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Criminal Law in the Social Dimension: Contours of Change and New Development Strategy

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Abstract. The article deals with scientific-theoretical aspects of understanding criminal law in the conflictological discourse. The basic tendencies and regularities of criminal law development, its social connections, mechanism of transformation of social relations and change of the essence of man himself are revealed. The structure of criminal law regulation and the tasks facing today's criminal law are analyzed. The purpose of the article is to rationally and critically examine the trends in the development of criminal law, to identify the current regularities and the scope of criminal law regulation. The author's main conclusion is that the current criminal law is a tool for resolving social conflicts, as well as a global regulator of the international legal order. Criminal law also directly influences social relations and consciousness of society. However, the transformation of criminal law itself entails the uncertainty of criminal law regulation, because the limits of permissible influence and the boundaries of the criminal law on the development of social relations are not clear. The idea of society's security transmitted by the state today does not always have clear outlines, and there is always a threat of going beyond the limits of the reasonable and natural. The problem is that with the development of new technologies, human space is objectively narrowing and law is increasingly invading private life, and such private life of a person becomes unacceptably transparent. In this case, it is important to find a reasonable balance between the security of society and the state, as well as individuals and the personal space of the individual.

Keywords: crime, punishment, criminal law, conflict, person, security, public relations, value of law, strategy, mechanism of legal regulation.

Research area: social structure, social institutions and processes; criminal legal sciences.

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Уголовное право в социальном измерении: контуры перемен и новой стратегии развития

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Аннотация. В статье рассматриваются научно-теоретические аспекты понимания уголовного права в конфликтологическом дискурсе. Раскрываются основные тенденции и закономерности развития уголовного права, его социальные связи, механизм трансформации общественных отношений и изменение сути самого человека. Анализируются структура уголовно-правового регулирования и задачи, стоящие перед сегодняшним уголовным правом. Целью статьи является рациональное и критическое рассмотрение тенденций развития уголовного права, выявление действующих закономерностей и сферы уголовно-правового регулирования. Основным выводом автора состоит в том, что действующее уголовное право является инструментом разрешения социальных конфликтов, а также глобальным регулятором международного правопорядка. Уголовное право также прямым образом оказывает влияние на социальные отношения и сознание общества. Однако трансформация самого уголовного права влечет неопределенность уголовно-правового регулирования, так как непонятны пределы допустимого влияния и границы действия уголовного закона на развитие общественных отношений. Транслируемая сегодня государством идея безопасности общества не всегда имеет четкие очертания, и здесь всегда есть угроза выхода за пределы разумного и естественного. Проблема заключается в том, что по мере развития новых технологий объективно сужается пространство человека и право все больше вторгается в частную жизнь, и такая частная жизнь человека становится недопустимо прозрачной. В данном случае важно найти разумный баланс между безопасностью общества и государства, а равно отдельных лиц и личным пространством человека.

Ключевые слова: преступление, наказание, уголовное право, конфликт, человек, безопасность, общественные отношения, ценность права, стратегия, механизм правового регулирования.

Научная специальность: 5.4.4 – социальная структура, социальные институты и процессы; 5.1.4 – уголовно-правовые науки.

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Introduction

Modern society is very unstable, however, as well as there are constant shifts in the socio-economic and political dimension of the level of social development. It cannot be said that this process has a special acuteness and significance today. Regulars will always be able to object and

cite a lot of examples from history and practice, recalling that it has already happened and, moreover, not once. And strangely enough, they will be right.

Progress has a progressive development, and it concerns absolutely all spheres of social life and human existence. But how universal is

the idea of progress and is it the only true one? Everyone will have a different answer to this question and the arguments “for” or “against” will be diverse. Nevertheless, it is obvious that the idea of progress is not absolutely universal, as well as the global development of mankind in this perspective. This fact imposes its imprint on absolutely all spheres, including law.

