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E. STRELTSOV,
Prof. Dr. Jur., Dr. Theol., Corresponding Member of the National Academy of Legal Sciences of Ukraine, Honored Scientific Worker of Ukraine, Scientific Secretary Southern Regional Center National Academy of Legal Sciences of Ukraine

Є. СТРЕЛЬЦОВ,
доктор юридичних наук, доктор теології, професор, член-кореспондент НАПрН України, заслужений діяч науки і техніки України, вчений секретар Південного регіонального центру Національної академії правових наук України

CONTEMPORARY POSSIBILITIES OF STATE IMPACT ON CRIME: SOME REFLECTIONS

Summary. Law regulation is one of the basic tools in a state administration, which involves a system of legal methods and means of influence with the aim of fixing, protecting and developing social relations according to social needs. In the contemporary conditions influence on criminality has been becoming one of the basic tasks of the state administration. Taking into account a complexity of the current social processes, we consider that such influence must be rich in content, must have more clear forms and types of its realization.

Keywords: crime, criminality, criminal law, criminal law area, forms and types of impact on criminality.

Introduction. Legal provision is one of the major tools in the state administration. Of course, first of all, we are expecting such regulation from law, that will order social processes in the state, protect the values enshrined in the society [1, 187]. Therefore, legal regulation, which does not have proper quality, will not only be ineffective, it may negatively affect the realization of many of the necessary social processes. This is also relevant for organizational-legal measures related to the impact on crime, one of the essential directions of state administration [2, 28]. If the aggregate of such measures has the character of an inseparable, uniquely defined sequence of interaction of specific processes and techniques, leading to the achievement of set goals, such measures should be considered a method. In this case, it is important to consider, that impact, as a method, can have various general and specific forms of its substantial existence and expression.

Form and substance are interrelated aspects, the form acts as an external expression of certain substance or, as was perceived by the German philosopher Hegel, the substance is formed, and form is substantial. Therefore, here, at a more sectorial level, inaccuracies in determining the necessary forms and their substance can have a real negative impact on all the processes of state building. In any case, if citing a quote of the author of «The Capital», a part of which is put in the title of this article, in its entirety, it reads: «The form is devoid of any value if it is not a form of substance» [3, 159] which means that between form and substance

in the impact on crime, there should be an organic relationship.

It would seem that all is clear; however, just here is where the known discussion starts. Most commonly defining impact as a method of influence on crime, the following forms are identified: fight against crime, counteracting crime, crime control, crime prevention, etc. Of course, there may be some clarifications and variations. For example, a more active form of impact on crime than fighting is allocated war against crime. Or a need to distinguish between the concepts of «crime prevention», «crime prophylactic» or «crime averting» is underlined [4, 139].

A view was also expressed, according to which, counteraction is essentially equalized with control. Activity of a state in the development of goals and objectives, production of tools and methods of influencing crime may also, subject to certain aspects, be referred to as criminal policy. Criminal policy can have different directions and levels, may have different goals, among which are both strategic and tactical. But this also has its difficulties. First, this concept is interpreted differently [5, 732-733]. In addition, difficulties arise when trying to relate to each other, for example, the fight against crime and criminal policy. Is it possible to compare these concepts, which is broader, deeper, and so on?

In this regard, a more general question is legit: why such a necessary for society state activity does not always have the necessarily productive character. Different answers are possible, however most probably it is due to a number of interrelated circumstances. For example, in terms of substantive features, it is likely that the state does not know, or can not, or if considered only as a scientific proposal, does not want to establish the causes and conditions of the emergence and existence of certain types of crime. This leads not only to future virtuality of counter criminal measures, but also to progressive generation of crime, which, in turn, «allows» crime to significantly disturb the social processes that are called upon to ensure a decent existence of human civilization, and are viewed by the societal legal consciousness as an inevitable reality.

