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IMPOSING A SENTENCE IN CASE OF CUMULATIVE CRIMES (Legislative Tendencies in Georgia)

Papuna Guruli
Doctor of Law, Dean of School of Humanities and Law, St. Andrews Georgian University, Attorney, Georgia

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ABSTRACT

Following the principles laid in foundation of Criminal Code adopted in 1960 Georgian legal scholars have always been very cautious to issues of criminal punishment. Remembering bloody consequences of soviet repressions, they always tried to follow the principle of proportionality. So did the legislature. Criminal Code of Georgia adopted in 1999 was largely based on that principle. Yet, in 2004 Georgian Parliament declared policy of zero tolerance which led to number of legislative innovations. Rules on imposing a sentence in case of cumulative crimes were substantially affected. Despite high expectations in just eight years it became apparent that something went wrong. In 2012 newly elected Parliament faced a necessity to declare a significant amnesty for vast number of prisoners and rethink the policy overall.

Present article attempts to analyze these legislative tendencies through the prism of theories of goals of punishment. Author argues that above mentioned issues were mostly consequence of superficial approach to the subject. The chase for statistics made government less mindful towards fundamental categories of criminal punishment. Namely, the goal of restoration of justice was almost entirely sacrificed for the sake of general prevention while special prevention was to a great extent misinterpreted as well. In 2013, thanks to further legislative innovations, general radicalism was largely overcome, but there is still much room for improvement.

INTRODUCTION

For past twenty years, legislative approach to criminal punishment has significantly changed at least twice in Georgia. First in 2004-2006 following newly proclaimed concept of zero tolerance Georgian legislature adopted number of laws that aimed to make legal consequences for committing a crime a lot more severe. Naturally provisions that regulated imposing a sentence in case of cumulative crimes were affected a lot. Population of Georgia, quite tired of many years of criminal activity, initially praised the pursuit. Nevertheless the approach was so one-sided and radical that some authors even refer it as a sign of authoritarianism.[1] Despite high expectations in just eight years newly elected parliament, dealing with the consequences of earlier praised zero tolerance policy, had to declare a significant amnesty for vast number of prisoners and rethink overall approach. In 2013 Parliament adopted a massive legislative package that included subject of present article. It seems that legislature aimed to overcome the radicalism so inherent to zero tolerance policy. In addition to rethinking existing provisions some new ones were introduced. For example a new type of punishment such as house arrest was introduced[2] that up to this day serves as a good alternative to imprisonment.[3]

What was the reason for such a massive turn around in just eight years? Answer may lay deep in the fundamental categories of punishment. **May be while chasing statistics of reduced crime government disregarded something essential?** In order to answer that question present article aims to analyze above mentioned legislative tendencies and ascertain whether they were in compliance with the goals of punishment well praised by legal science and acknowledged by legislator himself, namely: **restoration of justice**, **special prevention of crime** and **general prevention of crime**.

1. METHODOLOGICAL BASE

In order to fully and consistently analyze the subject of present article it is necessary to be equipped with a proper methodological base for the analysis. Otherwise, the consistency of argument may be easily lost and discussion may become pointless. The subject of present paper will be analyzed through the prism of goals of punishment which are: **restoration of justice (retribution)**, **special prevention of crime** and **general prevention of crime**. This choice was made because of two main reasons. First, goals of punishment are central to entire concept of criminal law. Hence the approach that assists reaching those goals has a good chance to be considered acceptable. On the other hand, the approach that hampers reaching those goals is most likely to be rejected. So the goals of punishment could be a good **orientation point** for sentencing in general and imposing a sentence in case of cumulative crimes in particular. Plus, the above mentioned goals of punishment are not only well appreciated by criminal science but acknowledged by the legislature as well. Namely, section 1 of article 39 Criminal Code of Georgia directly indicates, that: "The goal of a sentence is to restore justice, prevent repeated commission of a crime and resocialise the offender."

