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A Look at Criminal Law Reform in Ukraine through the Prism of Jus est Art Boni et Aequi

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Abstract

This article examines the issues related to the modern views on the law and its impact on the criminal legislation of Ukraine. The analysis of the current scientific thought about the volume and meaning of the categories of "right" and "law" is carried out, their juxtaposition is explained, and it is argued that these categories differ one from another and do not coincide neither for their volume, nor for their meaning. It is suggested to use integrative approach as the most optimal in determining the impact of law and order on the implementation of domestic criminal legislation.

Keywords: criminal law, positivism, normativism, libertarianism, mondialism, broad understanding of law, legal theory, legal system.

Introduction

The implementation of legal regulation of the fight against criminal offences through law, just like the limitation of the forms of this regulation by legislative acts, is not uncommon, because the world still does not know a better way of formalizing the rules of this or that branch of law. However, the one-sided approach to an understanding of criminal law, as a basis on which other phenomena — whether narrow normative or otherwise — are conceptualised is inconsistent. The idea of a broad, "libertarian" or "monetary" (linked to the processes of globalization) in the current context of the development of criminal and legal doctrine is becoming more and more evident. The dominant view of this particular area of law only through the prism of its positive component no longer satisfies the legal thinking at the present stage of research.

Therefore, current trends in the development of legal science require deepening the understanding of the essence of criminal law, which would be based on apart from its traditional features — the establishment of malice. In this article,

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the authorization of the criminal law would be based on legal ideas, principles, norms, social relations as a single whole. This article, of course, does not claim to be a comprehensive solution to the problem posed, but considers it as the initial (output) material for the rest of the analysis of the remaining cases of the criminal law and the criminal law (law on criminality) in the light of the current understanding of the law.

The nature of criminal law as a separate branch in the science of criminal law was studied by such scholars as M. I. Bazhanov, Y. V. Baulin (2019; 2010), M. I. Korzhansky, N.F. Kuznetsova (1999), A. V. Naumov (1994), V. O. Navrotsky (2013), M. I. Panov (2010), A. A. Piontkovsky (1958), Y. A. Ponomarenko (2020), Y. E. Pudovochkin (2005), V. D. Filimonov, V. Y. Tatsiy (2013; 2010) and others. However, the majority of scientific works investigated little, trends of their interaction and development were not analysed in a separate analysis of correlation of criminal law and law on the basis of modern theoretical views on law and order.

In connection with this, the aim of this publication is to restore the integrity of criminal law, which integrity, in our opinion, has been destroyed by the dominance of normative theory, on a rational theoretical basis. Through integration of positive and normative views on the law with ideas expressed by representatives of other conceptions of legal understanding, it is proposed to understand the criminal law more broadly as a holistic phenomenon, to determine the nature and interrelationship of criminal law and their relationship to each other, as well as the meaning and scope of each of these legal phenomena separately.

The issue of the essence of law has been and remains at the centre of current legal and political thought, and the concept of law is still not only the main category of the general theory of law, but also a subject of research, which is assigned to each particular branch. Because the understanding of law and its essence depends on the understanding of a lot of legal and social phenomena, solutions of very important theoretical and practical issues of public life.

Review of Historical Facts and Literature Data

1. A general concept of criminal law

In the legal literature, the notion of the essence of criminal law is often associated with its departmental characteristics, indicating that it is "a system of legal norms (actually, laws) adopted by the Verkhovna Rada of Ukraine, which establish which socially unlawful acts are criminal offences and which penalties or other measures of criminal-legal influence are to be applied to the persons who committed them" (Tatsii et al., 2020), or "the branch of law which consolidates the rules of law that determine which acts are criminal offences and which penalties, as well as other measures of criminal influence, are imposed on the persons who

have committed them. They determine the grounds for criminal liability and dismissal from criminal liability and punishment" (Naumov, 1994). It is also defined as "the totality of legal norms established by the supreme body of legislative power, which define the objectives, principles, grounds and conditions of criminal liability, as well as the punishment of socially unlawful deeds recognized as crimes" (Vetrova & Lyapunova, 1997).