Discussion. Speaking in general terms, for many centuries humanity has been developing programs of impact on crime that contain different in substance general ideas and practical measures of influence on this negative social phenomenon. The score of such «fight» is well known. Therefore, domestic and foreign experts continue their, to some extent, « Sisyphean work» and are constantly searching for the most productive capabilities of such impact, which is to develop tools and techniques that contribute to the achievement of one main goal — impact on crime in its general or species forms. All this confirms the idea that, in such circumstances, it is essential to understand the sequence of the final determination of the form and substance of the impact on crime or, in other words, to answer the question of what should be primary in this definition: the substance, which determines the form, or the form, which determines the substance? Or should they be interrelated processes? Let us try to answer this question without utopia, scientism and unnecessary rhetoric.

Firstly, it should be noted that the impact on crime consists of several necessary elements. The criminal law component is, in our opinion, one of the main «precursors» for this. After all, it is the criminalization of specific socially dangerous acts that transfers them to a different social category, and those who have committed them — to a different social group. This in turn creates a necessary object of regulation, both for all the areas covered by the

so-called criminal law sphere (criminal law, criminal procedure, criminalistics, criminology, penal law, etc.) and for other areas (e.g. Administrative Law); initiates the activity of government and social institutions and organizations, etc. At the same time, for many years, we have been insisting on the fact that since ancient times experts reasonably believe that criminal law is the «*ultima ratio*», that is «the last resort», which a state has at its disposal to overcome the most socially dangerous acts. Such a definition does not diminish the role of criminal law in state building, the legal provisions of which may be effective to the extent necessary, if certain social values, the protection of which is assigned to said provisions are declared in the society and the state. However «hard», and in some countries «irreversible» possibilities of application of criminal law provisions, in the event of their unreasonable use, can go far beyond the execution of the protective functions of this law [6, 103-104].

In this regard, it should be clearly established that criminal law should not be seen as a kind of universal social «medicine». After all, in the concept of «last resort», in our opinion, a thesis is laid, which states that to eliminate or reduce the volume and number of socially negative defined acts, it is necessary to primarily develop a number, and possibly a complex of relevant social measures to influence this. Unconditionally, in order to develop and implement such measures, initially, as already mentioned, one should understand the meaning of events, to determine which attributes are key for them, which are the prerequisites for their emergence, what are their possible consequences, etc. Only then a reasonable plan to overcome these acts should be developed, the provisions of this plan should be implemented, and if necessary, systematic and permanent nature should be given to them, which, in general will determine the productivity of the state influence. Perhaps some of the planned measures will turn out to be insufficiently effective, and then they need to be clarified, modified. Perhaps some should be excluded. And this again requires certain «financial-brain effort» to be taken, also without accurate confidence in their perspective effectiveness. There are many questions, but this is exactly how it is necessary to begin to impact emerging negative acts. It must be thoughtful complex of challenging actions but it should be carried out before we want to «punish». Put yourself in a place of reasonable parent. What does such a parent need to punish their child? First to «exhaust» all the preliminary educational complex, and only then, realizing that everything was done, and the child continues to seriously «act naughty», to apply the punishment. Criminal law is essentially the same «belt» in the hands of a «reasonable» state.

If we try to compare criminal law, as a branch of law with the branches of medicine, and it is reasonable since medics deal with physical human illnesses, and lawyers — with social «illnesses», we can come to a conclusion that the analyzed law is closest to surgery. According to the view of the well-known Ukrainian surgeon Prof. S.A. Geshelin, «with the knife to the body — only as a last resort». Criminal law is not just a social «belt», but also a social «knife» in the hands of the state, which further enhances its social possibilities.

It is important to note that over time the term «*ultima ratio*» because of its figurativeness, from being purely legal, started to be used in socio-political life. For the first time it happened during the Thirty Years War, when Cardinal Richelieu ordered to cast the words «*Ultima ratio regum*» (Latin: the last argument of

kings) on all cannon barrels. Since 1742 by order of King Frederick II of Prussia such an inscription was also inflicted on all army cannons. At the same time, and this should be emphasized, in this case it meant not as much the last resort, as the most decisive means that should finally resolve an existing conflict. However, in this sense too, criminal law attains an added social value.