And if we are talking about criminal law, it cannot understandably be left aside. Be that as it may, the law has undergone significant changes over the last decade. In the perspective of the problem under consideration, it would seem that the protective function should correspond to the regulatory function. However, this is not always the case. This is where the global question arises as to what path criminal law will follow in its development, whether it will be able to preserve its classical institutions or whether they will also be subjected to revision. Of course, we are not talking about a change of priorities in criminal law overnight. It is a long and progressive process. But which direction will it take? In the direction of global criminal law or the law of an individual state, within the framework of strengthening the security function of the state or in the context of the priority of criminal law protection of human rights and freedoms from any interference. Ultimately, whether criminal law should remain a shield for the individual or a punitive sword in the hands of the state.

Methodological issues

The history of mankind is filled with various ideas and revelations, and it so happens that these ideas move the world and fill the minds of many people. This has always been the case, and always some meta-idea has been dominant, has been the main precursor of various events, be it revolutions or world wars, shifts in the economy or in social and political life.

The global transformation of society and its social relations is reflected in the refrain on man, his essence and purpose. It is obvious that in the heat of the scientific and technological revolution and all new achievements in science and technology, the essential purpose of man has changed radically. Man has become “sharpened” on his rights and freedoms, their

realization, protection and guarantees, which necessarily has a material component as its basis. Personal success in life is now an indicator of chosenness and a measure of human dignity, a fundamental category of social consciousness. The success of today’s man is measured only through one criterion: material prosperity multiplied by the social position and status a person occupies (a kind of place in the caste hierarchy). Money, status, career – that is the god of the present mankind. Receiving benefits and pleasures, having a good and fun time – this is another component, which is the basis of the modern universe and goal-setting of man.

It should also be noted that the total informatization of society carries many risks and they are associated with the alienation of man, his dependence on technology, the instability of the social system itself and the increasing stratification of society (Berezina, 2022: 157). The category of “uncertainty” has become dominant in everything, but it can hardly become the basis of social progress. Moreover, entering the era of digital technologies has significantly changed the value system of society, and in the near future will radically transform its culture, including the cultural code, and will predetermine the further development of civilization (Laptev, 2022: 91).

At the same time, in a world of uncertainty, people are beginning to lose their sense of meaning, and this is partly due to the lack of mutual understanding and communication. People have simply stopped understanding each other, and indifferent attitude to what is happening today in society, politics, economy indicates a change in the priorities of man himself. A man is closing in himself and his own world predetermines his choice. However, the loss of the meaning of life for man has become so great that even it has overshadowed the phobia of the fear of death. The loss of meaning is now the most terrible thing for man. And it must be said that the consumer society leaves man no choice in this unrestrained race and total domination of the ideas of technological and pragmatic behavior of society.

The sacralization of human rights and inner narcissism devalues life itself. The reduction of the human being to the property of

simply being alive, easily turns into the possibility of becoming dead, becomes as a result of the practical implementation of the Western power paradigm a reality in which human life as a living being is practically worthless, can always be questioned by political expediency and become a bargaining chip (Sayamov, 2022: 46). Especially when it comes to other (“third”) countries and this reflects the status quo of modern existence. Consequently, in a society of hyper-consumption, the value of human life is determined by its economic profitability.

As we can see, at present, in the conditions of aggravation of social conflicts and political contradictions, the fundamental values of human civilization are weakening and losing the ability to ensure its sustainable existence and development. And as D. V. Miroshnichenko notes, “at this time the axiological theme becomes a priority for humanitarian science” (Miroshnichenko, 2015: 62). The change of society’s development paradigms, value attitudes and guidelines, giving the political component a new reality, complication of economic, social and legal discourse reveals complex problems and metamorphoses due to shifts in the value priorities of society and its essences. Let us also not forget that a person is formed, acquires his moral image within the framework of those values that he experiences and through which the formation of his moral image, the ability to adequately assess the events occurring in the lives of many people takes place.