Ideas about goals of punishment went through a long and uneasy way from primitive revenge to modern elaborate concept.[4] For a large period of time revenge on the offender has been the main goal of criminal punishment. According to theories developed by Kant and Hegel, Punishment should have compensated for criminal's culpa. Punishment should have served fairness, rather than social good.[5] These are often referred as **absolute theories.** Methodologically they are **based on morality,** or to be exact on the idea of moral law. According to these theories, criminal act constitutes a breach of moral law, therefore punishment is a fair retaliation which follows that breach. Any kind of

1 Begiashvili K. (2022). Aggregate Sentencing for Cumulative Crimes Under the Criminal Legislature of Georgia. Justice and Law, #1(73), 153.

2 Law of Georgia on Amendments to Criminal Code of Georgia. No 944 of 1 June 2017 – website, 20.6.2017. <https://matsne.gov.ge/ka/document/view/3696184?publication=0#DOCUMENT:1> [Last accessed: 20.11.2023].

3 Gelashvili M. (2023). House Arrest as an Alternative to Prison Sentence in Modern Georgian Law: (Evolution and Transformation). "Law and the World", 9(27), 138-179. (In Georgian and English). Https://doi.org/10.36475/9.3.9

4 Abegg J. F. (1969). The Various Criminal Law Theories in Their Relationship to One Another and to Positive Law and Its History. First Part. Philosophical-historical Development of the Concept of Crime and Punishment. Frankfurt/Main: Verlag Sauer & Auvermann KG, 8-73.

5 Roxin, Arzt, Tiedemann (2013). Introduction to Criminal Law and Criminal Procedure Law. 6th Edition. C. F. Müller, 4-5.

social goal or practical expediency of punishment is absolutely rejected and the issue is solved purely based on morality. Since the offender puts his will against the will of society and thereby breaches the law, the punishment to which he eventually gets sentenced is the mean of restoration of what he has breached. Hegel also rejects the concept of deterrence through the threat of punishment, as well as the idea of re-education of criminal. He believes that since the criminal has a free will, threatening him or punishing him with the goal of re-education would mean to reduce him to animal. Kant directly refers to Talion principle – "An eye for an eye" – and argues that a criminal must be punished since **he deserves punishment** due to what he has committed.[6] Therefore absolute theories of punishment are frequently referred as theories of retribution. Complete rejection of utilitarian goals means that a criminal must be punished purely because it is fair to punish him, nevertheless whether it is socially expedient or not.[7] In this regard absolute theories are oriented towards past, towards the fact that has already happened.[8]

Despite its popularity the idea of pure retribution was opposed pretty strongly by some scholars. For example, Beccaria consistently argued why sentencing based purely on retribution is wrong. Finally, he points out that since revenge is no more the primary goal the punishment must have an exact proportion to the magnitude of the evil that criminal has committed, make the strongest and most lasting impression on the mind, but to be the least painful to the sensibilities of the unfortunate.[9]

Farther evolution of legal science conditioned development of **relative theories** of punishment, which considered practical expediency as its main goal. Namely they pointed that punishment must be oriented on benefiting society instead of revenging on the perpetrator. Therefore, relative theories are frequently referred as utilitarian theories of punishment. Unlike absolute theories relative theories are methodologically **based on expediency** instead of morality.[10] Social benefit is achieved not through retribution but rather through **prevention of crime.**[11] In that regard unlike absolute theories relative theories are oriented towards future, towards prevention of what has not yet been committed.[12] Crime prevention itself is divided into special and general prevention.

The concept of **special prevention** was developed by List. He argued that main goal of punishment is to influence the criminal in right way that prevents him from committing yet another offence.[13] Evolution of this thesis brought to life very important provisions such as alternative measures to criminal punishment, parole, etc.[14]

The concept of **general prevention** belongs to Feuerbach. It is oriented on larger part of society rather than the offender himself. Main priority is to influence and deter potential criminals from committing crime through threat of punishment. At the same time general deterrence is reinforced by application of punishment to the actual offender. It serves as an example for those who think about committing a crime but have not developed the actual criminal intent yet. Such prevention is often referred as **negative** general prevention.[15] On the other hand, **positive** general prevention is oriented towards spreading respect and loyalty to law among society instead of fear of punishment. In this regard the application of punishment to the actual offender is intended to ensure trust to integrity and efficiency of legal order in society.[16]

Each of the above mentioned theories has been subject of a fair amount of criticism, including some well-reasoned.[17] The core of the problem

6 Vacheishvili A. (1960). Punishment and Means of Social Protection. Tbilisi: Stalin Tbilisi State University Publishing House, 28-31.