Therefore the process of criminalizing in its entirety, as a necessary social prerequisite in the organization of the subsequent impact on crime, requires its own separate analysis. However, let us try to identify a slightly different aspect: how, in which way is the possible impact on crime stated in the provisions of the legislation of the criminal law sphere.

A study of the provisions of this legislation shows that in the norms that stipulate their goals, purpose, functions, etc. (for example, Art. 1 of the Criminal Code, Art. 2 of the Code of Criminal Procedure, the provisions of the Law «On the Forensic Review», etc.), the questions of liability of a specific person for the commission of a crime are personified to a greater extent and the general directions of impact on crime are not highlighted. Thus, the legislation which creates a legal basis for impact on crime, the procedure of implementation of relevant legislation, forensic activities and technical-criminalistics provision for different categories of cases, etc., does not specify the forms and substance of possible state influence on crime, which requires the continuation of such analysis.

Concluding the research of the complex processes of creation of necessary legislation for impacting crime, we believe it necessary to underline two important points. First, speaking of criminalization as a necessary component of the impact on crime, we must at the same time note, that not only the criminal law provides the necessary legal prerequisites for this. Overall policy direction of such impact, its substance and form can greatly, so to speak, in reverse order, determine the nature and directions of the process of criminalization. Secondly — if the impact on crime, as one of the areas of functioning of the state, is not enshrined in the relevant legislation of the criminal law field, then consequently such impact is largely determined by the socio-political activities of the state, which, in turn, provides a certain «freedom» in the elaboration and justification of the substance and forms of impact on crime, including such activity through research

A systematic approach to the definition of the initial steps in the organization of impact on crime, a detailed analysis of the manifold of processes of criminalization can offer a solution, not only in the «formal» use of the concepts of «fight», «counteraction», «control», «prophylactics» and others, but also in filling each of them with specific substance, which in turn should allow their more substantive use while impacting on crime. In our view, while separating these concepts one should not so much focus on the dynamics of their impact on negative processes (for instance, some more harsh, others — more lenient) as on their internal substance, as outside activity may not always correspond with the impact on specifically the fundamental provisions that characterize crime. We have some experience for this approach, as in the early 90-ies of the last century, when the topic was still «not trendy», we already spoke about the need for more precise reasoning in the use of these concepts [7, 28].

Of course, all is not that simple. It is known, that the acts included in the total array of crime are quite «unsimilar», for example, different social values on which they impinge, different nature of the acts,

community members, different in their social characteristics who commit them, etc. Therefore, the modern character of the research of this problem requires, in our opinion, a more detailed use of the inductive method of conducting such a study, which, as should be recalled, was proposed by the founder of English materialism, philosopher Francis Bacon, and this method receives its implementation in law due to the fact that in the study of events and processes of a lesser scale, by systemizing the established generalities and systemizing certain generalizing theoretical provisions, the extraction of more general characteristics that are inherent to this phenomenon as a whole is carried out. We need to begin such a study not from a search of the forms and substance of the overall impact on the «whole» of the crime, but from attempts to determine the specific characteristics of substance and forms of impact on certain groups of crimes.

In order that further study would receive the necessary substance-methodological character, let us try to analyze from these positions, one of the main forms that is used in the organization of the impact on crime. Thus, the fight against crime, which is defined as a certain active social confrontation, should logically assume the victory of «good» side and, in the long term, lead to the elimination of the «defeated» social phenomenon. But the aim of eradication can only be achieved where there is an interrelated set of circumstances: a) criminal acts are alien to moral-ethical values enshrined in a particular society, and contradict the socio-legal foundations laid down in this state; b) the causes that produce them, are uncharacteristic to the given society, for example, are the «birthmarks of capitalism». Precisely then can a social fight against certain events and acts lead to their elimination, what was still very recently proclaimed by us at all levels, including the reasoning of this idea in many scientific studies. However, even today a number of acts, such as criminal infringements against life and health, violent criminal attempts at seizure other people's property, sexual offenses, including rape, pedophilia, etc., which are rejected by the morality of any civilized society exist, and the need for active dynamic fight with them stays relevant.