Discussion

This is where the question arises: in this regard, is law capable of properly regulating new social relations? Due to their seeming permanence, and in fact impermanence, the law is objectively unable to do so. Moreover, today it is formally unable to fix what already exists. And this poses a global challenge for the law itself: whether it is able to direct new social relations into the legal direction and predict their development, positive and negative processes of the mechanism of their legal regulation as a whole. The answer to this question is not obvious, because it is not clear what the law will be in this paradigm, what role it is destined to play:

...serving the interests of political elites, ruling classes or fighting for justice, observance of the rule of law and human dignity?

However, the existing trends in the development and functioning of law show that it has become unpredictable, more technological and pragmatic, in some ways standardized, as a result of which:

...there is a breakdown of the basic institutions of law, private law flows into public law and vice versa, the methods of legal regulation become inertial;

...the role of the state as a kind of arbiter, resolving social conflicts and establishing the balance of rights and obligations between social groups is questioned;

...the introduction of digital technologies into social life raises the question of abandoning and modifying established and known structures, but no one knows the ultimate goal of such a process, and as a result it becomes unclear what we will be dealing with at all;

...man goes into himself, into his own world of digital reality, and this changes the whole context and requires the recognition of other values, which must be legalized and incorporated into the existing reality.

It is obvious that nowadays there is a rethinking of values and basic constructions of building social relations, because not the individual, but the security of society and the state as a whole is at the center of attention. Consequently, the law with its arsenal of measures and means of regulation of social relations, as well as the fight against socially dangerous manifestations will have to take into account these changes. And they consist in the fact that mankind shifts emphasis from total globalization of all spheres of public life to regional development, protection and security of the state in the first place. And the law, by the way, should reflect the interests of its society and territory, taking into account the mental and subjective preferences of specific states and persons inhabiting them. Hence, institutional transformations are inevitable, the essence of which will consist not in protecting the interests of transnational corporations and supranational organizations, unification of law and its standardization, but in refracting one’s

own interests, protecting them and understanding what law is in general, and how deeply it is able to intrude into the sphere of regulation of social relations, what measures of influence are optimal and effective in this case, what are the limits of the mechanism of legal regulation and the scope of national legislation (Khilyuta, 2020: 46–47).

The point is that globalism as a clearly formulated economic project is not based on cultural and ethical values and the idea of building a society of “social welfare”. In this case, the facade of human rights and the development of democracy hides quite different goals of universal unification and the reflection of the hidden interests of certain social groups and political forces. In such a situation, law is only an appendage of this global idea and serves only as a means of ensuring and realizing supranational projects. Simply, law is called to fix the existing state of affairs. This role is assigned to absolutely all branches of law (both public and private), where law (or a particular branch of law) is viewed through the prism of a peculiar instrument for realizing the practical possibilities of total economic, political and social law and order. This is not in line with the principles of national and sovereign states. It is obvious that in the near future we will face the dilemma of reassessing the principles of international and national law development, and reformatting their classical foundations in the digital era. In this sense, the global instrumentalization of law is just beginning. And it will take place in the spirit of the security of the national interests of the state and its citizens, where it will be about the de-globalization of law and its instruments. From this point of view, the human choice should be obvious for the modern Russian, as well as Belarusian society. While preserving true national spiritual and moral values, it is important not to miss the chance to remain a state with a human face in this unrestrained world race, where true moral values are the basis of the foundation for building the state and society. Technologization cannot and should not replace the moral face of man (Khilyuta, 2022: 27–23).

Research results

It is well known that every new generation tries to overthrow from the pedestal those ideas that were developed by the previous generation and function in society as basic, dominant and a priori true. This is by no means a process of self-assertion, but it is a cyclical progressive movement, as each new generation tries to prove its own consistency and that its idea of what is proper. It concerns almost all spheres of life in society and one cannot do without it. Moreover, it is a natural process of life. It is directly related to criminal law. And if at the level of legislative prescriptions, the ongoing transformations are not so obvious, then at the level of the doctrine of criminal law the considered trends are clearly visible. Moreover, the issue here is not a radical breakdown of the foundations of criminal law, its central institutions, etc., but is to give a new impetus to criminal law regulation, verification of its subject matter and method, scope and modification of the very concept of what constitutes a crime. And in the context of what constitutes punishment, the subject area of criminal law comes to the mechanism of criminal-legal impact, the essence of which is prevention, not “punishment”. That is, from this perspective, criminal law turns into a mechanism of social protection, a means of ensuring the security of the state, society, and the individual (and the sequence of criminal law protection looks like this).