Sometimes criminal law is seen as: "a specific branch of public law that has as its purpose the designation of acts that are criminal offences and criminal liability for them" (Naden, 2012). And, also as: "a branch of law determined by socially inoffensive behaviour of people and designed to protect the most important social relations, which contains a system of legal norms. It contains a set of socially disadvantageous and defined criminally unlawful acts, the conditions of recognition, type and amount of punishment for the perpetration of such acts" (Maltsev, 2000). In this case, such definitions are grounded precisely through the tasks set before the criminal law, which is the form of the legislative expression of criminal law: according to part. Pursuant to part 2 article 1 of the CC, 'The Criminal Code of Ukraine determines which socially dangerous acts are criminal offences, and which penalties are imposed on the persons who committed them.

These understandings of criminal law (and similar definitions could be continued), despite some external differences, have one thing in common — they all define the relevant field mainly through the institutions enshrined in the Law, The Law on Criminal Procedure and the Criminal Liability Act (the Law on Criminal Liability). However, this approach, we believe, is old and inadequate for clarification of the essence of criminal law in terms of current understanding of the law. Although it should be noted that at the time of the adoption of the so-called normative theory of law, which was widely disseminated in the domestic science during the Soviet era, it was domesticated and fully accepted.

At the outset, it should be noted that this article does not aim to define a general concept of criminal law. The authors try only to devote attention to this problem taking into account modern views on the legal understanding. At the same time, taking into account the main vector of development of legal thinking (at least for the coming years) (Shepitko, 2020), which, most likely, will be directed towards the creation of an integrative concept of law, we consider it possible to make some judgments in this regard on its separate branch — criminal law. This is important because the concept of criminal law, within a certain type of legal understanding, becomes the basis not only for the development of the theory of criminal law, but also for lawmaking activities of the legislator, taking into account the recognition of these or other legal phenomena. Thus, the disclosure of

what constitutes criminal law is often concentrated in its definition and implies a general legal concept.

Indeed, for most of the twentieth century domestic legal science was based on the dogmatic concept of law (including criminal law) as embedded in the law the will of the ruling class. Without commenting on the reasons for such an approach to the understanding of law, we should note only that, in fact, it was due to the fact that on one side, the law was the basis of the law. On the one hand, it was very well integrated into the communist ideology concerning the relationship between the interests of the individual and society, and the latter and the state, which prevails both over the former and over the latter. On the other hand, the mental structure attributed to our people — the "phenomenon of faith" in justice, which comes from "above", has accompanied them throughout their entire existence. First, faith in a higher power, then faith in a good tsar who would do everything justly and, finally, faith in a power that fights for the interests of the people and thus realizes this goal.

2. Discussion on the understanding of law

However, at the beginning of the twentieth century, due to fundamental changes in the social and economic structure of Ukraine and other countries of the former USSR all signs of the outdated (traditional) definition of law began to be questioned: a) domination of one class over others in modern society; b) a strictly state approach to law; c) the supremacy of the state over law; d) the total collapse of law and the law (Malynyn et al., 2005).

Without disparaging the achievements of the concept of law at a certain historical stage in the development of domestic legal thinking (and such achievements were indeed significant), We note that the appearance of their criticism was not accidental, as runs on the discontent with the possibility of swivel legislation, which in essence is derived from the above-mentioned formulation. We should also not underestimate the change in the ideological approach to the role of the state (its predominant character) over the society in that period compared to the present.

Beginning in the second half of the twentieth century in scientific discussions on the understanding of law, the view on the statutes of law as the main content and "unit" of law became subject to harsh criticism as a "normative, normative, positive understanding of law" (Piontkovsky, 1958). This criticism was based on a fair argument that the law should not be reduced to texts of laws because the result of such an understanding is that the law is removed from the practice of its application, the importance of (or lack of recognition of) human rights and freedoms, as well as the moral foundations of law, is diminished.

Some of these arguments are very valid and have not lost their relevance today in the sense that not only in criminal law enforcement, but also in doctrinal

studies there is a tendency to limit oneself to commenting on the texts of laws without analyzing the nature of their origin and their relation to the public perception of them. Indeed, the vast majority of provisions in the current CC vary from one version to another and are what one would call traditional, centuries-old precepts that fully coincide with the public's perceptions of fairness.

