Vol. 5. Is. 1

Information for citation:
Kozachenko, I. Ya. & Melyukhanova, E. E. (2022) Systematicity as a Way to Internationalize the Direction of Criminal Law in Russia. *European and Asian Law Review*. 5 (1), 38–44. DOI: 10.34076/27821668_2022_5_1_38.

UDC 343.2/.7
BISAC LAW026000
DOI: 10.34076/27821668_2022_5_1_38

Research Article

SYSTEMATICITY AS A WAY TO INTERNATIONALIZE THE DIRECTION OF CRIMINAL LAW IN RUSSIA

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The paper provides the rationale for systematicity of phenomena (processes) that serves (can serve) as a way to internationalize the direction of criminal law in Russia. The research methodology includes using historical, sociological, axiological, and logical methods of comparative legal studies that allows expanding the subject matter of research significantly. However, due to the specificity of the research, structured system analysis and functional analysis are used as the main methods. The accomplishment of the objectives set by the authors allowed them to be convinced that the internationalization of Russian law (just like the law of any other country) is not only possible but necessary in a number of cases. This fact is substantiated by the multipolar world order that also reigns in the criminal world, where the development vector has rapidly changed from unipolar to multipolar in the context of recent events. Internationalization of the measures countering such crimes as, for instance, illegal traffic, slave traffic, kidnapping, acts of terrorism, etc. can be taken as an example. Countering any of these crimes as well as any other similar crimes is more than one country can manage, particularly, when the country is less developed or dependent. In this context, efficacy can only be achieved through consolidated and highly organized unity of many countries, which in turn, is impossible without proper international efforts of many countries of the world or – in many cases – of their majority.

Key words*: internationalization, systematicity, law, criminal law, legal system, system of punishment*

Introduction

In the face of global crises on a global scale, there are processes that have a direct impact not only (and maybe not so much) on the social criminal landscape in the country among other things but on the reasons that cause powerful outbreaks of crime here and there. In this context, the alarming thing is the close affinity between criminal acts notable for their sophisticated commission that would have never been possible without the perpetrator's use for criminal purposes of state-of-the-art developments in the field of technology, chemistry, biology, genetic engineering, and other areas of scientific advancement.

The progress of criminality towards transnational and regional scales puts on the agenda the issue of internationalization of criminal law, criminal-legal relations, criminal codes, crimes, criminality, criminal punishment, etc. In respect thereof, neighboring states join efforts to create various legal formats along

with national criminal law: criminal-legal acts, treaties, conventions, and other international documents to be able to confront the chaos of crimes as much as possible. In many cases, as time goes by, these regional criminal-legal examples become permanent, efficient, and quite acceptable for establishing more large-scale legal systems as exemplified by thematic or other multilateral conventions.

Materials and methods

The research methodology includes using historical, sociological, axiological, and logical methods of comparative legal studies that allows expanding the subject matter of research significantly. However, due to the specificity of the research, structured system analysis and functional analysis are used as the main methods.

To internationalize the educational process means to create a unified educational system for different countries, to integrate educational systems. This is a consequence of the globalization of the entire modern world.

Naturally, internationalization inevitably touches (will and must touch) upon the development of this issue not within a national branch of law, but within its individual parts, institutes, sub-institutes, etc. The internationalism of criminal law, among other things, expands the range of interpretations of the meaning of the criminal law concept.

Nowadays, a tendency for rapprochement between criminal-legal systems is observed. The modern process of globalization encompasses more and more different areas of public life. Trends for active rapprochement of different countries in the world determine the socio-economic, political, and many other factors on a global scale. While having their special features, the legal systems of states still have similarities.

As a social phenomenon, criminal law due to its diverse nature is usually perceived by average citizens (in the good sense of these words) with a reference to three main aspects: associative, every day, and official.

The first aspect, associative one, is tied to a deep ethnic perception of criminal law the same way traditions, customs and religious taboos serve as natural regulators of relations between people.

The second one, everyday aspect, is based on the idea that criminal law is a social value without which humans, communities, ethnic groups, nations, societies and countries can't live safely, since criminal law is the only way to resolve issues regarding crimes and punishment for criminal activities.

The third official aspect of criminal law allows seeing it as a unique phenomenon of the socio-legal reality, a product of the country's (or countries') activity, a subject of scientific knowledge and study in the process of professional training.

