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Book Review:

Current problems of the penal law and criminology. Edited by Emil W. Plywaczewski, Ewa M. Guzik-Makaruk

C.H. Beck, Warsaw, 2017. 896 p.

Many scientists (politicians, sociologists and even lawyers) believe that the science of criminology is in a deep crisis. It is neither able to assess new phenomena in the structure and dynamics of crime nor to propose any effective measures to overcome and eliminate them. Criminology now is clearly in crisis (at least, according to its critics) after takeoff in the 70-ies of XX century. But, nevertheless, it continues to exist-as does the science of criminal law, which, at least for two decades, is in a state of crisis too. Yet research in both of these areas of scientific legal knowledge continues and often demonstrates remarkable and significant achievements for society and the rule of law. The publication of more than 900-page collection "Current problems of criminal law and criminology" is undoubtedly one of such positive results. This is not the first edition of this kind: the collections began to be published 20 years ago and the reviewed book is the seventh volume of this series. The structure of the book consists of a Preface in English and German languages (p. V-XXIX), compiled by the chief editors Professor Emil M. Plywaczewski and Professor Eva M. Guzik-Makaruk, and two parts entitled, respectively: "Criminal law" (p. 1-280) and "Criminology" (p. 281-882), as well as information about the editors (p. 883-890) and the reviewers - Professor Helmut Kury and Professor David L. Weisburd (p. 891-896). All articles are published in either English or German.

In the Preface, the authors describe the current state of criminal law and criminology, their development, as well as the achievements of the criminological school in Bialystok and briefly – the content of the previous volumes of the series. The section on criminal law includes 17 articles that really cover the acute and controversial problems of the industry, including its components such as criminal medical and criminal environmental law, and such issues that have been actively discussed recently not only among professional lawyers, but also by politicians and society: the fight against domestic violence, sexual violence against children, child pornography, inaction of officials, with the dissemination of false statements about the Holocaust, using "prohibited" songs and the distribution of relevant CDS. Some articles also deal with criminal procedural aspects, such as the shortened criminal proceedings in Austria, the peculiarities of the interrogation of child victims of sexual violence in Poland. This section also presents materials of theoretical and generalizing nature: on the change of the paradigm of the reception of law and its development in the science of Japanese criminal law. The classical theme of criminal law sanctions, analyzed in the light of the criminal legislation in force in the Czech Republic, France, is also not ignored. It should be noted that the geography of the articles included in the first section is impressive: it provides information on the actual problems of criminal law not only in Poland but also in Austria, Belarus, Turkey, Germany, Greece, Portugal, Russia, the Czech



Republic, Japan, on the ways in which the lawyers of these countries seek to find the most effective solutions to the long-standing, newly emerging problems and possibly those that still arise in the near and relatively distant future. The second section "Criminology" is twice as large and includes 37 articles. The articles analyze not only the issues that are devoted to numerous studies of experts from different countries (transnational, computer, economic and organized crime, criminal policy against drugs and psychotropic substances, criminological aspects of social isolation and social control), but also those that have become aggravated or have arisen recently and are closely related to international conflicts, the consequences of military clashes, the flows of refugees seeking to Europe, or the spread of new forms of illegal behavior, for example, bikers. Theoretical aspects of modern criminological science (institutional analysis capabilities, potential of legal means (law) in compliance with legal norms, links and relations between crime, punishment and society, etc.), and studies of the impact of changes in criminal policy and the reforms of criminal legislation on the state and dynamics of crime in individual countries are also not overlooked. The authors of this section belong to different schools of criminology and seek to characterize and objectively assess the experience gained by researchers and practitioners, especially judges, police, and legislators. Here are not only the works of European criminologists from Germany, Russia, the Czech Republic, Poland, but also specialists from the USA, Canada, China, Australia, Syria and other countries.

Of course, it is impossible to highlight the content of all the materials of this publication, so let's focus only on the evaluation of those articles, which are less known to Russian experts information or analyze new problems, not yet considered in detail by domestic criminal law and criminology.

