

IMPLEMENTATION OF SOME PRINCIPLES OF CRIMINAL LAW IN THE CRIMINAL LEGISLATION OF CIS COUNTRIES AND WORLDWIDE

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ABSTRACT

***Description:** The purpose of the article is to investigate the concept of the principles of criminal law and their implementation in legal acts of an international and national character.*

***Methodology.** Research methods are chosen based on the object, subject and purpose of the study. The study used general scientific and special methods of legal science. Thus, the analysis and synthesis method as well as the logical method were used to formulate a holistic view on the main principles of criminal law. The logical-semantic method was used to establish the meaning of the concepts of “principles”, “equity”, “justice”, “legality” and “humanism”. The comparative method was used when analyzing legal acts, which enshrine the main principles of criminal law, in different countries. The legal modeling method was applied to draw conclusions and to develop proposals in order for the legislator to determine the place of principles in the legal system of each State. Based on the results of the study, the authors state that nowadays there is no consensus in the scientific literature on whether or not to consolidate the principles as such in the law itself. Different States have chosen various methods to solve this issue.*

***Practical Implications.** The article examines the essence and implementation of such basic principles of law as the principle of legality, the principle of equality of citizens before the law, the principle of humanism, and the principle of justice in the legislation of various States. The authors conclude that it is the legislator, who must determine the place of the principles in the legal system of each State, guided, first of all, by the interests of the society, which it represents, and by the trends and objective conditions, in which all these factors lie.*

***Value/Originality.** It is proved that principles are dynamic phenomenon, i.e. they are subject to changes under the influence of external and internal factors; at the same time, principles as a legal phenomenon have a more stable form of living than the other legal norms.*

Keywords: Principles of Criminal Law, Principle of Justice, Principle of Equality of Citizens before the Law, Principle of Legality, Principle of Humanism.

INTRODUCTION

Before proceeding to an analysis of the system of principles of criminal law and criminal liability, we think it necessary to consider some definitions of the concept, in which we are interested, in the criminal law literature.

The principles fully permeate the legal system of the State, being an integral condition for its formation, development and functioning. With this in mind, consideration of any legal institution in the light of the fundamental principles of the relevant legal branch is an important stage of its comprehensive study.

Indeed, the significance of certain phenomena and processes for humanity directly becomes important precisely because of their principles, since they represent dynamic, and therefore, the main manifestation of their essence. The implementation of the principles directly depends on a proper, correct understanding of their theoretical essence.

It should also be noted that nowadays there is no unified view in the scientific literature on whether to incorporate or not the principles of law directly in the law.

MATERIALS AND METHODS

Research methods are chosen based on the object, subject, and purpose of the study. The study used general scientific and special methods of legal science. Thus, the analysis and synthesis method as well as the logical method were used to formulate a holistic view on the main principles of criminal law. The logical-semantic method was used to establish the meaning of the concepts of “*principles*”, “*justice*”, “*equity*”, “*legality*” and “*humanism*”. The comparative method was used when analyzing legal acts, which enshrine the main principles of criminal law, in different countries. The legal modeling method was applied to draw conclusions and to develop proposals in order for the legislator to determine the place of principles in the legal system of each State.

The materials studied are the scientific works of domestic and foreign scholars, related to the issue under consideration.

Thus, according to Kelina and Kudryavtseva (1987) the principles of criminal law are the guiding ideas, fundamental principles expressed in criminal law, as well as in prosecutorial, investigative and judicial practice, reflecting people’s political, economic and legal views on the grounds and forms of responsibility for the crimes committed.

Pudovochkin and Pirvagidov (2003) characterize the principles of criminal law as:

“The basic principles, guiding ideas that determine the content and direction of criminal law, which are enshrined in criminal law and are binding on the legislator, law enforcement agencies and citizens in the fight against crime”.

Lopashenko (1989) claims that:

“The principles of criminal law are guiding ideological, political and moral ideas of criminal law, which originate from the very nature of society and are determined by it, reveal the essence of criminal law as a specific regulator of a certain group of public relations aimed at protection of social, political and economic systems, property, personality, rights and freedoms of citizens and rule of law as the whole from criminal encroachments and ensure the unity and consistency of criminal law”.

