JUNE 2025 (№34)
Volume 11; Issue 2; Page No. 7-16
ISSN: 2346-7916 (Print)
ISSN: 2587-5043 (Online)

INTERNATIONAL JOURNAL OF LAW: "LAW AND WORLD" www.lawandworld.ge

https://doi.org/10.36475/11.2.1

Dark Legacy of Zero Tolerance in Georgia (Criminal Punishment and Sentencing)

Papuna Guruli
Ph.D. in Law
Dean of the School of Humanities and Law, St. Andrew Georgian University, Georgia
papunaguruli@gmail.com

ARTICLE INFO

Article History:

Received	9.03.2025
Accepted	23.05.2025
Published	30.06.2025

Keywords:

Punishment, Sentencing, Proportionality, Zero tolerance

ABSTRACT

Following much-praised promises to reduce crime to zero Georgian Government in 2004 imposed a "zero tolerance" policy embodied in both criminal legislation and legal practice. The fateful phrase "No probation! Everybody to the prison!" explicitly indicated the way of thinking of government officials at that time. This, of course, primarily affected regulations on criminal punishment and sentencing. Unfortunately, the principle of proportionality was largely disregarded, and the goals of punishment were narrowed. In 2012, the new government faced all the consequences of such a one-sided approach – overcrowded prisons, massive human rights violations, etc. As expected, the policy was largely revised. Some radical regulations were repealed. For example, a judge was allowed to use absorption or partial addition of punishment when imposing a sentence in the case of cumulative crimes and cumulative sentences. Sadly, many instances of punishment, such as conditional sentence, imposing more lenient sentences than provided for by law, etc., remain unchanged, presenting the dark legacy of zero tolerance policy.

INTRODUCTION

It is fair to say that Georgian criminal law has seen good, bad, and ugly for the last hundred years. The first two decades (1921-1941) of soviet occupation can safely be defined as the dark age. Both criminal legislature and justice system were oriented to simply punish as many people as possible and as severely as possible, ignoring even the *nullum crimen sine lege* principle. It is not surprising that such repressions in the 1920s and 1930s left a bleeding wound on both the state and society. Nevertheless, from the late 1950s, Georgian legal scholars once again aimed to implement a more elaborate approach. Namely, the principle of proportionality of criminal liability and punishment was reintroduced in and implemented in the Criminal Code of Georgia of 1960. After Georgia regained its independence, the new Criminal Code of 1999 became even more based on proportionate punishment. This consistency was broken in 2004 when the new government declared a "zero tolerance" policy. Step by step Criminal Code was amended to make punishment more and more severe, even when it was not necessary. The judge was left with fewer and fewer freedom in terms of sentencing. While some short-term gains were achieved, overcrowded prisons and massive human rights violations became more than apparent. Overall, things were so bad that in 2012, the newly elected parliament was faced with the need to pass a sweeping amnesty and simultaneously revise the Criminal Code. Since then, many radical regulations have been revised. The purpose of this article is to clarify whether Georgia has finally overcome this issue or still has to deal with the dark legacy of zero tolerance.

Since between 2004 and 2012 Criminal Code of Georgia was amended 93 times, this article cannot cover all of the amendments. Instead, it is primarily focused on the most important general provisions of punishment and sentencing since these are the ones that have the greatest impact on the outcome.

METHODOLOGICAL BASE

Criminal punishment has come a long and thrilling way in evolution from simple revenge to a modern, elaborate concept.[1] The most ancient idea behind punishing someone was built around the offender him/herself. On the other hand, the modern concept is much more mature and targets the entire society. Moreover, it sets specific goals for punishment that need to be achieved. Generally speaking, these are retribution and crime prevention. More specifically, they are divided into several sub-goals, but eventually they all aim to bring two things into society: justice and social good. They are recognized not only by the overwhelming majority of legal scholars but are also directly prescribed in the law. Namely, §1 of Article 39 of the Criminal Code of Georgia indicates that: *"The goal of a sentence is to restore justice, prevent repeated commission of a crime and re-socialize the offender".* Since these goals are set, every decision regarding punishment and sentencing should be focused on achieving those goals. Respectively, any idea or concept around punishment and sentencing can be and should be analyzed through the prism of retribution and crime prevention. If the idea itself initially contradicts these goals, it is not surprising that the result may seem unsatisfactory. On the other hand, if an idea is more likely to assist in achieving these goals, it is more likely to be acceptable. Since the present article primarily focuses on issues of punishment and sentencing, it would be simply a shame to ignore these very goals.