Article written by Gülsün-Ayhan Aygörmez-Uğurlubay "Umweltdelichte im türkischen Strafgesetzbuch" (p.23-43) briefly describes the features of the historical development of the institution of liability for violations of natural resources and the environment: prior to the reform of criminal law in 2004, criminal liability for their Commission was regulated in the acts of additional legislation and did not play a significant role. The author emphasizes the close connection between the elements of environmental crimes and administrative regulations. Compared with other countries, including Russia, which also began reforming criminal liability for environmental crimes in the 90-ies of the last century, the Turkish legislator limited himself to a smaller number of criminal law prohibitions. The criminal code of Turkey includes only four articles: Art. 181 "Intentional pollution of the environment", Art. 182" Unintentional pollution of the environment", Art. 183" causing noise", Art. 184"Unauthorized construction". At the same time, article 184 refers to the prohibition of violation of the rules of waste management, residues, substances entering the soil, water, air, as well as for the illegal import of waste (formal compositions), and in the case of harm to animals and plants (qualified compositions), higher sanctions are established – not less than 5 years of imprisonment and 1000 daily rates. Due to legal entity, liability is set out in part 5 of this article: they are subject to the measures provided for these subjects of the crime. The author rightly criticizes the legislator for the fact that the crime provided for in part 1, i.e. "simple" pollution, does not entail the responsibility of legal entities, although such in the protection of the environment "plays an exceptional role and has a huge criminal and political significance" (p.33). Art. 183 of the criminal code of Turkey provides for

the liability of one who, in violation of statutory duties, causes noise, which harms the health of others. In this case, the protected legal good is the environment as the condition of life of the people. The article emphasizes that this rule protects *de lege lata* people's health from noise, but not from non-ionizing radiation, and therefore the author proposes *de lege ferenda* to expand its disposition. Article 184 prohibits unauthorized construction, as well as, in part 3, the performance of industrial activities in buildings constructed without permission.

The author gives the statistics of environmental crime for the period 2006-2014 (see the table) and concludes that there is an urgent need to further improve the Turkish criminal and environmental legislation, including in order to harmonize with European law and to ensure an effective fight against environmental crime.

Table 1: Environmental crime

№ Art.	Year								
	2006	2007	2008	2009	2010	2011	2012	2013	2014
181	50	238	272	729	896	824	1030	1338	1175
182	11	36	298	115	137	144	56	200	144
183	32	56	16	49	56	106	128	133	113
184	6214	8574	11143	26000	23700	24260	21411	18000	17000
All	18506								

In conclusion, he suggested what elements should be included in the criminal code, namely: on the violation of the rules for the treatment of hazardous substances, on the illegal trade in protected species, on the destruction of protected animal species, etc. Thus, the recommendations developed largely coincide with those contained in international and European environmental law and have already been approved by the legislators of other countries. Anyway, in our opinion, familiarization of Russian experts with the situation of overcoming environmental crime in Turkey and the deficiencies of law – making and implementation of the law may be useful-at least because these problems arise not only in our country. Perhaps their decision will be made as a result of taking into account the experience - positive and negative, not only in the US, Canada, the European Union, but also in other countries, including Turkey.

We draw the reader's attention to the fact that the number of criminal cases (even without taking into account the crime rate and significant differences in the scale of the territorial space of Russia and Turkey) in relation to the criminal prosecution of environmental crimes is striking. Even considering the absence of articles in the Turkish criminal code



containing poaching crimes (as they are contained in the additional criminal law, i.e. the criminal code), in special legislation on environmental protection and use of natural resources), which are still the bulk of such attacks on the environment and its components, we have to admit that in our country is still not formed an understanding of the importance of environmental crime and its consequences, even though the criminal code looks in this respect (Chapter 26) is much more "advanced" and in fact fully consistent with the European Directive 2009 on combating environmental crimes by means of criminal law. Apparently, as always in the history of the Russian state goals and their implementation are radically different.

No less interesting, in our opinion, the article of Yuri Yamanaka on organ transplantation in Japan (p. 273-282). At the very beginning he emphasizes the importance of the problem faced by the legislator of any country – the admissibility of the removal of organs and tissues of *post mortale* and during the life of the donor. In different countries, it is solved in different ways: there are prohibitions, permits, reservations, i.e. very complex legal structures. Thus, as stressed by Yuri Yamanaka, it is inferred that in vivo transplantation. At the same time, the peculiarity of law and order in Japan is that there is still no special law regulating the procedure for the removal and transplantation of organs from a living donor. The author emphasizes that the current situation needs to be corrected and suggests some ways to solve the legal (and moral-ethical) conflicts.

Yu. Yamanaki begins his article with a brief description of the prerequisites and the development of legal regulation of in vivo transplantation in Japan, paying special attention to the time of the establishment of brain death. However, he points out that 70% of transplants from living donors have been successful, and this practice continues to expand with respect to kidney, liver, lungs, intestines. Further, he analyzes the legal situation: there is still no special law in Japan. In Japan, any clinic can receive organs from a donor. And here there are many criminal and medical legal problems. Finally, Yu. Yamanaki characterizes the content of the main acts of the Ministry of health and the existing legal restrictions on the part of relatives, as well as the issue of freedom of expression of the donor. He emphasizes that according to the act of The Japanese society of Transplantology ("the Japan Society for translation") it is necessary to confirm the freedom of expression of will by third parties. This, in his opinion, detracts from the will of the donor.

