



УДК 343.2

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CRIMINAL CODE DRAFTING METHODOLOGY

Overall objectives: Drafting Byzantium Criminal Code Theoretical approach. Noting that Byzantium legal family differs from Roman-German by its relationships with the Rule of Law and Justice one should point out that new Criminal law is a fundamental tool to protect human rights. New Criminal Code Draft creation needs to understand how global and regional imbalances and conflicts affected the Rule of Law. To understand how stable Criminal legal form has to be in a dissonance with developing public and social relations and processes one should challenge social control schemes from the field of State, perpetrator, victim and civil society attitudes.

It is the fact that the diversification of Criminal law enforcement understanding at the auspices of civil society cognitive mood, unifying sustainable or global development, has a chance to be resulted in a situation when political union or party assumes the right to abuse opponents, forming armed groups, with a tolerance of local restrictions on the freedom of movement that, as a basis for the right to revolt during the revolution, undermining the idea of the legitimacy of power and widespreading corruptive practices in the transitive development period.

Global and regional, political, social and cultural imbalances and conflicts, communication stuffing affecting the Rule of Law, disorganize it and create a situation where essentially stable Criminal legal form has to be in a dissonance with developing public and social relations and processes.

The notion of criminal law differs at the levels of citizens, media, social groups and networks and law enforcement officials.

Moreover, it differs between victims and perpetrators, civil society and the State, media and social networks at post-truth society. The aim of this issue is to develop on abovementioned background a theoretical model of New Criminal Code.

Formulating theoretical contemporary methodology of legal dynamics analysis and comparative approach. In modern social democratic societies Criminal justice system reflects organizing and stimulating role of deviations control. The concept is quite simple: criminal justice shows the transition from absolute forms of public-law relationships to post modern approach of nowadays with holistic system that essentially based on human rights primacy concept and basic human values landscape protection ideology [1, 13].

"Justice" was identified with the understanding of truth and justice. Now this extends to post truth concept of misuse of law erosive interpretation. Moreover it gives theoretical background to mass misuses and abuses of Criminal law reflecting corruptive practices and political interests, peoples' attitudes, communicative and religion values. "Color revolutions" misuses and terrorist states' abuse through Criminal law formation approach are of the same scheme: Criminal Law ensured crime trends prevention determined more by political interests and processes than by the true needs of society. That is connected with certain processes.

First, the actual destruction of normative tensions of criminal-law institutes is not an appropriate consequence of the influence of the postmodern philosophy of the 21st century. It was just a cat-



alyst. The principle of additionality in state regulation, the virtuality of the hierarchy and the unlimited possibilities of non-criminal response to deviation, led to a significant reduction of the force of criminal law. Criminality is becoming more latent, its combatting – highly ideologized. So, since 2014, certain types of crime (in particular violent, juvenile delinquency), according to statistics, are constantly decreasing in Ukraine, but the population's fear of crime is on the contrary increasing. We are told about the decrease of homicides but not informed about rapid increase of violent deaths. The significant difference between victimization and state reaction is offset by routine preventive measures (more street robberies – less going out on the street). The purely preventive function of the new law enforcement agencies is replaced by the ceremonial functions of the post-truth society (civil servants).

Secondly, in the post-truth situation, there is a certain positive development in society, as it opposes the development of healthy forces of civil society. True, in this way we (the whole world) faced with another problem. Network communication and other types of communications have led to information explosion and neglect while filtering information. The recipient focuses on its own platform, which has its own rights and its sanctions, its values and priorities, which do not always (sometimes) do not coincide with the national ones. People generally have a rather typical deviant action, especially when this action is supported / catalyzed by the reference group. Along with this modern methodology of metamodern involves the synergy of the individual components of a certain phenomenon, interaction and the transition of each other attitudes.

In times of transitivity of the ideologies of criminal law in the countries of common and continental law, when convergence of meaning becomes a central component, we see the emergence of a precedent in Europe and statutory law in America.

The world is becoming more uniform on the surface and more fragmented in real sovereign politics. Hence, the benefits of criminal-law regulation in the balance of state legitimation of the prohibition of the past are replaced by the spread of disciplinary practices and abuse of power.

In this regard, modern Criminal law is a tool to enforce policy shift from obsolete forms of social relationships to the new legal framework of public government and society. It is more dynamic and flexible, it is in constantly change and contributes to breaking the legal forms and outdated stereotypes at the same time.

The doctrine of crime and punishment is complemented by a separate misconduct simulacrum, developing the idea of municipal Criminal law that blurs the field deviations, from one side, and transitional and Integrative Criminal law from other side.

Unity and sovereignty mode is changed to the legality of International Criminal law virtual relationships, where the production of certain types of Criminal offenses is given to international society's universal jurisdiction scheme.

However the last creates the possibility of non governmental transnational authorities and other supra-national actors influence on local legislative level by protection of their own interests.

So, Criminal norms in Transition countries should be analyzed, interpreted and constructed from the point of view of international societies, governments, local experts, law obedient citizens, law enforcement professionals and judiciary, victims of crime and perpetrators.

We argue that complex holistic approach based on mutual recognition of all parties rights and obligations should give positive effort in combatting crime and new law constructing. Thus, new criminal legislation structure and its theoretical background based on multidisciplinary matrix approach had to be analyzed and formulated on different than Western European Transitional approach.





From our point of view, *criminal responsibility constitutes mutual rights and obligations between state (legality and justice), offender (punishment), victims (fair treatment) and third persons (cognitive control) on crime commission*. Mutual rights mean that one should construct criminal norms in order to effectively modify forbidden human behavior only respecting all actors needs.

