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Principles of criminal law: immersion in theory

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Abstract:

The article is devoted to the criminal law principles. Criminal law principles can be defined as sustainable, objective and essential connections between criminal law phenomena, on the one hand, and social and legal phenomena, on the other hand, which determine the genesis, structure and functional peculiarities of criminal law. In the work of the proposed classification of the criminal law principles, based on various grounds.

Keywords: *Principles of criminal law, modern Russian criminal law theory, groups of principles functioning in the criminal law, criminal law formation principles, criminal law development principles, criminal law functioning principles, structural principles of criminal law.*

Introduction

Principles of criminal law in the most general and figurative form may be defined as the sustainable basis of this legal sphere, its “skeleton”, on which legal matter grows and on which the whole “body” of criminal law is formed. They are, on the one hand, a result of the prior evolution of criminal law, something stipulated historically and socially, and on the other hand, the source and basis of the modern state, functioning and sustainable development of the area. Principles dictate the formation of the criminal law aspects of social life and are responsible for the form, structure, composition, functions and features of criminal law, the progress of the criminal law procedure.

Just as any physical, chemical, biological processes are governed by certain laws discovered by scientists, criminal law aspects of social life are based on specific principles which give a special quality to criminal law as a social phenomenon.

Meanwhile, it is worth noting that in the framework of criminal law theory the topic of criminal law principles still remains a “white spot”. For all the years of its formation, criminal law science has accumulated a significant amount of theoretical knowledge about various phenomena of criminal law reality. In particular, the doctrine of crime, corpus delicti, punishment, punitive law have been established. As for the problem of the principles of criminal law, it has not become a separate subject of study in Russian science. It led to the fact that a significant number of issues are still unresolved: the definition of the concept of criminal law principles and the establishment of their

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specific character, the system of principles which function in the criminal law sphere, their classification, wording and content, etc. Search for the English language sources did not reveal any special works devoted to the problem of the criminal law principles, either.

Lack of proper results of exploring them explains the critical condition in which modern Russian criminal law theory and practice remain. In particular, at the legislation level the increase in the number of erroneous decisions, their essential character, illogicality, inconsistency and invalidity indicate that criminal provisions are either inappropriate or ignore their own principles. While at the level of law enforcement ignoring the essential and necessary connections between various elements of the system of law, relationships between legal activity of people and competent authorities, or neglecting them may make even the most perfect laws useless.

These circumstances seem sufficient to point out the fundamental importance of scientific research and explanations of the content of criminal law principles and their role in modern socionormative regulation. The study of principles of criminal law is the subject area and stage of its exploration which brings criminal law theory to the level of other natural, technical and social sciences and requires the research of the universal principles inherent in all forms of the movement of matter, in particular a social form, and is a further step into methodological interaction of sciences.

Concept of criminal law principles

Identification of the principles governing the criminal law reality requires in the first place the formulation of the concept of criminal law principles. To do this we believe it appropriate to use deductive reasoning from the general to the particular as an effective methodological approach. A philosophical concept of the law will serve a starting point of the analysis in this case. It is a well-known fact that the law is an interaction between substantial properties or stages of development of the objective world phenomena, which has a universal and essential character and is manifested in relative stability and recurrence of this connection¹. Since criminal law principles by their nature are a kind of social principles, we should define the latter. The definitions of a social law state that it is a universal, essential, stable connection between social phenomena, which determines the flow of events of a historical process in a particular direction; that the law is the basis of human activity, it emerges and is implemented only through human activity². The next step in the study of criminal law principles is the definition of principles of law. Proceeding from philosophical and sociological understanding of the category of "principle" and taking into account the specific character of the legal reality as a particular area of social life, the following definition can be suggested: principles of law are objective, substantial, universal, essential, recurring and sustainable connections of social and legal phenomena which characterise the emergence, formation, structuring and functioning of the law and which are part of the system of social principles and function alongside other laws of society, evolving and

¹ See: Tugarinov V.P. Laws of objective world, their study and usage. L., 1955. p. 55-56.

