

## THE CRIMINAL CODE OF MONGOLIA. THE GENERAL PART. PUNISHMENT

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The subject. The Criminal Code of Mongolia, as one of the newest criminal laws, needs to be studied.

The purpose of the study is to identify the features of criminal punishment and its appointment in Mongolia.

The author uses method of formal legal interpretation of Mongolian Criminal Code.

Main results: (1) Criminal liability in Mongolia consists of punishments and coercive measures. Its goals include: punishment, restoration of rights violated by a crime, and compensation for damage or prevention of new crimes, as well as re-socialization. (2) The system of punishments has been significantly simplified. It is free from special punishments for military personnel, as well as types of punishment that duplicate each other in terms of content. There are 5 types of punishments in the current Criminal Code. Four of them can be assigned as the main ones: a fine, community service, restriction of movement rights, and imprisonment. The death penalty is excluded. The only additional type of punishment is deprivation of the right. The Court has been given a fairly wide margin of appreciation. (3) The procedure and grounds for bringing to criminal responsibility and exemption from criminal liability. The Law establishes general rules for criminal prosecution and special rules for sentencing. The latter also provide for the possibility of release from punishment, as well as the application of coercive measures (suspended sentence or restriction of rights) to the perpetrator. Mitigation of punishment is achieved by setting a reduction coefficient applied not only to the upper, but also to the lower limit of the sanction. The imposition of punishment for multiple crimes allows for the addition of a fine with other types of punishment. The possibility of imposing imprisonment for a term exceeding twenty years is excluded. (4) Probation and compulsory measures. A suspended sentence of up to five years is an alternative to punishment as an independent compulsory measure, without imposing a custodial sentence. At the same time, the scope of application of probation is significantly narrowed. The court may attach all types of coercive measures to the prescribed punishment. (5) The specifics of sentencing minors under criminal law demonstrate the most vivid embodiment of the idea of humanizing the criminal policy of the state. The legislator ruled out the possibility of imposing a fine on minors, and transformed the punishment in the form of imprisonment into its sparing form - imprisonment in a special educational institution. 6. Liability of legal entities. The only form of punishment is a fine. Compulsory measures may be attached to it.

Conclusions. It is necessary to use the positive experience of Mongolian legislation in addressing issues of punishment and its appointment in Russia.

### 1. Introduction.

Mongolia has a 2015 Criminal Code, which was adopted on December 3, 2015 (entered into force on July 1, 2017) and is characterized by many innovations. The first translation of the full text of the Criminal Code of Mongolia was carried out by the Omsk Academy of the Ministry of Internal Affairs of the Russian Federation and the University of Internal Affairs of Mongolia [1]. It is taken as a basis in this work. As noted in its first part [2], the new Criminal Code was highly appreciated in the doctrine [3, pp. 107-109; 4, p. 119]. Therefore, there is a noticeable increase in the number of publications [5; 6; and many others] devoted to legislative decisions of the Criminal Code of Mongolia (hereinafter – the Criminal Code). There is an obvious need to take into account and use the positive experience of Mongolian criminal legislation in addressing issues of punishment and its appointment.

**2. Criminal liability.** Firstly, according to Part 2 of Article 5.1, criminal liability consists of punishments and coercive measures. Secondly, the responsibility of minors has significant specifics (Chapter 8). Thirdly, the recognition of not only an individual but also a legal entity as the subject of a crime has led to the existence of an independent system of types of criminal liability (Chapter 9). The objectives of criminal liability (Part 1 of Article 5.1) are: punishment of an individual or legal entity who committed a crime, restoration of rights violated by a crime, and compensation for damage or prevention of new crimes, as well as the re-socialization of a person who committed a crime. The latter goal is pursued only in relation to individuals.

**3. The punishment system** The Russian doctrine actively explores progressive provisions on the system of punishments, which have found their way into the Criminal Code of Mongolia [7]. There are 5 types of punishments in the current Criminal Code. Four of them can be assigned as the main ones, and in the list of punishments they range from milder to more severe: fine, community service, restriction of movement rights, and imprisonment. The latter is called – and thus isolated - deprivation of the right, which is used as

an additional type of punishment. Thus, the restriction of freedom of movement is fixed as a new type of punishment. Confiscation of property has been moved to the category of compulsory measures. The arrest was ruled out as an unnecessary measure due to the reduction of the minimum term of imprisonment to 7 days.