This fact once again proves the point that a uniform consolidating concept of criminal law that could be applicable for all cases is hardly possible. And there actually is such an imperative need for it. This is most likely explained by the fact that the concept of law as such cannot ignore the question of what the law is in general. It is to be interpreted despite the branch it belongs to. It should be noted though that it is the positivistic approach to defining this term that has quite a few supporters among legal theorists.

This is hardly an indisputable statement since on the pages of legal literature the positivistic approach is often accompanied by many interpretations of law, including the so-called natural law interpretation. Its definition is not tied to the emergence of a state or any human activity, but to the nature of God or people expressing their visions of kindness, freedom, justice, equality, etc. It is the natural law interpretation of criminal law that mostly gravitates towards internationalism that is often blurred in unbounded space.

Considering that the concept of law in its original definition generates so many different theories about its essence, origin, features, and so on, it is difficult to see the situation as logical when only one (positivistic) approach to the concept of this law branch is reflected in the current attempts to define criminal law. This inevitably leads to a situation where some legal theorists who have recognized the limitations of the positivistic interpretation of law conclude that law is some measure of freedom or 'a system of standards expressing a measure of human freedom adopted or sanctioned by the state and protected by it from any violations' (Kozachenko & Novoselov, 2013). With respect to criminal law, the reality is that Russian criminal-legal theory is not ready for such a concept of criminal law yet.

Aside from the positivistic methodology, what most of today's definitions of the concept of criminal law have in common is that they describe this law branch as a certain body of legal codes (internationalization of criminal-legal codes).

It has been established by the general theory of law that any legal code is a certain rule of human behavior. Hence, the criminal law code is also a certain rule of behavior. From the perspective of existing views, the specificity of criminal law codes should be viewed as the fact that it contains such a form of behavior that creates a risk for vitally important values and, therefore, such behavior is criticized from the moral point of view and prohibited by the legislator (Yatselenko, 1995).

However, it should not be overlooked that the criminal-legal code is always connected with a certain behavior of the law enforcer one way or another since it is the enforcer that must not only assess a socially dangerous act in terms of whether it is envisaged by the criminal law but also inflicting a punishment on the guilty person if necessary. Considering the latter, it becomes quite relevant for an understanding of criminal law as a body of codes to decide to whom the behavior patterns provided for by criminal-legal codes apply: to those who commit socially dangerous acts, to those whose responsibility it is to enforce the criminal-legal code, to classify the act as a crime and to inflict a punishment for this crime, or to both of them? The answer to these questions conceals the latent forms of a certain process that insistently points to the intersection of two kinds of forces (internal and external) that drive the internationalization of criminal law, criminality, etc.

Obviously, this is not the only problem caused by the concepts of criminal law as some body of codes. Actually, criminal law in national legal literature used to be interpreted not as a body of codes, but, for example, as a body of 'laws, customs and provisions of judicial practice' (A. F. Kistyakovsky) or a body of 'legal rules' (N. S. Tagantsev). However, subsequently, such views did not receive broad support.

Nowadays, the concept of criminal law as a body of codes is called into question because of some considerations according to which:

a) it is not criminal law, but criminal legislation that constitutes a body (system) of codes that establish principles and fundamentals of criminal liability, a range of acts considered criminal, types and scope of punishment for them, the grounds for absolution from criminal liability and punishment;

b) criminal law as a branch of law encompasses not only criminal legislation but also criminal-legal relations associated with lawmaking and law enforcement (N. F. Kuznetsova).

Still, the discussion stemming from this issue suggests that currently, the question remains as to what exactly is meant – criminal legislation or criminal law as a branch of law – when the definitions touch upon a body (system) of codes that establish principles and foundations for criminal liability, the range of acts considered criminal, types and scope of punishment for these acts, the grounds for absolution of criminal liability and punishment (Boyko, 2008).

The uncertainty of this issue is a naturally-determined phenomenon for the positivistic approach to the concept of criminal law that equates law to legislation. It is no coincidence that in the framework of this approach, legal theorists have faced the need to distinguish two kinds of law in the objective (objective law) and subjective senses (subjective law). This separation criterion has always caused debates in the general theoretical literature.