RESULTS

It is worth noting that the legislator, when constructing principles, uses different legal techniques in various legal systems:

1. In one case it structurally identifies the principles in criminal law, gives an exhaustive list of them;
2. In another, the list of principles is not formulated, and their content is derived from constitutional provisions or the provisions of criminal law itself;
3. In the third case, the legislator does not provide for the possibility to determine a criminal offense in the relevant codes not only by national law, but also by international law;
4. In the fourth case, it determines that an offense and other punishable acts can be provided only by law.

There are some other techniques for formulating the principles. The legislator singles out, for the most part, the following principles, which ultimately allow harmonizing and unifying national laws within generally recognized principles and norms of international law. These principles are, for example: the principle of legality; the principle of equality before the law; principle of justice; principle of humanism. Let us consider them in more detail.

The Principle of Legality

Legality as a universal principle of law is considered as the basis of the normal life of a civilized society in all spheres of public life. Covering the most important spheres of human coexistence, including the enforcement activities of criminal prosecution bodies, the law brings harmony to it, ensures fair differentiation of people's activities.

The concept of the principle of the "*legality of criminal law*" is broader than the concept of "*legality of punishment*". The principle of legality in criminal law covers the observance of the requirements of the law not only when appointing punishment, but also when applying the norms of other criminal law institutions. For this reason, the principles of imposing punishment relate to the principles of criminal law as parts of the whole.

Legality as a universal principle of law requires certain prerequisites. Such prerequisites are the following:

1. The priority of international criminal law over national;
2. Constitutionality of the criminal law;
3. Prohibition of the application of the criminal law by analogy.

The requirements of legality also include those fundamental provisions of the legal foundations of social life, without which real legality is impossible.

The principle of legality is enshrined in paragraph 2, Art. 11 of the Universal Declaration of Human Rights in paragraph 2 of Art. 11:

"No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed".

Similarly, the principle of legality is established in Part 1, Art. 15 of the International Covenant on Civil and Political Rights of 1966, Art. 7 of the European Convention for the

Protection of Human Rights and Fundamental Freedoms. Nowadays it is safe to say that the criminal law doctrine takes a broad view of the principle of legality and includes: prohibition of application of the law by analogy; sufficient certainty of the criminal law; establishing the severity of punishment depending on the time the crime was committed; the impossibility of recognizing a person as guilty, as well as applying criminal penalties, unless there is the relevant court decision (Dodonov, 2010; International Covenant on Civil and Political Rights, 1966).

The principle of legality has been enshrined in the constitutional and criminal law of most countries in the modern world. However, the legal expressions of this principle were realized by the lawmakers in different ways despite its universal nature. These differences are in the formulation of names, the allocation of elements and their essential characteristics, structuring. The differences in the interpretation of the principle of legality are related to the peculiarities of national criminal legislation, understanding of the role and place of international law in criminalizing acts.

It is worth noted that the principle of legality is enshrined in the Constitutions and criminal codes of most states: in the CIS countries, the Baltic States, the European Union, etc.

The Principle of Equality of Citizens before the Law

The essence of the principle under consideration is the consistent and full expression of equality, enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights. This principle, based on the above international legal acts, has been enshrined in the constitutional provisions of most countries of the world; therefore, its reproduction in criminal laws is recognized by the legislator as inappropriate. At the same time, the principle of equality before the law was embodied in a number of criminal codes: of the Republic of Azerbaijan, the Republic of Armenia, the Republic of Belarus, Vietnam, the Kyrgyz Republic, China, Colombia, the Republic of Moldova, the Republic of Tajikistan, Turkey, etc.

According to article 3 of the Criminal Code of the Republic of Belarus the perpetrators are equal before the law and are subject to criminal liability regardless of gender, race, nationality, language, origin, property and official position, place of residence, religion, beliefs, membership in public associations, or other circumstances (Law of the Republic of Belarus, 1999).

At the same time,

“In relation to the perpetrators, one should speak only of equality of their duty to stand trial and be penalized. It is incorrect to say about equal duty to bear criminal responsibility, since it means ignoring the fact of legal exemption from criminal liability” (Lopashenko, 2004).