Since ancient times until quite recently, revenge on the offender has been the main idea of criminal punishment. According to theories of Kant and Hegel, punishment should compensate for the criminal's culpa. Punishment should serve fairness instead of social good.[2] These are often referred to as absolute theories. Kant and Hegel claim that

1 see: 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, pp.8-73 (In German).

2 see: Roxin/Arzt/Tiedemann. (2013). Introduction to Criminal Law and Criminal Procedure Law. 6th Edition. Müller, C. F., pp. 4-5 (In German).

criminal conduct breaches the law; therefore, punishment must be, first and foremost be perceived as a just retaliation for it. Things like social good or expediency of punishment are completely rejected, and the issue is solved purely based on morality. Being immoral, the criminal opposes his will to the law. Therefore, through his action law becomes breached. Consequently, punishment is the means of restoration of what he/she has breached. Hegel rejects the concept of the deterrence effect of punishment combined with the goal of re-education. He argues that since man has free will, the threat of punishment and the attempt to re-socialize him/her would mean reducing him/her to the level of an animal. Kant directly refers to the Talion principle – "An eye for an eye" – and argues that a criminal must be punished since he/she deserves punishment due to what he/she has committed.[3] Sometimes, absolute theories are named theories of retribution. Utter denial of utilitarian ideas brings the offender to the punishment which he/she simply deserves for what he/she has done, and no one cares whether it is socially expedient or not.[4] In this regard, absolute theories are oriented towards the past.[5] Despite their popularity among the people, absolute theories met resistance from some scholars. Beccaria claimed that criminal sentencing based purely on retribution is wrong. He pointed out that punishment must have an exact proportion to the magnitude of the evil that the criminal has committed, make the strongest and most lasting impression on the mind, but be the least painful to the sensibilities of the unfortunate.[6]

The evolution of legal science and consistent retreat from pure retribution made possible the invention of more socially oriented theories commonly known as relative theories. These were based on the idea of expediency instead of morality.[7] Revenge was largely disregarded. Instead, social benefit was considered the main goal, and it was to be achieved through the prevention of crime.[8] In that regard, relative theories became oriented towards the future.[9] Furthermore, two main types of crime prevention were developed.

The first type of prevention developed by List is specifically oriented towards the offender. Therefore, it is commonly known as the concept of special prevention. There are two subtypes of special prevention. Negative special prevention aims to isolate the most dangerous criminals from society and thus protect it.[10] Positive special prevention intents to influence the offender in the right way to prevent him/her from committing another offence in the future.[11] This theory has been much hailed and greatly contributed to the introduction of such important provisions as alternative measures to criminal punishment, parole, etc.[12]

The other type of crime prevention is oriented towards the entire society. It is commonly known as general prevention and was developed by Feuerbach. The main priority here is to influence and deter those individuals who are thinking about committing a crime but have not developed an intent yet. Deterrence is to be achieved through a threat of punishment. Simultaneously, general deterrence is reinforced by sentencing an actual offender. Hesitant individuals should take it as an example and give up criminal thoughts for good. This subtype of general prevention is often referred to as negative general prevention.[13] On the other hand, positive general prevention aims to win the hearts and minds of citizens instead of deterring them. Once an actual offender is sentenced, it instills confidence among citizens, building trust in the integrity and effectiveness of law enforcement in society.[14]

3 see: Vacheishvili, A. (1960). Punishment and Means of Social Protection. Tbilisi: Stalin Tbilisi State University Publishing House, pp. 28-31 (In Georgian).

4 see: Dvalidze, I. (2013). General Part of Criminal Law. Punishment and Other Legal Consequences of Crime. Tbilisi: Meridiani, p. 18 (In Georgian).

5 Turava, M. (2013). Criminal Law. General Part. Concept of Crime. Tbilisi: Meridiani, p. 355 (In Georgian).

6 Beccaria, C. (1764). On Crimes and Punishments. Translated From Italian. Breslau, p. 67 (In German).

7 see: Vacheishvili, A. The work cited, p. 31.

