

**Criminal right as the right of its time
(on concept of modern criminal law)**

Abstract: The article formulates provisions creating in combination of a concept of modern criminal law, analyses the requirements brought to criminal legislation, and shows the directions of its improving. It is reasoned a conclusion on necessity of some advancing in development of criminal law – in attitude to the state of society as the law like whole legislation, called to assist to promotion of the society on the way of law and order and renewing all spheres of vital activity, civilized and progressive development.

Keywords: concept; criminal law; criminal legislation; law and order; vital activity; development; presentation; criminal policy; legal measures.

Being developed a strategy for modernization of a country its leadership does everything in order to carry out all that consists main gist and content of this strategy. First of all, people are need in renewal, which try to live in new way, and consequently, they should be other ones. As, in order to live afresh one should have not only all needs but also to live anew.

State should provide positive demographic situation, increase birthrate, reduce mortality and it is important to increase a weigh of young generation in structure population. It is necessary to reduce essentially crime rate, minimize such negative phenomenon like drunkenness and alcoholism, drug addiction and toxicomania, parasitism and chase for short –term success.

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Further, there are economy, politics, social sphere, art, literature, poetry, organization of educational and cultural matters, science and mass media and many others. Here, it is opened also perspective of discovering new opportunities of law. Since, resource of its today's opportunities looks like exhausted in significant extent then one should search perspectives its new state, i.e. to plan and fulfill measures on modernization the law itself, try to do it maximum modern.

Far not the last place in the number of such measures takes improving of criminal legislation. Being submitted in June 2011 in the State Duma of another draft law with amendments in the Criminal Code of Russian Federation (hereinafter, the CC of the RF), the President D.A. Medvedev, in particular, emphasized that “the draft law contains number of new provisions and deserves attention as it makes criminal law more modern, eliminates outdated norms...” [2, p. 2].

Since, we will be applied repeatedly to the novation in criminal legislation that was suggested by President, we would like to remind briefly their main sense: firstly, it is entered new kind of punishment - compulsory labour (on sense the same that correctional works, but executed out of residence of sentenced person, and namely where is especially requires labour force); secondly, upper limit of compulsory works is increased two times – from 240 up to 480 hours; thirdly, conformably to less danger economic crimes is now provided (alternatively to deprivation of freedom) application of fine up to five times of the cost of caused by crime damage; fourthly, a number of economic offences is transmitted in the category of administrative offences; fifthly, slander and insult are also transmitted in the category of administrative offences; at last, sixthly, in respect of illegal traffic in drugs, psychotropic substances or their analogues is introduced (alternatively to deprivation of freedom) the punishment in form of mandatory drug treatment; in this case if sentenced person agrees voluntarily drug treatment then he can avoid deprivation of freedom [2, p. 2].

Certainly, this is a step to serious updating of whole criminal legislation, so that it could be met the requirements of time. This circumstance is obliged to

clarify deeply and comprehensively the matter what is a modern criminal law, how it should be understood and what kind then should be our criminal legislation.

If to speak about law in general then it may in its development: a) to fall behind from the needs of time; b) to be adequate it or c) to outstrip it. Any of these variants has minuses as if law falls behind in its development then it always “pushes” life behind, if it is adequate of time then it willingly or unwillingly is behind of events, and if it outstrips time then as if comes off them, does not provide real assistance.

Modern in full sense of this word law will only be if it following the traditions that established for decades and maybe hundred years, at the same time outpace it but so that not to break away from life, to be in the most advanced its part.

Illustrating said on material of criminal law we may assert that for example the fines themselves (for corruption and some kind mercenary crimes), multiples against a sum of bribe, other object of crime, damage, profit, debt, scope of turnover etc. - the excessively outpacing forward, and various (multiple) fines for appropriate crimes as alternative to deprivation of freedom are the measures that adequate time, in turn the multiple fines as additional kind of punishment presented to be some falling behind of time.

Criminal law might be a modern if each of listed variants is applied just in those cases, which required that, for example, if replacement of freedom's deprivation is applied against for less serious crimes, and such selective replacement against serious crimes and combination of deprivation of freedom with multiple fine against especially serious crime.

Opening perspective of inclusion abovementioned measures of reacting to crime in a system of punishment (compulsory labours and mandatory drug treatment), inclusion separate new components in some available punishments, transmitting a number of economic offences in area of administrative legal jurisdiction, enlargement of the elements of optionality at assignment of punishment – all these actually make criminal law more modern as it contains traditions, and namely, soviet “chemistry” (compulsory labours: earlier they had

applied in frames of conditional sentence with mandatory involving of sentenced person to labour and early release on parole with mandatory involving of sentenced person to labour), and also something new that fits to present day (de-criminalization of number of offences with transmitting them in category of administrative offences), and at last, something, the value of which might only be manifested with considering of certain perspective – for example, mandatory drug treatment of persons suffering of it and the persons, who committed less serious crimes connected with drug and psychotropic substances or their analogues.

We note that criminal law is the both as a factor and so result of the criminal policy pursued by state. The factor – because of legislation as it basis, which indicates main evil of society, shows us to what we have to combat and contract, for what we have to punish and by what we have to reinforce a punishment so that it would not only be a simple measure of reaction on crime, but also it should be that legal base, on basis of which should be carried out all other measures of combating to criminality. And why is the result? Because criminal legislation follows criminal policy, and namely, reflection, registration and embodying in the state's activity of the needs of society in overcoming the criminality.

In the basis of criminal policy like state attitude to criminality is not only criminal legislation, but also related branches of legislation, many subordinated legal acts and norms of moral, mobilizing activity of state including in sphere of contracting criminality all arsenal of means, which state has including means of organizational, economic, educational, and scientific and other nature. There enough completed expression of criminal policy should be become wide-ranging program of offensive on criminality that cover as federal so and regional and local aspects of this activity.