In the most general view, the essence of criminal law in this paradigm is reduced in this paradigm to conflict resolution. A conflict that, on the one hand, exists in society and, on the other hand, between specific individuals. But in fact, criminal law fails to fulfil this task, because by resolving the conflict with the arsenal of means at its disposal, it generates a new conflict. This chain is inevitable. And in this case, we cannot say that criminal law is a universal tool in the hands of the state in resolving conflict situations. It is just that today there are no other such means.

The socio-political processes currently taking place in society and in the world as a whole raise the question of transformation of criminal law itself, the need for its adaptation to new institutional formations and the de-

mands of society. However, on the other hand, criminal law has constantly lived in an era of change. These changes have always taken place and are always taking place, as man himself, his essence, is changing. And here the fundamental question is to what extent criminal law itself is capable of reflexion and whether it needs it at all.

Remaining one of the conservative branches of law, criminal law gradually begins to become obsolete, not changing in its nature, it tends to resolve new conflicts in the old ways. And in this respect, it still continues to be the “last argument” of the state in the system of ensuring social order and resolving all kinds of disputes and conflict situations. From this point of view, criminal law violence is an element of compromise between society and the state. But if one side loses parity in this issue, it is clear that this is no longer a compromise, but domination. However, in such a plane, the attributive forms of the state’s impact on society are generated by the needs for the joint coexistence of the state and society. Therefore, as pointed out by A. E. Zhalinsky, criminal law “develops under the influence of contradictory interests of power groups and the general pressure of the population, consciously or unconsciously striving to strengthen security through increased repression, and in many situations to psychologically satisfy various aspirations (restoration of justice, revenge, revenge, joining a strong group, etc.). The problem is that it should still develop on the basis of general regularities, while necessarily taking into account the balanced interests of the country and ensuring equal position of its citizens” (Zhalinsky, 2015: 18).

In determining the meaning of criminal law and its place in the life of a particular person, it is necessary to make a fundamental emphasis on the fact that criminal law is just one of the forms of life activity of society (socium), which (it is society) seeks to protect itself from any arbitrariness on the part of anyone, including the state. Literally, this means that criminal law is not at all a means of solving those tasks that the state faces in a particular historical dimension. These tasks may vary and for obvious reasons they will always vary. Even if we talk

about criminal law becoming a means of security, such a means cannot be directed against society itself, against the individual, if only because criminal law is designed to resolve social conflicts, not to generate them.

Positive regulation of social relations is not the subject of criminal law, so it is not at the forefront of those socially significant processes that occur in society. This is the domain of other branches of law. But the question is how quickly and promptly, taking into account the transformation of social relations and mechanisms of their regulation, criminal law should develop its own standard of criminalization of acts that are socially dangerous, deform the existing social relations and are beyond the boundaries of permissible.

Of course, this is the eternal question of what constitutes an offence and what its normative boundaries are. But today it is also obvious that criminal law cannot remain outside the context of socio-political processes taking place both inside and outside society, outside the process of modification of the social essence of man. Of course, political expediency often predetermines the vector of development of criminal law. But on the other hand, it is also obvious that this vector is unstable and extremely changeable, depending on many factors that are beyond the criminal law itself. Much more important in this question is the answer that allows to define the boundaries of criminal law in the context of changes in the social essence of man himself. And in this situation, it seems that the choice of the individual himself predetermines the contours of the future of criminal law.

