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Criminal Law and its Victim-Oriented Development: an Academic Inquiry

Criminal Law and its Victim-Oriented Development: an Academic Inquiry

Abstract: In the 21st century, one of the essential roles of the Criminal Code is to protect the rights and interests of crime victims. Criminal law is a complex field that must balance established principles with evolving societal dynamics. This involves various stakeholders, including the state, perpetrators, victims, and civil society, each with differing views on criminal law. The modern era, marked by post-truth narratives and a reputational society, has further complicated matters. Casuistry now prevails over systematic approaches, leading to a disconnect between criminal law's foundational principles and intended societal outcomes. Contemporary criminal law operates on multiple dimensions, addressing individual, societal, and institutional levels while aiming to balance the interests of these entities. The transition from the “age of information” to the “age of reputation” underscores the importance of information subjected to external evaluation. In the context of harmonizing Ukrainian criminal legislation with EU and Council of Europe norms, it is vital to protect human rights. This aligns with a Committee of Ministers recommendation that recognizes crime as a wrong against society and a violation of individual rights, emphasizing the importance of safeguarding victim rights. Approaching criminal law from a victimological perspective offers unique insights into victim participation in criminal

liability, crime qualification, and offender culpability. This perspective encourages assessing the efficacy of criminal law prohibitions and promoting victim engagement in crime control.

Keywords: Criminal law, criminal policy, victim-oriented policy, victimology, human rights

Introduction

In the 21st century, the role of the Criminal Code is unequivocally intertwined with the protection of crime victims' rights and interests. However, the path of criminal law is far from straightforward; it navigates a complex landscape where established principles must coexist with ever-changing social dynamics. The intricate dance of criminal law involves a multitude of stakeholders, each with their distinct perspectives, including the state, perpetrators, victims, and civil society. These disparities even extend to European legal judgments, adding another layer of complexity. As Ukraine moves toward European integration, the protection of human rights through criminal law theory becomes

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paramount. This approach aligns with international recommendations, recognizing crime as both a transgression against society and a violation of individual rights, emphasizing the need to safeguard victim rights.

In this complex landscape, examining criminal law through a victimological lens provides invaluable insights into criminal liability, crime qualification, and offender culpability. It encourages a comprehensive assessment of the effectiveness of criminal law prohibitions and promotes greater victim engagement in the quest for crime control.

With the potential expansion of passive citizenship principles in criminal law and a focus on fundamental rights and freedoms, the ongoing evolution of criminal law is a journey that continues to adapt to localized traditions and diverse cultural influences.

Criminal policy and its development

It should be axiomatic in the 21st century that ‘one of the tasks of the Criminal code is to protect the rights and interests of the victim of crime’ (Baulin, 2020). The evolution of criminal law is a complex endeavor, necessitating a delicate balance between its established tenets and the ever-shifting dynamics of public and social relations. This discord challenges traditional mechanisms of social control, implicating various stakeholders, including the state, perpetrators, victims, and civil society, each with divergent perspectives on criminal law.

Indeed, the concept of criminal law varies significantly across different segments of society, encompassing citizens, media, social groups, and law enforcement authorities. The autonomous concepts of criminal law, punishment, and crime exist also in ECHR and ECJ judgments (ECHR Guide on Article 7 (2022), ECJ, Case 80/86 criminal proceedings against *Kolpinghuis Nijmegen BV* (1987))

The contemporary era, characterized by post-truth narratives and a reputational society, has exacerbated these disparities. Notably, there is a discernible predilection for casuistry over systematization, with an increased emphasis on situational ideas over the construction of explanatory models. These trends have contributed to a growing disjunction between the foundational principles of criminal law and their intended societal outcomes.

Historically, this disjunction finds its roots in the post-Soviet era, where the manipulation of the rule of law principle, ostensibly in pursuit of safeguarding human rights and countering totalitarianism, resulted in extensive rights violations, societal disarray, and disruptions in governance. During this period, organized crime and corruption emerged as alternative mechanisms for enforcing decisions. This erosion of the principle of responsibility led to the bifurcation of criminal-legal norms into two categories: those serving the collective good (positive) and those favoring individual interests (value). This phenomenon has culminated in an erosion of legal-criminal ideology, the proliferation of corruption, law enforcement fragmentation, legal breaches, anomie, and a crisis in state-level criminal-legal regulation.

In the contemporary landscape, multiple layers of criminal-legal regulation coexist concurrently. The multidimensional and intricate nature of criminal law necessitates analysis on several planes, including material, informational, static, dynamic, and an additional dimension characterized as energetic or spiritual, embodied in individual law enforcement actions.