Criminal law as an important guide of criminal policy forms its own policy (criminal legal policy), which presenting a policy of legislative determination of crimes and punishments, is combined with other branches of criminal policy including the policy of criminal preventive, criminal executive, criminal

procedural, criminal searching, criminal investigative, criminal judicial, criminal organizational.

Criminal legal policy in its wider meaning is a policy of state on matters of establishing:

- The principles and other provisions of criminal legislation;
- Grounds and limits of criminality and penalty of concrete kinds of offences;
- Common beginnings and special rules of assignment of punishment to persons committed crimes;
- Grounds and limits of releasing from criminal responsibility and punishment.

Certainly, there should be expanded a circle of offences, which are recognized with criminal law as crimes, and that often are emphasized by lawyers. In particular, there are needs prohibitions to illegal entrance to other people premises including non-living ones, and in territories of other individuals, prohibitions to conducting medical experiments over people – independent of their consent, and experiments on cloning of man, and many others. Main is to try reduction circle of criminalized offences, particular those, which have economic nature. It is reasonable to transmit these offences in sphere of administrative legal jurisdiction that is doing presently.

Certainly, it is necessary to put in strictly scientific base “drawing” of sanctions punishments measures in the Articles of Especial part of the CC of the RF. There should return in a system of punishments such measures like confiscation of property, deportation, dismissal from post and an opportunity to cover caused harm. These measure will be appropriate for period when is finally determined clear edge between sphere of criminal legal and administrative legal jurisdiction. It is reasonable to adopt the Code of criminal delinquencies in respect of those who committed crime first time of not serious weight, disseminating its norms that are in jurisdiction of the justice of the peace.

Being concerned with criminal’s problem and some passivity of attitude of authority to it, i.e. with weakness of really functioning criminal policy, some

jurisprudents call authorities to “press” the criminality, other words, authorities should concentrate criminal legal means in direction of law enforcement activity – for example, combat to terrorism, extremism, corruption, pedophilia etc. It is also suggested to call in the law the more dangerous crimes not as crimes (like now), but “atrocities”, to include in system of punishments “penal servitude” – “hard physical labour, without pardoning, meetings, correspondence, information about sentenced person...” [3].

But, if the famous postulate about the fact that man is a measure of all things is right and in a great extent just those relationship, in structure of which it included, then it turns that being deprived connection with external world an individual loses an opportunity to be helpful him and society.

Deprivation of freedom should stop being “isolation from society” and to be keeping a sentenced person in an institution with regulated relationships in an open space because there is much of such in an open space that it is reasonable to “close” for an individual, who sentenced to imprisonment.

It is also important the issues of punishment assignment. Here is an optimal, in our view, variant of new edition of Article 60 of the CC of the RF that formulates common beginnings of punishment assignment:

“Article 60. Common beginnings and special rules for punishment assignment

a) Common beginnings of punishment assignment are the general rules that are mandatory to consideration at sentencing of any person committed crime for any crime. They consist in that assigned punishment should be legal and fair, correspond to all principles of criminal legislations and to be assigned by a court:

a) in compliance with his own conviction that occurred out of dependence any external impacts;

b) Under absence of the grounds of releasing from criminal responsibility and (or) punishment;

c) In frames of sanctions those Article of the Special part of the Code, on which is qualified a crime committed, provides few kinds of punishments, then is assigned less serious kind if it allows to achieve punishment targets just its

assignment. More serious kind is assigned only in case if less serious its kind does not allow providing of achievement of punishment goals. Exceeding a high limit of the more serious punishment that stipulated with sanction of appropriate article of the Special part of the Code is only allowed in established with the law limits and only at committing few crimes by an individual, and namely at assignment of punishment on rules of complexity of crimes or sentences – in compliance with Articles 69 and 70 of the Code;

d) In the base of provisions of criminal legislation about its principles, kinds and purposes of punishment, other related to committed crime and assigned punishment of the provisions of General part of the Code, norms of moral, and also state of fixed sense of justice of society;

e) With considering of nature and level of public danger of committed crime, its reasons and terms, and also individual particularities of an individual committed crime including circumstances stipulated in the Code as mitigating and aggravating the punishment;

f) With considering of perspective of achievement of the punishment's purposes including such aim like correction of guilty;

g) With considering of the task of minimizing of possible of negative impact of punishment on condition of life of family of guilty and condition of functioning those organization and sphere of vital functions, in which this individual had worked and had been prior sentencing.

2. Special rules of punishment's assignment stipulated by articles of 62, 64-74 of the present Code".

Thus, criminal law has to be in Russia just criminal law, i.e. without any pretensions to exclusiveness its role in providing of law and order, without any exaggeration its opportunities in matter of contraction crimes and criminality and whereas without justified heightened activity in functioning. Whereas, these opportunities that coming from the set of punishments and has criminal law, are relatively not much. Maximum that it can do is to limit a guilty in the rights I order to learn a certain lesson from happened. Then, at least, society would know

what and who should be feared. Main cares on adaptation of guilty lies usually on society.

Criminal law has obligatory to be just the law, but not an instrument for unscrupulous politicians, officials, journalists, various money-bags, and sometimes for criminals. Anyway, there are much criminal law so named “instrumental”, i.e. easily managed from outside and it is rather small real legal one. It is an important task to expand formed proportion to diametrically opposite one. It is quite possible to be carried out by state, society, and citizens. If certainly to consider the criminal law as certain factor of management of social processes – in direction of preventing crimes and criminality, and, consequently for strengthen law and order, saving, increasing and rational using those values, for sake of which it invented by humanity and used by them.

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