

Criminalization as a Tool for Ensuring National Security in the Modern Rule of Law. (Short Logical Statement)

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Abstract— The modern rule of law state is a state of clear legal rules and justice. In such a democratic and humane state, national security is explained, regulated and protected by law as a significant social benefit. Moreover, national security is logically understood as one of the most valuable legally protected goods. National security and its protection arise directly from the law. The rule of law itself introduces rules for measuring and achieving national security, but it is also obliged to comply with these rules. Therefore, lawmaking can be presented as one of the basic methods for guaranteeing national security. And criminalization as one of the basic manifestations of criminal lawmaking.

This publication analyzes and logically traces the impact of the criminalization of acts, and not so much the differentiation of criminal liability and the optimal criminal procedure on the quality of national security. This is relevant and important to do, because through criminal lawmaking, national security can be created, protected, enhanced and managed in a subtle, direct, nuanced, effective and long-term manner in a modern constitutional state.

Criminalization is one of the most important processes in the rule of law, because it is directly related to the creation and protection of national security. This is so, because through criminalization the most dangerous acts for the existence of national security are declared crimes. Human behavior that has gone through the process of criminalization becomes a crime, the commission of which is harmful to the existence of national security and is therefore subject to criminal prosecution. Through criminal prosecution, national security is restored and expanded. Any criminalized behavior is undesirable and harmful to the peaceful existence and development of the "man-society-state" system, and should be guided, including with scientific methods and means.

Keywords— criminalisation, national security, rule of law, criminal proceedings.

I. INTRODUCTION

The modern state of law is a state of clear legal rules and justice. In such a democratic and humane state, national

security is explained, regulated and protected by law as a significant social benefit. Moreover, national security is logically understood as one of the most valuable legally protected welfare. Here, national security is understood in general, as a favorable state of protection against influences that are harmful to the balance or the very existence of the system - "man - society - state". In a state of law, laws define not only the content of the concept of security, but also the threats to security, as well as the very instruments for their interception, control and guidance. In other words, national security and its protection arise directly from law. The rule of law itself introduces rules for the measurement and achievement of national security, but it is also obliged to comply with these rules. Therefore, lawmaking can be presented as one of the basic methods for guaranteeing national security. And criminalization as one of the basic manifestations of criminal lawmaking.

Norm making is simply one of the forms of guaranteeing the inviolability of individual levels of national security by restricting their typical possible threats. It is in this regard that this publication analyzes and logically traces the influence of the criminalization of acts, not so much the differentiation of criminal liability, and the optimal criminal procedure on the quality of national security. This is relevant and important to verify, because through criminal lawmaking, national security can be created, protected, enhanced and managed in a subtle, direct, nuanced, effective and long-term manner in a modern constitutional state. It is important also to be done from educational point of view. University education, especially in masters and doctoral programs, is unthinkable without active research. The introduction of new interdisciplinary scientific disciplines, as well as the capacity of non-university research organizations to prepare young scientists, should be encouraged. Bulgaria needs to make significant efforts to change the situation in the security system by increasing the interest in research at higher education institutions, creating conditions for the

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modern generation of modern knowledge and preparing the new generation of scientists [1].

With the help of criminal lawmaking, the prohibition and prosecution of those human actions is declared that pose an immediate danger or actually damage the system of public relations, in which national security as an architecture is enclosed. Criminal laws, therefore, are crucial for national security. They recognize, mark and paralyze its potential and/or real pests! For example, harmful activities such as: terrorism, sabotage, espionage, and cybercrime. Criminal lawmaking as a dynamic and complex activity of creating separate mandatory rules of behavior in society, is a measured and objectively manifested expression of the criminal policy conducted in the rule of law. Criminal lawmaking as a process includes criminalization, differentiation and the development of the criminal procedure. Here we are talking about criminalization. It is the most important of the three legal phenomena, since the prohibition of a given very dangerous behavior in the criminal law precedes and makes sense of the development and imposition of the corresponding behavior – punishment! In this report, the issues of differentiation and criminal prosecution are addressed to a minimal extent, as this is important and necessary for a better understanding of criminalization and the fight against crime.