However, in recent times, in response to the challenges of today, the law more and more often contains new provisions that are ambiguously accepted by society, including through poorly or incomprehensibly written text of the corresponding criminal law norm. As an example, one can bring criminalization of production, distribution and also public use of symbols of the communist totalitarian regime, public display of the hymns of the USSR, the Ukrainian Soviet Socialist Republic (USSR), other union and autonomous republics or their fragments throughout Ukraine's territory ... (art. 4361 CC) (Decree of the CEC and SNK…, 1932). Although the interpretation of the texts of criminal laws represents only one of the basic stages in the understanding of law, it is in itself, being disconnected from the legal relations, their content, dynamics and guarantees of implementation.

Without taking into account the peculiarities of the legal system of society, as well as tradition and law enforcement practice, in our view, it is not only obstructing the preparation of substantiated proposals for improvement of the CC, but also leads to deterioration of the strength of the rule of law and the rule of law. That is why the understanding of criminal law only as the texts of laws does not fully reveal the proper legal meaning of these acts, to distinguish legal writings from declarations and definitions. For example, how to use only the text of Article 2 (1) of the CC to identify the concept and characteristics of the "structure of criminal offence" as a basis for criminal liability, or to disclose the essence of the "criminal liability" itself, or to conduct its interdiction from the punishment, etc.

Furthermore, it appears that a view of the text of the law as a "state order", which is one of the tenets of normativism and the reduction of the regulation of criminal relations exclusively to an imperative method may lead to the conclusion that, even, the enshrinement of civil rights in the law is only a dictate that does not establish but, on the contrary, interferes with their freedom "if only because these very rights are enshrined and not other rights, because these very rights and not other rights are allowed to be exercised" (Nedbaylo, 1965).

The idea that this is a common rule, rather than an exceptional way of government conduct, raises a low level of doubts. Firstly, even at the level of abstraction it is difficult to imagine, for example, if the CC does not provide for criminal liability for homicide. The society will be put up with the loss of life (or consider it acceptable) and will quietly wait for the legislator to appropriately address the phenomenon.

3. Social conditioning of criminal law

The doctrine has long since established the social conditioning of criminal law. As we know, formulating this or that structure of evil (criminal offence) the legislator creates in a specific form certain models of behaviour, which directly reflects the social meaning of this criminal offence. Therefore, criminal law (as, in fact, any other law) is always socially conditioned, always a "universal and genuine representative of the legal nature of speech. The legal nature of speech cannot, therefore, be appealed to the law — the law, on the contrary, must appeal to it" (Marx et al., 1955).

This thesis of K. Marx, who is almost forgotten today, about the social conditioning of the law can be fully applied to such a legal phenomenon as criminal offence. Moreover, the sociological analysis of the nature of criminal law allows us to make a substantiated conclusion that the crime (criminal offence) exists objectively, namely: before, at the time, and irrespective of the assessment of the legislator. So the models of socially unacceptable behavior are formed by themselves in the course of the historical development of society, regardless of whether the legislator formulated them in the form of a legal prohibition or not. If it turns out that, due to its social nature, unsafe behaviour is such that it can cause real harm to society, the latter will need its legal protection. In other words, the criminal-law defence reflects the society's overall need in its struggle against malicious encroachments. Thus, in the words of K. Marx, "the point of view of the legislator is the point of view of necessity" (Zinchenko, 2005). Thus, the dialectical approach to the establishment of criminal-legal sanctions always includes the notion that the nature of intrusion of law into social life is determined by social necessity (Kudryavtsev et al., 1982).

The state, however, only formalizes in criminal laws the notion of the need for protection of the most important public relations, which is generally accepted in society or necessary for its own functioning. Alternatively, sometimes (also possible), it offers a suitable vector for shaping this perception, e.g. by criminalising an act. Depending on whether the latter is perceived as meeting the needs of society and its views in terms of justice or not and determining its future share — the rule in the law is retained, or it is amended accordingly, or it is cancelled altogether.

