



УДК 343.9.01

**АНТРОПОЛОГИЧЕСКОЕ РАЗВИТИЕ И ОБЩЕСТВЕННАЯ МОРАЛЬ:
ПРОБЛЕМЫ УГОЛОВНОЙ ПОЛИТИКИ**
**ANTHROPOLOGICAL DEVELOPMENT AND PUBLIC MORALS: PROBLEMS OF
CRIMINAL POLICY**

Boychenko V.P. / Бойченко В.П.*Ассистент кафедры уголовного права**ORCID: 0000-0002-1938-4943**National University «Odessa Law Academy»,**Odessa, Fontanska doroga, 23, 65009**Национальный университет «Одесская юридическая академия»,**Одесса, Фонтанская дорога 23, 65009*

Summary *This issue is a special comprehensive study of the anthropological foundations of criminal law policy to ensure the security of morality in modern legal doctrine and criminal law of Ukraine. A concept of criminal law protection of public morality in Ukraine in the transition to the new legislation was developed. The study of criminal law protection of public morality as socially and historically determined phenomenon of anthropogenesis is analyzed. The ideology of criminal legal compensation for victims of crimes against morality as a criminal measure is supported, as a sense of social justice is the highest goal of regulating criminal law counteraction to crimes against morality in terms of tools and mechanisms of modern legal anthropology.*

Key words: *public morality, criminal law protection, criminal policy, crimes against public morality, criminal anthropology, anthropological method.*

Introduction

Morality in the criminal law sense is a social relationship that is formed and developed in society, to ensure respect for some people to others, shyness, respect for universal values established in society, non-compliance with which a person leads to public condemnation and affects the level of cultural and spiritual personal development. But the case of development depends not only on standard goals but the urge to be secure. In order to be secured it is important to organize new criminal policy based partially on Based on this, the concept of criminal law protection of public morality in Ukraine in the transition to the new legislation was developed.

Main text

The study of criminal law protection of public morality as a socially and historically determined phenomenon of anthropogenesis is a complex process to study the social preconditions for criminalization of such crimes, features of the modern concept of criminal law protection and prospects for improving the relevant norms [1, 2]. Morality in the criminal law sense is a social relationship that is formed and developed in society, to ensure respect for some people to others, shyness, respect for universal values established in society, non-compliance with which a person leads to public condemnation and affects the level of cultural and spiritual development of her as a person. Under criminal law protection are measures to ensure the security of existing social relations and interests and deter citizens from criminal encroachments by defining in criminal law harmful to the individual, society and the state offenses and establishing criminal penalties and other measures of criminal law influence [3].



The main hypothesis of the study is the statement of the possibility of using the subjective characteristics of the individual and the tolerance of its assessment in the information society as a basis for criminalizing acts against public morality.

Not only public danger, but also network permissibility and support of individual deviations makes it possible to recognize the act as socially dangerous. Thus, the material feature of the crime (danger to the state and society) is determined by the significance of illicit practices for the individual (social group) and is reinforced by tolerance of violations of these norms in the reference group (subculture) or society as a whole.

The presence of numerous scientific positions, which are sometimes contradictory on certain debatable issues regarding the regulation of criminal law protection of morality in times of cultural relativism, indicates both the urgency of the issue and significant complications in the process of qualifying crimes that encroach on relevant objects. From the point of view of criminalization theory, this may be due to the dominance of the classical methodology of positive legal research. On the other hand, the progress of knowledge in the field of existing scientific disciplines with their history of development, theoretical and methodological support, definition of subject-objective area, classification characteristics, long-term goals and objectives largely depends on ways to transform this knowledge under the influence of new concepts, theories, exercises and direction [4].

The criteria for using the anthropological method for the analysis of a specific legal form and the factors that determine its specificity are determined. The typology of crimes against morality from the point of view of the personal approach, and possible criteria of revealing of efficiency of criminal-legal influence in this case is developed. We argue that improvement of legal mechanisms for regulating social relations arising in the spiritual sphere should become a priority of public policy (including criminal policy) in the field of morality and spiritual security of the individual, society and state.