It seems that we have not to make a choice between the law in force, the law in media, the law in minds, and the law in communications, but to find out a common portrait of Criminal law system in Byzantian (Slavic), Common Law, Roman, German, Scandinavian, Muslim, Customary and Mixed Law families in comparison with International Criminal Law Model via all these faces of Criminal Law.

Primary activities to be carried out while programming Criminal Code Draft are include :

1. Formulating Human rights oriented theoretical approach of Criminal law means (concepts of legality, crime and punishment)
2. Comparative analysis of modern legal families through common indicators (concepts of legality, crime and punishment)
3. Structural analysis of state, social, communicative and cognitive approach to criminal law's common indicators (dimensional approach).
4. Formulating the Theoretical Matrix as a tool for Law Constructing (dynamic model).
5. Preparing of Questionnaires through common indicators cognitive understanding (pilot survey).
6. Developing Common Part of Criminal Code of Ukraine Draft through above mentioned theoretical approach.
7. Preparing a Theoretical Bilingual Model of CCU Draft
8. Conducting survey (academia, law enforcement officers, politicians, members of the bar, judges, perpetrators, members of criminals' families, victims of crime, householders).

9. Interpreting the Analysis.

10. Preparing a unified drafting mechanisms for criminal legislation.

11. Preparing a new cognitive CCU Common Part Draft.

Formulating Human rights oriented theoretical approach of Criminal law concept should be based on comparative research of human rights generations' comparison with table of crimes gravity. So we could construct a ladder of human rights due to their significance, i.e.:

1/ The right to life (incl.the Right to life, the Right to privacy, Prohibition of torture and inhuman or degrading punishments, Prohibition of slavery and forced labor). 2. Freedom and security of a person and the Right to a fair trial. 3. The right to property of the person or of a legal person. 4. Freedom of mind, of thought and religion. 5. Freedom of expression and information. 6. Freedom to free elections.

2/ The right to be employed in just and favorable condition, right to education, learning, rights to food, housing and health care, to social security, to unemployment benefits.

3/ Group and collective rights, the Right to self-determination, the Right to economic and social development, the Right to a healthy environment, the Right to natural resources, the Right to communicate and communication rights, the Right to participation in cultural heritage, Rights to intergenerational equity and sustainability, the right of sexual minorities, ethnic, religious, etc.

4/ Rights of future generations.

After that one should compare table of crimes gravity with the abovementioned ladder to define the "points of power", where state and legislators' opinion corresponds international standards. The same should be done with the help of social polls to these points, verified by state officials, victims, perpetrators and civil society.

Expected outcomes and impact. Harmonization of national legislation, the development of universal mechanisms of control over new kinds of criminal





practices, unification of sanctions and the system of criminal legal response in the system of interstate formations on ordinary crimes and crimes with higher expectancy of being organized will have to be done due to sustainable development model. For this reason, future Criminal laws should be deprived of politicking opportunities. It is obvious that the effectiveness of the law is not only connected with the consistency of its fundamental human rights and freedoms aim to protect, but also with legist formal definition of norms and principles reeducated and approximated on international supranational, national, group and individual levels of Criminal law understanding.

Today, however, the need to create and design a new model of Criminal legal relations in the holistic triad of “offender-victim-state” based on the basis of public-law changes and the primacy of human rights, is necessary to recognize.

A joint concept of criminal responsibility creation that constitutes mutual rights and obligations between state (legality and justice), offender (punishment), victims (fair treatment) and third persons (cognitive control) on crime commission. Mutual rights mean that one should construct criminal norms in order to effectively modify forbidden human behavior only respecting all actors' attitudes and needs. The second point of interest is connected with the development of contemporary methodology analysis based on multipolar understanding of criminal norms and usage of such Dimensional Matrix while constructing disciplinary and criminal punitive norms.

Key words: criminal responsibility, crime, criminalization, criminal policy.

A joint concept of criminal responsibility creation that constitutes mutual rights and obligations between state (legality and justice), offender (punishment), victims (fair treatment) and third persons (cognitive control) on

crime commission is analysed as a basis for Criminalization methodology. It is stressed that harmony between actors and mutual legal and contractual responsibility should be analyzed in common while forecasting a new dangerous behaviors to criminalize.

Современная концепция понимания уголовной ответственности, представляющая содержательно взаимные права и обязанности между государством (законность и справедливость), правонарушителем (наказание и компенсация), жертвами (справедливое обращение и реституция) и третьими лицами (когнитивный контроль и ресоциализация) в связи и по поводу совершения преступления, анализируется как основа методологии формирования уголовного преследования. Подчеркивается, что гармония между субъектами и взаимная юридическая и контрактная ответственность должны анализироваться совместно при прогнозировании новых видов опасного поведения для последующей криминализации.

Сучасна концепція розуміння кримінальної відповідальності, що представляє змістовно взаємні права та обов'язки між державою (законність і справедливість), правопорушником (покарання і компенсація), жертвами (справедливе поводження і реституція) та третіми особами (когнітивний контроль і ресоціалізація) у зв'язку і з приводу вчинення злочину, аналізується як основа методології формування кримінального переслідування. Підкреслюється, що гармонія між суб'єктами і взаємна юридична і контрактна відповідальність повинні аналізуватися спільно під час прогнозування нових видів небезпечної поведінки для подальшої криміналізації.

Literature

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