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CRIMINAL POLICY IN EAST EUROPEAN TERRITORIES

КРИМІНАЛЬНА ПОЛІТИКА НА СХІДНОЄВРОПЕЙСЬКИХ ТЕРИТОРІЯХ

Different methodological approaches, weakness and virtuality of state governing has of great impact of modern criminal policy in East European Territories. Analyzing modern ECHR and ECJ practice, one could consider that Crime, Criminal responsibility, and Punishment in Eastern territories will be reflected from the limits of internationally recognized substantive forms of conduct that necessary to criminalize, margins of criminal responsibility and the nature of punishment in comparison with preventive detention, security measures and criminal restitution, while conceptualizing unified approach of judicial practice on international level for future realization in native doctrine and legislation.

Key words: *ECHR practice, criminal policy, sovereignty, crime, punishment, abuse of powers.*

Різні методологічні підходи, слабкість і віртуальність державного управління мають великий вплив сучасної кримінальної політики на Східноєвропейських територіях. Аналізуючи сучасну практику Європейського суду справедливості та Європейського суду з прав людини, можна вважати, що злочинність, кримінальна відповідальність та покарання на східних територіях повинні бути відображеними, зважаючи на обмеження міжнародно визнаних форм поведінки, які необхідні для криміналізації, характеристик кримінальної відповідальності та визначення покарань у порівнянні із запобіжними ув'язненнями, заходами безпеки та кримінальною реституцією, а також концептуалізації єдиного підходу судової практики на міжнародному рівні для майбутньої реалізації у вітчизняній доктрині та законодавстві.

Ключові слова: *практика ЄСПЛ, кримінальна політика, суверенітет, злочинність, покарання, зловживання владою.*

Различные методологические подходы, слабость и виртуальность государственного управления оказывают большое влияние на современную уголовную политику в восточноевропейских территориях. Анализируя современную практику ЕСПЧ и Европейского суда справедливости, можно считать, что преступность, уголовная ответственность и наказание на восточных территориях будут отражены в рамках международно-признанных основных форм поведения, необходимых для криминализации, границ уголовной ответственности и характера наказания в сравнении с превентивным задержанием, мерами безопасности и уголовной реституцией, при концептуализации единого подхода судебной практики на международном уровне для будущей реализации в отечественной доктрине и законодательстве.

Ключевые слова: *практика ЕСПЧ, уголовная политика, суверенитет, преступность, наказание, злоупотребление властью.*

Criminal Law is a tool to protect Sovereignty and Security and is considered as major instrument to defend Human rights and ensure Harmony between State and Citizens [1]. But time changes and State's Sovereignty is frequently secured by disciplinary measures that due to rational purposes are not included at criminal legal relations being naturally the part of them. As time goes by, we have to analyze criminal responsibility, offence construction and trends in sentencing while colonizing criminal law at National level.

Colonizing Criminal Law means certain attack on its purity and clear subject as law of Crime and Punishment. A time when Criminal Law was associated with "Ultima ratio Regis" unfortunately has passed away. One considering emerging issues in modern criminal justice, has to analyze zemiotic and narrative tendencies in legal policy associated with diversification of the sense of Criminal to administrative and disciplinary practices. This widespread characteristic of state's punitive power. It means that usage of new methodological approach (triangle or holistic) formats legality depending on diverse narratives of law enforcement and judiciary [2].

At Z.A. and others v. Russia [3] the ECHR 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. Thus, use of disciplinary measures without necessary human rights guarantees is at any extent is more efficient for the state abuses of power than criminal proceedings.

The role of Individual changes too. Network and social clusters and platforms formulate new narratives that differ by state, national and common paradigms. These paradigms (Safety, Security and Independence) contradict each other on above mentioned levels, generating different understanding of what is the right to happiness and the right to be punished. The Law in action needs protective usage of new approaches from modern economy, psychiatry, neuroscience, sociology, political science.