However, most authors perceive law in the objective sense as a body of legal standards contained in laws, codes, decrees, etc. as well as legal precedents, legal customs, and regulatory treaties; while the law in its subjective sense refers to various personal liberties, rights, responsibilities, and interests secured in legislation or inherent to people from birth. From the perspective of this interpretation of the law in objective and subjective senses, there is another shared feature of all definitions of the criminal law concept where a body (system) of codes, i.e., the law in the objective sense is meant by the term no matter the nuances (Zvecharovsky, 2001).

Unfortunately, unlike the general theory of law, the criminal-legal science does not pay enough attention to the issues of whether some definition of legal law encompasses its interpretation in the subjective sense, exactly what kind of liberties, subjective rights, and obligations are implied by such an interpretation of the criminal law concept, who is the bearer of rights and obligations in this branch of law, etc.

In the middle 19th century, when the positivistic approach to the concept of criminal law was just picking up momentum, representatives from a criminal-legal science expressed some interest in those aspects of the problem. They were particularly interested in what gave the state the right to enforce punishment for a crime committed. Debates on this issue that required going beyond the exclusively objective approach to the concept of criminal law led to theories that practically ceased to provoke any interest at all when positivism turned into an unchallenged methodology in jurisprudence.

Unfortunately, in the modern criminal-legal literature subjective rights and obligations are largely mentioned when analyzing relations that have come into existence as a result of the crime and are the subject matter of criminal-legal control.

Results

When the concept of criminal law is officially articulated in Russian legal literature, it is usually based on the fact that it is some body (system) of codes approved by the highest legislative body (state) and it establishes which socially dangerous acts (acts or inactions) are considered criminal and what punishment should be inflicted for their commission. When this term is defined, it is often additionally mentioned that the codes forming this body: a) are a part of a single legal system; b) are arranged in strict logical order; c) are accepted as federal criminal laws; d) are duly put into force; e) express the people's will; f) are based on certain principles, etc.

Additional information of another kind can also be found in existing definitions of the criminal law concept. Thus, for example, attributing qualitative singularity of criminal law to the specific subject of legal regulation and the main social designation – with protection of social relations from criminal attack, some authors (A. I. Korobeev) essentially provide two independent definitions of the concept of criminal law:

1) as a system of codes established by the top lawmaking body of the state to define the principles and foundations for criminal liability, criminality and punishability of socially dangerous acts, the procedure and kinds of absolution from criminal liability and (or) punishment, as well as the grounds and limitations for applying criminal-legal measures that do not constitute punishment;

2) as a system of standards that regulates the relations that have come into existence as a result of socially dangerous acts committed to protect individuals, society and state from criminality.

In modern scientific knowledge, the main focus is on the issues associated with system research of objects, and law is no exception. Within the framework of the system approach, law is seen as a system-based construct.

Regardless of whether it is specified in definitions of the concept of criminal law, when these definitions are established, it is customary to proceed from the premise that this branch is a body of codes that serves as an independent element of a single legal system. Viewed from such a perspective, criminal law can be ascribed to the branches of intrastate law considering its specificities that provides for identification of interrelations between the concept of Russian criminal law, on the one hand, and criminal law of other countries (foreign criminal law), on the other hand.

With respect to the first interrelations, it should be noted that any domestic (national) criminal law, including Russian criminal law, differs from international criminal law significantly in terms of the accepting subject entity, the objects of criminal-legal protection, forms of exercising, means of enforcement, structure of regulatory instructions and so on.

Many of these specificities are usually reflected in definitions of the concept of international criminal law, as in the case with the systems of codes established as a result of collaboration between sovereign countries or between state bodies or organizations aimed at protecting peace and security of nations, and international law and order not only from grave international offenses against peace and humanity, but also from other crimes of international scale provided for by international treaties, conventions and other legal acts of international scale punishable in accordance with special acts (charters, conventions) or treaties entered into by several states in accordance with standards of national criminal law.

Discussion

The interrelations between Russian criminal law and criminal law of other countries (foreign criminal law) were called upon to identify universals and particulars in order to solve the problem of major criminal-legal systems (families) and the affiliation of modern national criminal law to one of them based on comparative legal studies.

In most cases, the following criminal-legal systems (families) are identified in the legal literature: a) the Anglo-Saxon criminal-legal system (family); b) the Continental-European (Romano-Germanic) criminal-legal system (family); c) religious criminal-legal system (family).

