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About the efficiency of sanction for retail to the minor of alcoholic products

Now the problem of counteraction to the process of alcoholization of minors with the criminal and legal means is extremely actual. In the modern conditions alcoholization of youth became one of the most harmful social and negative phenomena threatening the national security of the Russian state. Only the active counteraction of alcoholization of minors can promote prevention of growth of the specified negative phenomenon. The author analyzes the sanctions of administrative offense and penal act for retail to the minor of alcoholic products in the plane of general prevention. In this article the differentiated approach to the system of calculation of the sizes of penalties and to the terms of corrective works is offered (taking into account a degree of public danger of the considered crime).

Об эффективности санкции за розничную продажу несовершеннолетним алкогольной продукции

В настоящее время проблема противодействия процессу алкоголизации несовершеннолетних уголовно-правовыми средствами является чрезвычайно актуальной. В современных условиях алкоголизация молодежи стала одним из наиболее вредных социально-негативных явлений, ставящих под угрозу национальную безопасность российского государства. Только активное противодействие алкоголизации несовершеннолетних может способствовать недопущению разрастания указанного негативного явления. Автор анализирует санкции административного правонарушения и уголовно-наказуемого деяния за розничную продажу несовершеннолетним алкогольной продукции в плоскости общей превенции. В статье предлагается дифференцированный подход к системе исчисления размеров штрафов и к срокам исправительных работ (с учетом степени общественной опасности рассматриваемого преступления).

Keywords: *penalty, corrective works, efficiency of criminal and legal influence, criminal liability.*

Ключевые слова: *штраф, исправительные работы, эффективность уголовно-правового воздействия, уголовная ответственность.*

Criminal liability as one of the most important elements of the mechanism of criminal and legal regulation allows by the means of realization of criminal and

legal ban provide the effective protection of public relations from the public and dangerous and illegal encroachments [1, p. 96]. At the same time, as K.R. Samvelyan notes, "… efficiency of application of the criminal law in no small measure depends on its construction and, first of all, the type of sanction. The upper and lower bounds of punishment and their types specified in the sanction determine the powers of the court at the choice of look and volume of criminal and legal impact on the defendant. From the type of sanction and clearness of its construction, from whether it corresponds to axiological estimates, the questions connected with the punishment individualization" depend [2, p. 15].

At the same time, in the legal literature there is no consensus about the concept of efficiency of sanctions of any rules of the law, per se, and criminal and legal sanctions in particular. The position of M.V. Sobolev who suggests to understand the difference relation between the social aim (purposes) which it pursues, and the result achieved now to the spent means as efficiency of the sanction of precept of the law is interesting [3, p. 16]. At the same time, M.V. Sobolev notes that "… practical determination of efficiency of the legal sanction will always be relative because to determine the result received at achievement of a goal very difficult. Respectively, the efficiency of precept of the law should be understood not only as achievement of the most useful consequences, but also as receiving simply positive result. For example, elimination of consequences of the offense, re-education of the offender and stimulation of his social and active behavior … Restoration of the law and order, suppression of illegal behavior and correction of the offender" [3, p. 17] can become the result of application of the sanction.

According to the part 2 of the article 43 of the criminal code of Russian Federation (further-CC RF), punishment is applied for restoration of the social justice, and also for correction of the convict and the prevention of commission of new crimes. If to take into account these criteria, the developed law-enforcement practice according to the art. 151.1 of CC RF, and also the social effect of operation of this article about which it is possible to judge by statistical data and results of the carried-out questioning then is obvious a conclusion that the article 151.1 of CC RF isn't rather effective, and the reason not only in imperfection of its disposition, but also in incorrectly certain sanction. So, now the article 151.1 of CC RF prescribes the punishment of such kinds:

- a penalty in the amount of fifty to eighty thousand rubles or at a rate of a salary or other income of the convict for the period from three to six months;
- corrective works for a period of up to one year with deprivation of the right to hold certain positions or to be engaged in a certain activity for a period of up to three years or without that.

We consider that at introduction to CC RF of this article and definition of the acceptable types and the amount of punishments the legislator has applied incorrect approach.