But there are some gaps on the path to way of formatting Effective Criminal Policy against of "Mad Printer" one while legislators tend to use laws on crime and punishment as frequent instrument to fulfill fake political needs or social interests [4]. The urge to make something criminally liable gives politician or party to show them as a strongmen fighting for people's needs. As usual that is a bogus political trick, because is made for popularity and rating, nor for certain real protection and safety. In this way Eastern European Countries due to Slavic ideology and post-communist background are formatting specific family in European Criminal policy Synergy process.

First, only the countries of the Eastern European territories establish criminal responsibility in a single normative act - the Criminal Code. The practice of most European countries, based on the widespread interpretation of the crime in accordance with the established Engel rules (ECHR Case of Engel and others v. The Netherlands), sets out a diversified approach to sources of criminal law regulation [5, 6].

Secondly, the ECHR speaks of the definition of the Convention on Human Rights as a "constitutional instrument of the European public order" in the field of human rights. (Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland, § 156 [7]). The same can be said about the approach to punishment. The court found in case of S., V. and A. v. Denmark [8] that any flexibility of law enforcers and lawmakers in the application of the deprivation of human rights and freedoms should be limited to certain guarantees provided for in paragraph 5 of Article 5 including the deprivation of liberty, and the requirement that the offense must be specific and specifically defined, and the authorities indicate that the potential offender may be restricted in rights, if this does not damage the fair procedure for his detention and he will be entitled to a refund.

From our point of view, the regulatory function of Criminal Law is not only to secure of criminal law protection objects by the normative-determined measures of state coercion, but also the achievement of harmony in relations between the state and citizens, where the responsibility of the offender corresponds to the state's duty to seek, fair punishment and rehabilitation of the offender; compensation and restitution to a victim of a criminal offense; achieving social peace and harmony at the national, local and individual levels.

This fully corresponds to the interpretation of legality principle in implementation of the provisions of Article 7 of the Convention, whereby the court must verify whether the act of state coercion is punishable and that the penalty imposed does not exceed the limits imposed (ECHR Coëme and Others v. Belgium, § 145; Del Río Prada v Spain, § 80 – [9; 10]).

We know that sometimes levels of punishment or other coercive measures exceed stated limits. For example, in Ukrainian legislation applying more severe punishment under current criminal legislation is possible:

 with the departure of the sanction in cases provided in Part 2 of Article 53 of Ukrainian Criminal Code [11]. For the commission of a crime for which basic punishment is imposed in the form of a fine of more than three thousand tax-free minimum incomes, the amount of the fine imposed by the court may not be less than the amount of property damage inflicted by the crime or received as a result of a crime of income, regardless of the limit amount a fine stipulated by the sanction of the article (a sanction of part of the article) of a special part of this Code.

 with the departure of the sanction in cases of imprisonment established for a term of more than fifteen years, in accordance with Part 2 of Article 53 of the Criminal Code, and the provisions for the imposition of punishment on the totality of sentences. In drawing up sentences in the form of deprivation of liberty, in accordance with the rules of Part 2, Clause 71 of the Criminal Code, the total period of sentences finally imposed on the totality of sentences should not exceed fifteen years, and if at least one of the crimes is particularly grave, the total the term of imprisonment may be more than fifteen years, but shall not exceed twenty-five years.

 in theory, there is a possibility to determine a longer sentence if the President is to be deprived of liberty by deprivation of liberty for a certain period of time in the form of pardon. According to the provisions of Part 2 of Art. 87 KK, the act of President's pardon may be replaced by person sentenced by the court in the form of life imprisonment for a term of at least twenty-five years. In addition, this act is not an act of justice. And the possibility of substituting a punishment by an act of an administrative authority for a period of not less than 25 years does not correspond to the generally accepted principle of legality. By the way, the draft Law of Ukraine dated 03.03.2015 N 2292 "On Amendments to Certain Legislative Acts of Ukraine regarding the Replacement of Life Longer Imprisonment by Milder Penalties" provided for the possibility of limiting the president's discretionary powers, was vetoed October 3, 2018. We consider it expedient to consider in the future the determination of a two-stage solution to this issue: pardoning the person by the president and replacing the sentence with the pardoned person solely by the court.

