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Some issues of modern criminal policies

Abstract: It is revealed some of the problematic issues of modern criminal law doctrine, a list of dilemmas that require urgent solutions, such as the need to improve the structure of the theory of the Criminal Law, the formalization of the theory of the crime and the criminal offense with the new classification and taxonomy, improve the penal system, optimizing the number of special rules of the Criminal Code, etc.

Keywords: criminal law doctrine, re-codification, anthropocentrism, criminal processes, taxonomic structure.

Most of the modern criminal law theories are based on the dichotomy of opposites, where a state coercion and crime as a "protest of an isolated individual" are antagonistic sides of a conflict, which has neither winners nor losers. Lose everybody – someone loses freedom, health, power, reputation, and life, while other loses full and productive members of society.

In the opinion of professionals, on a scale of crime / punishment every day fills such level of evil of a state, which is sufficient, for requital of evil of individuals. This is a formula. The evil should be punished. And it can not be changed through any idea of restorative, retributive justice. From here is the observed trends criminalization of society and increasing of total administrative control.

On idea, this approach should lead to a positive result.

However in reality a deviant behavior has become the norm for a large part of population. We are talking about criminal practice, hiding in boundary latency; it is about ordinary offenses, which became widespread due to its subjective "routine", not to speak of system acts of corruption.

The increase in the number of evil deeds have been increasing, being dependent on a level of anomie in society and conscious following the law by citizens. And after that, we accumulate experience its naming and punishment, respectively.

The paradox of modern public law doctrine is to gradually erosion of the publicity and in returning of presumption of primacy of an individual, private, private

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over the state, public. Or at least in search of balance such state, the equilibrium protection of private and public interests with coercive means and methods. Anthropocentrism of modern research is obvious. It is clearly it traced in the works on criminal and legal themes.

First, we fully agree with the fact that criminal legal regulation should be an instrument of protection of the rights and freedoms of an individual and community rather then a tool to protect the state from attacks on its sovereignty and security. The emphasis on community justice, the justice system is especially important at re-orientation of the vector of criminal law protection in practice but not in words. We can talk much about "erosion" of the object of legal regulation, the inadmissibility of a return to "seniority" to private-legal principles, until state policy, in reality but not in words will pay its attention to victims of crime, for approval of humanistic social values as a priority of criminal law protection. We have already had occasion to write about that is not possible re-codifying without changing the ideas.

The task of the criminal law in the utilitarian, legist sense is protection of constitutional norms and principles. In essence, the Criminal Code is the Constitution with sanctions. Unfinished process of constitutional reform, the instability of regulation of relations will cause inefficiency and palliative legitimate stories of re-codifying of criminal law, the formation of a new complex of temporary "dead" rules.

As correctly noted S.V. Maksimov: "One of the paradoxes of our time are we can write a text of the Criminal Code, which in various relations will be better then a text of the present criminal law, but adopt the best law, which also will be work as conceived a legislator, we can't"[1].

This means that associated with construction of a new categorization of criminal offenses a re-codifying process should receive its justification on a theoretical level. It is required a new theoretical model of the Criminal Code, designed for stable development of relations of state building, protection of rights and lawful interests of individuals.

So it was suggested that in the preamble of the future Criminal Law would be reference to constitutional conditionality of criminal prohibitions, its coherence with norms of the Constitution of the state and internationally recognized principles and fundamental freedoms of man and citizen. Among the participants of criminal legal relations (a criminal - a state - a victim - third persons) a central place should be occupied a by the victim. Only punishment should be the essence and content of responsibility. Restoration of rights of the victim is referred to other mandatory measures of reaction to criminal act. It was pointed out that the main purpose of the Criminal Code should be legal support of protecting the rights and freedoms of a

[1] http://info-pravo.com/ blog/ugolovnyj _kodeks_ustarel_i_ ego_ nemedlenno_nuzhno_zamenit_ novym/2012-03-01-6529

victim of the crime. Other acts should be decriminalized, transferred into the category of criminal misdemeanor or should be initiated on complaint of victims (including a state and other social groups). Under this, a widening of system of private prosecution must lead to the expansion of alternative ways of responding to crime. This assumes a description in the General Part of the Criminal Code issues related to the application to a guilty not only a punishment, but also other measures of criminal law sanctions (security, social protection, restitution, and compensation). It is required here a description of a supplement to the principle "ne bis dem idem" with reference "completion of sentence does not release criminal from responsibility to a victim". That, basically, came down to main idea - the Criminal Code should be written rather for the victims than for the law enforcers and offenders. However, in practice, as a rule, it everything limited only by ascertaining necessity of development an idea of restorative justice, mediation and reconciliation in criminal law and procedure.

The criminal provisions are being remained unchanged of defenders and guardians of the eternal and immutable interests of a state to protect it and the citizens from criminal harm.

Professor Asaf Harduf (2009) emanates precisely from this position, claiming that the key reason of criminalization of deed "harm" has a systemic nature and consists of the damage actually, characteristics of the activity and behavioral cause. In fact, the basic criterion the criminalization of deeds defined in Part 2 of Article 11 of the Criminal Code of Ukraine (causing significant harm to a person or entity, society, state). However, in some cases we do not criminalize or conversely de-criminalize a deed, on the grounds that its characteristics do not satisfy (do not meet) the requirements of public morality, do not contribute to social stability and principles of natural law.

In this regard, any Criminal Code is constructed with substantiation of prohibitions of encroachments against persons, property, society and a state and against a number of moral values declared as the base in society and supporting by it.

But can the criminal law achieve relevant targets when it goes on about a legislator and permanently prohibiting certain acts? Can the prohibition prevent the offensive of damage, whether there is any alternative of criminalization in prevention of deviant behavior?