Secondly, it should be noted that the above approach to the possibility and nature of unilateral use of relevant rights has led to inappropriate, in our view, conclusions of some scientists about the fact that the norm of criminal law is formulated, enshrined and protected rule of conduct for the state (Naden, 2012). For example, in the opinion of O. V. Nagyon it turns out that the whole essence of criminal law is reduced only to the powers of the state and it is in this, in her view, is the meaning of state relations of a criminal-legal nature.

Similar position, although in the context of criminal liability and criminal punishment, is maintained by Y.A. Ponomarenko. The scientist, analyzing the instrumental theory of law within the framework of the general doctrine of legal means as a methodological basis of his scientific research, notes that there are "grounds for the coverage by the sphere of criminal law of at least that part of the administrative and substantive legislation, which regulates public relations, in the framework of which the State in a judicial manner prosecuted an individual to be liable to it (the State), rather than to the victim of a violation of law. The statement about the scope of criminal law and instances of public legal liability of an individual to the state to which he/she is subjected in a judicial procedure does not cause serious restrictions (except for the phonetic rejection of the above-mentioned thesis)" (Ponomarenko, 2020).

Indeed, if we relate criminally-legal relations with criminally liable, and the latter — exclusively with criminal punishment, the above mentioned by Y. A. Ponomarenko theses are fully accepted and fair. However, reducing the content of all public relations of criminal and legal nature to the responsibilities of the state alone, in our view, actually does not respect the very notion of legal relations and leads us to a "path with a single track", which is not applicable to any of their species.

4. Inadmissibility to change the concept of criminal law

Unfortunately, the same idea lies at the heart of the Concept of the Reform of the Criminal Code of Ukraine as well as other acts of current legislation on the liability for public offences (Concept of the Reform of the Criminal Code…, 2019). The Law Committee is a working group on the development of criminal law in accordance with this article.

It is difficult for us to agree with the concept proposed by the above-mentioned working group. Our position is based on the thesis that it is inadmissible to change the concept of criminal law, as a separate branch of law, exclusively as a functional part of the state, which, in the view of our opponents, is a determinant of its essence. This diminishes the significance of criminal law, reducing it to one of the types of exclusively state law. Indeed, this position of some scholars is quite surprising, especially in view of the fact that in their scientific research they actively criticise the narrow normative understanding of law and do not agree with this interpretation of law.

Finally, let us point out that the protective function of criminal law, although it is the main, but by no means the only one among the tasks that characterize (for which it exists) in accordance with the prescription of part 1 article 1 of the CC, this field (Zinchenko & Shevchenko, 2017).

For the sake of fairness, it should be noted that the view of criminal law only as its textual structure, which expresses the will of the authorities, in terms of

criminal oppositions and punishability, is reflected, first and foremost, in the activity of the legislator himself. However, the stable adherence to the normative understanding of law, in that part, which relates to its essentially state-oriented nature, leads to the fact that the legislator singles out exclusively the creator of any of its rules. At the same time, he takes into account the peculiarities of expression of the content of the legal norm in the consciousness of society (lawfulness), the textual clarity of the law as a guarantor of ease of implementation of the norm in the legal relations between the relevant subjects, the dynamics of the practice of functioning of the legal system as a whole (law and order) is largely left out of the legislator's attention and is purely declarative in nature.

We do not intend to diminish the role of criminal law and the current trends to expand the sphere of legislative regulation of the issues related to combating criminal offences, and we welcome the will of the state to strengthen the rule of law and the protection of law and order. The state is committed to upholding the rule of law and the rights of individuals and citizens against criminal infringements by strengthening safeguards in the application of the harshest measures of state coercion. However, the situation is always seen as optimal when new laws in the field of combating criminal offences are the result of a long negotiation and testing of legal ideas, As a result of this — the harmonization in practice of the interests of the individual, the society and the state as a whole. Otherwise, the very question about the fairness of the claims to Transnistrian people regarding the application of the general legal principle of ignorantialegis non excusat (ignorance of the law does not exempt from liability) is impeded, because the overall scope of such amendments and supplements is sometimes so great that it requires considerable effort to identify and fix what exactly they consist in, even for professional lawyers.