 discriminatory practice. Unfortunately, there are specific examples that need immediate removal. Thus, violation of the above-mentioned provisions of the practice of the ECHR was implemented by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improving the System of Guaranteeing Individuals' Deposits and Removing Insolvent Banks from the Market", dated July 16, 2015, No. 629-VIII. According to the latter, the sanction of Article 220-2 and part 1 of Article 365-2 introduced additional punishment in the form of deprivation of the right to occupy certain positions or engage in certain activities for a term up to ten years [12]. Given the fact that according to Art. 55 of Criminal Code deprivation of the right to occupy certain positions or engage in certain activities may be imposed as the main punishment for a term of only two to five years or as an additional punishment for a term of one to three years, the stated "novel" is an obvious case of neglect of the principle of legality and should be eliminated from the existing criminal legislation.

Next existing question is concerned the problem of what criminal police makers should do when the State or its part became Virtual due to separation of uncontrolled territory, rebellion or national-liberation movement? How criminal policy in Virtual state will affect people's rights and duties when there is no border or other elements of State Sovereignty, but administrative oppression exists?

People's safety needs to be protected on European Continent. But social control schemes from the field of Virtual State differ on International and National level, perpetrator, victim and civil society attitudes.

Feeling safe, secure and independent means to be happy. The status of Happiness reflects the mainstream at modern sustainable World. Developed countries and virtual territories differ each other regarding to Happiness status.

The concept of Virtual State is based at State's Sovereignty erosion in favor of Nation's and People's security attitudes. Nation or People's development rise against different threats and criminogenic factors through their own legally mentioned obligations, rights and freedoms [1]. It is significant that the latest decisions of Taricco II, ECJ 2017 [13], Tsezar and others v. Ukraine, ECHR 2018 [14] 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.

But National and Peoples' Sovereignties are constructed on their own Cultural and Religious platforms that differs from the State one [1].

In addition, the role of Protective State changes at multipolar, post-truth informational society. It is the fact that the diversification of Criminal law enforcement understanding at the auspices of civil society cognitive mood, has a chance to be resulted in a situation when political union or party (civil society representatives) assumes the right to abuse opponents, forming armed groups, with a tolerance of local restrictions on the freedom of movement that, as a basis for the right to revolt during the rebellion, undermining the idea of the legitimacy of power and widespreading corruptive practices in the transitive development period. Criminal legal form has to be in a dissonance with developing public and social relations and processes.

Sometimes the effect of Informational society and Networks triggers Social Anomy and Protest against State Sovereignty as narcissistic energy Boom. 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 image 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.

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.

Does the Virtual State have to make a plain Criminal Legislation version, or we have to find proper ways to correct National and Peoples' Narratives, Rights and Obligations approximating State's Justice to people's needs. New actors need a new place at Public law balances and distribution of powers' background. To my opinion it should run through internationally accepted model like the trade state concept, or through more typical local Unrecognized State model. Northern Cyprus and Kosovo, Donetsk and Luhansk rebels' fake republics, Transnistria, South Ossetia, Abkhazia, etc., symbolize legal, moral and social circumstances that affect Human rights and obligations while fundamentals of public law and justice are formulated null and void on unrecognized territories. Thousands of applications, broken lives…

Regarding Ukrainian situation, the European Court of Human Rights has to decide this December that any related individual applications concerning violations or abuses of power at Crimea Peninsula or on other territories that are out of Ukrainian governmental control and which are not declared inadmissible or struck out at the outset will be communicated to the appropriate respondent Government or Governments for observations in parallel with the inter-State case (Ukraine vs Russia). After receiving the Governments' and applicants' observations in reply, the Court intends to record an adjournment for each case, pending a judgment in the inter-State case, with a view to having the files complete and ready for decision or judgment as soon as possible thereafter [15].

Thus Crime, Criminal responsibility, and Punishment in Eastern territories will be considered from the limits of internationally recognized substantive forms of conduct that necessary to criminalize, margins of criminal responsibility and the nature of punishment in comparison with preventive detention [16], security measures and criminal restitution, while conceptualizing unified approach of judicial practice on international level for future realization in native doctrine and legislation.

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