The implementation of such a policy involves, in particular, improving the existing system and legal features of the corpus delicti, as well as the development of new corpus delicti (taking into account the specifics of both criminal liability and spiritual life) and the inclusion of relevant legal norms in the current Criminal Code.

This vision of criminal law anthropology, in contrast to the established ideas in this field, linking its existence with the positivist methods as a private criminal law theory that studies the relationship between personality and criminal law, personality as an object of action rights and its requirements to the law, the structure of personal values and criminal law as a means of embodying these values in public life, human rights and their legal protection by criminal law.

Thus criminal-legal prevention of crimes is characterized as an effect of the criminal law as a whole, and not exclusively of its separate norms and institutions. Implementation of protective and preventive criminal-legal relations insists on the need to differentiate the amount of state coercion depending on the characteristics of the subjects of such influence (individuals, social communities, the state), the degree of influence on the characteristics of the perpetrator; its criminality; the severity of the crime; the needs of the victim, third parties, the state, the international



community).

It is stated that the formation of legal anthropology as a relatively independent scientific field in modern criminal law is through the promotion of new scientific paradigms, new methodologies of legal activity (lawmaking, interpretation of law, application of law, etc.), as well as at the logical level - by providing new meanings of concepts and derivation on this basis of new legal constructions [5].

To our opinion anthropological knowledge in criminal law appears as a result of fixing new connections between signs and objects that have developed in the system of legally significant activities, operations and procedures to ensure the security of the individual, society, state by specific methods of criminal law. So legal norms in the criminal-legal and political sense receive anthropological interpretation due to the need for new activities based on humanistic principles, the need to increase the effectiveness of criminal-legal protection of the population from crimes against morality.

That is why the anthropological analysis of the criminal law norm is a humanitarian examination of legal documents, mainly related to its assessment from the standpoint of relations between the subjects.

The purpose of anthropological analysis of crimes against morality is to determine the degree of compliance with the conditions of normal development of man and society using the methods of criminal law. This assessment stems from the belief that criminal law is a form of collective adaptation of the community to its place of existence.

Criminal law in the anthropological sense of today is analyzed as a system of interrelated obligations, considered as a right on the one hand and recognized as a duty on the other to ensure the security of the individual, society, state, protect them from criminal offenses. Accordingly, the anthropological analysis of the criminal law norm in the process of studying the genesis and state of the norm should reveal the amendment of the norm, its compliance with the ideology of the criminal law, the adequacy of the legal form and the effectiveness of restrictions.

Thus, crimes against public order and morality are exclusively anthropological in nature and development. Such a return to the origins of the formation of law, which is culture in various forms of its existence, provides the formation of a new, modern level of legal understanding, able to satisfy both the theory and practice of law.

We argue that the statement on the mode of implementation of the provisions of criminal law is directly proportional to the level of both legal culture and general culture.

This issue acquires a special meaning in the context of reforming the modern legal system of Ukraine, which is aimed at adapting to their own social conditions of criminal law, which were formed in other social preconditions. The devaluation of traditional spiritual foundations in the form of religious and moral ideals, positive legal consciousness creates an atmosphere of heightened social tension at all levels of socio-cultural relations in society, which contributes to the emergence and development of destructive principles in all other spheres of public life.

The ideology of criminal legal compensation for victims of crimes against



morality as a criminal measure is supported, as a sense of social justice is the highest goal of regulating criminal law counteraction to crimes against morality in terms of tools and mechanisms of modern legal anthropology.

As a result of historical and legal-dogmatic comparison of signs of the text of the law, concrete activity and conclusions concerning legal understanding of norm, textual norms new values. Thus, legal norms receive an anthropological interpretation due to the need for new activities based on humanistic principles, the need to increase the effectiveness of criminal justice. The principle of scientific validity of lawmaking and the application of law in the criminal law sense requires in this area the use of new knowledge in the analysis of criminal law at all levels of social interaction, namely legal and anthropological knowledge.