The same can be said about the legislator's limited use of the time limits on the enactment of the new provisions of the CC. Although the possibility of a new criminal law taking effect from the date of its official publication does not contradict part 1 of article 4 of the CC. Article 4 of the CC, we believe that this provision should apply to exceptional cases (such as natural disasters, war, etc.) rather than its systematic use, as has often been the case in recent years. Since, as stated in the explanatory note to the draft of the new CC, the practice of enacting laws on amendments to the CC of Ukraine "from the day of their publication" (or "from the day following the day of their publication") violates the rights of people, which makes it impossible for the population of a large country to be actually informed about such amendments (Concept of the Reform…, 2020).

This shows that the changes to the CC should not be adopted in an arbitrary manner, in the so-called "turbo mode", because there are few questions. First, whether the drafters of the current CC of 2001 at the stage of its adoption was

intentionally flawed in taking into account the development of society in the creation of its needs for legal regulation of relations to the law and the creation of criminal laws. Or, alternatively, the process of law-making in Ukraine is reduced to something else, for example, the re-examination of highly utilitarian and sometimes lobbyist goals of a certain category of individuals. The competition between individual MPs over the number of draft laws submitted per term or, worst of all, is politically motivated.

Thus, only the draft Law on Amendments to the CC in 2020, according to the estimates of V. I. Tiutiuhin (2020), can be counted more than 120, and for the whole period of the current CC functioning, the multifarious proposals of the legislator for its improvement have already exceeded several thousand! Taking into account that the vast majority of them relate to not just one, but at least nine to ten or twenty articles of the CC, the total number of proposed amendments is in the tens of thousands. Although the number of adopted amendments to the CC is much lower, their drafts total 1120 (238 in the General Part; 885 in the Special Part).

Most of the legislative novelties refer to legislative amendments or criminalization (almost 70 new criminal offences, some of which have already been amended several times (97 — twice; 57 — three times; 38 — four times); These have already been changed a dozen times (97 — twice; 57 — three times; 38 — four times; 22 — nine times; 12 — six; 6 — seven times, etc.), and Art. Art. Articles 364 and 369 of the CC have undergone as many as 9 such amendments. The apotheosis is Article 368 of the CC, which has been changed 12 times in recent years! Some negative processes also occur: 16 of the adopted criminal law provisions have already been excluded, and 26 criminal offences were de-criminalised with the aim of humanising the current law. Thus, the 447 articles of the Criminal Code that were in force when it entered into force in 2001 were amended and supplemented by 359 articles [80, 3%]: in the General Part, 96 out of 108 [88.9%]; in the Special Part, 263 out of 339 — 230 [77.6%].

Legislative developments

1. Criminal law as a branch

It should also be noted that some of the amendments and additions to the current CC are associated with systemic changes that substantially alter the generally accepted approaches and attitudes that have been shaped by domestic criminal law doctrine for centuries. Some of these legislative developments are not without precedent. In particular, this applies to the rules on the classification of fines as the most severe form of punishment and, as a result, the criteria for classifying criminal offences according to their degree of severity were changed; implementation of the term "illegal profit" which is a more narrow concept compared to the traditional term "bribery" in our legislation, which, indeed, does

not correspond to the goal of strengthening the fight against corruption (Kirichko, 2013) and many others. This is a classic example of lawmakers' failure to fully understand their direct function of formalizing the rules of criminal law and changing this designation to a unified definition of their content, which is a negative consequence of the introduction of regulatory norms in the present realities of the development of Ukraine's statehood.

Therefore, for the practical implementation of the idea of creating a law-governed state, the search for a new definition of criminal law, which would confirm not only the legality, but also the rights of people, would change the misunderstanding for many of the right and state for the benefit of the former, is extremely necessary.

