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Book Review: *Alfred Zhalinskij, Selected Works*²

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Moscow, Higher school of Economics. 2015, P. 619*

The attention of the reviewer focused on the content of 2 and 3 sections of the third volume of "Selected works" by Alfred Zhalinskij, i.e. on the development of methodological bases of comparative jurisprudence and criminal law of foreign countries. It must be noted that the main thoughts and opinions of the author on these issues are not abstract and theoretical, but derived, primarily, from the author's comparison of the legal system and Criminal law of Germany and Russia. The researcher establishes certain "parameters" of this comparison. This allows "to identify the place of any national legal system in the international legal order in modern conditions". The author proposes three necessary conditions: "a) belonging to separate legal families (evidence of similarity); b) the most significant manifestations of the uniqueness (differences); c) features to overcome or strengthen the similarities or differences" (p. 140).

Unfortunately methodological foundations of comparative law provided by A. Zhalinskij, were not perceived in the theoretical works of the Russian forensics devoted to characteristics of international Criminal law.

What characterised this kind of research in the recent Soviet past? In fact the falsity of the ideological and party task of criminal-legal science of that time connected the comparative legal method mainly with the exposure of the "reactionary" bourgeois theories of criminal law and the "reaction" of the essence of bourgeois law. Criticism has lost the criterion of objectivity, and the very Criminal law theory, followed that approach, had lost a lot. (See: Naumov A. V. Criminal law. The General part. A course of lectures. M., BECK, 1996, P. 34-35) That was the methodological approach to a research, which did not withstood the test of time and required a fundamental change. And theoretical views of A. Zhalinskij essentially fulfill the resulting "vacuum" in criminal law doctrine. And almost perfect "field" of the new theory of criminal law comparativistics was comparison of the legal system and criminal law of Germany and Russia carried out by the author.

A. Zhalinskij rightly believes that the comparative materials (legal and doctrinal) simultaneously and close to each other and distant from one another on another hand. He admits that the German and Russian law historically belongs to the same "legal family" (for example, in the terminology of René David) Romano-Germanic or continental (in contrast to the common law) in general. However, modern German law (criminal law), even within one

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legal "family" remains "national", "independent" law. In this connection of general and the specific, the author sees a reflection of not just the historical path reflecting the achievements of the actual law-making, law enforcement and scientific-research processes (in other words the historical "legacy") but "striving for European Unity".

The author revealed evidence of significant proximity (within the Romano-Germanic) of continental law family of Russian criminal law and law of Germany. However, he mentions the main General parameters of this approach. First, the recognition that the law is the main source of legal statute and it is developed through codification. Second, the coincidence of the compared legal systems on the level of branches of law (Constitution, Civil law and Civil procedure, Criminal, Criminal procedure Codes). Thirdly, certain similarities in the content and interpretation of the basic law terms, including criminal law (guilt, responsibility, law, crime, misdemeanor, etc.). The author even claims that "basic legal terms" in German and Russian law, "form a common legal language" (p. 165). Fourth, the influence of German law and doctrine on the Russian criminal law. The author, for example, draws attention to the numerous references made by N.S. Tagantsev in his most famous Course of lectures on the General part of the Russian Criminal law 1902 to the works of A. Feuerbach, F. Liszt and other German authors.

Of course, A. Zhalinskij draws attention to significant differences. And most important is the assessment of the level of recorded crimes in both countries, and the repression in the form of custodial sentence. According to the first parameter everything looks quite proportionate on the other hand the second parameter obtains a clear disparity. The researcher proceeded from the fact that in Germany annually approximately 6-7 million of the crimes committed, i.e. much more than in the Russian Federation, especially in recalculation per 100 thousand of the population. The courts issue about 700 thousand decisions, and about 550 thousand of them are convictions. And yet there are 40-50 thousand people in places of deprivation of freedom (p.314). For comparison, we note that the number of prisoners in Russia serving sentences of deprivation of liberty, together with those in custody as a preventive measure (117,759 people), of January 1, 2016, was 646,085 people.

It is known that our legislator is taking serious measures to reduce the "prisoners" population. In March 2008, it was eliminated the reference to a minimum penalty of deprivation of liberty in about 80 articles of the Criminal Code, including the penalty for organised and armed robbery. However, the fundamental number of prisoners remains more than in Germany. The reason is an another fact: the appearance of new articles in the Criminal Code which provide the liability for dangerous acts, declared now a crime and punishable by criminal law. The number of criminal prohibitions has grown over 20 years by more than 1/3. And it would be better if the Russian legislator got acquainted with the scientific views of A. Zhalinskij on this matter.

It is particularly interesting the objective characteristics of the Russian criminal law (both as a brunch of law and doctrine). Judging from the publications in Russian sources (e.g. popular scientific magazines), it is clear that we are in a crisis, and the output is quite problematic. Sometimes "between the lines" one can read that this "diagnosis" and the main way out of it among others were placed by A. Zhalinskij (See, for example: Bochkarev S. A. *The State of Criminal Law: "Thresholds" and "Vices" of Scientific Interpretation / Rus-*



sian journal of legal studies. 2015, №1 (2), pp. 58-71; Babaev, M. N., Pudovochkin Y. E. *Dialectics of Tradition and Innovation in Criminal Law/ Criminalist Library*. The scientific journal. 2015, №2, pp. 9-32). It seemed that the followers of this theory were "impressed by the name of one of the greatest recent works of Alfred "The Criminal law in expectation of changes: theoretical and instrumental analysis". If they read the book, then none of this they would there found. Based on the analysis of the debate on the crisis of criminal law, the author proceeded from the fact that the concept of "crisis" in relation to criminal law is not used and, secondly, "is largely controversial." The author identifies some "signs" of a crisis (for criminal law and science of most "developed" countries). He suggests that "similar phenomena with more or less intensity typical for the Russian criminal law and defines the directions of development of criminal-legal science" (p. 455). The prediction of perspectives of modern criminal law (including German) was carried out by A. Zhalinskij on the analysis of various works devoted to the theory of German Criminal law, in particular G. Kaiser and K. Roksin.