Anthropological analysis of criminal law is a humanitarian examination of legal documents, mainly related to its assessment from the standpoint of relations between the parties. The purpose of anthropological analysis is to determine the degree of compliance with the conditions of normal development of man and society using the methods of criminal law. This assessment stems from the belief that criminal law is a form of collective adaptation of the community to its place of existence. Thus, criminal law in this sense is considered as a system of interrelated obligations, considered as a right on the one hand and recognized as an obligation on the other hand to ensure the security of the individual, society, state, protect them from criminal offenses.

Today's popular security approach in the ideology of sustainable development of modern states focuses on the guarantees of rights and mutual obligations of the subjects of public relations. Public morality is a complex regulator in the system of modern social control, which ensures the mutual responsibilities of the state, society and the individual in relation to their normal functioning. Along with this, the right to revolt, the right to deviate, the right to personal deviations from public stereotypes are not always supported by the prevailing system of norms in society. : in crimes against public morality, the definition of public danger is socio-political in nature, regardless of the determining significance of the subjective component.

Thus, the policy in the field of combating this type of crime is a system of political and legal measures aimed at reducing the level and dynamics of criminal offenses by all political, economic measures and legal means (punishment, other criminal measures, measures to treat offenders) on the main characteristics of the development of society and moral values in it.

The state has a duty to punish for the sake of social peace, but this duty is offset by a number of restrictions and balances of executive and legislative power. criminal law is not due to social needs and internal necessity, which leads to a conflict between public consciousness (or attitudes of individuals) and criminal law prohibitions, mass anomie, genocide, legal nihilism.

The structure of the policy of protection of moral relations as an object of criminal law protection includes:

1) security (preservation) of historical and cultural heritage as a set of the most: significant material carriers of spirituality, which is the result of a system of organizational, legal and other measures to prevent the destruction, destruction or



damage of cultural property, their illicit trafficking in the form of illegal transfer of ownership;

2) security of the moral foundations of society as a system of protection against the destruction of the national mentality of the Ukrainian people in the form of the moral foundations of the nation, traditions and customs based on them, ideas of justice, goodness and equality, etc .;

3) religious security of the individual and society as a state of political and legal protection and social stability of religious relations, including freedom of conscience and religion, non-interference of the state and anyone in church affairs, inadmissibility of spreading destructive cults in Ukraine, totalitarian sects, etc.

Thus, the development of anthropological dimension of criminal law and policy should be understood as a human-centric component of policy in the field of combating criminal offenses, on the development and implementation of substantive criminal law aimed at ensuring the safety of public morality from the most dangerous encroachments.

The mode of implementation of the law is directly proportional to the level of both legal culture and general culture. This issue acquires a special meaning in the context of reforming the modern legal system of Ukraine, which is aimed at adapting to their own social conditions of criminal law, which were formed in other social preconditions.

Conclusion and findings

The anthropological knowledge in criminal law appears as a result of fixing new connections between signs and objects that have developed in the system of legally significant activities, operations and procedures to ensure the security of the individual, society, state by specific methods of criminal law. The interdependence of subsidiarity, proportionality, solidarity and respect for the criminal law prohibition is especially clear in the characteristics of modern criminal law doctrine, which is gradually evolving.

That is why the criminal law protection of public morality and individual morality is an important element in the development of the modern rule of law. Moral prohibitions for unwritten negative acts condemned by society are primary in determining punishment, but the logic of social development shows a certain immorality of modern criminal law.

The limits of state intervention in private life, the features of responsibility for deviant behavior, guarantees of rights, freedoms, responsibilities, security of the individual, society and the state are determined by the prevailing moral values in society. The purpose of criminal law protection of public morality is to ensure the functioning of the state system of protection of moral principles, narratives and values aimed at economically, psychologically psychiatrically and socially healthy lifestyle. This means a set of norms with double prevention, aimed at neutralizing the negative impact of network factors in the information society, protection of traditional values from the promotion of the cult of violence and cruelty, pornography, hate and bullying, racial and national hatred, acts of discrimination.



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Анотація В статті було розроблено концепцію кримінально-правової охорони суспільної моралі в Україні в умовах транзиції до нового законодавства. Дослідження кримінально-правової охорони суспільної моралі як соціально та історично детермінованого явища антропогенезу є складним процесом щодо вивчення соціальних передумов криміналізації таких злочинів, особливостей формування сучасної концепції кримінально-правової охорони та перспектив удосконалення відповідних норм.