This approach is not new for criminal law, because on its basis in doctrine have emerged and developed the notion of, so-called, a broad understanding of law and, as a result, about the separation of law and law. According to the relevant concept (Piontkovsky, 1958), the law included not only legal norms but also legal relations as well as legal ideology and legal awareness. This approach to legal understanding gives the possibility to undermine legal formalism, and its democratic idea consists in the fact that the legality is not only voted on the paper. That is, in the text of the law, but also put into practice, both through the practical actions of the authorities and the rule of law, as well as in accordance with the rights and freedoms of citizens.

However, nowadays this concept of understanding of law is used only in part in the criminal law of Ukraine and only in that part that concerns the law relations, as one of its characteristics. Meanwhile, world science has gone much further in its quest. Therefore, it may happen that as long as the domestic scientists-theorists will only "take into consideration" different views on the legal understanding of their suitability for Ukrainian criminal law, the practice. Taking into account the recent trends towards interstate associations, the practice itself will tend to eliminate the barriers between legal families and legal systems, undermining the foundations of legal pluralism. Thus, for example, in the opinion of A.I. Kovler, the process of creating a single international legal space has already begun. And now, in his opinion, "the history of European law is being written in Brussels and Strasbourg" (2002), but not at the level of domestic law.

Without overestimating the significance of such an extreme, although not deprived of a fair share of the scientist's opinion, we should note that the definitions of criminal law have also appeared in the domestic legal literature for the last time, In which, apart from the traditional nature of this legal phenomenon — the definition of criminal offences and punishability of actions, there is an emphasis on its features such as legal relations, as well as on the legal ideology and legal ideology of society. Thus, N. F. Kuznetsova believes that criminal law

as a branch, subsystem of the system of law, is a wider concept than criminal law. It includes not only criminal legislation, which is a system of norms adopted by a supreme authority that defines the principles and grounds of criminal liability, a set of actions that are declared, as criminal offences, types and amounts of punishment for them, grounds for exemption from criminal liability and punishment, as well as "criminal-legal relations related to law-making and law enforcement" (Borzenkov et al., 2002).

For his part, Y. T. Pudovochkin, defines criminal law as: "a self-contained branch of law that is based on the ideas of legality, equity, guilt, justice and humanism, a system of legal norms adopted by a superior body of representative power that determines the malice and punishability of socially disastrous acts, regulating them by means of a prohibition, obligation, permission or request arising from the moment of committing a crime on the basis of the legal relations between the person who has committed the crime and the state, represented by its competent authorities" (Malynyn et al., 2005).

However, the most deserving of support is the opinion expressed in this regard by V. O. Navrotsky. This scientist also supports the idea of separation and juxtaposition between criminal law and criminal law, but through the well-known formula: "meaning and form", rightly pointing to the nature of speeches, that "meaning can never exist without a proper form, and form cannot be without meaning". That is why, as a conclusion, he considers that: "on one side, detachment of criminal law and law, on the other — their confrontation — are extreme" (Ukrainian Criminal Law. General part, 2013). However, V. O. Navrotsky does not give his own definition of criminal law, but proposes to take into account the role of this branch of law in society, distinguishing it from the functions and tasks of the CC. That is why he considers the functions of criminal law as a branch of law, in contrast to the established views in science: 1) In the formulation of public requirements for the definition of the range of actions, which are malicious; 2) Determining the circumstances under which actions that are characterised by certain features of the crime are considered non-criminal; 3) Determining grounds for exemption from criminal liability and punishment.

2. Law as "the art of good and just conduct"

Developing the views of the scientist, we note that the key, in our view, is the fact that the function of criminal law lies in those legal relations. The function of criminal law is precisely those legal relations that arise from the demands of society, rather than from the state's understanding of the implementation of the protection and prevention, which are attributable to the legislative order. And, as a result, the function of criminal law, although related, but not necessarily coincide with the functions of criminal law. This is a matter of principle.

As for the tasks of the branch of criminal law, they also have some difference from the tasks of criminal law. According to part 1 article 1 of the CC, the objective of the CC is: "legal disorderly conduct". The aim of the CC is: "legal protection of the most important social relations, as well as prevention of criminal offences", then the aim of criminal law should be based on achieving justice in the field of combating criminally unlawful acts, as follows: "that anyone who deserves to be held criminally responsible for a criminally wrongful act should be criminally liable and anyone who is not guilty before the public should not be held criminally liable" (Ukrainian Criminal Law. General part, 2013). The conclusion is not infallible, but, however, coming, for example, from "libertarian" views on the right perception — quite logical.