7 Dvalidze I. (2013). General Part of Criminal Law. Punishment and Other Legal Consequences of Crime. Tbilisi: Meridiani, 18.

8 Turava M. (2011). Criminal Law. General Part. Concept of Crime. Tbilisi: Meridiani, 42-43.

9 Beccaria C. (1764). On Crimes and Punishments. Translated From Italian. Breslau, 67.

10 Vacheishvili A. The work cited, 31.

11 Grolman K. (1968). On the Grounds of Criminal Law and Criminal Legislation. Frankfurt am Main: Verlag Sauer & Auvermann KG, 56.

12 Turava M. The work cited, 44.

13 Liszt F. (1905). Criminal Law Essays and Lectures. The Idea of Purpose in Criminal Law. First Volume. Berlin: J.Guttentag Verlagsbuchhandlung G.m.b.H., 163-179.

14 Turava M. The work cited, 44.

15 Feuerbach P.J.A.R. (1798). Is protection from crime the purpose of punishment and is criminal law the law of prevention. Library for penal jurisprudence and Legal Studies..

16 Tskitishvili T (2019). Punishment and Sentencing. Tbilisi: Meridiani, 31-32.

17 Köstlin C. R. (1978). System of German Criminal Law.

was that each of them concentrated on particular issue and failed to grasp the subject entirely.

Subsequently, the goals of punishment were divided into non-utilitarian and utilitarian goals.[18] Pros and cons of all of them are being discussed up to this day. Although subsequently absolute and relative theories were combined and **unified theories** of punishment were developed. Those theories acknowledge both non-utilitarian and utilitarian goals at the same time. The core idea is that neither retribution, nor special, nor general prevention can guarantee the necessary result on its own. It is extremely important to combine the best ideas of all three into one and thus balance out each other's weaknesses.[19] First attempts of such combination proceeded pretty painfully.[20] It is understandable since at first sight non-utilitarian and utilitarian goals of punishment seem to contradict to each other.[21] On the one hand, the state must punish the offender, retaliate, take revenge on him, because he deserves that. On the other hand, it must show concern for the criminal, mitigating the punishment if possible, in order to use a chance for rehabilitation, if one still exists. Actually, these goals only seem to contradict each other. In fact they create dialectical unity and cooperate with each other. Hälschner once noticed that although punishment must serve multitude of goals, its nature is not determined by one or another of them, not even majority of them. It is only determined by one and only absolute goal – justice, since it is truly fair and automatically serves all the relative goals.[22]

Interestingly, the analysis of the theories of goals of punishment made the necessity of **legimetrical approach** even more apparent. The idea of a **balance between morality and expediency** which legimetry insists on is useful for solving number of issues and as it turns out issues of punishment as well. Absolute theories praised retribution and ignored social benefit of punishment since they were based purely on moral grounds. That was the problem since approach based entirely on morality was much less beneficial to society and authors of relative theories capitalized on it. They viewed crime prevention as a possible good that society could gain by punishing a criminal. So, they claimed that the approach to the punishment must expedient in the first place. The supporter of unified theories went even farther. They proposed that neither fairness nor expediency is enough if a balance between them is not well-calculated and that's exactly what legimetry stands for.[23]

2. Legislative Tendencies

In order to answer the question asked in the introduction of present article it is necessary to analyze three phases of evolution which the subject went through: the original provisions of Criminal Code of Georgia (prior to 2006), provisions introduced in 2006 as a part of amendment package largely dictated by zero tolerance policy and provisions introduced in 2013. All three variants must be analyzed as mentioned above through the prism of goals of punishment, set by theories of criminal law and acknowledged by legislator himself.