Моральність у кримінально-правовому сенсі це суспільні відносини, що формуються і розвиваються в суспільстві, задля забезпечення шанобливого ставлення одних людей до інших, сором'язливості, поваги до загальнолюдських цінностей, що утвердилися в суспільстві, недотримання яких особою призводить до громадського осуду і впливає на рівень культурного і духовного розвитку її як особистості. Під кримінально-правовою охороною розуміють заходи по забезпеченню безпеки існуючих суспільних відносин та інтересів та утримання громадян від злочинних посягань шляхом визначення в кримінальному законі шкідливих для особи, суспільства та держави правопорушень та встановлення за їх вчинення кримінальних покарань та інших заходів кримінально-правового впливу.

Основною гіпотезою дослідження є констатація можливості використання суб'єктних характеристик діяльності індивіда та толерантності її оцінки у інформаційному суспільстві в якості основи криміналізації діянь проти суспільної моралі. Не тільки суспільна небезпека, але й мережева дозволеність та підтримка індивідуальних девіацій робить можливою визнання діяння суспільно-небезпечним. Отже матеріальна ознака злочину (небезпека для держави та суспільства) детермінується значущістю недозволених практик для особистості (соціальної групи) та підкріплюється толерантністю до порушення даних норм у референтній групі (субкультури), чи у соціумі у цілому.

В роботі підтримується наукова позиція стосовно того, що удосконалення правових механізмів регулювання суспільних відносин, що виникають у духовній сфері, повинно стати пріоритетним напрямком державної політики (у тому числі і кримінальної політики) в галузі забезпечення моральності і духовної безпеки особистості, суспільства і держави. Здійснення такої політики припускає, зокрема, і вдосконалення існуючої системи і юридичних ознак складів відповідних злочинів, а також розробку нових складів злочинів (з урахуванням специфіки як кримінальної відповідальності, так і духовної сфери життя) і включення відповідних правових норм у чинний КК України.

Для цього було визначено основні тенденції розвитку вчення про антропологічний напрям у сучасній доктрині кримінального права; охарактеризовано кримінально-правове попередження злочинів – як дія кримінального Закону в цілому, а не виключно окремих його



норм та інститутів. Реалізація охоронних та профілактичних кримінально-правових відносин наполягає на необхідності диференціації обсягу державного примусу в залежності від характеристик суб'єктів такого впливу (особи, соціальні спільноти, держава), відповідності ступеня впливу характеристикам особи винного; її кримінальності; ступеню тяжкості скоєного злочину; потребам потерпілого, третіх осіб, держави, міжнародної спільноти).

Констатовано, що формування юридичної антропології як відносно самостійного наукового напрямку у сучасному кримінальному праві проходить через висування нових наукових парадигм, нової методології юридичної діяльності (правотворчості, тлумачення права, застосування права і ін.)

Таким чином, антропологічне знання у кримінальному праві з'являється в результаті фіксації нових зв'язків між знаками і об'єктами, що склалися в системі юридично значущих діяльностей, операцій і процедур стосовно забезпеченню безпеки особи, суспільства, держави специфічними методами кримінально-правового впливу. Взаємозалежність субсидіарності, пропорційності, солідарності та поважання кримінально-правової заборони особливо чітко виявляється у характеристиках сучасної кримінально-правової доктрини, що отримує поступовий розвиток.

Таким чином, під антропологічним виміром кримінального права та політики слід розуміти людиноцентристську складову політики у сфері протидії кримінальним правопорушенням, з приводу розвитку та реалізації норм матеріального кримінального права, спрямованих на забезпечення безпеки суспільної моралі від найбільш небезпечних для відповідного суспільства посягань.

Ключові слова: суспільна моральність, кримінально-правова охорона, кримінальна політика, злочини проти суспільної моральності, кримінальна антропологія, антропологічний метод

Scientific advisor: LLD, professor Viacheslav Tuliakov

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