Therefore, the definition of the concept of criminal law norm, which is very different from the concept of criminal law, has a sufficient theoretical basis and is very promising for further scientific research, although this thesis (separation of law and law, "mismatch" of functions and tasks of the latter) itself generates a low number of unhandy, and such that require addressing the issues, both for the theory of criminal law, and for law enforcement activities.

That is why this article does not support the concept proposed by the working group of the Legal Reform Commission established in accordance with the Decree of the President of Ukraine № 584/2019 of 7 September 2019. We believe that we will adopt the New CC of Ukraine in the version proposed for consideration by the scientific community in 2021. We believe that at this stage it would be more appropriate to revise the current CC, and later, on the basis of the revealed shortcomings and testing of the novelties, to adopt the Criminal Code on principally new grounds.

Without overestimating the fairness of the approach to comprehension advocated in this work, we do not exclude that it will cause a lot of inconsistencies: most likely, it will turn out that the history of the world had a lot of laws, but not so much of those that can be called lawful. For example, it is difficult to say whether such laws existed during the period of the despotism in Eastern countries or during the various stages of Soviet history. Lots of laws were clearly unjust and inhumane and could not meet the demands of society. How, by the way, to the notion of malice in the 1919 Criminal Law Regulations, the Criminal Code of Ukraine, which was in force on the territory of Ukraine and according to which it was defined as a "socially unacceptable act that infringes on the social order and law and order established for the transition period to the communist order," with their provisions on the analogy of the criminal law, etc.

It is possible to admit a certain logic in the arguments of the then developers of criminal legislation about the fact that a decade of Soviet power is too short a term to correctly predict possible forms of malicious manifestation through the

absence of the Soviet regime. A decade or two of Soviet power is an awfully short term for the correct prediction of possible forms of malevolent behaviour through the absence of historical analogues of the socialist CC, but it is unlikely that the society was intent on it. Or the famous "law of the eighth to the eighth" or otherwise the "law of the nine spikelets", According to this law, the theft of collective and cooperative property was punishable by destruction and confiscation of all property or, for other reasons, deprivation of liberty for a period not less than 10 years with confiscation of all property. Amnesty was prohibited in these cases. Perhaps this law was in the interests of the state at that stage of its development, but for the public it was clearly detrimental.

In this context, the assessment of many of today's laws is also ambiguous. So, if not all laws meet the interests and demands of society and are not fair, how must society abide by them? And only one question that poses not only to the theory and practice of application of criminal law, but also to the state as a whole.

"Law", wrote V.S. Nersesyants, "Law should not, of course, be mixed up with various general binding acts — laws, decrees, ordinances, decrees, precedents, officially sanctioned laws, etc., in short — officially established (so-called positive law). Notwithstanding the law, the law is subject to the characteristics of equality and freedom. Where there is no ... The principle of equality does not exist, there is no right as such. Thus, formal equality is the most abstract notion of law which is common to all law and specific for law in general (1997)".

In our opinion, the answer lies in the understanding of the principle of separation of criminal law and criminal law, and the legal consequences that arise in this case. It seems unreasonable to exclude the social content of the concept of law and transform it into a "pure" formality in comparison with the content of the concept of criminal law. Even more incorrect is the one-sided approach to the assessment of justice, as a sign of law through the opposition of such a perception of people and society on one side and the interests of the state on the other. It should be borne in mind that both individuals and society have their own ideas about the conformity of the law with their rights, and the state, as a social institution, may have legitimate interests that are extremely important for their livelihood and not necessarily in conflict with the notion of the fairness of the individual community.

For example, state terror in the form of defence under martial law or during military conflict — Article 111 of the CC. Such a defection, of course, may be motivated not only by a desire to harm the foundations of national security of Ukraine, but also by discontent with the shape of the state structure. The main direction of development of the state or its ideology (we know that these events

took place not only in Ukraine but also in France, Germany and Russia during the Second World War, etc.). And these ideas, in the opinion of the authors, should be in harmony with the foundations of national security and not be opposed to them.