2.1. Prior to 2006

Article 59 of Criminal Code of Georgia adopted in 1999 contained three types of imposing sentence in case of cumulative crimes: **absorption, partial addition** and **full addition (aggregate sentence):**

- If offender had committed two or more less serious offences more severe punishment would absorb less serious punishment(s). Interestingly, this provision was amended in 2000 and the new regulation provided that partial and full addition of punishment (aggregate sentence) were also al-

General Part. First Part. Reprint of the Edition. Tübingen: Scientia Verlag Aalen, 395-413.

18 Team of Authors (Editors: Nachkebia G., Todua N.) (2018). Criminal Law (Textbook). General Part. Third Edition. Tbilisi: Meridiani, 534.

19 Roxin, Arzt, Tiedemann. The Work cited, 6-7.

20 Von Bar C. L. (1882). Handbook of German Criminal Law. First Volume. History of German Criminal Law and Criminal Law Theories. Berlin: Weidmannsche Buchhandlung, §. 95, 270-273.

21 Turava M. The work cited, 46.

22 Hälschner H. (1858). The Prussian Criminal Law System – Second Part of Prussian Criminal Law or General Part of the System. Bonn, 440.

23 Guruli P. Criminal Liability of an Entrapped Person Through the Prism of Goals of Punishment (2021). Law and the World. 7(20), 96. <https://doi.org/10.36475/7.5.6>

lowed, but final sentence could not exceed 5 years.[24]

- If offender had committed two or more serious or particularly serious crimes the punishments imposed for each crime individually would have been partially of fully added up. Plus, the term of imprisonment imposed as a final sentence could not have exceeded 25 years.
- If offender had committed less serious and serious crime or less serious and particularly serious crime, absorption as well as partial addition and full addition were allowed. Plus, the term of imprisonment imposed as a final sentence could not have exceeded 20 years.

Clearly the approach was much detailed. It enabled judge to take in account all important circumstances of criminal case and to apply most appropriate sentence. This is exactly that individualization of punishment stands for.[25] Properly applying individualization is the most precise way of achieving proportionality of punishment. Article 59 distinctly pushed forward that pursuit and was oriented on differentiation according to the crime categories: less serious crimes, serious crimes and particularly serious crimes.[26]

In terms of **restoration of justice,** these original provisions were pretty elaborate. As mentioned above, proportionality in this regard means that the offender must get the punishment corresponding to the evil that he has committed. That is why individualization of punishment is so important.[27] The judge must evaluate the level of severity of damage that the offence has caused and only then impose a proportionate (fair) sentence that offender deserves.[28] Original provisions would give the judge necessary freedom to individualize the punishment especially after 2000 amendment, since it allowed all three variants. At the same time there was an upper limit of five years to prevent arbitrary judgement in case if judge was too severe to the defendant. But there were risks as well. There was no limit for quantity of sentences that could absorbed by the most severe one. One (the most severe) sentence could absorb infinite number of less severe ones. For example, one offender who had committed one offence could be sentenced to 4 years of imprisonment; Another offender who had committed 7 offences could be sentenced to just 5 years of imprisonment since the most severe sentence had absorbed all others. Hence 6 more offences would make just one-year difference. So yes, in such extreme case there was a room for unfairness since not every criminal could get exactly what he had deserved.

In terms of **special prevention** this approach was also well-based. Special prevention as mentioned above is achieved by influencing the convict in right way to prevent repeated committing crime. In this regard it is essential to keep balance between fairness and expediency. If the punishment is too mild, it may make the convict feel like he got away too easily, so called "impunity syndrome". On the other hand, an overly severe punishment may hinder the resocialization as well. It depends largely on willingness of the convict to re-establish himself as liable and responsible citizen and find his way back to society. If that very society presented by judge in this particular case is unfair and unjust to him, what on the earth can make him to be filled with such willingness? A rhetorical ques-

24 Law of Georgia on Amendments and Additions to Criminal Code of Georgia (May 5, 2000). Article I, paragraph 14. Legislative Herald of Georgia. <https://matsne.gov.ge/ka/document/view/1720?publication=0> [Last accessed: 20.11.2023].

