



# FAN, TA'LIM VA AMALIYOT INTEGRATSIYASI

ISSN: 2181-1776

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## DIFFERENT VIEWS OF CRIMINAL PUNISHMENTS (The analysis of the laws of foreign countries)

**Abstract:** In the present paper explains the system of criminal penalties in the legislation of foreign states. The subject of journalistic research supports the complex theoretical and practical problems of systematization of types of punishment, their implementation and the effectiveness of foreign criminal legal theory, legislation and law enforcement practice.

**Keywords:** the system of criminal penalties, systematization of punishment, the criminal law of the foreign states, penalties.

### JINOIY JAZOLARNING TURLI KO'RINISHLARI (Xorij mamlakatlar qonunlari tahlili asosida)

**Annotatsiya:** Ushbu maqolada xorijiy davlatlar qonunchiligidagi jinoiy jazolar tizimi tahlil qilinadi. Maqolada tadqiqotning predmeti jazo turlarini tizimlashtirish, ularni amalga oshirish va xorijiy jinoiy-huquqiy nazariya, qonunchilik va huquqni qo'llash amaliyoti samaradorligining murakkab nazariy va amaliy muammolari ilmiy adabiyotlar tahlili asosida ko'rib chiqilgan.

**Kalit so'zlar:** jinoiy jazolar tizimi, jazoni tizimlashtirish, xorijiy davlatlarning jinoyat huquqi, jarimalar.

### РАЗЛИЧНЫЕ ВЗГЛЯДЫ НА УГОЛОВНЫЕ НАКАЗАНИЯ (На основе анализа законодательства зарубежных стран)

**Аннотация:** В данной статье анализируется система уголовных наказаний в законодательстве зарубежных стран. В статье предметом исследования являются систематизация видов наказаний, их реализация, а также комплекс теоретических и практических проблем зарубежной уголовно-правовой теории,

законодательства и эффективности правоприменения на основе анализа научной литературы.

**Ключевые слова:** система уголовных наказаний, систематизация наказаний, уголовное право зарубежных стран, штрафы.

## INTRODUCTION

The type of punishment not associated with deprivation of liberty is work in the public interest (French Criminal Code), community service (Norwegian and Dutch Criminal Codes), free work for the good of society (Scottish Criminal Code), public service (Finnish Criminal Code). In Norway, community service punishment is applied for acts that can lead to imprisonment for up to six years, but the offender must agree and the purpose of the punishment does not contradict its implementation at large. The number of hours of public works is determined from thirty to four hundred and twenty, the period of implementation is up to one year, if there are no serious reasons for a longer period, in addition, the court may additionally apply penalties, without any dependence on their presence in the provisions of the sanctions for this crime or not (№ 28a)<sup>1</sup>.

Due to the fact that the criminal law of the Republic of Finland, in addition to the punishment "Unconditional sentence to imprisonment", also provides for the appointment of public service, that is, in the form of ordinary, normal (corresponding to the profession, qualifications and abilities of the convict) unpaid work in the annual hourly range from twenty to two hundred constantly monitored by the supervisory authority. The main condition for their application by the Finnish court is obtaining the consent of the perpetrator to replace one type of punishment with another<sup>2</sup>.

In turn, in the Netherlands, which has a ban on forced labor, the appointment of public works occurs on the basis of the request of the convicted person, when they replace the punishment "Imprisonment" or other punishment associated with deprivation of liberty imposed for less than six months. Since the maximum number can be only two hundred and forty hours of work, when the work is determined by the duration of less than one hundred and twenty hours, the period of its performance does not exceed six months, and when more, this period is not more than one year<sup>3</sup>. According to the provisions of French criminal law, when a misdemeanor is committed, the offender is punished with imprisonment, and the court is competent to oblige the convicted person to perform gratuitous work in accordance with the public interest for a period of forty and two hundred and forty hours for the benefit of legal entities of public law or organizations that are authorized to take into account social useful interests.

<sup>1</sup> Norwegian criminal law. Translated from Norwegian / per. A.V. Zhmeni; scientific ed. and introductory article: Yu. V. Golika. – St. Petersburg: Legal Center Press, 2003. p. 53.

<sup>2</sup> Bagreeva E. Penitentiary system of Finland // Crime and punishment. 1995. No. 8. - P. 31

<sup>3</sup> The Dutch Criminal Code. Translation from English / scientific. ed. b. in. Volzhenkin per. and. V. Mironova. 2nd ed. St. Petersburg: jurid. center press, 2001. p. 142-143.

## METHODOLOGY

Accordingly, the non-application of this type of punishment “Work in the public interest” is due to both the official refusal of the defendant from them and his absence from the court session<sup>4</sup>.