As A.I. Korobeev notes, in the course of criminalization it is necessary to consider all noted features of interrelation of public sense of justice and the law-making. Ignoring of the level of public sense of justice reached at present can lead

to establishment of a criminal and legal ban which in the opinion of public opinion won't be perceived as fair [4, p. 84]. In our opinion, justice of criminal and legal ban needs to be understood in two aspects: as the justice of reference of this or that act to penal and as the justice of punishment established for it, – only both criteria of justice are capable to provide perception with the society of criminal liability for this or that act as fair.

According to K.R. Samvelyan, the sanction can be fair "… only when corresponds to the gravity of the act described in the article, is agreed with the sanctions for commission of others, close by the form and to the character of crimes" [2, p. 14]. S.A. Galaktionov considers as one of the necessary requirements imposed to the sanction compliance to its character of the public relations which are protected by a certain criminal precept of law: "… Because the criminal law is subjective, this property is inherent also in the sanction as the sanction – the inevitability of protection of the existing public relations refracted in the consciousness of certain representatives of the society and a measure of intensity of the impact on psychology of the criminal. In a case if the legislator incorrectly constructs the sanction (will incorrectly define a type and the amount of punishment), it can entail non-use of the sanction or application of unreasonable corrective actions to the offender and non-performance is more whole punishments and violation of the principle of justice" [5, p. 8]. However it is necessary to agree also that "… absolutely fair sanctions can't be constructed, they can be only relatively fair. The criminal and legal sanction can be estimated as fair or unfair only in comparison with the other sanctions in this legal system and at this period of time therefore the main criterion of compliance of sanctions to the principle of justice is their coherence" [6, p. 9]. It is characteristic that S.A. Galaktionov also considers the category "justice" as the estimated concept. In his opinion, "… terms "right" and "justice" according to the objective contents are faithful, but aren't identical. Being embodied in the current legislation, justice remains the phenomenon of morality and a sense of justice, one of the ideals to which it is necessary to aspire" [5, p. 9].

S. A. Galaktionov suggests allocate three levels of manifestation of the category of justice in the criminal law: justice when forming a circle of criminal act; definition of the fair sanction; justice at the infliction of punishment by the court [5, p. 8]. Apparently, these levels are the indicators of the above described interrelation of disposition of criminal norm and its sanction which in total determine potential justice of the established criminal and legal ban, and in the course of the right application its real justice is shown. A.V. Katasonov also points to the unity of three these factors, allocating such ways of implementation of preventive function of legal responsibility as:

- establishment of obligations for the observance of instructions of precepts of the law;
- information influence from the sanction of the precept of law;
- information influence from the practice of application of the legislation on legal responsibility;

- implementation of negative sanctions of precepts of the law which send behavior of the subject to the necessary direction or deprive him the actual and (or) legal opportunity to make a new offense;

- establishment of incentive norms and information influence from the lawful behavior acting as the dynamics of positive legal responsibility [7, p, 17].

However at all importance of the correct creation of disposition of the article, we consider that determination of the fair sanction in many respects predetermines the efficiency of criminal and legal ban, excessively soft or excessively rigid punishment will nullify even fairly established criminal and legal ban on commission of any act, without giving the chance to be shown and potential justice of this ban and its real justice since at the infliction of punishment the court can't go beyond the top limit of the established sanction.

In the initial edition of the article 151.1 of CC RF the penalty has been established, in our opinion, in extremely wide framework: "to eighty thousand rubles", – i.e. the minimum size of penalty, according to the p. 2 of the article 46 of CC RF, could make 5 thousand rubles. The actual difference between the minimum and maximum border – 16 times! While the p. 2.1 of the article 14.16 of the Code of the Russian Federation on Administrative Offences provides a penalty for the considered act for natural persons at the rate from 30 thousand to 50 thousand rubles. As the available judgments show passed according to the article 151.1 of CC RF till 2015, the sizes of the appointed penalties made: 5000 rub, 6000 rub, 10 000 rub, 15 000 rub [8, 9, 10, 11, 12, 13, 14]. Moreover, the administrative practice according to the p. 2.1 of the article 14.16 of the Code of the Russian Federation on Administrative Offences in the Far-Eastern federal district (further – FEFD) shows that the number made responsible after 11/12/2012 (when the penalties have significantly been increased[15]) became not in all regions of FEFD less. Their number, on the contrary, has increased in Yakutia and the Kamchatka territory. 52,7% of respondents among the staff of the Department of Internal Affairs also believe that after the specified increase in penalties the number of violations didn't become less.