25 Guruli P. (2018). The Judge and Individualization of Punishment (Contradiction Between the Goal and the Mean). Law and the World, 4(10), 161-172. <https://lawandworld.ge/index.php/law/article/view/159>

26 less serious – An intentional crime or a crime of negligence for the commission of which the maximum sentence provided for under this Code does not exceed 5 years of imprisonment.
serious – An intentional crime for the commission of which the maximum sentence provided for under this Code does not exceed 10 years of imprisonment, also a crime of negligence for the commission of which the maximum sentence under this Code exceed 5 years of imprisonment.
particularly serious – An intentional crime for the commission of which this Code provides for a sentence exceeding 10 years of imprisonment or life imprisonment. see: Criminal Code of Georgia (July 22, 1999). Categories of Crime. article 12. Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/16426?publication=257> [Last accessed: 20.11.2023].

27 Vardzelashvili I. (2016). The Goals of Punishment. Doctoral Thesis. Ivane Javakhishvili Tbilisi State University, 174-181

28 Von Hirsch A. (1992). Proportionality in the Philosophy of Punishment. Crime and Justice, Vol. 16, 55-98

tion. The original provisions of article 59 were at least at some extent were based on these considerations.

In terms of **general prevention** there were some risks in these provisions. As mentioned above, there was no limit for quantity of sentences that could absorbed by the most severe one. That could be less productive in terms of threat of punishment. Since an offender who had committed series of less severe crimes could have been sentenced to just five years of imprisonment, such "easy fate" could have encouraged potential criminals to elaborate their criminal intent.

To sum up, the original (1999) provisions of Article 59 of Criminal Code of Georgia were as far as possible oriented on all three goals of punishment. Although not without risks, restoration of justice was well taken into account. Special prevention of crime was also carefully considered. While in terms of general prevention the regulations contained some risks, they were well justified overall.

2.2. 2006 amendment

In 2006 in the midst zero tolerance policy Parliament of Georgia voted for an amendment package that included article 59 of Criminal Code of Georgia. According to new regulation in case of cumulative crimes the punishment had to be imposed for every crime individually and then added up (aggregate sentence). So, neither absorption nor even partial addition were available to the judge anymore. At the same time article 50 of Criminal Code of Georgia was also amended and possible term of imprisonment imposed as a final sentence was increased from 20 to 30 years.[29] Although in 2010 a new amendment was adopted that made partial addition possible, but that worked only as an exception rather than norm.[30]

In terms of **restoration of justice** these regulations were on the one hand pretty fair. The offender would have got as many sentences as many offences he had committed. So, he would get exactly what he deserved. If he had committed one offence, he would get one sentence. The number of sentences would be multiplied in accordance to number of offences committed. But such "fairness" was delusional. As Lekveishvili mentions, several less serious crimes could be punished more seriously than one particularly serious crime.[31] That's true. For example, if a person had committed theft by illegal entry into a dwelling place for three times, he would inevitably face a punishment by imprisonment for a term of 4 to 7 years[32] multiplied by three, in total – 12 to 21 years of imprisonment. A person who had intentionally killed someone thus committed an intentional killing (homicide) would face imprisonment for a term of 7 to 15 years.[33] Was that fair? Rhetorical question again.

In terms of **special prevention,** it was least appropriate. The goal of re-socialization of the criminal was almost ignored. As mentioned above, it is crucial to influence the convict in right way. As the theory of social disintegration suggests, by committing a crime the offender becomes separated and finds himself in confrontation with legally organized society.[34] Thus the connection link between the person and the society is lost. Resocialization itself is nothing more than re-establishment of that link. The willingness of the convict to take responsibility for his actions is essential in this regard. The convict needs to have a hope that he will be able to fix past mistakes and start new life by re-establishing that link. The state must achieve this through implementing complex of measures. But if the convict was previously subjected to such unfairness by the society as described above in ex-

29 Law of Georgia on Amendments and Additions to Criminal Code of Georgia (December 29, 2006). Article 1, paragraph 5. Legislative Herald of Georgia. <https://matsne.gov.ge/ka/document/view/22468?publication=0> [Last accessed: 20.11.2023].