Russian criminal law, as well as national law in general, is assigned to the Continental-European system by most researchers. Typical features of this system are: widespread occurrence; Roman law as the basis; the pursuance of written law with the rejection of common and precedent law; the most abstract and laconic formulations of legal instructions; a codified form of laws and regulations (Tagantsev, 1994). The abovementioned diversity in world systems and families is just a fraction of the entire global and criminal-legal entity. The aspiration to understand this legal phenomenon is not feasible without a deep and detailed analysis and synthesis of the process of internationalization of national criminal law.

In view of the aforesaid, it is reasonable to note that criminal law essentially manifests itself as a multilevel system-based construct. And the institution of criminal punishment is undoubtedly one of these system-based constructs. To some extent this explains our authorial interest in this issue.

The conceptual framework of the science of criminal law creates the theoretical basis required for cognition of objective patterns typical for enforcement of criminal-legal standards. In this regard, the system of punishment as an inherent part of criminal law has its own conceptual framework underlying cognition of objective patterns for functioning of the penalty system. The concept of a 'system' appears to us to be basic. It is systematicity of the researched phenomenon that allows identifying the main patterns for functioning of the penalty system.

Moreover, 'if specifically system-based concepts are ways to represent objects as systems, then specific system procedures serve as ways to implement the system approach as a certain direction of research' (Blauberg, 1973). The system of legal punishment encompasses historically established means and mechanisms the state uses to respond to the most dangerous criminal acts. Efficacy of the penalty system in general is ensured by the optimal structure, i.e., a set of such elements that can work together smoothly.

Analysis of systems of legal punishment existing in legislations of other countries is destined to reveal the most optimal structure for the penalty system. However, there is not a perfect punishment system for all states and there cannot be. Any punishment system reflects the specificity of the state where it was created and continues to function. It seems most important to identify similar trends and principles of punishment system establishment, the most stable elements in the punishment system and ways to improve it in criminal-legal systems of different states.

Attention should be paid to the fact that such punishments as imprisonment or fines exist in the structure of all the penalty systems abroad. Thereby, it can be acknowledged that punishments in the form of imprisonment or fines are the most stable elements in the penalty system for the majority of foreign countries. In this case, the Russian penalty system is not an exception.

Moreover, in most countries there is a tendency towards reducing the number of primary punishments and increasing the number of additional punishments. In the majority of countries, criminal law along with the system of criminal punishment provides for various additional criminal-legal consequences for committing an illegal act as well as some security measures as independent systems.

Conclusion

Internationalization of Russian criminal law is not only possible, but necessary in a number of cases. This fact is substantiated by the multipolar world order that also reigns in the criminal world, where the development vector has rapidly changed from unipolar to multipolar in the context of recent events. Internationalization of the measures countering such crimes as, for instance, contraband, slave traffic, kidnapping, acts of terrorism, etc. can be taken as an example. Countering any of these crimes as well as any other similar crimes is more than one country can manage, particularly, when the country is less developed or dependent. In this context, efficacy can only be achieved through consolidated and highly organized unity of many countries, which in turn, is impossible without proper international efforts of many countries of the world or – in many cases – of their majority.

Criminal law essentially manifests itself as a multilevel system-based construct. And the institution of criminal punishment is undoubtedly one of these system-based constructs.

In the legislation of the Russian Federation, criminal punishment is a way to fight against criminality, and the penalty system is tied directly to the criminal policy of the state. The modern criminal-legal policy of the state in the field of punishment is currently enforced in two opposite directions: humanization and toughening.

The process of humanizing punishment covers more and more countries, and the existing national criminal legislation must respond.

Thereby, currently the criminal-legal policy is carried out consistently with a focus on expanding the application area for so-called punishment alternatives that are not connected with isolation of the convict from society.

However, at the same time, a process of tougher punishment for certain crimes is being observed. This is confirmed by numerous recent changes in the Criminal Code of the Russian Federation. In particular, in order to counter certain types of crimes, the legislator consistently expands the categories of crimes for commission of which a life sentence can be imposed: especially grave crimes against public security; especially grave crimes against sexual inviolability of minors; crimes against the health of population and public morality.

However, the problem with criminality can not be solved by toughening the punishment, although, undoubtedly, criminal policy must be protective rather than liberal. Perhaps, the legislator adheres to 'a deeply mistaken opinion that only toughening enforcement actions against criminals can solve the social problem of combatting crime' (Petrashev, 1988). Additionally, punishment toughening is meant for reasonable criminals able to calculate all the benefits and consequences of the committed crime. Obviously, not all criminals belong to this category.

