

CRIMINAL AND LAW MEASURES IN CULTURAL - ANTHROPOLOGICAL DIMENSION

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Formation of a significant amount of the scientific complex research approaches of the law in general and its separate branches is a reality generated by crisis of ideas in sphere of law-understanding, character and structure of law and order, maintenance and properties of the law awaring and law culture.

The current stage of development of the law gives the chance to draw a conclusion on existence of the certain crisis phenomena in the course of scientific law-understanding research on several levels. First, the modern jurisprudence can't define its own subject exactly because of the «law expansion» to those spheres of social life that are used to be regulated by other social norms of corporate, religious or technical kind, and also by tradition. Secondly, if certain law-understanding crisis is recognized by scientists of the majority law schools in many countries, in Ukraine the special attention to law definition is conditioned by its transformation in connection with the government mechanism reforming, occurrence of new reference points of welfare and law-and-state development. Thirdly, the crisis of traditional approaches to understanding of the law is determined by the human rights issue the research of which, according to M.Ville, «gains more and more empty language clichés and tends to transform into the slogan-quoting science similar to what Marxism-Leninism has become in the last decades of USSR existence». Fourthly, the loss of placenta connection between culture, which has provided formation of the law sources of relations regulation in the society, and law has considerably impoverished its essence disoriented it, having deprived it of a defining paradigm of the existence.

Returning to the sources of law formation as to the culture in various forms of its existence, provides the formation of a new law understanding of the modern law at the level based on the cultural-anthropological sources.

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The further analysis of the offered approach to law understanding assumes establishment of a modern law paradigm which reflects essential characteristics of law. A paradigm of modern criminal law can be recognized as an anthropodecia that means certain world outlook coordinating legal establishments not only for strengthening the community basis and for maintenance of guarding function realization of the law, but for establishment of the criminally-legal restitution basis that means returning to sources of the regenerative justice focused on restoration of that social situation that existed before committing the crime and receiving damages. Anthropodecia resists to community basis of criminal law formation only, concentrating researchers' efforts on searching for the new forms of counteraction to criminal displays, without seeing it as a panacea from crime expanding and its destructive displays in retaliatory measures only.

The specified paradigm is characterized by definite trichotomy which also means its universality. First of all, anthropodecia focuses on formation of the humanistic beginnings of criminal law which obtain its realization through solution of the question of character and responsibility form of the person that has committed the act interpreted by criminal law as a crime. Besides, while searching for methods of influence on the criminal's behavior, anthropodecia provides taking actions in order to protect the interests of the injured party. Anthropodecia also assumes proper respect to interests of the third party that are subjects of criminal legal relations or relations that occur while applying criminal law measures.

The use of anthropodecia as a paradigm of modern criminal law assumes some specifications among which it is necessary to specify the following.

The first specification is connected with theological motives of a certain paradigm which shouldn't be considered as a lack, but rather are the advantage. Without going into detailed analysis of the archaic prime standards existing on the territory of modern Ukraine, it is possible to draw a conclusion that the base beginnings of criminal law and other branches of the law in their formation belong to religious sphere. Moreover, it is represented that exactly on Ukrainian territory law formation felt the humanistic impact of religious postulates the most, unlike, for example, some countries of Western Europe where the influence of religion on the law was carried out in the conditions of social conflicts of the international interconfessional kind which have made crucial impact on law formation. It is considered that the specified conflicts which are characterized as permanent oppositions, have predetermined the strengthening of the state's role in regulation of public relations on the basis of freedom

restrictions of legal subjects and formation rigid, sometimes cruel criminal legislation. Kievan Rus criminal law, in its turn, is formed and developed on the basis of Orthodoxy without a necessity of application of the rigid methods of influence on person's behavior that traditionally arise in the conditions of the social conflict. It is necessary to notice that further in the majority of countries of continental Europe the humanization of the criminal legislation is connected with the formation of the state of bourgeois kind, and Ukrainian criminal law loses its authenticity. On the basis of the mentioned above it is possible to draw a conclusion that the Christian tonality of anthropodecia as a criminal law paradigm indicates returning to sources of law formation and reproduction of other basic beginnings, rather than those who don't consider mentality and attitude of Russian people who after the christening were simultaneously attached to humanistic, philanthropic law sources in general and criminal law in particular.

The second specification is connected with active use of the term humanism, not only at the level of law application practice, but also at legislative level. It is considered that the humanism can't be seen as a characteristic of a synonymous number at the level with anthropodecia as it indicates attention accentuation on legal and actual position of the person having committed a crime only as the humane relation to the victim in the course of criminal law measures application has no sense and logic. The humane attitude to the person is based on two positions: first, standard fastening of responsibility for the committed act, secondly, the change of responsibility kind taking into account the specific attributes provided by the law which characterize both socially dangerous act and the person that has committed it. Anthropodecia in its turn it is not focused only on a legal status of separate subjects of legal relations which are regulated by the standards of criminal law, and demands attention concentration on the rights and interests of all participants of the corresponding relations occurring in connection with commitment or preparation for committing a crime.

If to consider that further development of the postmodern civilization will be followed by deepening of legal regulation crisis, spreading of legal nihilism which receives features of more and more latent and influential phenomenon able to change the legal culture, that is the positive relation to the law and its application, the interest to cultural-anthropological measurement application becomes understandable, as long as it provides both the optimization of law maintenances and deepening the connection of law and culture that are capable to resist the challenge of social regulation during a postmodern epoch, an epoch of "spontaneous uncontrollability" of a person's social being".

The cultural-anthropological understanding of the criminal law focuses on the fact that it represents the system of social wills coordinated on culturological values which coordination vector is directed to protection of values of the social, material and spiritual character that act as an achievement of the human culture which realization is followed by criminal law influence measures application focused on restoration of the social condition that preceded committing of a crime and that displays normalization degree of social life through the fair relation to the person which has committed a crime, a victim and other participants of public relations that occur in connection with committing of a socially dangerous act recognized as a crime.

On the basis of the mentioned above it is possible to draw a conclusion on existence of the whole system of additive features of the criminal law defined by means of cultural-anthropological values. First, the criminal law is an element of the culture common to all mankind, incorporating all its achievements, making determinative impact both on law and its application. Secondly, functional orientation of criminal law provides creation of preconditions to protection of social values which have culturological character, that is why it doesn't depend on the "person's cognition of the image reflection", and has an objective character provided by the coordination of social wills. Thirdly, within the limits of criminal law the measures of criminal law character which are focused on punishment of the person committed a crime are applied, directed to realization of educational influence, influence for the purpose of the crime committing prevention, providing of medical aid, maintenance of realization of a criminal law restitution and for other purposes. Formation of criminal and legal measures system for achievement of the specified purposes should be carried out on the culturological base as the measures can't include the ones that contradict requirements of a modern civilization, that doesn't suppose the mockery humiliating the relations to the person, committed socially dangerous act. Fourthly, the cultural-anthropological understanding of the law focuses on law and order formation not only on the basic of exact and steady execution of the law standards, but also on the valid relation to all participants of the public relations occurring in the course of criminal and legal measures application.

It is considered that the cultural-anthropological approach to criminal law understanding will give the possibility to reestablish the connection between law, culture and person which will provide objectification and social conditionality of criminal law establishments, effective application of the criminal law measures which origin initially should completely correspond with culture achievements on the basic of anthropodecia.