30 Law of Georgia on Amendments and Additions to Criminal Code of Georgia (February 23, 2010). Article 1. Legislative Herald of Georgia. <https://matsne.gov.ge/ka/document/view/91546?publication=0> [Last accessed: 20.11.2023].

31 Todua N., Lekveishvili M., Nachkebia G., Ivanidze., Mchedlishvili-Hädrich K., Tskitishvili T. (2016). Liberalization Trends of Criminal Law Legislation in Georgia. Tbilisi: Meridiani, 2019.

32 Criminal Code of Georgia (July 22, 1999). "Theft." article 177, section 3, subsection "c". Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/16426?publication=257> [Last accessed: 20.11.2023].

33 Criminal Code of Georgia (July 22, 1999). "Intentional killing." article 108. Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/16426?publication=257> [Last accessed: November 20.11.2023].

34 Trechsel S. (1967). Ground for Complicity. Bern: Verlaf Stämpfli & Cie, 11.

ample of three thefts and one homicide it is hard to imagine a measure efficient enough to convince him to become responsible member of society once again.

Additionally, 2006 amendment made individualization of punishment to large extent impossible. As the principle of individualization suggests the judge must impose the sentence proportional to the needs of resocialization of the offender. That's not only scientific point. As article 53 directly indicates that a stricter sentence may be imposed only when less severe sentence fails to achieve the goal of the sentence.[35] That's simply because excessive punishment is not only unfair but also becomes counterproductive in terms of resocialization. So, the judge on the one hand was obliged impose a proportional punishment, taking in account all the mitigating and aggravating circumstances of criminal case. On the other hand, he lacked the power to apply absorption or partial addition no matter how necessary it was. Very same contradiction was apparent in case of imposing conditional sentence and more lenient sentences than provided for by law.[36]

In terms of **general prevention,** 2006 amendment made criminal code relatively more effective. In particular negative general prevention was achieved with great efficiency. No doubt, since criminals were getting severe long term sentences, the threat of punishment was becoming more and more apparent to potential criminals. In terms of positive general prevention, the approach was also efficient since by punishing offenders, the state made integrity of legal order more apparent to citizens. The question is – at what cost?

To sum up, legislative approach applied in 2006 amendment largely disregarded restoration of justice permitting an inherently unjust and unfair punishment. Special prevention of crime was also ignored for the most part since convicts will to re-socialize was actually degraded and the judge was stripped of ability to properly individualize the punishment. Overall, the main requirement established by the unified theory of punishment was ignored. As mentioned above Balance between three goals of punishment is essential. Otherwise contradicting, non-utilitarian and utilitarian goals work cohesively by balancing out each other. That balance was severely broken. By large this seems to be the key reason why 2006 approach failed the high expectations.

2.3. 2013 amendment

As mentioned above in 2012 newly elected Parliament of Georgia face a necessity to declare an amnesty for vast number of prisoners.[37] In addition to that Parliament had also to rethink the approach to the subject of imposing sentences in case of cumulative crimes.[38] New law allowed judge much more freedom. It is fair to say that the legislature has to return to the regulation that was there prior to 2006 amendment. According to new law, in every case except for recidivism more severe sentence shall absorb less severe sentence. While in case of recidivism,[39] when imposing a final sentence for cumulative crimes, a more severe sentence shall absorb less severe sentence or the sentences provided for these crimes shall be added up in part or in full. In the case of recidivism, the term of imprisonment imposed as a final sentence may not exceed 30 years.

Overall, legislature went back to the original approach. The radicalism so inherent to 2006 amendment was fortunately overwhelmed. The balance between all three goals of punishment was largely restored. Although the core requirement set by unified theory of punishment is fulfilled, still there is a room for improvement.

35 Criminal Code of Georgia (July 22, 1999). "Principles of sentencing." article 53 section 1. Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/16426?publication=257> [Last accessed: November 20.11.2023].