Transitioning from a binary framework (statics vs. dynamics, positive law vs. law as a value), criminal law operates on various dimensions, manifesting at individual, societal, and institutional levels. Its primary function is to maintain equilibrium among the individual, society, and the state by safeguarding the objects of criminal-law protection.

We are currently witnessing a paradigm shift from the “age of information” to the “age of reputation”, emphasizing the importance of information that has undergone external evaluation and commentary.

Victim-oriented policy and Criminal Law

In the context of the Approximation of EU *acquis* and COE norms to Ukrainian criminal legislation, it becomes evident that contemporary criminal law serves as a fundamental tool for safeguarding human rights. This theoretical framework aligns with Recommendation CM/Rec (2023)2 of the Committee of Ministers of the European Council, which underscores the paramount importance of protecting individual human rights. “Crime is a wrong against society and a violation of the individual rights of victims. Member States

should, therefore, ensure the effective recognition of, and respect for, the rights of victims concerning their human rights; they should, in particular, respect the liberty, security, property, dignity, and private and family life of victims and recognize the negative effects of crime on victims” (Recommendation CM/Rec (2023)). This statement pertains to the development of criminal law theory, specifically in the context of victim rights and the recognition of crime as a violation of both societal norms and individual rights. Let’s break down the key points and elaborate on their implications within criminal law theory:

Crime as a Wrong Against Society and Violation of Individual Rights: This foundational principle underscores the dual nature of criminal acts. Crimes are seen as offenses not only against the state or society as a whole but also as violations of the rights of individual victims. This perspective acknowledges that crimes cause harm not only to the social order but also to the individuals who suffer as a result.

We should consider this dual nature of crimes when developing theories of punishment, deterrence, and rehabilitation. The justice system should aim to address both societal interests and the rights and needs of individual victims.

Respect for the Rights of Victims: Member States are encouraged to respect and protect the human rights of victims. This includes safeguarding their liberty, security, property, dignity, and various aspects of their private and family life. It recognizes that the consequences of crime extend beyond physical harm and can affect victims in various ways. Criminal law theorists should incorporate victim-centric approaches into their theories. This means not only focusing on the offender but also considering the impact of criminal acts on victims. Theories of restorative justice, for instance, emphasize the need to repair the harm done to victims and restore their dignity and well-being.

Non-Discrimination: Member States are urged to ensure that the measures designed to protect victim rights are applied without discrimination based on various factors such as sex, gender, race, religion, and others. This underscores the importance of equal treatment and access to justice for all victims, regardless of their background or circumstances. Criminal law theorists should examine how discrimination and bias can affect both victims and offenders within the criminal justice system. This can lead to discussions

about fairness, equity, and the need to eliminate bias in law enforcement, prosecution, and sentencing.

Inclusion of Vulnerable Individuals: The recommendation suggests extending these rights to victims with a criminal record and those suspected of committing a crime, to the extent possible. This recognizes that these individuals may also be victims of crime or may have unique needs. Criminal law theorists should explore the complexities of victimhood and offender status, particularly when individuals occupy both roles simultaneously. This may lead to discussions on diversion programs and alternative sentencing approaches that consider the underlying reasons for criminal behavior while addressing the needs of victims.

In summary, the Recommendation highlights the evolving understanding of crime and its impact on society and individuals. It calls for a more holistic approach to criminal law theory, one that not only considers the punishment of offenders but also emphasizes the protection of victim rights, non-discrimination, and inclusivity within the criminal justice system. These principles can inform the development of more comprehensive and equitable criminal law theories and practices.

The overarching goal is to develop a theoretical model of the Criminal Code, with a parallel objective of enhancing awareness of criminal policy in transitional countries. It is crucial to underscore that crime represents not only a transgression against society but also a violation of individual rights, underscoring the paramount importance of safeguarding individual human rights.

This theoretical approach constitutes a groundbreaking development in intergovernmental communication, particularly within the context of the Ukrainian conflict and its path toward European integration. It highlights the fragility of conventional legal instruments and the necessity for innovative approaches to achieve approximation and international and local human rights protection. Member States are strongly urged to recognize and respect the rights of victims, particularly concerning their human rights.

In light of these evolving circumstances, the utilization of human rights law as a foundational element for criminal law theory and harmonization with EU law is of paramount significance. However, the pursuit

of justice and equity necessitates mandatory victimization and criminological assessments in draft laws and criminalization processes.