Finally, what is a perfect taxonomic scheme in which a common classification substantiates optimality of criminalization's processes?

We have already written about fact that today there is a tendency to over-criminalization in a state, when methods of criminal law are considered as one of the basic and essential for use in controlling deviations in a country. Selectivity selection acts caused by procedural and managerial unprovability of specific encroachments (not to speak of the frank corruption models), leading to social injustice, to selective

justice, when the poor are sent to prison, and those in power are bought off. We are not talking about a class of people with ultrahigh or high-income. Man's attitude to the justice system and the justice system relation to him in today's society determine a by a man's attitude to the authorities (M. Weber).

It evidently leads to systemic human rights violations in the formation of the stigmatized as potential criminals of the community groups, a distortion of stereotypes and ideals of law and justice, to the "emasculation" of preventive and punitive functions of criminal prohibitions.

Consequently, a definition of the taxonomic structure (harm - deed - connection), a clear indication of the importance of a sovereignty of state, harm for personal, and the public interests or the criminalization of the national law cause the structure of the future doctrine of criminalization and a system of the Criminal Code model. Indicative in this regard an approach of the Romanian legislator. In 2004, following the French model, he had combined all infringements on individual and his rights in the first section of Special Part of the Criminal Code. Crimes and misdemeanors against a person in the Criminal Code of Romania of 2004 include:

- Crimes against humanity;
- Crimes and offenses against human life;
- Misdemeanors against the bodily integrity and human health;
- Crimes and Misdemeanors against genetic manipulation;
- Crimes and offenses against the freedom of the individual;
- Crimes and offenses against sexual integrity;
- Misdemeanors against the dignity;
- Misdemeanors against a family;
- Crimes and offenses against morality;
- Crimes against the freedom of religion and respect for the deceased.

Such approach (individual, community, society, state) is more "humane" and in a certain form has in the current legislation of Ukraine. Nevertheless, the number of unresolved issues is sufficiently large. That is why today, a special attention is paid to a formation of a new criminal law doctrine.

In this regard I would also like to put on the consideration the following several problematic issues:

1. Structural improvement of a doctrine of the Criminal law in part of a clearer description of the forms and types of criminal law impact, principles, sources, jurisdictional powers, the grounds of liability, features of the failure to prosecute and release from criminal liability, the rules approximation, and criminal law thesaurus. The given cycle of works includes the solution of the complex doctrinal problems, beginning from diversity of criminal law impacts up to extremely formalization of grounds of the failure to prosecute (immunities and privileges in criminal law).

2. A formalization of the doctrine of a crime and a criminal misdemeanor with a new classification and taxonomy, which based on a four-part division “individual, property, state, society, morality”.

3. Determination of a place and role of an institution of the victims of crime in formation of criminal and criminological policy; determination of characteristics of the victims and their rights in a system of objects of criminal law protection; changes of the role and significance of the victims in a system of criminal law relations and responsibilities by entering the category of victims in the required element corpus delicti; determination of primacy of a personal harm in a definition of the criteria of social danger of criminal offense (crimes and misdemeanors) under categorization of criminal offenses; definition of a victim (special victim) as a separate category of criminal law; spread of criminalization cases of a pre-criminal activity only upon a victim’s complaint; a formation of institutions of consent of a victim, mediation, restitution and compensation as separate or additional forms of implementation of liability for criminal offenses; a definition of normative characteristics of consideration of the victim’s opinion, at assignment of punishment, upon release from punishment and jailing, under applying of measures of security and social protection; definition of the combination of features of criminalization of deeds against the special victims as qualified of the constituent elements of offenses, detection of such features as essential criteria of criminalization, postulation of offenders’ liability which accused of committing of preferred consists only on the victim’s complaint; the ranking of the components of special part in depending on the significance of the protected benefit for the victims.

4. Improving the system of penalties (fines, imprisonment and probation) and other criminal measures: security (confiscation, deprivation of rights), social protection measures (compulsory medical treatment and educational measures), compensation measures, measures of restitution and incentives.

5. Limiting formalization the rules of imposing punishment. From our point of view we should speak here as a formalization of sentencing at presence of mitigating and aggravating circumstances, as well as the decriminalization of a qualified components of deeds in which a particular circumstance was initially listed as a system’s formation. From our point of view, for example, such attributes as a commission of a crime repeatedly by an organized group, a criminal organization, a person using his official position, by an official, and others should be excluded from the dispositions of Specific part of the Criminal Code. With including in the General Part of relevant norms, increasing punishment. Similarly it is possible resolve an issue with circumstances mitigating a punishment, which act system’s formation attribute of dispositions article of Specific part of the Criminal Code (for example, a crime in a heat of passion).

6. Optimization of the number special rules in Specific part of the Criminal Code. From our point of view, for example, it would be reasonable to change the disposition of Article 115 of the Criminal Code of Ukraine, calling it "deliberate attempt on the life" and thereby removing from the criminal law rules that violate a principle of equality and subjecting to additional protection of public authorities, employees of the law enforcement and justice, etc. There are a lot of such examples of systemic violations of basic principles of justice and equality.

7. Elimination of components with "dual" form of fault with transferring of responsibility to the general norms.

8. Elimination of a substantial part of blanket dispositions of components with transferring of responsibility in direction of civil proceedings or economic and legal relations.

9. Optimization of regulation within a unified norm, where the criterion of difference between crime and misdemeanor is a type sanction.

10. Formation of the criminal laws "sui generis", of which existence will allow more substantively describe features of criminal responsibility and punishment of juveniles, problems of military criminal and supranational criminal law.

Many of the above questions are quite debating and each of them is practically a subject of independent research. But a practice of recent scientific forums on criminal law and criminology demonstrates a necessity of its scientific consideration.

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