However not all such acts have such clearly negative characteristics, which are negatively perceived by the society for obvious principal reasons. There are whole groups of human actions deemed today by the legislator as criminal, but which not only «escort» ongoing social processes, and to a certain extent, are produced by them. Consequently, the analysis of the essence of such groups should be carried out on a different level, with a focus on other aspects, including the attempt to answer the following questions: 1) should in such a situation, the criminal law be seen as the main state tools of impact on these negative phenomena and 2) keeping the criminal law prohibition on a certain type of such behavior, which state-legal form of impact should be identified as the most effective.

Such an approach can be used in the evaluation of many individual groups in the general array of modern crime. Let's start with economic crime. The first question that needs its own assessment is: what are the social determinants? International lawyers have long «known» the answer to this fundamental question. For instance, in January 1996, in a private discussion in Canada in the prosecution's office of Montreal, the prosecutor in criminal cases, Ms. Jennifer Briscoe, speaking about the nature of economic crime, aptly said that «coming into this world (*of market economy E.S.*), we enter the world of money. And where there is

money, there are always economic crimes. Economic crimes are the «cost» we pay for living in such a society [8, 8]. We also understand it already. Thus, speaking in October of 2012 in Odessa on a representative international criminological symposium, the President of the Criminological Association of Ukraine A.M. Bandurka noted that economic crimes are part of the existing system. But getting back to economic crimes, if this is so, then the phrases, which indicate that such acts «impinge on national security», or «undermine the socio-economic development», or «contradict the fundamental interests», etc., should be considered at best, as «unconscious».

Therefore, in order to impact on the negative phenomena that are an «organic» part of the existing system of the functioning of the economy, other approaches are needed, since the eradication as the end point of impact, in this case would be, in our opinion, utopian. Of course, this statement should not be regarded as «all forgiving», one which, to some extent, confirms the «objectification» of such acts in the current system, «allows» the possibility of unpunished commission of economic crimes. It is not. But if such acts in one way or another are «derivative» of the existing economic system, then setting the task of «burning them out with a hot iron» should be considered, at best, as an attempt to pursue desired goals without consideration of objective circumstances and possible consequences, or what has been traditionally named voluntarism. But then which ways of impact should be formalized?

Of course, despite the fact that for the separation of this group of offenses, almost only one approach exists, within the group, such crimes have different characteristics. One of their main characteristics, which largely determine the social danger, is the consequences of such acts, and, above all, the damage they inflict. In this regard, let us consider those social acts that cause damage primarily to the state, for example, evasion of taxes and duties (other mandatory payments). Taxes, as we know, are mandatory, compulsory, gratuitous payments that should be carried out by individuals and legal entities to the state income. Taxes, especially in a market economy model, are more than necessary, because it is through these payments that the state impacts on many important social processes. The social purpose of taxes is manifested in their functions: fiscal and economic. The fiscal function consists in forming the monetary income of the state, which are necessary for the maintenance of the state apparatus, the military, development of science and technology, healthcare, the implementation of various social programs, etc.

However, it is well understood that between the amount of the volume of the monetary mass to be received, that is planned by the state and the actual size of the funds received, always, in all countries, there is a certain gap, thus the budget deficit, which is largely dependent on these factors, is initially established as permissible and the tax "shortage" is transferred to the so called category of «natural loss». But under certain conditions, this "loss" may entail criminal liability under Art. 212 of the Criminal Code of Ukraine.

But how should in this case, the government impact on tax crime, what form to choose to for this, which substance to fill this form with? In our opinion, in such cases one should speak of control over the level of this crime. Moreover, and this should be emphasized, control over the level of tax evasion should be treated as secondary, as the primary control should be that of the level of cash

inflows. For well-known reasons, and it is understood not only by professionals, tax evasion — is a phenomenon that is not contrary to the market model of the economy, is not incompatible with the mentality of many social groups, which have to pay taxes, and is, to some extent, an «accompanying» phenomenon, therefore counteracting it, and all the more so, fighting with the given act, it is impossible, as it is an integral part of this system. Still, understanding the importance of this type of payment, especially for "itself", the state should control the level of tax inflow, monitor and ensure that their nonpayment does not go beyond a certain critical threshold, applying for this measures, including those of criminal law compulsion. So in this case a different substantial tactic and methodic of impact on crime, which most likely implies, as mentioned, a socio-controlling form of impact should exist.