Special attention, especially against the background of discussions about the legality of the ban on the death penalty by the Constitutional Court of the Russian Federation [8], deserves the complete exclusion of the death penalty from the Criminal Code of Mongolia. Prior to that, in January 2012, the President of Mongolia, Tsakhiagiin Elbegdorj, introduced a moratorium on the death penalty for the first time, which was ambiguously perceived by the population [9].

A fine is defined in Part 1 of Article 5.3 of the Criminal Code as imposing a monetary penalty on a person who has committed a crime, measured in penalty units. Its size is set by tugriks in the amount of one hundred to forty thousand units. In this case, a fine may be imposed by a court with installment payments in certain installments for up to three years, taking into account the property status of the convicted person, as well as taking into account the possibility of the convicted person receiving wages or other income. The law provides for the consequences of non-payment of a fine, they are quite harsh: they can only be replaced by imprisonment. In this case, the amount paid by the convicted person is taken into account when determining the term of imprisonment at the rate of fifteen units per day of imprisonment.

In addition, the Criminal Code explicitly excludes the possibility of replacing the other main types of punishment with a fine. It is not allowed to impose a fine as an additional punishment. The concept, similarities and distinguishing features of a fine in modern Russian and Mongolian criminal law, the procedure and practice of fining both individuals and legal entities are also in the focus of attention of Russian scientists, including representatives of the Omsk School of Criminal Law. [10; 11; 12; 13]. It is noted that in the practice of Mongolian courts, when imposing a fine, the property status of the convicted person and his family, as well as the

possibility of the convicted person receiving wages or other income, are not always taken into account [14].

The punishment in the form of socially useful work (art. 5.4 of the Criminal Code) is the obligation established by the court to perform work in the public interest by the person who committed the crime without payment. The restrictions in their application are set more correctly than in the Russian criminal law. Firstly, this punishment cannot be imposed on persons who have been recognized as completely incapacitated. Secondly, pregnant women, women who have reached the age of fifty-five, and men who have reached the age of sixty are not assigned jobs that directly affect human health, which does not exclude the application of the punishment in question to these categories of persons.

The quantitative parameters of socially useful work are noticeably higher than in the Criminal Code of the Russian Federation: they are provided for a period of two hundred and forty to seven hundred and twenty hours. At the same time, socially useful work is served no more than eight hours a day. The criteria for determining the term and duration of serving a sentence are established: the circumstances of the commission of a crime, signs of harm or damage, and the identity of the offender.

The evasion of a convicted person from serving socially useful work entails their replacement with imprisonment based on the calculation, as in the Russian Federation, eight hours of socially useful work per day of imprisonment.

Restriction of movement rights (art.5.5) has certain similarities with the Russian punishment in the form of restriction of freedom. It consists in: a) prohibiting the person who committed the crime from leaving his place of residence or visiting certain places under the supervision of a competent authority, and b) assigning duties to move strictly in the directions established by the court and change his place of residence with the consent of the competent authority.

In addition, taking into account the circumstances of the commission of the crime, the

amount of harm or damage, and the identity of the offender, the court may prohibit communication with a certain person or with other people when determining the danger that the convicted person poses to them. The duration of restrictions on movement rights is provided for a period of one month to five years.

The convicted person's evasion from serving this sentence entails his replacement with imprisonment with a fairly strict coefficient: based on one day of restriction of movement rights for one day of imprisonment.

5.6 of the Criminal Code) – the most severe type of punishment - is defined as restriction of freedom of a person who has committed a crime, with detention in specialized institutions and is divided into three types: with detention for a certain period in an institution of 1) open type; 2) closed type; 3) closed type in strict isolation for life.

Imprisonment is imposed for a term of seven days to twenty years.

The court independently decides whether to serve a sentence in open or closed prisons, depending on the circumstances of the crime, the severity of the harm or damage caused by the crime, and the identity of the offender. There are no strict, maximally formalized regulations that determine the type of penitentiary institution, similar to the provisions of Article 58 of the Criminal Code of the Russian Federation, in the Mongolian Criminal Code.

Restrictions on the use of life imprisonment have been lifted: it is not imposed only on persons who have committed crimes before the age of eighteen, although the indication of this in the Criminal Code is superfluous due to the impossibility of imposing imprisonment on minors. However, the permissibility of imposing life imprisonment on elderly men and women was critically perceived by representatives of the Mongolian criminal law science [15]. If the convicted person has served twenty-five years of life imprisonment, the court decides whether to release the convicted person from serving the sentence, and if the release is refused, this issue is discussed every two years.