II. MATERIALS AND METHODS

The purpose of this report is to examine and briefly explain the relationship between criminalization as a legal process and the protection of national security in the modern state of law. To achieve this goal, the following presentation should address two tasks, which arise from the title of the report itself.

The first task - to prove that the timely and correct criminalization of acts limits the existence and impact of one of the main destroyers of national security - crime.

The second task is to reveal briefly and logically the classical role of positive criminal law as one of the components in the national security system of the rule of law state.

The significance of the report lies in the systematization and strengthening of the logical connection between scientifically established criteria for the criminalization of acts, which, if taken into account by the legislator, eliminate the risk of over-criminalization and the unjustified endangerment of citizens' freedom in the modern state.

To accomplish the above tasks, the following scientific methods were used: normative-dogmatic, logical, scientific-systemic and interdisciplinary. Through them, individual written scientific materials, state documents and normative acts, mainly directly related to the topic of the work, were studied (tested) and the exposition is made. Only after the subject of research indicated in the title has been examined, in this way and with these means, the desired practically useful conclusion could be reached that improving the development of criminalization as a separate

rule-making process will lead to an improvement in the development of the national security system in the modern rule of law state, since the developed penal provisions act protectively towards national security as a good.

III. RESULTS AND DISCUSSION

In the rule of law, "penal policy is built and developed on the basis of the theory of the causes of crime and the counter action in modern society. For this reason, its content is determined by the following basic principles: prevention of crimes; large-scale participation of society in the fight against crime; economy of criminal repression with maximum efficiency of criminal law methods and means." From here, the guiding judgment that served to build this report can be directly derived. The development of crime in legislation, and the fight against it in legal practice, including through scientific methods and means, is an effective protection of the security of: the individual, legal entities, society and state. The acts included in the criminal law are included precisely because they threaten or damage the peaceful existence and development of public relations in the state. In other words, because these acts are against the security and integrity of the republic, life, health, property, sexual integrity of the citizen, society, etc. The Criminal Code includes only the most dangerous acts for the security of the individual, society, and the state!

At the beginning of the presentation, the content of the concept of security should be specified. In this report, it is used in its widest possible and permissible meaning, not in its deeper and more precise meanings, relative to the object of security science. This is required by the subject limitation of the publication, already set out in the title. Security here does not mean a state of absolute safety, protected safety, relative safety or transformational safety [2]. **Security is apprehended more generally as a state of protection against impacts that are detrimental to the equilibrium or the very existence of the system** (person, society, state). I accept that protection is **the prevention or successful management** of already allowed internal and/or external impacts on the equilibrium of the system [2]. It is useful to add that the modern apprehension of strategic security management requires not only continuous efforts to improve the formation and implementation of security policies, but also new approaches and specific solutions to modernize the security system, thus making it adequate to the requirements of the dynamic security environment [3]. The normal (balanced) existence of the system of public relations in the rule of law leads to security and prosperity of society and the state itself. Conversely, the anomalous development of public relations arouses concern among citizens and introduces uncertainty into their daily and professional affairs. Such significantly unfavorable changes in the balance of the system "man-society-state" occur after the commission of one or more crimes. In the language of security science, criminal behavior is a risk to national security. The concept of risk can denote a certain factor (group of factors) that can manifest itself with measurable probability and threaten the balance or existence of the system. Such factors can be: processes, phenomena, conscious/unconscious human activity, or lack

of due human activity, and so on. Here we are talking precisely about undertaking "toxic" human activity for the balance of the system of public relations.

The criminalization process is one of the most important because it is directly related to the creation and protection of national security. This is because **criminalization represents the declaration of acts dangerous to the existence of national security as crimes**. The legislator's discretion is influenced by the objective properties of these acts. The marking of acts dangerous to national security "is always the result of the interaction of two factors an objective factor – the property of the acts to damage public relations in the rule of law; and a subjective factor – the state of public consciousness, and more specifically, this is the legislator's negative assessment of the relevant acts as undesirable" [4]. The criminal law collects those acts whose existence adversely affects the existence of the objective needs of the individual and society for security. As V. Kudryavtsev shares "the legislator must be guided by four criteria for criminalizing acts" [5].