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

9 Turava, M. The work cited, p. 355.

10 Turava, M. The work cited, p. 355.

11 see: 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., pp. 163-179 (In German).

12 Turava, M. The work cited, pp. 355-356.

13 see: 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. (In German).

14 see.: Tskitishvili, T. (2019). Punishment and Sentencing.

All these theories have been criticized over and over again.[15] The biggest problem was that each of them concentrated on a particular issue and failed to grasp the subject entirely.

Finally, the goals of punishment were systematized as non-utilitarian and utilitarian goals.[16] Based on this system, new unified theories of punishment were developed. Instead of focusing exclusively on one goal, they managed to collect all the good theses put forward by absolute and relative theories. Hence, both non-utilitarian and utilitarian goals are acknowledged at the same time. Adepts of unified theories think that none of the goals guarantees the necessary result on its own. Indeed, instead of picking one, it is possible to combine the best thesis of all three into one unified theory.[17] Of course, it was not done overnight. It took time and effort.[18] It was indeed uneasy since, at first glance, non-utilitarian and utilitarian goals of punishment contradict each other.[19] The state must punish the offender and take revenge on him/her because it is fair and he/she deserves it. At the same time, the state should take care of the criminal, mitigate the punishment if possible, and create a chance for rehabilitation. Despite seeming contradiction, these goals create dialectical unity and complement each other. As Hälschner once noticed, although punishment must serve a multitude of goals, its nature is not determined by one or another of them, not even the majority of them. It is determined by only the absolute goal – justice, since it is truly fair and automatically serves all the relative goals.[20]

Since clarity on methodological basis has been achieved, it is time to analyze specific amendments on punishment and sentencing made to the Criminal Code of Georgia and understand to what extent they contribute to achieving the goals of punishment.

REGULATIONS ON PUNISHMENT AND SENTENCING

First of all, it should be noted that these elaborate goals of punishment do not make a judge's life easier. They require strict adherence to the principle of proportionality of punishment. For some people, proportionality itself seems unattainable. The judge must take into account all important mitigating and aggravating circumstances of the criminal case and impose a proportional sentence. Of course, the task becomes even more difficult when one realizes that he/she needs to achieve proportionality essentially across all five sub-goals of punishment at the same time.[21]

The significance of proportionality of punishment is dictated by the goals of punishment themselves. It is not even so much about the contradiction between non-utilitarian and utilitarian goals. It's about different approaches that these goals require and also about the balance between them. Retribution is about strictness to the criminal. It is about punishing the criminal as he/she deserves due to the seriousness of the crime he/she committed. Therefore, if the sentence is not severe enough, retribution may not occur. On the other hand, positive special prevention is more about perception and even compassion for the criminal to clear his way back into society. It's about imposing a sentence that is enough for the re-socialization of the offender. Therefore, if the sentence is too harsh, it may be counterproductive and further alienate the offender from a law-abiding society. Based on the above, the sentence must not be too lenient and not too severe. It must be proportionate. Yes, not all five goals have the same weight all the time. Sometimes one of them can become more important than the others. For example, in cases of juvenile offenders, retribution is completely rejected while crime prevention, especially positive special prevention, is a full priority. What if a crimi-

Tbilisi: Meridiani, pp. 31-32 (In Georgian).

15 see: Köstlin, C.R. (1978). System of German Criminal Law. General Part. First Part. Reprint of the Edition. Tübingen: Scientia Verlag Aalen, pp. 395-413 (In German).

16 Nachkebia, G., Todua, N. (eds.). (2024). Criminal Law (Textbook). General Part. Third Edition. Tbilisi: Meridiani, p. 596 (In Georgian).

17 see: Roxin/Arzt/Tiedemann. The Work cited, pp. 6-7.

18 see: 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, pp. 270-273 (In German).

19 Turava, M. The work cited, p. 356.

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

21 Goh, J. (2013). Proportionality – An Unattainable Ideal in the Criminal Justice System. University of Manchester Student Law Review. volume II, p. 50 (In English).

nal deserves five years of imprisonment due to the seriousness of the crime he/she committed, but at the same time, three years of imprisonment are enough for him/her to re-socialize? In this case, the judge him/herself must choose which goal is more important – retribution or special crime prevention, and carefully tip the scales in favor of one of them. Anyway, it is extremely important to keep in mind the significance of proportionality and balance between strictness and leniency.