² See: Popov S. Social laws and social cognition. M., 1973; Uledov A.K. Sociological laws. M., 1975; Vinogradov V.G. Social laws and principles. Tallin, 1980; Concept-terminological dictionary. Rostov-on-Don. 2005; Osipov G.V. Sociology. M., 2008. p. 34

coming into effect through legal activity of people. This definition is the basis for understanding and identifying the principles of criminal law proper.

In line with the above, *criminal law principles can be defined as sustainable, objective and essential connections between criminal law phenomena, on the one hand, and social and legal phenomena, on the other hand, which determine the genesis, structure and functional peculiarities of criminal law.*

Criminal law principles: general and special

Analysing the criminal law reality in the light of the proposed definition allows to discover the principles this reality is subjected to, and reveal their content and properties.

In our view, criminal law would not exist and function as an independent branch of law without having its own specific principles. However, this does not mean that in the sphere of criminal law only criminal law principles work. In our opinion, *four groups of principles functioning in the criminal law sphere of social life should be highlighted:*

*specific principles (e.g., the principle of the prevalence in the criminal law method of the elements of power and subordination in conjunction with prohibitive and punitive means; the principle of immanence of a crime to criminal law as a category of legal facts and punishments as legal implications; the principle of the quantitative prevalence of crimes in a set of facts provided by the norms of criminal law; the principle of predetermination of various aspects of criminal liability implementation according to the category of a committed crime; the principle of providing means of implementation of regulatory norms in criminal law; the principle of dividing *corpus delicti* into four elements: object, objective side, subject, subjective side; the principle of criminal liability for a crime; the principle of proportionality of a crime and the punishment; the principle of compliance of the variation of sanction with the variation of disposition of the criminal law norm);*

*- general principles of law (e.g., the principle of the transformation of social freedom and liability into subjective legal rights and obligations; the principle of coherence of the legal system; the principle of the presence of two main subsystems in law: regulatory and protective; the principle of law division into private (*jus privatum*) and public (*jus publicum*); the principle of emergence of legal relations in the following typical way: according to legal norms and on conditions stipulated by these norms certain individuals begin to have rights and duties; the principle of emergence of regulatory legal relations as a result of lawful conduct of subjects and protective legal relations on the basis of unlawful actions; the principle of inevitability of legal consequences based on the presence of a legal fact; the principle of interrelation between subjective legal rights and duties; the principle of combining legal norms into institutions and branches; the principle of unity (compliance) of a subject and method of legal regulation; the principle of dependence of forms of implementation of legal norms on the ways of legal regulation expressed in them (positive obligation – execution, permission – use, prohibition – compliance);*

- social and sociological principles (e.g., the principle of determinancy of other sides of society's life by its economic system and their reversionary impact on economy; the principles of interaction between social subjects (social struggle, the relationship between society and individual); the principle of interrelation between governing and governed subsystems; the principles of interrelation between social being and social

consciousness; the principles of the functioning of social psychology and ideology; the principles of interaction between society and nature);

- *universal principles* (principles of dialectics: the principle of the unity and conflict of opposites, the principle of transition of quantitative changes to qualitative ones, the principle of the negation of negation).

The above-mentioned general (universal, social and legal) principles manifest in the field of criminal law while gaining specific character due to the peculiarities of its nature, content and functions.

In this context the question of the relationship between general and specific principles is important. In philosophical and sociological literature, it refers to debatable questions. Some authors³ believe that general principles manifest through specific principles functioning in one or another group of phenomena at a certain stage of their formation; while others⁴ argue that although general principles are connected with specific ones, they act independently, along with the specific ones; the third⁵ believe that general principles manifest through and along with specific principles.

Aware of a largely conditional nature of this discussion, we nevertheless tend to hold the view that the action of general principles manifests in specific principles.