Also, the national legislator provides for penalties in the form of deprivation of certain rights. According to the French Criminal Code, such a type of punishment as deprivation or restriction of rights is also possible<sup>5</sup>.

The provisions of punishment in the form of deprivation or restriction of rights in accordance with article 131.6 may include the following restrictions for the convicted person:

- deprivation of the right to drive a motor vehicle for up to five years

- driving ban for up to five years

- cancellation of the right to drive a motor vehicle and a ban on applying for a new license for up to five years

- confiscation of a vehicle or several vehicles that rightfully belong to the convicted person

- bringing into proper condition a vehicle or several vehicles that lawfully belong to the convict up to a one-year term

- prohibition to keep or carry weapons for which possession requires a permit for up to five years

- confiscation of weapons or several weapons that are lawfully owned by the convicted person or are at his free disposal

- Withdrawal of official hunting permit and prohibition to apply for a new permit for up to five years

- a ban for up to five years on the issuance of other checks into official circulation, in contrast to those that allow the drawer to receive funds with the payer present, based on the content of the bill of exchange, or those securities certified by the owners (the holder of the bill), or use credit cards

- confiscation of a material object (thing) that served or was intended for the purpose of committing the committed act

- prohibition for up to five years to carry out any professional or social activity, when the opportunities provided by this activity could be used in the preparation or commission of the deed.

The Holland Penal Code, prescribing punishments in the form of deprivation of certain rights, implies the following prohibitions:

- to hold public office or certain positions

- for military service

- to elect members to general representative bodies of power or to nominate oneself as a candidate for these representative bodies of power

- to work as an adviser in the courts or an administrative officer

- to engage in a specific activity.

<sup>4</sup> New Criminal Code of France. - M., 1993. P.20.

<sup>5</sup> New Criminal Code of France. - M., 1993.

## ANALYSIS AND RESULTS

The period of deprivation of rights is determined from two to five years, with the exception of the case when the convicted person is sentenced to life imprisonment - in such situations, the person will also be deprived of one or another right for life<sup>6</sup>.

In Germany, criminal law provides for the deprivation or restriction of rights: for example, in accordance with § 44, when the perpetrator was driving a car or in connection with driving a car or, having violated the duties of a car driver, was punished by imprisonment or a fine. Accordingly, the court of the Federal Republic of Germany is competent to apply to him a ban from one month to three months on driving any or a certain type of car, subject to street traffic. According to the provisions of § 44, the prohibition of driving is generally linked to the withdrawal of a driving licence. Additional consequences in the form of deprivation of the right to hold office, the right to be elected or the right to vote occur when the perpetrator of the deed was subjected to the form of punishment "Deprivation of liberty" for up to one year<sup>7</sup>.

This penalty is set for up to five years. Due to the fact that when losing the legal ability to occupy public positions determined by the court, the convict also loses the corresponding legal status and existing rights, then in fact this loss is directly carried out in reality in the case when the criminal law does not provide for another option for the development of this situation. Based on the provisions of § 45, the court is entitled to deprive the guilty person who has been sentenced from two to five years of constitutional rights in the form of the right to vote or vote, in the case when this circumstance is specifically stipulated by law.

According to the Norwegian Criminal Code, the term of imprisonment ranges from fourteen days to fifteen years, and in total up to twenty years. In specially provided cases, up to twenty-one years is allowed. When imposing imprisonment, the court is competent, in addition to the already existing form, to apply penalties, without making them dependent on the fact that they were directly formulated by the Norwegian legislator specifically for this crime or not<sup>8</sup>. The maximum period of detention is set from fourteen days to twenty years. At the same time, two days of detention are equated to one day of imprisonment. With the consent of the convicted person or at his request, detention may be commuted to imprisonment<sup>9</sup>.

If the time limit of the punishment is not considered sufficient to protect the public, then imprisonment may be commuted to a stay in a Department of Corrections facility (arrest) in the sentence if the following conditions are met:

1) a violator of the law is found guilty of committing or attempting to commit serious acts of violence, a crime on sexual grounds, imprisonment, arson or other

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<sup>6</sup> The Dutch Criminal Code. Translated from English / scientific ed. by B. V. Volzhenkin; per. by I. V. Mironova. 2nd ed. – St. Petersburg: Legal Center Press, 2001. – p. 106.

<sup>7</sup> The German Criminal Code. M., 1996 Butler, M.Yu. Dvoretzky. Directions for improving the system of certain types of criminal penalties and other correctional and security measures in the context of optimizing criminal liability under the Criminal Code of the Federal Republic of Germany / M.Yu. Dvoretzky // Black holes in Russian legislation. 2009. No. 5, - S. 86-88.

<sup>8</sup> Norwegian criminal law. Translated from Norwegian / per. A.V. Zhmeni; scientific ed. and the introductory article by Yu. V. Golik. – St. Petersburg: Legal Center Press, 2003. – p. 51.