Despite all these difficulties intention of Georgian lawmakers in 1999 on this matter was pretty apparent. Firstly, Article 40 of the original Criminal Code of Georgia of 1999 provided for as many as ten types of punishment. Such diversity certainly contributed to better individualization of punishment, thereby achieving proportionality. Article 41 provided basic and supplementary punishments, making sentencing even more flexible. §3 Article 53 obliged the judge to take into account specific mitigating and aggravating circumstances such as the motive and goal of the crime, the unlawful intent demonstrated in the act, the character and degree of the breach of obligations, etc. However, amendments made since 2004 paint a completely different picture.

IMPOSING A SENTENCE IN THE CASE OF CUMULATIVE CRIMES AND CUMULATIVE SENTENCES

Article 59 of the Criminal Code of Georgia, adopted in 1999, contained three options for punishing a cumulative of crimes: absorption, partial addition, and full addition (cumulative punishment). In case of two or more less serious[22] offences, more severe punishment would absorb the less serious punishment(s). This provision was amended in 2000 so that partial and full addition of punishment was also allowed. At the same time final sentence could not have exceeded 5 years.[23] In case of two or more serious or particularly serious crimes, the punishments imposed for each crime individually would have been partially or fully added up. Plus, the term of imprisonment imposed as a final sentence could not have exceeded 25 years. In case of 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. At first glance, these provisions were indeed intended to promote the goals of punishment. It would allow the judge to consider all the mitigating and aggravating circumstances of the case and impose a proportional sentence.[24]

In 2006 Parliament of Georgia adopted an amendment to Article 59. According to the new regulation, in case of cumulative crimes, the punishment had to be imposed for every crime individually and then added up (aggregate sentence). Hence, neither absorption nor even partial addition was available to the judge anymore. At the same time, Article 50 of the Criminal Code of Georgia was also amended, and the possible term of imprisonment imposed as a final sentence was increased from 20 to 30 years.[25]

As mentioned above, in 2012 newly elected Parliament of Georgia faced the necessity to declare an amnesty for a vast number of prisoners.[26] Parliament also had to rethink the approach to the subject of imposing sentences in cases of cumulative crimes.[27] New law allowed judges much more freedom. According to the new law, in every

22 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: Article 12, Criminal Code of Georgia.

23 Law of Georgia on Amendments and Additions to Criminal Code of Georgia. Date of passing: 23.02.2010. Document number: 2644.

24 Guruli, P. (2018). The Judge and Individualization of Punishment (Contradiction Between the Goal and the Mean). Law and the World, Vol. 4 №10, pp. 161-172 (In Georgian).

25 Law of Georgia on Amendments and Additions to Criminal Code of Georgia. Date of passing: 29.12.2006. Document number: 4213.

26 Law of Georgia on Amnesty. Date of passing: 28.12.2012. Document number: 202-RS.

27 Law of Georgia on Amendments to Criminal Code of Georgia. Date of issuing:17.04.2013. Document number: 546-IIS.

case except for recidivism more severe sentence shall absorb a less severe sentence. In case of recidivism,[28] when imposing a final sentence for cumulative crimes, a more severe sentence shall absorb a 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.

From the perspective of retribution, this 2013 change makes things significantly better. As mentioned above, retribution is about punishing the offender for what he/she has committed. e/she gets punished because he/she deserved it. So instead of simply adding up the sentences for individual crimes, it's better to think about how severe the punishment the criminal deserves. For example, one individual has committed *theft by illegal entry into a dwelling place* three times. Each time he/she stole 200 GEL (68 EUR), overall 600 GEL. This criminal would face 4 to 7 years of imprisonment for each offence. If there were only full addition available, he/she would face 12 to 21 years of imprisonment. At the same time, another person who committed homicide (intentional killing) would face 7 to 15 years. Does this thief who stole 600 GEL deserve more severe punishment than a murderer? Well, maybe... maybe not. At least a judge should have the right to answer this question, and if the answer is "no", he/she should be able to apply absorption. Although there is also a significant risk of unfairness. Since the judge can't apply partial or full addition unless there is recidivism, some people may receive undeserved leniency. If an offender has committed a series of crimes, for example, 15 episodes of fraud. If this criminal doesn't have recidivism, he/she will face only absorption as if he/she had committed only one episode.