First of all, **there is an urgent need** to introduce a criminal prohibition of a given human act. Nikola Filchev aptly points out that "criminal law regulates not individual excesses, but mass manifestations" [4]. This means that the prohibition of a given behavior is dictated not by its individual negative reflection on the social relations it encroaches on, but by the social danger of all such actions on these same social relations. In order to criminalize a given act, it must be widespread [4]. Therefore, the main factor here is the sufficiently high degree of social danger of a given widespread negative behavior. Criminalization is necessary only after society has exhausted all its efforts to limit the spread of certain negative manifestations with other less repressive means known to it [4].

Secondly, **the admissibility of the criminal law prohibition** [4]. This means that the prohibition of a certain behavior must be morally justified, fairly and in accordance with the principles of criminal law, the constitution and the current criminal policy in the rule of law. When developing criminal policy, the main aspects of the development of society are taken into account and a direction is given for the construction of criminal lawmaking [6]. This means that the essential for the preservation and progress of society is centered in the development of criminal laws or individual amendments to them. The content of criminal policy is expressed in the correct combination of the method of coercion with the method of persuasion [6]. In a rule of law, criminal policy has as its essence, on the one hand, strict punishment of perpetrators of serious (very dangerous) crimes, and on the other hand, limiting the scope of criminal repression [6], when it comes to crimes with a low degree of public danger, even the provision of light punishments- without deprivation of liberty. Moreover, for certain minor manifestations, exemption from criminal liability is also allowed. Instead, other coercive measures are used.

Thirdly, **the objective adjustability** of the behavior whose prohibition is sought. This means assessing whether the act that is dangerous to national security can be measured and described thoroughly in the disposition of a

given norm and linked to a specific punishment, so that the imposition of the punishment objectively leads to the possibility of correction and reeducation of the guilty perpetrators.

Fourthly, **the appropriateness of the criminal prohibition**. This means assessing the ratio between the harm and the benefit of criminalizing a given behavior [6]. If the benefit of prohibiting a given behavior is less than the harm of prohibiting it, it should not be treated in the criminal law. The harm should be sought in terms of costs, reaction of the judicial authorities, reaction of the convicted person and his relatives, the path of investigation, reflection in other normative acts, etc.

Therefore, the assessment of whether a behavior is dangerous to national security and whether it should be prohibited by a criminal law norm is complex and can only be carried out correctly after considering the aspiration to prohibit the behavior in question with each of these four criteria. Otherwise, it leads to unjustified or ineffective creation of criminal law norms that can prohibit and sanction insignificant, neutral or useful human behavior for national security.

Behavior that has undergone the process of criminalization becomes a crime. Theoretically analyzed without unnecessary details, a crime is first of all a human phenomenon, and more specifically it is an effect. An effect, in turn, is "an externally manifested human volitional act that is freed from physical and physiological coercion" [7]. A crime as an act can manifest itself in the form of action or inaction. But in both cases, a crime is a manifestation that occurs under the control of consciousness and is aimed at changes in objective reality that the will of the person-actor allows [8].

A crime is an unlawful act, which means that it itself as a behavior is prohibited from being undertaken in objective reality by a legal norm. Illegality is "an objective quality of the crime, it expresses the fact of the objectively existing contradiction of the act with the legal norm" [8]. This legal norm does not allow its commission! Nikola Dolapchiev rightly shares that "law is not only imperative, it is also, besides that, an evaluative norm" [7]. This means that law has, first of all, an evaluative function. It defines the state of affairs in objective reality that is actually valuable for the development of society. The legal norm proclaims which social state is valuable, and that it ought to occur and/or exist in reality. **In this sense, criminal law prohibits the violation of that beneficial state in which social relations ought to exist in order for a normal, peaceful and progressive life of the individual, society and state**. Thanks to criminal law, threatening or destroying the most vital social relations concerning the security of society is prosecuted and sanctioned, i.e. it can be believed that criminal law is designed to assess which behavior happens to be most dangerous for the national security and hence to prohibit it under fear of severe punishment. Crime is punishable. This means that its commission in the legal world is sanctioned by a penalty specified in the criminal law. Penalty is a previously thought-out means of self-defense of society, which reacts against the violated conditions for the security of life by crime [6]. It expresses the negative opinion of society