Hence, all the principles acting in the sphere of criminal law are to a certain extent specific and may be divided into two groups: a) special – principles represented in criminal law exclusively, *i.e.* purely specific principles; b) specified – general (universal, social and legal) principles which are interpreted and objectified in criminal law reality acquiring a certain specificity. Specified principles are a peculiar manifestation of general principles, which is why they contain universal features characteristic of a corresponding general principle as well as specified features stipulated by the peculiarity of the phenomena whose connections they express.

Types of criminal law principles

For deeper exploration of criminal law principles, it may be practical to classify them according to different criteria. In particular:

1. Depending on which aspect (genesis, function or structure) of criminal law they express, the principles can be divided into four groups:

a) *criminal law formation principles*, which characterise peculiarities of emergence and further formation of criminal law as an independent branch of law (*e.g.*, the principle of dependence of protective criminal law orders on regulatory norms which they protect from violating);

b) *criminal law development principles*, which characterise factors and primary directions of its development (*e.g.*, complete codification of criminal law; the prevalence

³ See: Deborin A.M. Philosophy and politics. M., 1961. P. 188; Glezerman G.E. Laws of social development: their character and usage. M., 1979. P. 224; Alexeev P.V., Pann A.V. Philosophy. M., 2007, p. 501.

⁴ See: Tugarinov V.P. On interrelations of objective laws of social development // LGU Vestnik. 1954. Nr. 9, p. 49; Andreev M.A. On correlation of common and specific laws of social development // Philosophical and sociological research. Issue 14. L., 1973. P. 64; Sirin A.D. Classification of social laws. Specifics of society laws. Irkutsk, 1974, p. 79.

⁵ See: Sheptulin A.P. Dialectics of the singular, special and common. M., 1973. P. 163; Uledov A.K. Sociological laws. M., 1975. P. 73-75, 138, 201-203; Gindev P. Philosophy and social cognition. M., 1977. p. 146; Theory of organisation: Manual for higher education/ed. by V.G. Aliev. M., 2003. p. 85.

of criminalisation processes over decriminalisation processes; mitigating punishment for criminal offences which are not of considerable danger to society; expanding optional elements in criminal law regulation; strengthening the criminal liability differentiation);

c) *criminal law functioning principles*, which are essential and sustainable relationships manifested in the course of implementation of criminal law (e.g., the principle of criminal liability; the principle of appropriateness of the punishment to the severity of the crime and the individuality of the offender; the principle of reasonability of applying a compromise and alternative penalties in social relations regulation caused by crimes of small and medium gravity, as well as the punishment for severe and highly severe crimes);

d) *structural principles of criminal law*, which are relationships characterising legitimate organisation of the criminal justice system (e.g., the principle of the Criminal Code division into general and special parts with their further subdivision into sections, chapters and articles; the principle of allocation of the Criminal Code articles in the following order: from the general to the particular (general and special parts), from the cause to the effect (crime – punishment), from more to less grave crimes; the principle of dividing the Special Section of the Criminal Code into disposition and sanction; the principle of combining articles which contain various penal regulations protecting homogeneous social relations into one chapter of the Criminal Code; the principle of systematisation of protective penal norms according to the objects of their protection).

2. According to the degree of generality, law principles may be subdivided into:

a) *general principles*, which function in all or several historical types of legal systems (e.g., the principle of genesis from a case to a general norm; the principle of law formation arising from customs codification; the principle of compliance of legal orders with real social life needs; the principle of transformation of social claims and social debt into legal rights and obligations);

b) *specific principles*, whose functioning is limited by one historical type of law or a family of legal systems (e.g., law emergence from court decisions is characteristic of the Anglo-Saxon legal family; law emergence from legal acts is characteristic of the Romano-Germanic legal family; law emergence from precepts for believers is characteristic of Islamic law).