In terms of special prevention, the current regulation is even more significant. It allows the judge to properly individualize the sentence, thus supporting the proportionality of punishment and greatly supporting the re-socialization of the offender. Although recidivism should not be a prerequisite for at least partial addiction, as discussed earlier. Some criminals may need partial addition of sentences to properly re-socialize.[29]

As for the general prevention, the current approach has slight problems. Since general prevention relies largely on the threat of punishment, i.e., the deterrence effect, using absorption instead of partial or total addition may not always be effective. For example, an offender has committed a series of crimes, 15 episodes of fraud, and gets punishment only for one. Such a sentence will not have a deterrence effect on the members of society who think about committing a crime. For most of them, this will be a signal of the possibility of evading responsibility. Thus, the judge should have the right to apply at least partial addition even in cases where there is no recidivism, but there is a need to impose a more severe punishment for general prevention. In general, recidivism is not always a good prerequisite for partial or full addiction. The original (1999) regulation was better than the current (2013) regulation in terms of both specific and general prevention, as it allowed for a more sophisticated approach instead of simply setting a single precondition, such as recidivism.

Overall, it is fair to say that the current revised (2013) provisions on imposing a sentence in the case of cumulative crimes and cumulative sentences are much more focused on the goals of punishment. At least the overt radicalism that characterized the zero-tolerance policy is no more. At the same time, undoubtedly, a more detailed differentiation is needed to prevent unjust sentences in the future.

IMPOSING A MORE LENIENT SENTENCE THAN PROVIDED FOR BY LAW

The original 1999 Criminal Code of Georgia introduced a mechanism allowing a judge to impose a more lenient sentence than provided by law if there was a particularly mitigating circumstance in the criminal case.[30] The judge should also have taken into account the personality of the offend-

28 "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, §1, Article 17.

29 Guruli, P. (2023). Imposing a Sentence in Case of Cumulative Crimes (Legislative Tendencies in Georgia). Law and World, Vol. 9, №28, December, p. 185 (In Georgian).

30 Article 55, Criminal Code of Georgia.

er him/herself. This provision was consistent with the legislative intent present in 1999. As mentioned above, the goals of punishment require strict adherence to the principle of proportionality. This is usually achieved by individualization of punishment. The judge weighs all the mitigating and aggravating circumstances present in an individual criminal case and imposes the most proportionate punishment. But a judge can't be given absolute power. The measure or term of punishment can't be fully dependent on the judge's opinion. To prevent legal voluntarism, legislator implements the principle of differentiation of criminal liability and punishment. In the special part of the Criminal Code, offences are differentiated from each other. For example, a *theft i.e. secretly taking another person's movable property for its unlawful appropriation*[31] is to be punished by imprisonment for a term of one to three years; The same act *committed by illegally entering a building or other storage facility*[32] is to be punished by imprisonment for a term of three to five years; The same act *committed with a preliminary agreement by a group*[33] is to be punished by imprisonment for a term of four to seven years; The same act *committed by an organized group*[34] is to be punished by imprisonment for a term of six to ten years. Specific offences are differentiated due to the level of social danger that they pose. Each of them gets their minimum and maximum term of punishment. For example, an individual is found guilty of *theft committed by illegally entering a building or other storage facility.* Accordingly, he/she faces three to five years of imprisonment. This is due to the fact that the act he/she committed represents such a degree of public danger that the punishment should be at least three years of imprisonment to be proportional. This perfectly aligns with the goal of retribution. But what if things are not that simple? What if there are one or more particularly mitigating circumstances? What if the judge considers that one year of imprisonment will be perfectly enough for his resocialization, i.e., positive special prevention of crime? In that case following two years will most likely be counterproductive. For this very reason, Article 55 was introduced as an exceptional provision into the Criminal Code of Georgia. The judge had the right to punish the minimum limit of punishment provided for by a specific article for a specific crime (the so-called "below the minimum") or another, more lenient punishment. In above mentioned case, the judge could impose one year of imprisonment that would be proportional to the goal of positive special prevention.

