

*Kisiliuk Eduard, candidate of legal sciences, associate professor, professor
department of criminal law National academy of internal affairs*

THE PART OF CRIMINAL LAW IN BUILDING OF A LEGAL STATE

The construction of the rule of law is one of the main tasks of each independent state. This issue is especially acute today in the states that were formed in the Post-Soviet space. After all, many things must be taken into account in order to build a legal state. This, the creation and implementation of legal regulations, the rule of this legal law, the separation of power, ensuring the implementation of rights and duties of a person and citizen, mutual responsibility of the individual and the state, control and supervision of compliance with laws and the rule of law, and much more. In this context, it is necessary to pay attention to attempts to build a rule of law by our ancestors, to analyze their mistakes and, considering them, to build their own law-governed state.

An important role in the construction of the rule of law belongs to criminal law. Exactly, the criminal law determines which misdemeanors are illegal, and what punishment is imposed for their commission.

Considering the historical development of criminal law, one must proceed from the formula, that the law does not have its own history, independent of the history of civilized society, from the history of the development of economic, industrial relations. Changes in socio-political conditions in society tend to entail partial or complete renewal of legal norms, including criminal ones, which, like the whole legal part of the superstructure, should help the prosperity of the state. Criminal legislation cannot be detached from real social processes. It will only reach its aim when it is brought to life by the objective development of the economic, political and legal spheres of society.

At the same time, it should be noted that in the struggle for the creation of their own statehood in all ages, methods and techniques, which guided the state bodies to prevent and punish all manifestations of criminal activities of destructive elements. These elements stood in the way of creating a new state organism, prevented the construction in it of such a state system that would ensure the existence of a young state and the maintenance of proper security and order in it.

For the period of the formation of the new system, the most characteristic is that the change in the state system is accompanied by chaos in the sphere of legislation. This is because some old laws are in force, which will soon be abolished, and new ones will replace them, which cannot immediately resolve all political, economic and social relations in society. Together with legislation of a socio-economic and administrative nature, important role in this regard belongs to the criminal law. It goes without saying that for the safety and protection from criminal attacks against the young state rules of criminal law, who guarded the existence and structure of the previous state formations, it was not always appropriate. Therefore, each stage of nation-building is different to work on updating the old criminal laws and the creation of their criminal laws. Although it should be noted that in the first period of the creation of a new state the criminal legislation of the previous formation is widely used, but only in a part that does not contradict the principles proclaimed by the new government. Gradually, changes and additions are made to it, which are related to the conditions of the new time, further there are new sources of criminal law. Over time, they are systematized into one legal act - Criminal Code, which regulates the criminal-legal relations in the society.

Of great importance for the creation of a criminal law that would really protect the interests of the state and the interests of the person from criminal attacks and contribute to building the rule of law, has an objective study of criminal law phenomena. Such a study is impossible without the use of historical and theoretical methods. After all, the history of criminal law is a consistent exposition of the development of criminal law in the state for a certain period of time, in connection with the changing needs and conditions of people's life at this time. Theoretical research will always give tangible and socially useful results, if we rely on historical experience. Based on historical analysis and synthesis, the theory develops its own category determines the patterns and trends in the development of legal regulation.

The study of criminal law heritage of the people connected with the attempt to use this experience, is an instrument for the analysis of the problems of modern criminal law. At the same time, the historical experience of legislative activity is ambiguous, and therefore contains both positive and negative features, characteristic for the modern period and the more distant past, inherited by him. In it, there are elements of traditional, proven practices, national perceptions of the material and spiritual values of society, and elements of a new understanding of the problems of its development, which only break their own path. Therefore, it makes sense to summarize the historical experience of the criminal law, to critically evaluate it from the perspective of the present day, creative use, where appropriate, positive experiences and avoid the mistakes of the past in today's practice, which certainly contribute to the construction of the rule of law.

If we talk about the independent significance of criminal law in the construction of a rule of law state, it should be noted that criminal legislation, first of all, serves as an indicator of the role of criminal law in the life of society, its place in the system of relations between the state and the individual. Since the criminal legislation, first of all, determines the range and characteristics of those acts that the state calls criminal, then from how wide this circle is, what exactly actions are criminal, can be seen, on the one hand, the level of civilization and humanism of the state, and on the other - about the actual boundaries of what is permitted for each individual.

Secondly, the criminal law is one of the criteria for assessing the existing legal system. The optimal combination of permits, regulations and prohibitions in legal regulation, the use of the mechanism of criminally legal regulation only in cases of extreme necessity testifies to the high level of improvement of the legal system. Conversely,

non-optimal combination of permits, regulations and prohibitions, frequent use of the mechanism of criminal law regulation testifies to imperfection of the legal system. In this regard, the criminal legislation makes it possible, to some extent, to assess the completeness, integrity and systemic nature of the legal regulation of various spheres of public life.

Thirdly, criminal legislation acts as a normative embodiment of the rule of law and the inadmissibility of analogies in the mechanism of criminal law regulation. This is due to the fact that only a criminal law establishes a circle of acts that are defined as a crime. Acts that do not belong to this group, in any case should not be called a crime and draw criminal liability.

And, fourthly, the norms of criminal legislation are the necessary legal basis for the qualification of crimes. Without a corresponding normative prescription, it is impossible to determine which crime was committed.

Great importance in the construction of the rule of law belongs to the judiciary. In this regard, it should be noted the main shortcomings of the criminal law, which hinder the work of the court and require immediate eradication: incompleteness of the criminal law - the provision expressed in the text of one normative legal act, does not fully comply with the provisions of other normative acts, that is, it is clarified wider or narrower; the ambiguity of some criminal law norms - the text of the text can't fully understand the idea of the legislator; internal contradiction of the criminal law - different answers are given to the same question in different regulatory legal acts.

In order to prevent these shortcomings and increase the role of criminal law in the construction of a state based on the rule of law, it must be based on the following provisions: all the norms of criminal law must comply with the norms of the Constitution and in no case violate the constitutional rights of man and citizen; the main source of criminal law should be the Criminal Code, and all other criminal provisions are gaining strength only after the introduction of the Criminal Code; in the system of criminal law there should be a clear division into chapters of the generic object, which is subject to legal protection; the application of criminal law, if possible, should take into account all the possible consequences of their application; the criminal law should act as an intermediary between the state and the individual; when reforming criminal legislation, it is necessary to study and use the positive historical experience of legislation that has been in effect for many centuries; The goal of criminal legislation should be to achieve full correspondence between criminal injunctions on the one hand and the actual conditions of life on the other, that is, criminal legislation should not hinder the progressive development of society, but should direct it to the legal channel.

Thus, the development of criminal legislation is of great importance for the construction of a rule-of-law state. Especially, the current process of constructing such a state and civil society is a very fast pace. He puts forward, and will put forward new complex theoretical and practical problems of the realization of human rights and freedoms. All this requires the science of criminal law, the main efforts were directed at identifying trends in the further development of criminal law, and it is reforming and improving the state of the fight against crime at the present stage.