It is worth to note that this evaluation is not only relative to economic crimes, which are enshrined in the Ukrainian Criminal Code. For example, the President of the International Olympic Committee, Jacques Rogge directly stated in August of this year [2012] that doping, the responsibility for the use of which is provided for in the Criminal Code of Ukraine, it is impossible to defeat. «You can never solve the problem of doping completely. Doping — he believes — is a form of crime in sport. *And you do understand that society can not get rid of crime*» (*emphasis added — E.S.*). And further: «And sport also can not exist without doping control» he believes (rus.DELFI.ee). In early November of 2012 year at the press conference dedicated to the doping scandal that is associated with the famous cyclist Lance Armstrong, the head of the World Anti-Doping Agency, John Fahey, incidentally, the former finance minister of Australia, stated that «*the war against doping can not be won*» (*emphasis added — E.S.*). However, such a seemingly «decadent recognition» did not prevent this agency to make a decision not only to deprive Armstrong medals for seven victories in the prestigious Tour de France, but to oblige the cyclist to return 3 million euros he received in prize money. If in this regard, we again recall Hegel, he thought that if a problem is unsolvable, it is not a problem, but regularity. This again implies that the understanding of the nature and the «origin» of negative phenomena in no way removes the need to impact on them. Simply, when carrying out such acts it is necessary to correctly choose the form of such impact and fill it with specific substance.

In our opinion, this also applies to a number of other groups of crimes, such as crimes committed by minors, a part of acts in the field of new technologies that are already considered criminal, etc., where government impact should carry a different character than when impacting the «traditionally-dangerous» group of crimes.

However, there are acts, the difficulties in assessment of which do not allow not only for equal and often even coordinated assessment in different countries.

As an example, let us consider the processes of euthanasia («easy», «decent» death). Only within the boundaries of regulation of the European region in terms of legal regulation of euthanasia, three groups of countries can be distinguished. The first group includes countries that allow both active and passive euthanasia (such as the Netherlands, Belgium, and Sweden). The second group consists of countries in only passive euthanasia is allowed (e.g., Austria, Spain, France, and Luxembourg). And finally, there is a group of countries in which any form of euthanasia is criminalized (e.g., Greece,

Poland, Russia, Serbia, Ukraine, Croatia, Czech Republic). There are interesting historical facts here. For example, in Finland, where passive euthanasia not that long ago ceased to be considered illegal, the first indications about suicide appeared in the General Statute of Laws of 1442 (!), where such acts were referred to as offenses against the state, which in the Middle Ages still made it possible to consider them criminal and not church crimes.

In general, however a more or less paradoxical situation is taking place. Countries of one continent, with practically the same model of economic development, with similar societal values and principles of state building establish different legal attitudes to euthanasia: from its full allowance (active and passive forms) to the criminal prohibition of it in any form. How to determine the substance of the impact on the processes of euthanasia such conditions in countries where it is prohibited, what form to choose for this?

Perhaps, in the base of such a ban there are some other arguments that will allow to more clearly defining the substance of the impact. For example, at the «equality» of the other arguments, the main role in these cases may be taken by religious postulates that dominate in a given society.

At first glance, this option seems quite acceptable. For example, in Greece, Russia, Serbia and Ukraine, where Orthodoxy is dominant, according to the doctrine of which, our life is the highest gift of God, the beginning and end of which are found only in His hands (*Job 12:10*), any human intervention in this process is unacceptable, and the criminalization of such acts seems quite justified.