Of course, one may argue that a "below the minimum" sentence may be harmful for retribution and general prevention of crime. Indeed, this provision contains a significant compromise. Of course, the criminal may not get what he/she deserve, and the deterrent effect may be reduced as well. However, it should be remembered that a punishment "below the minimum" is more of an exception than a daily norm. The judge should apply it only when he/she is certain that its application will do more good than harm. Moreover, when used correctly, "below the minimum" punishment can assist positive general prevention, showing that the state not only punishes but also sometimes shows mercy to people who have made mistakes and deserve a second chance.

Three main amendments have been made to Article 55. The first one was made in 2004.[35] This amendment expanded the grounds for application of Article 55. The judge retained the right to impose a sentence "below the minimum" if there were particularly mitigating circumstances. However, he/she also became obliged to impose a sentence of no more than half of the maximum term if the prosecutor presented a plea agreement signed between the parties. Of course, "no more than half of the maximum" and "below the minimum" are not the same. They are quite different. Therefore, it is not entirely clear why such a provision was added to Article 55.

The second amendment (addition) was added in 2005.[36] Judge also became obliged to impose a sentence of no more than two-thirds of the maximum term if the defendant voluntarily admitted his guilt and his confession was not in doubt.

31 Article 177, § 1 Criminal Code of Georgia.
32 Article 177, § 2(b) Criminal Code of Georgia.
33 Article 177, § 3(a) Criminal Code of Georgia.
34 Article 177, § 4(a) Criminal Code of Georgia.
35 Law of Georgia on Amendments and Additions to the Criminal Code of Georgia. Date of passing: 13.02.2004. Document number: 3295.
36 Law of Georgia on Amendments to the Criminal Code of Georgia. Date of passing: 20.12.2005. Document number: 2352.

Again, "no more than two-thirds of the maximum" and "below the minimum" are very different. Thus, it is clear that the First and Second Amendments somehow missed the base idea of Section 55.

The third and final amendment was made in 2006,[37], and it is fair to say that it did not miss the base idea. It destroyed it. From now on, the judge may impose a sentence "below the minimum", or another more lenient sentence, only in case if a plea bargain is concluded between the parties. This was the prime symptom of the zero-tolerance policy. The accused was robbed of a chance to get a sentence "below the minimum" unless he/she pleaded guilty or/and signed a plea bargain with the prosecutor. The entire concept behind Article 55 suddenly disappeared. What about a particularly mitigating circumstance? It didn't matter anymore. What about proportional punishment? The judge was robbed of a mechanism that was necessary for it. Positive special prevention of punishment? It was no longer considered too important. Unfortunately, the provision provided in 2006 remains in force to this very day.

CONDITIONAL SENTENCE

Unfortunately, a similar story happened with a conditional (suspended) sentence. As mentioned earlier, the concept of a conditional sentence largely follows the concept of special prevention. The original (1999) Criminal Code of Georgia, namely §1 of Article 63, indicated that a suspended sentence could be imposed if the judge decided that it was possible for the offender to re-socialize without actually serving the sentence. This is perfectly aligned with positive special prevention. For example, a person was found guilty of theft (§1, Article 177). He/she faces imprisonment for a term of one to three years. In terms of retribution, it is fine to send this person to prison for at least one year. Such punishment will be perfectly proportionate to the goal of retribution. General crime prevention will also be effective since the deterrence effect will be present as well. However, from the point of view of positive special prevention, there may be other opinions. The judge may consider the mitigating circumstances of the case and conclude that the offender would most likely be re-socialized if not sent to prison at all. This means that no prison sentence will be proportionate to the goal of positive special prevention. This usually applies to individuals who have no previous criminal record, who cooperate, did not have an inherent criminal intent, but were rather pushed by circumstances, etc. Such people usually deserve the opportunity to re-socialize without going to prison. Moreover, the penitentiary system is imperfect and does not always provide the necessary means for resocialization, especially for those entering prison for the first time. If such people end up in prison, they risk becoming involved in a criminal subculture, which will make their resocialization even more difficult. Therefore, having carefully weighed all the pros and cons, the judge may tip the scales in favor of positive special prevention and impose a suspended sentence.

