

CRIMINOLOGICAL CRITICISM OF CRIMINAL LAW

Giorgi Todria, Full Professor

Grigol Robakidze University, Tbilisi, Georgia

Abstract

The article discusses the peculiarities of criminal law and criminology. In order to push the process of compulsion on behalf of the state, an individual has to act not as a person who strives to restrain estrangement from the society, but as the one who him/herself causes estrangement. Because of this, the essence of crime for a lawyer is an action of a criminal. Thus, turning an estranged individual into a criminal is a typical example of compulsion on behalf of the state. Owing to this, from the viewpoint of criminal law, the eradication of estrangement can be measured by law-obedience, reducing the number of cases of breaching law, while from the criminological standpoint the eradication of estrangement is measured by improving living conditions, reducing the cases of estrangement.

Keywords: Criminal law, legal order, juridical practice, estrangement

Most countries of the world determine the aim of the criminal legislation in their criminal code. All sources of criminal law consider that the documents evidencing responsibility under criminal law stop estrangement – avoiding criminal encroachment (violation) and maintaining legal order, developing legislative comprehension in citizens, eradicating any kind of encroachment, protecting state sovereignty and formation, ensuring

citizens' independent and creative life, etc. According to this approach, compulsion on behalf of the state is one of the means of overcoming estrangement, and defining an action as a crime – as an element of this means.

In reality, implementation of the aim of criminal legislation has nothing to do with overcoming estrangement, as the estrangement is not revealed in the structure of crime. The following features of criminal dogmatics point out this:

1) In the process of working out the formula for the basic responsibility under criminal law, the starting point is the requirement according to which the action should exactly be described in law. The concept of “objectivity” is essential for a lawyer. Within the framework of dogmatics of criminal law all signs of action are described namely in the norms of law. These signs serve as equal measurement points. That is why the action described in normative standards is always a constant objective value for a lawyer as it is not depended on personal capabilities of a particular individual.

2) An action can become an element of responsibility under criminal law (objective side of an action) because it is described in the law. An action should be comprehended as a contradiction with the state. Among all attempts of eradicating of estrangement only signs that reveal the act of eradication of estrangement as the means of estrangement are selected. Namely, this aspect of the objective world is observed in objective composition of actions. Thus, objective composition of crime implies seeming base of responsibility under criminal law (an action which is considered by law as the element of objective side of an action) and not a real base (state as the means of estrangement). The whole logical process of

subsumption is directed to the above mentioned point. This is the way the legal system works and future lawyers are taught.

3) Intention, goal and motive of an individual determine his/her attitude towards the aspect of reality that is set by the state. It shows an individual's attitude to his/her own action and its result. In this virtual world a lawyer is well aware that increasing or decreasing the value of sentence within the scope of law depends on an individual's changeable attitude. Thus, subjective composition of an action persuades a lawyer that the model set by him/her is the base of responsibility under criminal law.

Thus, in juridical practice, the process of eradication of estrangement is identified with the procedure of ascertaining of responsibility under criminal law. In law, society is identified with the state and relations causing estrangement can be considered as the object of crime. In the subjective composition of action, an individual is considered not as an object of estrangement, but as a subject of estrangement. The objective composition of an action reveals amorphous society that lacks real life of individuals, but the subjective composition of an action reveals an amorphous individual that lacks any relation with society. Society and individuals are split. This reveals that the state forces eradication of estrangement of subjective and objective elements be seen as similar.

Compulsion on behalf of the state that is built on the category of a crime is not a means of eradication of estrangement as the category of a crime has no relations with the cause of estrangement. When an individual commits a crime, i. e. acts against society, he/she is estranged by society.

Turning an estranged individual into a criminal is a derived value of an individual as an individual is a criminal only in case the relations he/she encroaches are announced by the state as the objects of encroachment. Thus, estrangement of an individual is related not to individuality of a particular

person, but to the reality of Compulsion on behalf of the state. Public relations are limited by the forms set by the state. Philosophically saying, the state acts as the means of relation with itself though, the fact that the state itself is the reason of estrangement is never observed.

Thus, in the process of ascertaining of the responsibility under criminal law, a real subject becomes an object of encroachment, but an individual as an object of estrangement becomes a subject of estrangement. Though the above mentioned is conditioned by the on-going processes in society, in the juridical practice, fusion of subjects and objects is the basis for the state as functioning of the means of estrangement [1].

