

Viacheslav A. Tuliakov
National University «Odessa Law Academy»
Vice-rector, professor

**CRIMINAL NORMS AND PUNISHMENTS FORMATION:
BASIC TENDENCIES**

Criminal law of Ukraine is the basic branch of Ukrainian law and is an aggregate of homogeneous legal rules that define what socially dangerous deeds (acts or omissions) are crimes and which measures of criminal legal reaction should be applied to the persons who committed them. This formulation reflects the essence of criminal law in the briefest and most capacious way. However, the focus of this branch of law is somewhat broader, since the norms of criminal law apply to the grounds for indemnity, or to other measures of abusive nature of state impact, etc.

In the doctrinal interpretation, criminal law is a scientific discipline studying the legislation on crimes, punishments and other criminal legal measures based on the state's (and\or political majority's, public attitudes, commonwealth attitudes, spiritual influence, media supply, communicative backgrounds) dominating legal doctrine. Criminal law also studies individual legal institutions and practice both in the presently existing form and on the basis of comparative and historic analysis with the account of the genesis of the legal theory and dogmas. Additive nature of Criminal law in practice, the formation of a Criminal prohibition involves not only constitutional rules and processes connectivity, but also categorical and regulatory dependence on a lot of different kinds of processes. That means that levels of understanding of what crime is, differ from natural law doctrine to positive approach depending on the mixture of political, international and social circumstances of state development and governance that stand on informational basements of morally interpreted principles of what is right and what is wrong. So,

institutional part of criminal law reflects state \ society\citizen's reactions over basic rights and freedoms violation.

The notion of these basic rights and freedoms historically depends on spiritual and communicative trends of society's integration.

Modern criminal legal doctrine regards criminalization as the process of the formation of a criminal prohibition as well as the result of such process. Being partially closed homeostatic system; Criminal law seeks to regulate entropic nature and types of mass crimes and abuses of law manifestations committed in certain spatial-economic and political circumstances that depend on sustainable development process, partially fixing in criminal norms, partially in politically different developmental attitudes of high circles and ruling establishment as a whole. The legislator proceeds from the postulate fixed in art 3 of Criminal Code of Ukraine (CCU), which states that crime, punishment and other criminal consequences of the crime are defined solely by the Criminal Code.

The logic is obvious. Recognizing the Criminal Code as the sole source of positive criminal law the legislator principally denies the possibility of the alteration of the sphere of criminal regulation by any other normative legal acts, which corresponds to the tasks and functions of criminal law. This presupposes that criminal law solely and exclusively defines the content and the scope of application of any individual criminal norm (with exemption of European Convention on human rights protection art 6 criminal offence broad definition). However, this contradicts the essence of criminalization, which includes not only the criminal norm itself, but also the process of its formation and evolution. The above-mentioned process is progressive, continuous definition and alteration of the scope and sphere of criminal regulation in time and space.

The variability of criminalization in time is regarded as an objective characteristic of alteration of social estimations of the deviation in civilization process. Legal prohibitions change in accordance with the changes of the limits of what is permitted. Thus, the new Civil Code definition of self-defense (article 19) as a way of protection of civil rights against violations and illegal encroachments

will result in the necessity to solve the problem of the alteration of the criminal prohibition. This issue, for example, will arise in the qualification of the acts under articles 355 and 356 CCU (forcible assertion of private right, self-will).

The variability of criminalization in space depends on the estimation of the scope of criminal legal regulation in individual administrative units of the state on the one hand, and the estimation of crime from the viewpoint of the coexisting state ideology and individual subcultures on the other hand. Discretionary powers of the bodies of investigation and the court, the reserves of the system of criminal justice, administrative, political, economic, corporative, public, educational influence cause serious effect on the process of penal legal regulation, defining practical instead of formal volume of criminalization.

It is thus important to emphasize that the change of the volume and sphere of penal legal regulation (the scope and descriptions of the protected relations) frequently occurs irrespective of the change of the normative content of the specific penal legal regulation and/or penal legal institution. 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 the landscape ideology of the concept of human rights primacy and diversified protection of basic human values.

Some centuries ago the concept of personal vengeance in the Criminal law was changed to fair state coercion; today the concept of unfair state coercion is changing to a fair, appropriate to the needs and aspirations of the population, reflecting the natural and legal form of the distribution of species and forms of personal needs fair treatment.

By the way in this situation "justice" is identified with the understanding of truth and justice, and this extends to the interpretation of the term erosion.

Moreover it gives theoretical background to mass misuses and abuses of Criminal law reflecting political interests, peoples' attitudes, communicative and religion values.

“Color revolutions” misuses and ISIS terrorist abuse through Criminal law formation approach are of the same attitude: Criminal Law and Development ensured crime trends prevention determined more by political interests and processes based on communicative and spiritual background than by the true needs of society.

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, on the one hand, it is in constant change and contributes to breaking the legal forms and outdated stereotypes and at the same time, less democratic, because based on settled ideologeme of "harm and danger". 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.

The above-said defines the following tendencies in the development of Ukrainian criminal law:

Optimization of the criminal legal regulation process; bringing the CCU provisions in conformity with the Constitution of Ukraine and the possibilities of the constitutional reform, and with the statutes that came into force after the adoption of the CCU should reflect positive, natural, ideological, communicative and spiritual backgrounds of the world that develops over one country;

Carrying out the process of criminalization in conformity with the incidence of deviant activity in the society and supra national and international legal obligations of Ukraine (transnational organized crime, terrorism and corruption prevention, community initiatives: i.e. identity theft notion).

Consistent expansion of the ideology of rehabilitative justice in the criminal legal relations; differentiation of liability and criminalization of acts according to the plight of victims; insurance of comprehensive criminal legal protection of human and civil rights and freedoms. Optimizations of the penal system, legal

fixation of the institutes of safety measures, measures of social protection and other criminal legal measures (rehabilitation, compensation and restitution as a part of criminal coercion and special criminal legislative measures involved in the CCU).

Optimization of the system of sanctions with regards to inadmissibility of the “turn to the worse” for the offenders whose status does not allow differentiation of responsibility within the sanction of the specific article of Special part CCU (more correct legislative background on corruptive crimes responsibility).

Perfection of legal techniques (legal language, criminal legal thesaurus, statutory definition of the rules of qualification of offences, reduction of blanket dispositions and evaluative notions, reduction of special norms at the expense of optimization of legal regulation).

Judicial discretion minimization via sentencing process due to three ways of sentencing: juvenile, victim oriented, humanized basic.

At present, we have come close to the ideas of the complex precautionary influence of penal legal regulations, formation of the code of criminal offences, creation of institutions of restorative justice for law-abiding “accidental” offenders and expansion of possibilities for precautionary and social protection measures for «habitual» deviants.

Moreover, we can suppose that in the future penal legal protection of a person, the state and society from criminality will have the following functions:

determination of what kinds of acts are admitted as criminal ones;

what circumstances induce perpetrators to criminality;

what punishments are applied to the criminals;

what measures of security, social protection and indemnification are defined in addition to the guilty or others in the criminal condition, and also to the persons who require criminal-legal encouragement and protection.

The focus on the identifying features of the criminal condition and their accurate description by the law will ultimately allow resolving a dilemma of parity of punitive and restorative basic principles in the theory of punishment under criminal law.