Indeed, the meaning of any legal system is determined by historical patterns and is not unambiguous. Historical experience of humanity shows that the authority of positive law, which is created by far-reaching powers over time can and must become part of the public perception of fairness and in the future to be considered in the indivisible integrity of the content of the criminal law rules. Therefore, we believe that criminal law is a tool not only the state, but also the society, as well as individuals (citizens) on their understanding of the criminal offence, punishment and related concepts. And, opposing these notions is unacceptable. "The state," as R.Z. Levshits wrote, "does not create law, it must consolidate the notions of justice formed in society" (1989). L.S. Yavich went even further in this respect by declaring "objective relations with society even before they are sanctioned by law" as a right (1977).

As for the current law, the latter is a clear perception of the state of the demands of society in the field of combating criminal offences and their feasibility for its own. Nowhere in the world is there only "good law" and only "bad law". Every legal system has both, or else we would be moving away from the general principle of the coexistence of society and state (not society within the state and not the state for the sake of society) and constructing some sort of piecemeal law, the law is not in conformity with the reality of today.

From this point of view, ideal models of legal acts and systems are entitled and even required to exist, principles, axioms and postulates of criminal law are developed, progressive and conservative, reactionary bills and laws are propagated and criticised. The extent to which the law, as a form of expression, will be consistent with these ideals, the extent to which the state will claim its legal form. The regulation of the fight against criminal offences, as well as the limitation by a corresponding act of the forms of this regulation through the law, is not uncommon. The world does not know a better way of formalising the rules of relevant law and this must be respected.

The legislator, the public, the state and, in particular, the citizen in question, must have a clear and defined position: the wishes, beliefs and opinions to be pursued remain only an ideal model of criminal law norms until they are duly adopted in the manner prescribed by the Constitution. Accordingly, the provisions of these laws must express the will of both the people and the specific interests of the state, rather than those of an individual part of the ruling elite. Therefore, establishing representative (legislative) bodies and the Constitutional Court of Ukraine, adopting and further improving the Constitution of Ukraine are the only legitimate tools for achieving this goal, although it is not worth re-evaluating their significance without taking into account the rule of law. Thus, the well-known definition of law as "the art of good and just conduct" (Jus estarsboni et aequi)

given by the Roman jurist Celsus Juventius, more than two thousand years ago, has been and remains relevant today.

Conclusion

Summarizing the meaning of the above, the following conclusions can be made:

First: the concepts of "criminal law" and "criminal law" differ in scope. Law is a broader concept. In addition to criminal law, which is a supreme act of the legislature, it includes legal relations, lawfulness, and may also cover other normative acts (e.g., the rules of international law).

Secondly, the distinction between law and statute is also based on the nature of the law. The law is made by the state, and the law indirectly arises from public or state needs, is based on democratic ideas and outlasts the law.

Thirdly: the distinction between the law and the law exists also because of its content. As for criminal law, this thesis is fully reflected in the principle: "nullumcrimen sine poena, nullapoena sine lege, nullumcrimen sine poenalegali", if its meaning is interpreted as follows: 1) Equality sign — each punishment in its scope and extent corresponds to the public perception of the inherent gravity of the crime (there is no criminal contravention without punishment); 2) The sign of freedom — no appropriate law enforcement measures may be applied to anyone, except in cases provided for by the CC (no punishment without law); 3) Both features at the same time — all are equal before the law and, if there are grounds for it, no one must escape criminal liability (there is no criminal offence without legal punishment).

Finally, fourthly: the dominant view of the current criminal law on its essence is notably due to the positive composition and does not satisfy the criminal-law mindset. The understanding of the essence of criminal law should be based on the legal ideas, principles, norms, social relations, as a single whole, in addition to its traditional features — criminal opposability, punishability, other types of criminal-law influence, and so on. Therefore, scientific research at the present stage of development of knowledge about law requires new directions in the direction of widening the use in them integrative concept of law understanding, which corresponds to the realities of "libertarian" theory, and not the narrow approaches to its understanding.

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