

права. За великим рахунком, це не проблеми держави і права, скоріше, – це ваші проблеми. Будучи (називаючись) фахівцями і публічно пропонуючи неефективність державного утворення, відсутність дії правових приписів, ви, по суті, кажете про свою наукову неефективність. Ви не змогли або не здатні в межах своєї професійної діяльності виробити положення, які можуть (повинні) надавати необхідної ефективності розвитку держави і права.

Саме тому, з нашої точки зору, основне завдання, яке зараз стоїть перед науковою спільнотою, полягає не у будь-якому відторгненні необхідності наявності держави та права, як, доречі, і формуванні концепцій, які окрім ідеалістичної відірваності від соціального життя нічого не мають. Потрібна індивідуальна та колективна наукова дослідна робота, яка повинна бути спрямована на розробку, подальше удосконалення, в нашому випадку, кримінального права, приведення його у максимальне можливе співвідношення з тими складними соціальними процесами, які зараз відбуваються. Така, на мою думку, зовнішнє не дуже видима, але така змістовно-необхідна діяльність українських науково-педагогічних працівників виглядає зараз конче необхідною.

Viacheslav Tuliakov

National University “Odessa Law Academy”

Vice-president, vice-rector LLD, professor, NALsU Corresponding Member

ECHR Judge ad hoc (2013-2018)

“EUROCRIMPOL” PROJECT: METHODOLOGY OF ANALYSIS

Criminal Law is a tool to protect Sovereignty and Security. As fundamental tool to protect human rights and freedoms it symbolizes People’s, Society’s and State’s legal, moral and social attitudes on defense against different threats and criminogenic factors. New Criminal Legislation of Ukraine Draft creation needs to understand how Global and regional, imbalances and conflicts affected the Rule of Law, and how people’s safety needs to be protected on European Continent. 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. The aim of the project is to develop on European criminal law and policynotions' background a theoretical model of Criminal Code and to widespread knowledge about Criminal policy of countries in transition. Feeling safe, secure and independent means to be happy. The status of Happiness reflects the mainstream at modern sustainable World. Developed and developing countries differed each other regarding to happiness status. But the role of Protective State changes at multipolar, post-truth informational society. 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. 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.

For this reason, 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 strict and simplified by hidden talionrelationships to post modern approach of nowadays with holistic diverse system of disciplinary practices that essentially based on Human Rights Primacy concept and basic human values landscape protection ideology of Punitive measures legal equality (ECHR Engel Rule). Lisbon Treaty at Art. 83.1 proclaims that 'The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime are

the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime'. The Stockholm Programmewidespreads these ideas to harmonization of EU disciplinary practices associated with Criminal Law [1].

We argue that criminal responsibility of nowadays 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. Mutual obligations mean that State's "Ultima Ratio Regis" rule widespreads to different disciplinary practices that exist at society. This diversification consists of two points. Negative. That means loundering of Criminal Law normative essence at society. Positive. That focuses on protection of people's rights and freedoms, violated by state and society disciplinary practices. Additional attention should be done to comparison of local narratives on Crime and Punishment and International and Supranational ones (treaties, rules and procedures). Due to our hypothesis, 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 from European Criminal Policy (EC and EU rules that affecting Ukrainian legislation, judiciary and preventive practice).

The main approaches we are challenging while possessing European Criminal Policy Activities (see Syracuse AIDP institute actions) in Ukrainian legislative practice consist of:

The European Criminal Law Framework significance and characteristics (i.e. – STRATEGIC GUIDELINES for legislative and operational planning within the area of freedom, security and justice adopted by the European Council by27 June 2014);*the Sources of European*

Criminal Law (i.e. The General Data Protection Regulation 2016/679, which will be applicable starting 25 May 2018, that includes specific rules on the control of individuals' personal data for purposes of the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties), *Main Actors in European Criminal Law* (i.e. ECHR, ECJ, EuroJust, EuroPol; European Public prosecutor's Office; European Judicial Network; Joint investigative teams); *Harmonization of National Criminal Laws* (i.e. – Council FRAMEWORK DECISION 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and surrender procedures between Member States; – Council FRAMEWORK DECISION 2008/947/JHA 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions) *Procedural Elements and Instruments of European Criminal Law* (i.e., – DIRECTIVE 2014/41/EU 3 April 2014 of the European Parliament and of the Council regarding the European Investigation Order in criminal matters; – DIRECTIVE 2012/29/EU 25 October 2012 of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime); *Future Developments of European Criminal Law regarding sectoral EU treaties on combatting financial crime, market abuse, terrorism, cybercrime, environmental crime, etc* (i.e., – DIRECTIVE 2014/62/EU 15 May 2014 of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law; – Council FRAMEWORK DECISION 2003/568/JHA 22 July 2003 on combating corruption in the private sector; – DIRECTIVE 2014/42/EU 3 April 2014 of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union; – DIRECTIVE 2014/57/EU 16 April 2014 of the European Parliament and of the Council on criminal sanctions for market abuse; – DIRECTIVE 2013/40/EU 12 August 2013 of the European Parliament and of the Council on attacks against information systems; – DIRECTIVE 2011/36/EU 5 April 2011 of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims; – DIRECTIVE 2017/541 15 March 2017 of the European Parliament and of the Council on combating terrorism; – Council FRAMEWORK DECISION 2008/913/JHA 28 November 2008 on

combating certain forms and expressions of racism and xenophobia; – DIRECTIVE 2008/99/EC 19 November 2008 of the European Parliament and of the Council on the protection of the environment through criminal law), etc.

These are the main paths on the way of approximating European Criminal Law.

REFERENCES

1. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Delivering an area of freedom, security and justice for Europe's citizens // Action Plan implementing the Stockholm Programme – COM(2010)171 final, 20 April 2010.

Фесенко Є.В.

*Академія адвокатури України,
завідувач кафедри кримінального та
адміністративного права, доктор юридичних наук, професор*

ТЕРОРИСТИЧНІ ЗЛОЧИНИ ЯК ТРАНСНАЦІОНАЛЬНА ПРОБЛЕМА

В сучасний період особливу тривогу всього людства викликає тероризм.

Ще не забуті жахливі теракти, вчинені 11 вересня 2001 р. у США, коли горів і розсипався велетень-хмарочос, поховавши під грудями уламків тисячі жертв. Але й на сьогодні небезпечність терористичних злочинів не зменшується, а масштаби стають глобальними.

В 2017 р. вбивства та теракти вчинювались у всіх частинах світу.

Проведений автором аналіз оприлюднених у ЗМІ матеріалів з цього приводу показав, що в результаті найбільш зухвалих з цих злочинів за рік загинули 1384 чол. і близько 1900 поранені. Вказані діяння здійснювались шляхом масових розстрілів, застосування вибухівки тощо, в тому числі терористами-смертниками. Майже за половину злочинів взяли на себе відповідальність організовані злочинні