Nevertheless, in this question we must bear in mind that the progress of humanity does not lead to the perfection of man himself. The excess of techniques and technologies, of course, has simplified the life of man, made his life more comfortable and generally accessible, and life itself has become richer and more multifaceted. However, all this, we repeat, has not led to a change in the social essence of man. Man has not become better internally (and does not even strive for this), has not grown spiritually, so all those human passions (bordering on marginal and immoral behavior from the

point of view of the Christian way of life and natural values), which took place earlier, have not disappeared anywhere, but on the contrary, doubled. Therefore, the question that criminal law will gradually fade into oblivion, due to the eradication of crime, is naive and is not even debatable. And if it is, then in a completely different format, because it is obvious that scientific and technological progress gives rise to new social conflicts and contradictions, which then result in crimes of a new form.

At the same time, when we talk about the digitalization and technologization of criminal law (and law in general), we overlook one detail that significantly sheds light on the issue at hand. The point is that digitalization itself was a product of a more global concept – progress. It was progress in the system of neoliberalism that presupposed the course of human development, shaped the sociopolitical and legal foundations of society and its institutions. And this state of affairs has taken place over the past decades. However, today mankind began to abandon the idea of progress and global development of society due to its dead-end path of development, stratification of society itself into strata and social classes. The world has reached the threshold of deglobalization and stratification.

In this system of coordinates, digitalization is a fragment of the idea of progress, which has no place today. This is why digitalization has taken on a life of its own, separate from its meta-idea. It is obvious that digitalization cannot exist for long in such a paradigm, and all attempts to adapt it to the needs of criminal law are doomed to failure, because they are not systematic and do not bring rational principles to the law itself, but actually replace the old postulates with a new wrapper, without changing anything in essence. Technological innovations and innovations are only an accompanying part in the development and functioning of the law itself, but they cannot predetermine the course of development of criminal law itself, formulate its subject and method in its basis. Thus, as we have already indicated, the value system of liberalism is receding into the background, and the idea of universal globalization is being abolished. And these processes con-

cern not so much criminal law, but law in general, its basic institutions, which until recently were subject to total control and domination by supranational organizations and formations. In criminal law, this manifested itself in the form of the establishment of new universal principles, systemic criminal law prohibitions, issues of liberalization and decriminalization of relations in the sphere of economic activity, interests of the service, etc. However, at present these tendencies are acquiring the opposite character.

It seems, for this reason, that the processes that are currently taking place in society are not realized by criminal law. Therefore, there is a feeling that the criminal law lives its own life, and the society – its own. Hence, for many segments of the population, criminal law prohibitions and prescriptions, often bordering on anachronism, become incomprehensible, and on the other hand, it can be seen that criminal law cannot realize the social interests and demands of society, being guided only by the position of the state in ensuring total security.

The idea of security, which today becomes dominant in criminal law, narrows the scope of criminal law itself, as criminal law becomes an appendage of dominant power interests. However, this paradigm does not develop criminal law and pushes it into a rigid framework of serving the interests of the dominant power elites and the system that is dominant under the circumstances. In this system, the key principles and ideas of criminal law (mainly based on the provisions of the classical school of criminal law) are of secondary importance.

But it also suggests that a new criminal law is emerging, however we may personally feel about it. And this new criminal law breaks old stereotypes, established dogmas and legal principles. This new criminal law is based on the idea of security, and in this context, it is not the act of a person (a natural person, and in some legal families, a legal person) that comes first, but the person himself. Or, if you like, the act and the person are the basis of what we will call the offence.

At the same time, today the transformation of criminal law itself, coupled with the technologization of social relations and infor-

matization of public life, entails uncertainty of criminal law regulation, as the limits of permissible influence and the scope of the criminal law are not clear. The idea of security of society and the state may not have clear boundaries, and here there is always a threat of going beyond the limits of the reasonable and natural. The point is that with the development of new technologies, human space is objectively narrowing and the law is increasingly intruding into private life, and such private life of a person becomes unacceptably transparent. In this case, it is important to find a reasonable balance between the security of society and the state, as well as of individuals, and the private space of the individual.