In 2006, a major amendment was made to Article 63.[38] Just like the "below the minimum" sentence, a plea agreement signed by the parties became a necessary precondition for a suspended sentence. On the one hand, the judge is still obliged to impose a proportional sentence. But what if he/she considers that any prison sentence will be disproportional to one or more goals of punishment? If there is no plea agreement signed, he/she is simply powerless because he/she has been deprived of the necessary right to impose a suspended sentence.[39] Once again, principles of individualization of punishment and proportionality of punishment were disregarded. Positive special prevention of punishment was again not considered important.

Furthermore, it must be noted that during the "zero tolerance" period, it was common practice to force the accused to sign a plea bargain. More often than not plea bargain would include a large sum of money to be paid as a fine. This was almost exclusively a prerequisite for a more lenient punishment. People paid money to spend fewer years in prison. No surprise that both suspended sentence

37 Law of Georgia on Amendments and Additions to the Criminal Code of Georgia. Date of passing: 28.04.2006. Document number: 2937.

38 Law on Amendments and Additions to the Criminal Code of Georgia. Date of passing: 28.04.2006. Document number: 2937.

39 Guruli, P. (2018). The Judge and Individualization of Punishment, pp. 161-172.

and “below the minimum” sentence were a fine object for such “trades”. Having no other choice, people simply bought them with money. Most likely, this was precisely the original purpose of the amendments discussed above. Unfortunately, both these provisions remain in force to this very day.

CONCLUSION

Having carefully analyzed the process of revising the legislation in the area of punishment and sentencing, it is fair to note that some radical provisions adopted during the period of zero tolerance in Georgia have indeed been revised. For example, the judge was given back his right to apply absorption, partial addition, or full addition in case of cumulative crimes or cumulative sentences. This is a significant step in terms of the proper individualization of punishment. This, therefore, increases the likelihood of a proportionate sentence being handed down. Overall, the current approach, although in need of some improvement, does contribute to achieving the goals of punishment.

Unfortunately, the same cannot be stated about suspended sentence and so-called “below the minimum” sentence. In both cases, the judge is deprived of the necessary right to properly individualize the sentence. He/she still must impose proportionate punishment, but cannot use the tools necessary to do so. This is especially true for a suspended sentence. Many first-time offenders should be given suspended sentences to assist their re-socialization. But such an opportunity is only limited to those who sign a plea agreement with the prosecutor. Undoubtedly, such a limitation makes achieving the goals of punishment more difficult. Moreover, since a general course for revising such issues was announced, these provisions should have been among the first to be revised. Sadly, the problem remains unsolved to this day, resembling the dark legacy of “zero tolerance”.

BIBLIOGRAPHY:

1. Baurmann M. (2010). The punitive law in the social constitutional state. Proceedings of the Göttingen Academy of Sciences. New episode, volume 9. Göttingen: Hubert & Co. (In German).
2. Jescheck H. H., Weigend T. (1996). Textbook of Criminal Law. General part. 5th, completely revised and expanded edition. Berlin: Duncker &Humblot (In German).
3. Makharadze A. (2011). The Punishment Individualization Matters in Committing Crime With Accessory. Justice and Law, №1. (In Georgian).
4. Manikis M. (2022). The Principle of Proportionality in Sentencing: A Dynamic Evolution and Multiplication of Conceptions. Volume 59, Issue 3.
5. Roxin / Greco. (2020). Criminal Law General Part Vol. 1: Basics. The Structure of the Theory of Crime. 5th, completely revised edition. Munich: C.H. BECK. (In German).
6. Tumanishvili G. (2010). Regarding the Application of the “Guidelines” within the Administration of Justice. Justice and Law, №1. (In Georgian).
7. Ugrekhelidze M. (1984). The Significance of the Guilt Content of an Act in Criminal Law. Second German-Soviet Colloquium on Criminal Law and Criminology. Baden-Baden: Nomos Verlags-Gesellschaft.
8. Vardzelashvili I. (2016). Goals of Punishment. Ph.D. thesis. Ivane Javakhishvili Tbilisi State University. (In Georgian).
9. Von Hirsch A. (1992). Proportionality in the Philosophy of Punishment. The University of Chicago Press Crime and Justice 16.