The security of the state is contingent upon its developmental trajectory, societal ideology, the primacy accorded to human rights, and the establishment of equitable responsibility for rights violations. The methodology for aquis approximation includes the examination of current EU legislation, European Court of Justice case law, European Commission decisions, and EC Directives on criminal policy, spanning substantive, procedural, penitentiary, and preventive dimensions.

Pragmatical development of holistic methodology

Approaching criminal law from a victimological perspective offers multifaceted insights. Pragmatically, it entails an exploration of the role of victims in criminal liability and their integration into the Special Part of criminal legislation. Criminal law, transitioning from its historical repressive functions to contemporary preventive principles within democratic states, plays an instrumental role in fostering social justice and curbing crime. This transition has led to an intricate regulation of the victim's physical and social characteristics, behavior, status, and the harm inflicted upon them, significantly influencing crime qualification and the offender's culpability.

In navigating these regulatory provisions, it becomes imperative to discern how victimization knowledge applies to criminal law relations and the broader process of criminalization. This encompasses various issues, including victimization in criminalization, the role of victims in criminal law, their impact on the doctrine of crime, the doctrine of punishment, and the classification of criminal offenses.

Victimology affords a unique lens through which to scrutinize the alignment between formal legal norms and public perceptions of crime. The examination of these correlations facilitates an assessment of the efficacy of criminal law prohibitions and the identification of measures to promote prosocial victim engagement in crime control (Tuliakov (2023)).

Expanding the application of passive citizenship principles within the ambit of criminal law could

hold the potential to enhance justice. This expansion entails extending jurisdiction to encompass crimes committed by foreign citizens against the rights and freedoms of Ukrainian citizens or the interests of Ukraine abroad. Enacting real citizenship principles for crimes committed outside Ukraine against Ukrainian citizens could further fortify the cause of social justice. Prioritizing the protection of fundamental rights and freedoms necessitates revisiting select aspects of modern criminal law theory, including the recognition of specific individuals, legal entities, and social groups as objects of crime. The amplification of victim protection within criminal law relations, with a concentrated focus on compensation and restitution, constitutes an intrinsic and ongoing process in alignment with societal expectations.

The next step should be the implementation of the bilateral Ljubljana-the Hague Convention (Ljubljana-the Hague Convention, 2023) This document as a milestone step in mutual legal assistance and prosecution of international crimes after the Rome Statute represents a significant development in the realm of international legal assistance and extradition, addressing crucial gaps in this field. The convention underscores a victim-centric perspective within international criminal law, all the while upholding the principles of equitable justice for those accused of criminal wrongdoing. Central to its mandate is the elucidation of procedural intricacies, the delineation of substantive content, and the delimitation of the scope pertaining to legal assistance. Furthermore, the Convention categorically prohibits the provision of amnesty in cases involving international crimes.

Of particular note is the Convention's commitment to streamlining various aspects of asset management. It introduces simplifications in the processes associated with the freezing, seizure, confiscation, and conversion of assets. Additionally, the Convention contains explicit provisions concerning the disposal of such assets, with a specific emphasis on the interests of victims of international crimes. It also addresses identifying and tracing property or proceeds linked to criminal activities. Importantly, the treaty acts as a consolidating force, transforming established practices in asset management into a comprehensive legal framework. This framework fills a void that has persisted for an extended period, enabling individual

states and associations to circumvent asset confiscation based on its prior absence.

Mostly it will give a new theoretical landscape to criminalize unified crimes against humanity and war crimes in national substantial criminal legislation.

Conclusion

As the landscape of criminal law continues to evolve, principles such as equality, legal certainty, proportionality, predictability, subsidiarity, and legality must be reframed within the context of human rights and the security of victims. Striking a balance between coercion and compensation, restitution, rehabilitation, and the prevention of future harm to victims becomes a pivotal endeavor. In addition, the development of the European Strategy on Criminal Justice (European Strategy on Criminal Justice, 2022) envisages consideration of issues related to combating family violence, environmental crimes, and corruption offenses, as well as cooperation in the field of justice through mutual recognition and protection of the rights of victims of crime. This is linked to the developments (Questions and Answers: Amending the Victims' Rights Directive, 2023) in justice (child-friendly and victim-centered justice), society (e.g., increased need for a coordinated approach to ensure constant availability of the victims' support services during crises (such as health crises) and developments of technology (digitalization, and availability of new technologies to victims' support, protection, and access to justice).

The future trajectory of criminal law will be substantially influenced by localized traditions and the convergence of coercive measures drawn from diverse cultures based on a human rights victim-oriented approach and secure policy of the state.

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