The only additional type of punishment under the Criminal Code is deprivation of the right (Article 5.7 of the Criminal Code), which, as in the Russian Federation, involves the establishment of a

ban on either public service or professional activity, or the prohibition of other rights of the person who committed the crime. The duration of the sentence is from one year to eight years (previously – up to five years).

Deprivation of the right is mandatory if it is provided for in a special part of the Criminal Code, but it can also be imposed at the discretion of the court. In addition, the Mongolian legislator clearly indicates the possibility of additionally imposing this punishment for crimes against the sexual integrity of children (Chapter 12 of the Criminal Code), as well as for crimes against children (Chapter 16 of the Criminal Code) committed by their father, mother, guardian or trustee.

Thus, the system of punishments in Mongolia has been significantly simplified. It is free from special punishments for military personnel, as well as duplicate types of punishment. The court has been given a fairly wide margin of appreciation in choosing the type of punishment, with minimal restrictions on the use of the latter among individuals. The most severe punishment is imprisonment, and it is the only one that replaces all the main types of punishments if the convicted person evades serving them. Only in rare cases is it provided for in the sanctions of the norms of the Special Part without alternative.

**4. The procedure and grounds for bringing to criminal responsibility and exemption from criminal liability.** Chapter 6 of the Criminal Code contains regulatory prescriptions defining: general rules for bringing to criminal responsibility; special rules for sentencing; rules for exemption from criminal liability and punishment.

The general rules of criminal prosecution have certain similarities with the general principles of sentencing established in art. 60 of the Criminal Code of the Russian Federation. The Mongolian legislator identifies only one special principle of bringing to criminal responsibility - humanism: when bringing a person to criminal responsibility, inhumanity, cruelty, and humiliation of human honor and dignity are not allowed. Moreover, this idea is formulated more correctly than in the Russian criminal law.

Special rules for bringing to criminal responsibility, suggesting its mitigation, are

contained in art. 6.7. Along with mitigation of punishment, they provide for the possibility of release from punishment, as well as the application of coercive measures to the perpetrator.

The reason for their use is the lower public danger of a person due to: 1) by admitting guilt in the commission of a crime that has been proven; 2) by compensating for the damage caused as a result of the crime or expressing a desire to compensate for it; 3) by fulfilling the duties assigned to him by the court during the period of application of coercive measures in the form of imposing an obligation or restriction of the right without imposing punishment (if such a measure is applied).

The forms of mitigation of responsibility, as well as the degree of mitigation of punishment and the duration of a suspended sentence, depend on the severity of the crime committed, the criteria of which are the limits of imprisonment provided for the crime, or only its maximum term, established in the sanction of the norm of the Special Part. Mitigation of punishment is achieved by setting a reduction coefficient applied not only to the upper, but also to the lower limit of the sanction.

#### Mitigation of liability under the Criminal Code of Mongolia

<i>The term of imprisonment established for a crime</i>	<i>Forms of mitigation of responsibility</i>
no more than three years	release from punishment, suspended sentence for up to three years or restriction of rights
no more than five years	suspended sentence for up to five years or restriction of rights
over two and not more than eight years	the punishment is not more than half the maximum and not less than half the minimum term of punishment
up to twelve or fifteen years old	the punishment is not more than 2/3 of the maximum and not less than 2/3 of the minimum term of punishment
up to twenty years and life imprisonment is not established	the punishment is not more than three-quarters of the maximum and not less than three-quarters of the minimum term of punishment
life imprisonment	the use of imprisonment for a certain period of time

It should be noted the essential features of the Mongolian rules for sentencing with multiple crimes.

1. The issue of adding up the penalties to be imposed or on a separate imposition of punishment is decided by the court; 2. It is allowed to add a fine with other types of punishment (tugriks in the amount of fifteen units are equivalent to one day of imprisonment); 3. The total amount of punishment when added may not exceed the maximum amount of punishment in the form of imprisonment provided for the most serious of the crimes committed, and according to the totality of sentences - the maximum amount provided for this type of punishment. This eliminates the possibility of imposing imprisonment for a period exceeding the maximum duration established in the General Part; 4. The rules for imposing punishment based on the totality of sentences also apply to cases of conviction for a crime committed before the court's verdict in the first case, which became known after the first verdict (Part 1 of art. 6.9). In the Russian Federation, such a combination is assessed as a set of crimes (Part 5 of Article 69 of the Criminal Code of the Russian Federation).