According to the scientists, whose view we support, the implementation of the principle of equality implies not only an equal obligation to stand trial and be penalized, but also an equal opportunities for citizens to be exempted from criminal liability when they commit offences, which are equal in the gravity, in the presence of appropriate grounds and conditions.

The provision of the principle under consideration in the area of application of criminal law is characterized by specific legal content. With a more specific approach, the principle of equality of citizens before the law is clearly manifested in bringing a person to criminal liability on general grounds, i. e. establishing the same requirements related to sentencing, general grounds for exemption from criminal liability and punishment, the same conditions for

expunging a conviction. The peculiarity of its implementation is also as follows: the basic requirements enshrined in the law should exclude any possibility of evading criminal liability or significant leniency for persons, holding senior positions.

Thus, exploring the implementation of the indicated principle of criminal law in law enforcement, Maltsev (2004) has correctly observed that:

“If a crime is committed by a person with the features that are significant in a humanistic aspect and a person without such features, then the first one could be reasonably exempted from criminal liability, and the second one could be reasonably not relieved from criminal liability, even if crimes are equal. And there will be any violation of the principle of equality in relation to an unreleased person, as the exemption from criminal liability occurs taking into account the humanistic component of justice, rather than by diminishing the principle of equality in relation to a person who was denied this release”.

Klenova (1997) adheres to a similar point of view. She argues that the principle of equality of citizens before the law *“presupposes the equality of grounds for criminal liability and its inevitability”*. In her opinion, which we cannot ignore, the potential offender’s strong awareness of the inevitability of responsibility for any violation of criminal law is, in the vast majority of cases, an effective deterrent to prevent any crimes being planned or prepared. Timely and well-founded implementation of criminal law norms creates a strong sense of respect for the law, contributes to the achievement of the objectives faced by criminal law.

The Principle of Justice

Justice is a moral reference point in the relationship between people, a category of moral and legal consciousness, an abstract expression of actions, which should be done in accordance with law. The features of justice in the legal sphere lie in its clear, formally defined character. In regard to criminal law relations, justice means the compliance of retribution for the person's actions in the form of certain consequences predetermined by the nature and gravity of the deed.

Famous legal scholars Kelina and Kudriavtsev (1988) distinguish three levels of justice in criminal law. The first level reflects the justice of the sentence, the type and size of which must strictly correspond to the gravity of the crime, the identity of the perpetrator and all other circumstances of the case. The second one is the fairness of sanctions, which must correspond to the gravity of the act, enshrined in law, and be consistent with sanctions for the other acts. The third level includes the formation of a range of criminal activity, as when criminalizing and decriminalizing some acts, the legislator must take into account the moral and ethical ideas of citizens about justice and injustice of certain acts.

Punishment and other measures of criminal responsibility must be fair, that is, be established and assigned taking into account the nature and degree of public danger of the crime, the circumstances of its commission and the identity of the perpetrator. No one can be held criminally liable twice for the same crime (part 6 of article 3 of the Criminal Code of the Republic of Belarus).

The studied principle was formulated by the legislator on the basis of one aspect—the justice of punishing and other measures of criminal responsibility, which include the institute of excluding criminal liability. At the same time, one should agree with the opinion of N. F. Kuznetsova & Tiazhkova (2002), which highlights one more aspect in the principle of justice—the justice of the criminal law.

Developing a twofold understanding of the principle of justice, Maltsev (2004), notes that

“The definition of justice as a principle of the Criminal Code should also be addressed to the legislator; the scope of its influence should be all criminal legislation, and its content must fix the relationship between the principle of justice and two elements of its structure: the principles of equality of citizens before the law and humanism”.

It is precisely due to the implementation of the principle of justice in criminal proceedings that a person is subject to exemption from criminal liability in accordance with the relevant conditions and the existence of grounds, which showed that, due to positive post-criminal behavior, the implementation of criminal liability in full has lost its meaning.