In this sense, we are forced to speak of the instrumentalization of criminal law, where it has come to be perceived solely as a means (and not even the main one) of solving certain tasks of power (Ormerod, Laird, 2021). Here, criminal law is directly derived from those tendencies and mindsets that exist in the institutions of power (but not in society) and is completely predetermined by the legal policy of the state and the element of expediency. From this perspective, criminal law is a purely dogmatic means of solving political problems. Therefore, there is no reason to have illusions today that criminal law will be a kind of shield in the hands of society against possible arbitrariness on the part of the state (Todros, 2016; Amster, 2008). Let us emphasize that criminal law has never been in the hands of society, on the contrary, it has always been used as a tool for “soft” regulation of social relations and suppression of marginalized sentiments in society. In this aspect, to argue further that criminal law will be outside of the state’s policy is meaningless today.

Conclusion

So, is criminal law on the cusp of change? Is it possible to say that we have to deal with a new strategy for the development of criminal law itself in the focus of the social and political changes that have been taking place recently? Or are these processes permanent?

It seems that the answers to these questions must be in the affirmative, whatever one’s

attitude and whatever one’s view of the present problem may be. In our opinion, criminal law cannot remain aloof from the changes that are taking place in society and the state today. The only question is with what intensity criminal law will absorb the mindset of various subjects of criminal policy and society as a whole, what conjuncture will precede it and what tasks will have to be realized at a particular stage. There can be several scenarios of development and further functioning of criminal law. On the other hand, today there are no universal theoretical and methodological megaconstructions that claim to be exhaustive, and even more so, the only correct explanation of the essence of criminal law itself and scenarios (models) of its development. And yet.

Scenario one. It is connected with the fact that criminal law will try to preserve the existing state of affairs without changing the very strategic concept of functioning of criminal law institutions, mostly adapting to the changes that will take place. At the same time, the basic institutions of offence and punishment will not undergo significant changes. Point changes will always concern specific criminal law prohibitions, which will be designed to reflect the state of affairs in a specific historical period of time, taking into account the objectively developing socio-political situation. This process is partly taking place today when adjusting the provisions of the Special Part of the Criminal Code.

Scenario two. It implies a change in the approach to the understanding of the essence of the offence and punishment. In this perspective, the offence will be linked not only to the act as such, but also to the person. That is, speaking of public danger we will relate it both to the act of unlawful behavior of a person (act) and to the person who committed it. This variant of criminal law development corresponds more to the idea of security of the state and society itself. This cornerstone idea of security changes the very approach to punishment, because here the postulate of social prevention is the basis, which makes it necessary to talk about the expansion of measures of criminal-legal impact on persons who have committed an unlawful act or on persons inclined to such an act.

The third scenario. This scenario is based on the change of the existing paradigm of criminal law functioning in the bosom of the concept of criminal matter, and not only. That is, criminal law will be called to absorb both crimes and any offences, as well as all kinds of misdemeanors. This means moving away from public danger and shifting the emphasis towards unlawfulness, expanding dispositive principles in criminal law of a “broad type”, preventive measures and strengthening punitive sanctions. Such a liberal model is based on a broad understanding of the essence of public misconduct (both crime and offence), which is based on the idea of criminal responsibility, where the principle of personal culpability is not dominant. Hence the provisions on the criminal liability of corporate entities, artificial intelligence, etc. are derived from it.

The said points to the fact that at present the classical canons of the school of criminal law are undergoing not just a correction, but a fundamental breakdown. It is important for us in this case to try to discern what can be replaced and on what path criminal law will develop. Of course, the change of the existing criminal law paradigm cannot take place overnight. Therefore, it is essential to identify the general patterns of the process that has begun in formulating the basis for understanding what kind of criminal law we will be dealing with in the near future. Consequently, the aim of researchers should be to develop a theoretical model of criminal law development in the conditions of globalization (or deglobalization) and total transformation of society from the position of adequate criminal law protection of social relations.

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