#### 5. Probation and compulsory measures.

Chapter 7 of the Criminal Code is devoted to probation and the use of coercive measures. A suspended sentence of up to five years is an alternative to punishment as an independent compulsory measure, without imposing a custodial sentence. At the same time, the scope of its application is significantly narrowed.: 1) It is prescribed only in the case of a minor crime and 2) it cannot be determined in cases of repeated commission of intentional crimes, as well as members of an organized group. An admission of guilt is a prerequisite for the appointment of this measure.; compensation for damage or an expression of a desire for compensation (in the latter case, the court sets a time limit for compensation).

The court, taking into account the circumstances of the commission of the crime and the identity of the offender, imposes compulsory measures provided for in Parts 2 and 3 of Art. 7.3: several duties (perform certain jobs and duties, etc.) or establishes several restrictions (a ban on visiting a certain place and communicating with certain people; a ban on performing a certain type of activity, etc.). (violation), as well as the commission of a premeditated crime by a probationer during the probation period, entail the cancellation of the suspended sentence and the imposition of punishment. In the case of a negligent crime, the court decides whether to cancel or maintain the suspended sentence.

The effectiveness of probation is recognized to be quite high. Thus, the total number of those who evaded their duties in Mongolia is about 0.4% of all probationers [16; 17, p. 35].

It is characteristic that the listed types of coercive measures, as well as compulsory medical measures (hereinafter referred to as MMMH), and confiscation of property may be attached by the court to the prescribed punishment (Part 1 of Art. 7.2). The measures imposed are an additional type of punishment (Part 2 of Article 6.4 of the Criminal Code of Mongolia), which indicates the identification of punishment and compulsory medical measures [18].

Confiscation of property also has certain specifics. In particular, the forced seizure of

property or income is carried out in order to compensate for harm caused to other persons, as well as to pay for the costs of conducting a case review process in an amount corresponding to the harm. Only if the amount of property or income received as a result of the commission of a crime exceeds the amount of damage caused, the property or income is transferred to the state budget.

The chapter concludes with instructions on postponing the execution of a court sentence from serving a sentence (art. 7.6). It can be applied for up to two years.: 1) a minor who has committed a minor crime for the first time; 2) a pregnant woman, a woman with a child under the age of three, or a man with a child and being the only parent.

#### **6. Peculiarities of sentencing minors**

Mongolia has adopted about 60 laws and other regulations concerning juvenile offenders [19; pp. 82-83].

Criminal liability applied to a minor should be aimed at helping him find his place in society, get an education, realize the consequences of the crime he has committed and protect him from the environment and people who contribute to the commission of crimes, and, if necessary, should be aimed at educating the minor through imprisonment (Part 2 of art. 8.1). The stipulated features of sentencing are also of interest to representatives of Russian science [20]<sup>1</sup>.

1. A suspended sentence may be imposed on minors with the assignment of duties provided for in Part 2 of Article 7.3 and with subsequent educational impact for a period of one to three years, during which the duties of upbringing may be assigned to a certain collective, a non-governmental body, father and mother, guardian, trustee, educator and close relatives. or to a specific citizen at his request or with his consent). Such measures can be applied independently and can be added to the prescribed punishment. Only a minor who has committed a serious crime must be punished.

2. The types of punishments for minors are: socially useful work; restriction of movement rights; incarceration in a special educational institution. Thus, the legislator excluded the possibility of imposing a fine on minors, and transformed imprisonment into its sparing form.

3. The duration of punishments has been significantly reduced (compared to the general terms).

The court may impose punishment and compulsory educational measures on persons who have reached the age of 18 and under the age of 21 on the prescribed grounds and in accordance with Chapter 8 of the Criminal Code.

#### **7. Liability of legal entities.**

The responsibility of legal entities, which is actively discussed in Russian doctrine [22; 23], is devoted to Chapter 9, which closes the General part of the Criminal Code, which defines the grounds for bringing legal entities to criminal responsibility; types of criminal liability; guarantees of its inevitability [24; 25].

The only form of punishment for legal entities is a fine. Compulsory measures may be attached to it in the form of: 1) deprivation of the right (prohibition of carrying out one or more types of activities for a period of one to eight years, or measures in the form of deprivation of the right provided for in the Special Part of the Criminal Code); 2) liquidation; 3) confiscation of property or income of a legal entity.

#### **8. Conclusions.**

The Criminal Code of Mongolia has rightfully been highly appreciated by experts. This is a unique normative act with a pronounced humanistic orientation. It is a living and actively developing Code, absorbing the achievements of criminal law thought, responding to new challenges and the main thing is to be able to achieve the stated goals.

<sup>1</sup> At the same time, advice to the Mongolian legislator is sometimes formulated [21; p. 322], which seems incorrect.

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