A key question is how strongly the humanization process affects the existing penalty system. The extent of this influence is restricted by the repressive nature of the penalty system in general. It is impossible to exclude the punitive factor completely from the penalty system, and this also does not make any sense, since the institution of punishment will lose its essence as a result. An example is the radical criminal policy in the field of punishment in the Soviet period that proclaimed a complete shift from measures of criminal punishment to compulsory measures of educational influence, so that 'the penalty system was completely replaced by a system of measures of an educational nature' (Noy, 1973). However, it is generally admitted that punishment cannot replace other regulators of social relations, just as they cannot replace the punishment.

Still, not only the repressive nature of the institution of punishment as such withstands the humanization process. The opposite trend, as it has already been noted, is toughening criminal repression in order to fight against certain kinds of crimes.

A significant disadvantage of the criminal policy is that these two opposite trends have selective enforcement within the framework of Russian criminal legislation. Liberalization is for economic crimes, for example. Toughening is for corruption, terrorism, sex crimes and other offenses. Also, selective enforcement comes with inconsistency. Particularly, any toughening in anticorruption efforts should be out of the question as long as there are so many exemptions in the form of additional guarantees and exclusive procedures for criminal prosecution of officials at various levels.

As it can be seen from the latest changes in Russian criminal legislation, criminal policy in the field of punishment is extremely controversial and based especially on current problems. It is necessary to reach a certain balance, to develop the optimal functioning system aimed at implementing a criminal-legal policy in the field of punishment.

It has been long recognized as a given in the science of criminal law that the inevitability of the punishment is most important, not its severity. So the system of penalties should not be too severe or too weak, but should include the elements of various degree of severity. The issue of punishment severity should be resolved in each particular case when the punishment is imposed on the person found guilty of committing a crime through individualization of the punishment.

To summarize the abovementioned, it is impossible to disagree with the opinion of V. N. Petrashev that the legislatively provided 'extensive scope of criminal-legal means to take compulsory measures against law breakers <...> is the most brilliant manifestation of the principle of actual humanism in criminal law' (Petrashev, 1988). Therefore, the criminal policy of punishment toughening or humanization must be implemented within the existing penalty system that can offer enough alternatives. Anyway, legislation should preserve its main features in the process of development and improvement, and the penalty system is no exception in this case.

The deep internationalization process is aimed at smoothing out strictly internal problems and inconsistencies.

References

Blauberg, I. V. & Yudin, E. G. (1973) *Stanovlenie i sushchnost' sistemnogo podkhoda* [Establishment and Essence of the System-Based Approach]. Moscow, Nauka. (in Russian)

Boyko, A. I. (2008) *Sistema i struktura ugolovnogo prava: v 3 t.* [Criminal Law System and Structure: 3 volumes]. Rostov-on-Don. (in Russian)

Kozachenko, I. Ya. & Novoselov, G. P. (2013) *Ugolovnoe pravo Rossii: Obshchaya chast': uchebnik dlya vuzov* [Criminal Law in Russia: General Information: a Textbook for Universities]. Moscow, Yurait. (in Russian)

Noy, I. S. (1973) *Sushchnost' i funktsii ugolovnogo nakazaniya v Sovetskom gosudarstve* [The Essence and Functions of Criminal Punishment in the Soviet State]. Saratov, Saratov University. (in Russian)

Petrashev, V. N. (1988) *Gumanizatsiya sistemy nakazanii v sovetskom ugolovnom prave* [Humanization of the Penalty System in Soviet Criminal Law]. Rostov-on-Don, Rostov University. (in Russian)

Tagantsev, N. S. (1994) *Russkoe ugolovnoe pravo: lektsii: v 2 t.* [Russian Criminal Law: Lectures in 2 volumes]. Moscow. (in Russian)

Yatselenko, B. V. (1995) *Sushchnost' ugolovnogo prava* [The Essence of Criminal Law]. Moscow. (in Russian)

Zvecharovsky, I. E. (2001) *Sovremennoe ugolovnoe pravo Rossii: ponyatie, printsipy, politika* [Modern Criminal Law in Russia: Concept, Principles, Policy]. (in Russian)

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Date of Paper Receipt: March 12, 2022
Date of Paper Approval: April 8, 2022
Date of Paper Acceptance for Publishing: May 10, 2022