But after a more detailed analysis it becomes clear that such arguments tend to faint, if not to disappear. For instance, in Belgium, where 76% of the population consider themselves Catholic, and the Catholic Church actively protested against allowing euthanasia, in 2001 both forms of euthanasia were officially allowed. In France, where 62% of the population consider themselves to be Catholics, in Luxembourg 76% Catholics, i.e. almost the same percentage of Catholics as in Belgium, only passive euthanasia is allowed. However in Poland, where from 70 to 90% of the population considers themselves to be Catholics, in Croatia, where there are 85% Catholics, i.e. the percentage of adherents of the Catholic faith is slightly larger, but still practically at the same level as stated above, any euthanasia is prohibited. What is it that lies in the basis of making legal decisions regarding euthanasia in these states, including its prohibition? Therefore we repeat, the question of effective impact on this type of acts in the countries where they are recognized as criminal has all the chances to move into the category of «eternal». And, maybe, figuratively speaking, everything is simpler, and we again have to think about the social «boundaries» of criminal law impact? For example, in England, suicide was in general considered an illegal until the 1960s. But in 1961 a law on suicide was adopted, which largely expressed disapproval of it, but at the same time, it was recognized that «*the severity of the problem can not be solved by legal prohibition*» (*emphasis added — E.S.*) This is to some extent, if you desire, a reason for further reflections on the choice of forms of impact on crime.

Conclusions. The dynamic development of the world, processes of globalization, which nowadays attained irreversible character, objectively formulate new challenges for the legal regulation of such processes. In this regard, there are increasing discussions about the prospects of the development of

criminal law. Such development may relate to both the general provisions connected to the processes of criminalization and decriminalization, penalization and depenalization, further categorization of socially dangerous acts, problems of improvement on the level of legislative techniques, etc. This can include changes that will apply to the institutions and norms of the Special Section. Possible changes in the system and the types of penalties are being increasingly discussed, giving this type of government impact the character «adequate» to the committed act. Such changes may occur at both the international and national levels.

Nevertheless, these processes should not acquire the character of «bravura demonstrations» and mechanical copying. In this paper we have attempted to demonstrate how thoughtful and reasonable, even «socially cautious» should be any decisions related to the criminalization of certain acts, transfer, in this context, of «normal» people to a different social category, starting thus, the entire mechanism of criminal justice, but in essence — the search for new, or modified, or other methods of impact on crime, which we «ourselves» create with the processes of criminalization. Consequently, all of these processes must be thoughtful, interconnected, interdependent, mutually submitted or, speaking more figuratively, sufficient and necessary. Only such an attitude to the initial processes of criminalization and the subsequent impact on the «created» crime is able to display the effectiveness of state building, the general level of the functioning of the state mechanism, and the proclaimed form of impact will receive the necessary substantial filling. Still there are more questions than answers...

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Стрельцов Е.Л.

Современные возможности государственного воздействия на преступность: некоторые размышления.

Аннотация. Правовое регулирование — один из основных инструментариев в государственном воздействии на общественные отношения, которое традиционно предполагает осуществление этого при помощи системы правовых способов и средств воздействие с целью их закрепления, охраны и развития в соответствии с общественными потребностями. В современных условиях воздействие на преступность становится одной из основных задач государственного управления. Учитывая сложность современных социальных процессов, такое воздействие должно иметь необходимую содержательную наполненность, более четкие формы и виды своей реализации.

Ключевые слова: преступление, преступность, уголовное право, уголовно-правовая сфера, формы и виды воздействия на преступность.

Стрельцов Є.Л.

Сучасні можливості державного впливу на злочинність: деякі міркування.

Анотація. Правове регулювання — один з основних інструментаріїв в державному впливі на суспільні відносини, яке традиційно передбачає здійснення цього за допомогою системи правових способів і засобів впливу з метою їх закріплення, охорони та розвитку відповідно до суспільних потреб. В сучасних умовах вплив на злочинність стає одним з основних завдань державного управління. Враховуючи складність сучасних соціальних процесів, такий вплив повинен мати необхідну змістовну наповненість, більш чіткі форми і види своєї реалізації.

Ключові слова: злочин, злочинність, кримінальне право, кримінально-правова сфера, форми і види впливу на злочинність.