

Viacheslav Tuliakov

National University“ Odessa Law Academy”

Vice-president, vice-rector

LLD, professor, NALSU Corresponding Member

ECHR Judge ad hoc

SOVEREIGNTIES AND CRIMINAL LAW: A RESEARCH HYPOTHESIS

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Some ideas to discuss while working on Criminal Code Drafting Methodology.

Criminal Law is a tool to protect Sovereignty and Security. It symbolizes People, Society and State's independency legal, moral and social defense against different threats and criminogenic factors.

Feeling safe, secure and independent means to be happy. The status of Happiness reflects the mainstream at modern sustainable World. Developed and developing countries differ each other regarding to happiness status. But the role of Protective State changes at multipolar, post-truth informational society.

Principle of Legality at Metamodern Society validates depending more on general values of Happy Nation, Happy and Prosperous Social Group nor Happy State, aggressively contradicting to “enemies images” and Rule of Law's State Concept. Due to this backdrop, abuses of power and the abuses of law are forming specific compensational mechanisms. The Right to be law obedient supplements the Right to be deviant. Moreover, sometimes State's Sovereignty is secured by disciplinary measures that due to rational purposes are not included at criminal legal relations being naturally the part of them. As for example, it was considered by the Grand Chamber of ECHR at Z.A. AND OTHERS V. RUSSIA, 2018 [1], the case concerns complaints brought by 4 individuals from Iraq, the Palestinian territories,

Somalia and Syria who were travelling via Moscow's Sheremetyevo Airport and were denied entry into Russia. They spent between five months and nearly 2 years in the airport's transit zone. This kind of deprivation of liberty as preventive sanction is as the same as criminal punishment by its consequences, violating basic human rights. The same should be said about 30-days preventive detention used by Special Forces to convicts of terror activity from zones out of government's control. PACE on its Resolution 2209 (2018) "State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights", p.18.1.1 specially stresses that. Ukraine has to reconsider the utility and hence the necessity of maintaining the provision on 30-day preventive detention, which the Constitutional Court should be given the opportunity of examining [2].

The role of Individual in formatting Criminal Code Draft changes too. Network and social clusters and platforms formulate new narratives that fluctuate by state, national and common paradigms. Victim and Perpetrator, Judge and Investigator, Probation officer and Prosecutor, Law Obedient and Deviant: their ideas and needs has to be considered while constructing the definitions of Right and Wrong

State sovereignty and protection paradigm differs from National and Peoples' ones too. It means that the right to commit a crime (Hegel) is no more always an isolated individual protest against economy exclusion (Marx), but a result of contradictions at information, energy, and product exchanges between individuals based on different than State's understanding of what is Right and what is Evil. Safety, Security and Independence paradigms contradict each other on above mentioned levels, generating different understanding of what is the Right to happiness and the Right to be punished.

That is why the problem of State, National and People's sovereignties imbalances in modern world while constructing new Criminal Law could summarize:

- a "1 + 2" criminal laws Matrix at the level of fragmentation (positive law and natural law of the nation and people),
- 2 Criminal Legislatures and Judicial Rulings at the supranational and transnational level (European and International, ICC, ECJ, ECHR),
- 1+... Mono or Complex Religious' narratives (like at ISIS hybrid enclaves or Moral and Habitual norms like Saudi Arabia, Malta, Israel, etc.)
- and several billions individual.

It is significant that the latest decisions of TARICCO II, ECJ 2017 [3], TSEZAR AND OTHERS v. UKRAINE, ECHR 2018[4] demonstrate a shift in focus on the priority of the values of collective actors over individual rights (European and State Values). Naturally these rulings are only bricks at informational wall.

Nevertheless, National and Peoples' Sovereignties are constructed on their own Cultural and Religious platforms that differ from the State one. Sometimes the effect of Informational society and Networks triggers social anomy and protest against State Sovereignty as Narcissistic energy Boom.

The question is what we have to do to harmonize Crime and Punishment, Justice and Prevention notions not on the level of National or People's narratives but on the level of legal Dynamics and Ideology. Does the State have to make a plain Criminal Legislation version, or we have to find proper ways to correct National and Peoples' Laws approximating State's Justice to people's needs. New actors need a new place at Public law balances and distribution of powers' background.

References

1. Z.A. ANDOTHERSV. RUSSIA, 2018[Электронный ресурс] // – Режим доступа:[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%2261411/15%22\],%22documentcollectionid%22:\[%22CHAMBER%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%2261411/15%22],%22documentcollectionid%22:[%22CHAMBER%22]})

2. PACE Resolution 2209 (2018) “State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights” [Электронный ресурс] // – Режим доступа: <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=24680&lang=EN>
3. ECJ Judgment of the Court (Grand Chamber) of 5 December 2017 - Criminal proceedings against M.A.S. and M.B. Reference for a preliminary ruling — Article 325 TFEU — Judgment of 8 September 2015, Taricco and Others (C-105/14, EU:C:2015:555) - Case C-42/17 [Электронный ресурс] // – Режим доступа: <http://curia.europa.eu/juris/liste.jsf?num=C-42/17>
4. ECHR Case of Tsezar and others v. Ukraine (Applications nos. 73590/14, 73593/14, 73820/14, 4635/15, 5200/15, 5206/15 and 7289/15) [Электронный ресурс] // – Режим доступа: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-180845%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-180845%22]})