36 Guruli P. (2018). The Judge and Individualization of Punishment … 161-172.

37 Law of Georgia on Amnesty (December 28, 2012). Legislative Herald of Georgia. <https://matsne.gov.ge/ka/document/view/1819020?publication=0> [Last accessed: November 20.11.2023].

38 Law of Georgia on Amendments to Criminal Code of Georgia (April 17, 2013). Article 1, paragraph 2. Legislative Herald of Georgia. <https://matsne.gov.ge/ka/document/view/1903548?publication=0#DOCUMENT:1> [Last accessed: 20.11.2023].

39 "Recidivism shall mean the commission of an intentional crime by a person who has previously been convicted for an intentional crime." see: Criminal Code of Georgia (July 22, 1999). "Recidivism." article 17 section 1. Legislative Herald of Georgia. <https://matsne.gov.ge/document/view/16426?publication=257> [Last accessed: 20.11.2023].

In terms of **restoration of justice,** judge may be granted more freedom in case of non-recidivism. He should be able to apply at least partial addition if considered necessary. In case of multiple crimes if the offender does not have a record of conviction recidivism will not be constituted. So, most severe punishment will absorb multiple less severe punishments and that may be unfair.

For example, a person who killed someone will face imprisonment for a term of ten to fifteen years for intentional killing (homicide). Another person who illegally purchased a pistol, stole a vehicle, drove to victim's house and killed him, will be charged with intentional killing (Article 108 CCG), illegal purchase of firearms (Article 236, section 3 and 4 CCG) and vehicle theft (Article 177, section 3, subsection "d" CCG). He has definitely infringed three objects (legal goods): human life, public security and public order, right to property. Nevertheless, the he will face same punishment: imprisonment for a term of ten to fifteen years since it is prescribed by article 108 and is most severe among the three. Based on this, it is reasonable to conclude that judge should be able to apply partial or full addition in some cases even if recidivism is not established.

In terms of **special prevention,** the regulation allows judge to fully individualize the punishment. This largely supports the proportionality of punishment and as discussed above is great for resocialization.

In terms of **general prevention,** there is a risk of arbitrary judgement and foreseeability of legal consequences is not guaranteed as well. As article 53 section 3 prescribes, when imposing a sentence, the court shall take into consideration circumstances that mitigate or aggravate the liability of the offender. In case of cumulative crimes, it is unregulated which aggravating circumstances can lead to partial or full addition in case if recidivism is established. Difference between final sentence imposed through absorption or full addition may be great. The second murderer described above will face imprisonment for a term of 10 to 15 years for homicide, 4 to 7 years for firearm and 4 to 7 years for car theft. In case of absorption, he may be sentenced to 10 to 15 years, because that's the most severe punishment of all three. In case of full addition, he may be sentenced 18 to 29 years. In terms of foreseeability of legal consequences of crime this regulation definitely needs some improvement.

CONCLUSION

After the analysis presented above it is reasonable to draw several conclusions over the legislative approaches applied to Article 59 of Criminal Code of Georgia in terms of imposing a sentence in case of cumulative crimes:

1. Original (1999) provisions were as far as possible oriented on all three goals of punishment. Although not without risks, restoration of justice was well taken into account. Special prevention of crime was also carefully considered. While in terms of general prevention of crime the regulations contained some risks, they were well justified overall.
2. Legislative approach applied in 2006 amendment largely disregarded restoration of justice permitting an inherently unjust and unfair punishment. Special prevention of crime was also ignored for the most part since convicts will to re-socialize was negatively affected and the judge was stripped of ability to properly individualize the punishment. Overall, the main requirement established by the unified theory of punishment was ignored. As mentioned above Balance between three goals of punishment is essential. Otherwise contradicting, non-utilitarian and utilitarian goals work cohesively by balancing out each other. That balance was severely broken. By large this seems to be the key reason why 2006 approach failed the high expectations.
3. In 2013 the radicalism so inherent to zero tolerance policy was fortunately overwhelmed. The balance between all three goals of punishment was largely restored. Although the core requirement set by unified theory of punishment is now fulfilled, still there is a room for improvement in terms of individualization of punishment on the one hand and improving foreseeability of legal consequences of crime on the other.

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