The above doesn't allow us agree with E.A. Gerasimova considering that "… the sanction put by the legislator in the norm on retail to the minor of alcoholic products meets the requirements of legality, justice and individualization of the criminal liability. The serious objective reasons for its modification are absent" [16, p.138].

V.P. Silkin has absolutely fairly specified that "… unfairly big gap between the minimum and maximum borders of each type of punishment in the sanctions threatens the unity of practice of the infliction of punishment" [6, p. 24]. Certainly, on the legal consequences administrative and criminal penalties aren't identical. However such factor as a risk of existence of criminal record, not for all citizens can serve as significant circumstance with the due preventive influence.

The federal law from 12/31/2014 No. 529-FL [17] in the article 151.1 of the criminal code of Russian Federation has made the changes which have set the lowest limit of a penalty of 50 thousand rubles. These changes should be noted as

positive, however, we believe that the penalty size problem in Art. 151.1 of CC RF hasn't been finally solved by it.

The offers on mutual settlement of the sizes of penalties aren't presented in the p. 2.1 of the art. 14.16 of the Code of the Russian Federation on Administrative Offences and the art. 151.1 of CC RF actual because of the need of exception of its construction of an administrative prejudice proved by us [18, p. 109 – 112]. However the gap problem in the penalty size borders in the art. 151.1 of CC RF demand the permission. From the staff of the Department of Internal Affairs interrogated by us only 14,8% have considered the size of penalty of suitable, 59,5% determined in the art. 151.1 by CC RF – consider that it should be increased, 25,7% – have found it difficult to estimate unambiguously its harmony to the nature of act.

In our opinion, taking into account cancellation of the part 2.1 of the article 14.16 of the Code of the Russian Federation on Administrative Offences, the minimum size of penalty for the sale of alcoholic products to the person which hasn't reached 21 years has to make 50 thousand rubles, as well as is established now. However its maximum limit has to be increased to 100 thousand rubles or be estimated at a rate of a salary or other income of the convict for the period from three to six months.

As for the second type of punishment prescribed by the article 151.1 of CC RF – corrective works, according to some authors, corrective works are softer type of punishment, than a penalty and deprivation of the right to hold certain positions or to be engaged in a certain activity which consequences are more serious for the convict, than the purpose of corrective works [19, p. 10]; actually corrective works as a type of criminal penalty are "a penalty by installments", therefore, the name of this punishment has to correspond to the contents [20, p. 7].

According to Federal State Statistics Service, the average monetary income per capita by the end of 2015 in Russia made 30 514 rub a month [21]. If to consider corrective works as "a penalty by installments", then at such situation the subject made responsible according to the art. 151.1 of CC RF will pay the minimum penalty of 3 051 rub (5% of a salary in 2 months), and maximum – 73 233 rub (20% in one year). We believe that it is possible to recognize only the upper bound of this sanction accepted for the art. 151.1 of CC RF.

As the available law-enforcement practice shows, according to the article 151.1 of CC RF corrective works as a punishment aren't used yet and in general the statistics of application of this type of punishment in the Russian Federation shows that they are appointed extremely seldom – approximately in 5% of cases [22, p. 50]. However, considering the all measures for humanization of the criminal legislation applied in recent years, it is possible to believe that this type of punishment will find more often the application that also in addition causes a need of its improvement for the art. 151.1 of CC RF. For comparison, corrective works for involvement of the minor in the use of alcoholic drinks are established for a period of one year till two years (p.1 of the art. 151 of CC RF). In our opinion, corrective works as the sanction in the art. 151.1 of CC RF also have to be established for a period of one year till two years. At such terms the minimum sum

which is a subject to payment (5% of a salary in one year), on average, will make 18 308 rub, and maximum (20% of a salary in two years) – on average, 146 467 rub.

We consider that as a result of application of these measures for improvement of the sanction of the art. 151.1 of CC RF efficiency of its criminal and legal influence will significantly increase.

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