The subject of criminal law investigation is randomness as it is related only to superficial forms of life. According to T. Tsereteli, “Capitalism comprises conditions the natural features of which inevitable cause a crime. But this inevitability is revealed in certain occasions of crime, i.e. randomness of crime” [2]. It is obvious that the aim of the legislation – avoiding criminal encroachment and maintaining the legal regulation – cannot be achieved as the basis of the eradication of estrangement – crime – is a random, unreal phenomenon. Historical analysis shows that the essence of crime – eradication of estrangement – in the categories of criminal law acquires a mystified form of estrangement.

We have to take into consideration one circumstance. Criminological thinking of different countries does not consider bilateral role of law: law as the form of expressing contradiction with society and law as the element of determination.

Consequently, we do not have such fundamental research which analyses the factors revealing determination of criminality. Criminological thinking is thinking not only about the essence of a crime, but it is also consideration of forms in which determination of criminality is revealed.

Clearing up the dualistic nature of law directly affects the correct solution of the issue of measuring criminality.

Thus, for the right solution of the given issue it is necessary to investigate the historically existing forms of governmental reflection. The given approach will give us the opportunity to get rid of eclectic thinking existing in criminology. Besides, the described approach will reveal the reason why a modern criminologist thinks superficially. We believe that as a result of the analysis of the dualistic nature of law, the most difficult problem related to criminology will be solved.

It is indisputable that without understanding the criminogenic role of criminal law and the expression forms of law as the determination of criminality, criminological thought will never reach the top of science. The mentioned consideration proceeds from the fact that criminal law always appears to be the means of compulsion on behalf of the state in relation to ensuring a certain type of property. Let us discuss a well-known historical fact. In XV-XVI centuries, population of West Europe was massively pursued from their lands for the purpose of expanding pastures. As a result they grew poorer and poorer and started thieving, robbing and committed other types of crime in order to live somehow.

In the mentioned historical period, they were severely punished as in the given case such individuals were considered as subjects of estrangement and criminals. Later these individuals were forced to work in developing manufactories in any hard conditions. In both cases these people were considered as criminals deserving punishment. In the determination of crime beyond the existing legal relations, the real role of law is not observed, neither law as the element of compulsion on behalf of the state and the way of accumulating capital.

Contradictory nature of law is the fact that law as the subject of estrangement essentially participates in determination of crime. And as the form of revealing the given determination, it is given virtually: a particular individual is a subject of estrangement, but law is an object of estrangement.

Why does criminological criticism become impossible in Georgian society? It seems impossible for several reasons:

1) Georgian criminological thinking is still not free from the norms set in the totalitarian state [3]. Criminology is still taught by such criminologists who think that criminology is based on criminal law.

2) In the Bachelor's programme of criminology, Theory of Law and Criminal Law are taught as pre-requisites instead of Philosophy, Sociology and Economic Sciences. This, on its turn, shows the lack of knowledge in criminology.

One significant fact should also be pointed out. Many lawyers refer to criminology as the course of the Bachelor's programme of the Faculty of Law imitating the approach of many European countries. But they do not consider that monopolistic economy is developed in European countries that establish legal etatism. States try to admit such monopolistic criticism of state and law that cannot offer the society radical reforms. That is why a criminologist is not able to gain critical thinking skills at the faculties of law of worldwide universities. As a result, he/she develops phenomenological skills instead of the skills of critical analysis.

There is no Board in Georgia that certifies Doctoral Degree in Criminology as dissertations defended in criminology are not differentiated from dissertations defended in criminal law, criminal law procedure and penitentiary law. Even more, dissertations in criminology, as a rule, are a sort of symbiosis of criminal law and criminology. The founder of

ethnomethodology, Garfinkel once said that all this is the result of establishing ideas of “dumb idiocracy”.

In the process of strengthening the independence of Georgia, criminology can play a significant role if it is formed as a manifest of global thinking of eradication of estrangement. The subject of criminology is criminality genesis of which has law as an important element. The starting phase of fulfilling this criminological mission is setting criminology free from the “tongs” of criminological thinking.

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