<sup>9</sup> Norwegian criminal law. Translated from Norwegian / per. A.V. Zhmeni; scientific ed. and the introductory article by Yu. V. Golik. – St. Petersburg: Legal Center Press, 2003. – p. 49.

serious crime that violated the life, health or freedom of other people or could endanger these legal values. In addition, there must be a perceived immediate danger of that. That a lawbreaker can commit such a crime again

2) the violator of the law is guilty of committing or attempting to commit a serious crime of the same kind as named in paragraph 1 and has previously committed or attempted to commit a crime named there.

The Norwegian legislator actually established both the minimum (ten years) and maximum (twenty-one years) term of arrest for a convicted person. However, in accordance with the prosecutor's request, the court is entitled to extend the established framework up to a five-year period at a time<sup>10</sup>.

In accordance with Dutch criminal law, imprisonment is provided for as life imprisonment or limited to a certain period of imprisonment of the convicted person. The term of imprisonment is set from one day to fifteen years. In some cases (including cumulative offences), an increase in the term of imprisonment up to twenty years is allowed<sup>11</sup>.

The conclusion can be a minimum of one day and a maximum of one year. In case of cumulative crimes, repetition, and also if the crime is committed by a public servant in violation of his official powers, a period of up to one year and four months is established<sup>12</sup>.

In accordance with the Swedish Criminal Code, the maximum term of imprisonment is set at 10 years, and the minimum is 14 days. For cumulative crimes or sentences, the term of imprisonment may not exceed 18 years, while the existence of life imprisonment is not ruled out<sup>13</sup>.

According to the provisions of the Criminal Code of the Swiss Confederation, a number of types of execution of the punishment "Deprivation of liberty" are provided, which are served in a hard labor prison, in the form of imprisonment, or arrest. Since, based on the provisions of Art. 35 of the Criminal Code, the heaviest punishment associated with serving imprisonment is imprisonment in a hard labor prison, then the term of execution is provided from one year to twenty years, and, as an exception, life imprisonment. Due to the fact that the minimum term for serving this type of punishment is limited by the legislator to three days, then, unless the Criminal Code provides for another circumstance, in accordance with Art. 36 maximum it is determined by a three-year period. In turn, the punishment in the form of arrest acts as the easiest deprivation of liberty for the convict. When, in addition to imprisonment, punishment in the form of a fine is provided as an alternative sanction, the court is accordingly competent to replace imprisonment and may order arrest (art. 39).

In addition, it is allowed to replace imprisonment with arrest if the term of imprisonment does not exceed three months (Article 37). The term of arrest ranges

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<sup>10</sup> Norwegian criminal law. Translation from Norwegian / trans. A. V. Zhmeni scientific. ed. and intro. Art. Yu. V. Golik. - St. Petersburg: Jurid. Center Press, 2003. - S. 59-60.

<sup>11</sup> The Dutch Criminal Code. Translation from English / scientific. ed. B. V. Volzhenkin per. I. V. Mironova. 2nd ed. - St. Petersburg: Jurid. Center Press, 2001. - P. 108.

<sup>12</sup> See, for example: Ibid. - P. 121.

<sup>13</sup> The Swedish Penal Code / scientific. Ed.: S. S. Belyaev, N. F. Kuznetsova. - St. Petersburg: Jurid. Center Press, Moscow Publishing House. state un-ta, 2001. - P. 24, 205-218, 238.

from one day to three months. The arrest is carried out in a special institution, within the limits of special premises not intended for the detention of those sentenced to deprivation of liberty. When serving an arrest, a person is obliged to work, while he is allowed to independently choose the appropriate job<sup>14</sup>.

In the Criminal Code of France, the punishment in the form of deprivation of liberty is presented more extensively and extensively. Thus, natural persons can be subjected to criminal punishment alternatively in the following forms:

criminal imprisonment or life imprisonment

criminal imprisonment or imprisonment for not more than thirty years

criminal imprisonment or imprisonment for not more than twenty years

criminal imprisonment or criminal imprisonment for not more than fifteen years.

In accordance with the provisions of article 131.1 of the French Criminal Code, in fact, criminal imprisonment or criminal imprisonment should not be directly imposed in reality for a period of less than ten years.

As corrective punishments, based on the provisions of article 131.4 of the French Criminal Code, imprisonment can be applied, determined for the following period:

not exceeding ten years

not exceeding seven years

not exceeding three years

not exceeding two years

not exceeding one year

not exceeding six months<sup>15</sup>.