towards crimes as phenomena and towards their perpetrators as persons who have deviated from the usual morality. By developing the penalty and by imposing it, the aim is to re-educate the criminal and to warn him to refrain from future acts on the one hand, and warn and educate society to refrain from crimes on the other hand.

A crime is a socially dangerous act. It threatens or damages the personality, the rights of citizens, property, the established constitutional order in the rule of law state or other interests protected by the law that operates in it. It "creates an objective danger to the optimal functioning of the social system" in the rule of law state [9]. A danger that has the potential to negatively deform public life and take away security from it.

A crime is a culpable act. Guilt is "the mental attitude of the perpetrator to the public danger of his behavior and to the socially dangerous consequences that it causes. It can be intentional or reckless" [10]. The perpetrator cannot be held criminally liable for consequences for which he did not show guilt (he did not understand them and caused them culpably).

Therefore, from what has been said so far in this field, it can be assumed that the introduction of a ban on committing acts with the highest degree of public danger and the criminal prosecution of persons who have violated this ban is fundamentally important for the protection of national security. **Hence, the conclusion that through criminal lawmaking, national security is finally grasped, further developed and guaranteed as a good!** It is protected from crimes, which are one of the most threatening human deviant phenomena! In criminal law rulemaking, security can and should be postulated as a benefit, not as a service for citizens. And this is the most desirable and most valuable thing in protecting the individual, society and the state today. In support of this reasoning, it is enough to point out what Nicolay Slatinsky stated: "the distribution of the benefit is on the principle of unconditionality, of unconditional justice, i.e. everyone receives their share of it. And the distribution of the service is related to the operation of the principle of conditionality, of criterion justice" [2].

For cognitive purposes, it can be noted that another important issue for the success of the fight against crime is the creation of penalties. In other words, the issue of the differentiation of criminal liability. It can be conditionally assumed that if criminalization represents the description and prohibition of a given behavior in the criminal law, then differentiation represents the development and connection of the behavior prohibited by criminalization with a specific type and amount of punishment. The differentiation of criminal liability means the definition in the criminal law of different criminal liability for different crimes depending on the depth of their public danger (harmfulness), socio-moral tameness, and the typical properties of the personality of the criminal perpetrator [4]. Differentiation is therefore the activity of the legislator. He develops different penalties for different crimes in the criminal law in order to protect national security. The creation of an inevitable and adequate criminal liability in terms of type and amount of a crime indicates a deterrent effect for its commission in social reality.

The factual and practical connection of the criminalized behavior with the punishment provided for its commission is carried out through the application of the norms of the criminal process. The criminal process is a way of realizing the content of the substantive criminal legal relationship. When talking about the criminal process, it ought to be borne in mind that as part of state activity, it is always related to the character, tasks and organization of the state [11]. That is why the content and arrangement of the criminal procedure institutes always follow and further develop the logic of those principles, methods and forms of work that characterize the state organization at a given historical moment. Therefore, the criminal process is always bound by significant state policies. Moreover, it is an instrument for the realization of the state criminal policy. In this line of thought, the norms of the criminal process (consciously or not) express part of the state policy in the field of national security. The criminal process provides protection for national security by effectively and fairly sanctioning its violators! In a state governed by the rule of law, this should always be done through accurate, fair and justified application of clear and expertly (scientifically) confirmed legal provisions. When developing procedural norms, the legislator should find an optimal balance between the speed and quality of the criminal process on the one hand, and between public and personal interest on the other. It is also appropriate that the development of procedural norms be subordinated to the idea of procedural efficiency (the cost of the efforts expended). The optimal criminal process consists of clear legal norms that impose the possibility of achieving maximum results in a pending criminal process with minimal effort on the part of the participating subjects. This means that the criminal process should be shaped with such legal rules that, without unnecessary expenditure of people and efforts, the objective truth be revealed as well as its inclusion in the judicial acts in each case. Only in this way can speed be achieved that is not detrimental to the administration of justice, and a low frequency of procedural errors that is not at the expense of citizens' rights!