The principle of justice in the Republic of Moldova has been transformed into the principle of individualization of criminal liability and criminal punishment (Article 7 of the Criminal Code of the Republic of Moldova) and is formulated as follows:

“When applying the criminal law, consideration shall be given to the nature and degree of harm caused by the commission of the offence, the identity of the perpetrator and mitigating or aggravating circumstances. No one may be repeatedly prosecuted and punished for the same act” (Law of the Republic of Moldova, 2002).

Sometimes the principle of justice is established not as sector-wide, but as the principle of sentencing. Thus, according to Art. 53 of the Criminal Code of Georgia

“The court shall appoint a fair punishment for the guilty within the limits established by the relevant articles of the Special Part of this Code, taking into account the provisions of the General Part of the same Code (Law of Georgia, 1999)”

The Principle of Humanism

An important trend in the evolution of criminal law is increased attention to the manifestation of the principle of humanism in various institutions of this legal branch.

Humanism is a moral ideal, according to which a person, his (her) freedom, dignity become the goal of the progress of society, and the quest for the well-being of an individual, the protection of his (her) interests, rights and freedoms become the main task for the State. Thus, the State turns into the main instrument for realizing the ideas of humanity in real life, and humanism becomes a guide for the State in making the most important decisions in each area of activity and functioning (Vieliev, 2004).

The principle of humanism in most countries of the world is formulated from specific international legal and constitutional principles, in particular the prohibition of cruel immoral or degrading treatment or punishment. Thus, the Universal Declaration of Human Rights proclaims that *“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”* (Article 5). The 1966 International Covenant on Civil and Political Rights included a similar provision:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation” (Article 7).

The prohibition of cruel treatment and punishment, formulated on the basis of international legal acts, has been enshrined in the constitutional provisions of various countries

(Albania, Angola, Bangladesh, Belarus, Brazil, Hungary, Venezuela, Zimbabwe, Iceland, Spain, etc.).

For example, the legal basis for enshrining the principle of humanism in criminal law should recognize the provisions of the Constitution of the Republic of Belarus (Law of the Republic of Belarus, 1994), according to which an individual, his (her) rights, freedoms and guarantees of their implementation are the highest value and the goal of society and the State (Article 25). With regard to criminal law, this provision was developed in Part 7, Art. 3 of the Criminal Code of the Republic of Belarus (Law of the Republic of Belarus, 1999), according to which criminal law is intended to ensure physical, mental, material, environmental and other human security, while punishment and other measures of criminal responsibility are not aimed at causing physical suffering or humiliating human dignity. It can be noted that the content of the principle of humanism in criminal law is determined by its general philosophical concept and directly follows from its requirements (philanthropy, respect and protection of dignity, interests, rights and freedoms of an individual) (Vieliiev, 2004).

However, in order for humanism does not turn into forgiveness (Malyhina, 2007); it is necessary to remember the duality of its nature. The first aspect is the protection of interests, rights, freedoms, life, health, personal benefits and the identity of a citizen from criminal encroachments; the second one is a human attitude to the person, who committed the crime, within the requirements of the law (Vieliiev, 2004). We believe that the exemption from punishment for illness in the context of this duality combines both a humane attitude to the convict (associated with the realization of the fact that the detention of a person should not increase the physical torment of the sick person), taking into account the comprehensive protection of the interests of society and the rights of citizens from criminal encroachments. An important principle, which “*enhances*” humanism, is the principle of saving criminal repression. As Tanieieva (2012) correctly points out, the principle of saving repression has successfully “*lied its way*” in the current legislation, inter alia by consolidating an entire group of norms for exemption from punishment in the Criminal Code.

CONCLUSION

On the basis of the study we can conclude that today there are different approaches, ways and methods to determine both the essence of the principles of criminal law and their consolidation in the current legislation. It depends on various factors: the legal system, to which this or that State belongs; the priorities of society (its social values), geographical position of the State, etc. Nevertheless, in our opinion, the legislator should determine the place of principles, their essence and concept in the legal system, based on, first of all, the interests of the society that it represents and by those trends and objective conditions, in which all these factors lie. It is worth noting that the legislator, taking a certain position in resolving this issue, should not forget that the principles are dynamic phenomenon, i.e. they are subject to changes under the influence of external and internal factors; at the same time, principles as a legal phenomenon have a more stable form of living than the other legal norms.

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