According to the provisions of German criminal law, criminal punishment in the form of deprivation of liberty forms the basis of the system of punishments, since it is the only type of punishment for acts of grave and moderate gravity, as well as for private recidivism. Accordingly, in fact, the application of the type of punishment "Deprivation of liberty" is provided directly from one to six months in reality. The execution of punishment in the form of imprisonment in the last decade has been superseded by a significant spread of punishment in the form of a fine. Also in the criminal legislation of Germany there is a punishment in the form of life imprisonment.

In addition to the named types of punishments, the criminal laws of the named foreign ones provide for other additional types of punishments. So, according to the Criminal Code of Norway, this is removal from an official position, loss of the right for a certain period or forever to occupy a certain position or carry out certain activities or work, deprivation of civil rights, a ban on being in a certain place<sup>16</sup>.

The Criminal Code of Holland additionally provides for such punishments that we have not yet named, in the form of deprivation of certain rights, placement in a state correctional house, publication of a sentence. At the same time, they can appoint

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<sup>14</sup> The Swiss Criminal Code. Translation from German / scientific. ed. A. V. Serebryannikova (translation, foreword). - St. Petersburg: Jurid. Center Press, 2002. - P. 86-87.

<sup>15</sup> New Criminal Code of France. - M., 1993.

<sup>16</sup> Norwegian criminal law. Translation from Norwegian / transl.: A. V. Zhmeni nauch. ed. and intro. Art. Yu. V. Golik. - St. Petersburg: Jurid. Center Press, 2003.

separately, together with the main punishments or in combination with each other. This also includes the confiscation already mentioned above<sup>17</sup>.

Swedish criminal law also includes conditional imprisonment, probation and transfer to special care. Due to the fact that the provisions of probation suggest the possibility of its combination with the “Fine” punishment, which is actually paid in the form of a fine, regardless of its presence in the content of the sanction for the deed, it is also directly combined with the “Imprisonment” punishment, which in reality is imposed from fourteen days to three months. Since the duration of probation is set for a period of three years, counted at the beginning of its execution, during the one-year period, the convict is officially monitored by representatives of the state body. Transfer to special care applies to persons under the age of twenty-one. And it resembles the institution of compulsory medical measures<sup>18</sup>.

### **CONCLUSION**

In turn, the provisions of the Swiss criminal law also contain additional types that provide for criminal legal consequences for the convicted person in the form of:

dismissals from office from two to ten years

deprivation of parental or guardianship

a ban on engaging in a certain profession, craft or a ban on concluding commercial transactions from six months to five years

expulsions outside the host country in relation to foreigners

a ban on visiting a restaurant for a person who has officially been recognized as an alcohol addict from a six-month to two-year period.

Other measures are also established, including: preventive bail (meaning in a guarantee not to commit a crime), confiscation, compensation to the victim for damage, publication of the verdict<sup>19</sup>.

The French Criminal Code also provides for additional types of punishment in accordance with article 131.10:

prohibition

deprivation

incapacity or withdrawal of any existing entitlement

instructions for certain care or obligation to act accordingly

immobilization or confiscation of any thing included in the list of items subject to it

the closure of any institution for advertising the decision of a public authority or its dissemination in the press or in any other way by an audiovisual message<sup>20, 20</sup>

The criminal legislation of the Federal Republic of Germany contains provisions on additional penalties of the following types:

driving ban

<sup>17</sup> The Dutch Criminal Code. Translation from English / scientific. ed. B. V. Volzhenkin per.: I. V. Mironova. 2nd ed. – St. Petersburg: Jurid. Center Press, 2001.

<sup>18</sup> Swedish Penal Code / scientific. Ed.: S. S. Belyaev, N. F. Kuznetsova. – St. Petersburg: Jurid. Center Press, Moscow Publishing House. state un-ta, 2001.

<sup>19</sup> The Swiss Criminal Code. Translation from German / scientific. ed. A. V. Serebryannikova (translation, foreword). – St. Petersburg: Jurid. Center Press, 2002.

<sup>20</sup> New Criminal Code of France. – M., 1993.

deprivation of the right to occupy a certain position  
deprivation of the right to be elected somewhere or the right to vote for something.<sup>21</sup>

The criminal legislation of the Federal Republic of Germany contains provisions on additional penalties of the following types:

driving ban

deprivation of the right to occupy a certain position

deprivation of the right to be elected somewhere or the right to vote for something<sup>21</sup>.

Thus, the analysis shows that such an exceptional type of punishment as the death penalty is practically not used in Western foreign countries. There is a list of punishments associated with deprivation of liberty, however, the application of this punishment is provided only for the commission of a certain category of crimes, and then if it cannot be replaced by punishment not related to deprivation of liberty. In the criminal legislation of foreign countries, great preference is given to alternative types of punishment, which, as a rule, affect the financial situation of the convicted person or restrict him in any rights.

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<sup>21</sup> The German Criminal Code. - M., 1996.



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