Last but not least, it is worth emphasizing that the sum of the substantive and procedural criminal legal norms developed in the rule of law forms the positive criminal law. The latter is a set of these norms. From a formal and material point of view, this set of norms is always arranged and expressed, and perfected in criminal laws [12]. As a specific set of legal norms, positive criminal law also affects in its own more general way the protection of national security. For the truth of this statement, it is sufficient to emphasize the following conception of Rumen Markov: "by prohibiting the commission of crimes under fear of punishment, the criminal law has a general educational effect on the psyche of citizens (informational) and warning-deterrent impact, in order to motivate them to refrain from crime. The general educational effect of the criminal law is based on information about the actual social essence of the acts declared as crimes. The warning-deterrent effect, in turn, is based on the fear of the punishment specified in the law and the warning that it will be imposed upon the commission of the crime [12]. Neglecting the functions of positive substantive criminal

law leads to its violation. Any violation of positive substantive criminal law is compensated by the existence of an organized criminal procedure to correct the given violation. The norms of the criminal process, by the mere fact of their existence and entry into force, guarantee national security, because they are capable of creating a conviction in every criminal perpetrator that a fair, timely and justified procedure will be organized to reveal their crime and hence expose guilt. Thus, the written criminal procedural law educates to respect the inviolability of national security under fear of inevitable, but fair and sufficiently quick punishment otherwise.

For greater comprehensiveness, it should be mentioned that the written norms of international cooperation in criminal matters also have a beneficial impact on the protection of both national security and global security. They reveal a separate form of combating international crime. Interstate legal counteraction to crime includes the harmonization of national criminal legislation (regimes) on a global scale and the definition of their applicability by location so that the individual national criminal legal regimes do not overlap in their action [13]. This ensures the effectiveness of and in the intersection of global crime by legal means. This includes procedures such as extradition, European arrest warrant, transfer of criminal cases, recognition of foreign convictions, preliminary inquiries, etc. From what has been said, it can be safely concluded that the written norms of criminal law are useful for achieving and guaranteeing national security, because they regulate behavior that is too dangerous for national security, by limiting it by declaring it criminal, and by educating people to refrain from undertaking it in objective reality, under fear of exposure and adequate sanctioning.

IV. CONCLUSION

From the study of the question stated in the title of the report, the following more important logical conclusions (connections) can be drawn.

First of all, criminal lawmaking creates positive criminal law, which as a set of legal rules, by the mere fact of its existence, protects national security as a benefit for the citizens of the rule of law. The development of crime in legislation, and the fight against it in legal practice, including through scientific methods and means, is an effective protection of the security of: the individual, legal entities, society and the state.

Secondly, criminalization as a kind of norm-setting process is particularly important for the emergence and maintenance of national security, because through it, acts dangerous to the existence of national security are identified and declared crimes;

Thirdly, any criminalized behavior is undesirable and harmful to the peaceful existence and development of the "man-society-state" system.

Fourth, based on strict criteria, only those human actions are criminalized, the undertaking of which is contrary to security or the fair distribution of material and intangible goods that are essential for the rule of law.

Fifth, in the criminal law, each criminalized act is subject to a sufficiently deterrent, appropriate in type and amount, punishment.

Sixth, the restoration of national security violated by a single crime is achieved through the application of the norms of criminal procedure.

Seventh, the norms of criminal procedure can lead to the restoration and expansion of national security only if they have a consistent content that economically takes into account the needs of public and private procedural interests equally well. Otherwise, the criminal procedure turns from a guarantor into an obstacle to the functioning of the national security system.

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