3. According to their sphere of activity, criminal law principles may be subdivided into:

a) *intrasectoral principles*, which express internal relationships between elements of criminal law (e.g., the principle of dependence of various aspects of legal liability realisation on the category of the committed crime);

b) *intersectoral principles*, which express relationships between criminal and other branches of law (e.g., the principle of providing with legal means of implementation of regulatory standards; the principle of functional interaction between criminal law branches (criminal material, procedural and penal law) in order to resolve conflicts caused by an offence);

c) *socio-legal principles*, which express relationships between criminal law and other aspects of social life: public, economic, political, religious (in general, these principles reveal criminal law as the public will in terms of recognising certain acts as criminal and punishable, which is expressed in obligatory legal regulations and whose contents are determined by objective needs to protect the interests of an individual, society and the state from the most dangerous types of human conduct).

4. According to their manifestation, criminal law principles can be subdivided into:

a) *absolute principles*, which establish a strict relationship between phenomena of legal reality and are valid for each individual case of legal phenomena (*e.g.*, the principle of dividing *corpus delicti* into four elements: object, objective side, subject, subjective side);

b) *statistical principles*, which extend onto a certain class of legal phenomena rather than onto each phenomenon separately (criminality is mainly governed by statistical principles; *e.g.*, the probability of acquisitive crimes rises with progressive poverty, while the increase in welfare of citizens lowers their probability).

5. According to the nature of relationships all criminal law principles can be subdivided into two groups:

a) *principles which differ among themselves on the subject of relationships*. Some of them express relationships between structural elements within legal phenomena (*e.g.*, the principle of division of *corpus delicti* into four elements), others between legal phenomena (*e.g.*, the principle of criminal liability), the third between a phenomenon and its features (*e.g.*, the principle of systematisation of punitive norms according to objects of protection; the principle of categorising all crimes according to the character and degree of danger for the public into four groups: crimes of small gravity, crimes of medium gravity, severe crimes, highly severe crimes); the fourth between features of legal phenomena (*e.g.*, the principle of compliance of the type and strictness of the punishment which is stipulated for committing a crime with the character and degree of its danger for the public; the principle of compliance of sanctions alternative with disposition alternative of a criminal norm);

b) *principles which differ among themselves in the quality of relationships*. Thus, some principles express causal relationships (*e.g.*, the principle of dependence of criminal law emergence on the objective need in such a system of social regulation which could perform the function of protection of the interests of an individual and society from dangerous types of human conduct), others express relationships of programmed conditioning (*e.g.*, the principle of emergence, modification and termination of legal relationships only with the occurrence of the facts which are connected with certain consequences by the Criminal Code norms), the third express relationships between the general and the particular (*e.g.*, the principle of dividing the Criminal Code into general and specific parts with their further subdivision into sections, chapters and articles), the fourth express relationships between the form and the content (*e.g.*, the principle of the unity of the Criminal Code and criminal law; the principle of correspondence of the Criminal Code to historically developing system of criminal law), the fifth express relationships of identity and equality (*e.g.*, the principle of proportionality of the crime and the punishment), the sixth express relationships of development, movement (*e.g.*, the principle of dividing legal facts into law making, law modifying and law terminating), the seventh express genetic relationships (*e.g.*, the principle of dependence of protective measures on the content of regulatory norms which they protect) and functional relationships (*e.g.*, the principle of providing with protective legal norms of the realisation of regulatory norms), the eighth express relationships of subordination (*e.g.*, the principle of subordination of legal norms to constitutional norms) and relationships of coordination (*e.g.*, the principle of functional interaction between criminal law branches (criminal material, procedural and penal law) in order to regulate the conflict caused by the crime), the ninth express structural relationships (*e.g.*, the principle of dividing the Special Section of the Criminal Code into

disposition and sanction; the principle of dividing corpus delicti into four elements: object, objective side, subject, subjective side).

Conclusion

The analysis of the concept and types of criminal law principles conducted in this article does not claim to be comprehensive and exhaustive. However, these initial results of immersion in the problem allow to see the prospects for its further development not only to ensure harmonious formation of criminal law within a particular country, but to identify common and different principles peculiar to criminal law phenomena and institutions in legal systems of different countries.

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