In conclusion, the author emphasizes the idea that in Japan, lifetime organ donation is widespread and does not cause resistance of society, and the legislation is consistent with public expectations. Of course, the European culture (to which the Russian culture generally belongs, despite all the "Horde" heritage and attempts to revive it, building a "vertical of power") is significantly different from the Japanese worldview on life and death, humility and resistance, etc. But still, in our opinion, the experience of legal regulation of in vivo organ transplantation in Japan should be taken into account in the framework of improving not only the Russian medical, but also criminal and medical legislation.

Focusing on the analysis of only some articles placed in the first section of the book, devoted to criminal law, should us turn to criminology. It was extremely difficult for reviewers to select materials that deserve discussion and evaluation. Nevertheless, although not everyone can agree with this, given the limitations of the volume, we believe it is neces-



sary to present to the Russian reader the views and the results of studies of the criminal consequences of the migration crisis in Europe.

The book contains a number of articles devoted to the study of the situation and status of refugees and migrants in Europe. As already mentioned, one of the most acute problems that has taken over the European Union countries at the present time is the migration crisis. Therefore, scientific works devoted to a comprehensive analysis of the social and political situation in society, changes affecting thousands of people, humanitarian law are very valuable for the reader.

Mesut Hakki Caşın in his article "the Massive Syrian refugee crisis: how to respond the humanitarian law and impact on European security" (p. 348-361) examines the global issues associated with the influx of refugees and the gaps in European and international legislation not adequately respond to changes in the situation on the borders of the EU. In the introduction, author says that Europe currently cannot get out of the crisis associated with the migration of Syrian citizens, moreover, the situation is getting worse every day. The provisions of national legislation to protect asylum-seekers are currently unable to address all the problems associated with the large flow of refugees from North Africa and the Middle East. As the author points out that the Syrian crisis affects not only the security of countries, the territory which is directly adjacent to the borders of Syria, and which may be only a transit for the refugees, but also on the security of all countries participating in the EU. Insufficient control over the borders leads to the reverse trend: residents of the Eastern regions can cross the border and join the ranks of ISIS. Returning back to the EU territory, ISIS fighters are launching terrorist attacks on European territory. On the other hand, the unification of terrorist organizations (ISIL and Boko Haram, for example) could lead to wars and destabilization of the situation in Nigeria, Libya and other African countries, which would lead to an even greater number of refugees wishing to cross the Mediterranean sea and find refuge on the European continent. Another problem related to the lack of legal regulation of border crossing processes is the huge number of victims among people who seek to cross the border illegally (thousands of migrants drown in the waters of the Mediterranean sea, trying to get to the territory of Spain, Italy, Malta, Greece on unsuitable for sailing inflatable boats).

In conclusion, the author says that the European authorities need to develop new conditions for the stabilization of the economy and social sphere in the countries that accept the largest number of refugees (border with Syria), where the situation already leads to a serious confrontation between refugees and residents of the host country. In order to meet the challenges posed by migration, it is necessary not only to have the strength, but also a competent strategy aimed at stabilizing the situation in the countries from which refugees come, and a new migration policy of the EU member States, based on changing the legal situation and the integration of the provisions of international legislation.

In European society, there are two views on the situation related to mass migration to the EU. On the one hand, the population supports government decisions aimed at the adoption of a large number of foreign citizens in need of assistance. The other half of the European population criticizes migration policy, demanding to close borders and waste budget funds. The article of Michael Platzer "International aspects of social exclusion of migrants"



(p. 698-707) raises the question about the necessity of integrating migrants into social and political spheres of life in host countries with the aim to avoid the growth of crime and clashes with local residents. The author argues that under the current realities, refugees who came to the EU countries become a "lower class", as they cannot legally get a job because of lack of permits, knowledge of the language, as well as discrimination by the employer, which pushes them to commit crimes. At the same time M. Platzner writes: "in spite of the hot debate in 2015 about the need for all countries-EU member States to accept refugees, this position was not supported by the former Communist countries of Eastern Europe, with proper justification in support of the decision were not expressed, and therefore, these countries have forgotten the meaning of the word "solidarity" and the biblical mandate about the "hospitality and generosity to a stranger" (p. 700). This position, according to the author, leads to crime and terrorism, as angry migrants, without proper social support and tolerance from society, are forced to break the law. However, the article does not contain official statistics on crimes committed by migrants or statistics reflecting the number of court sentences, confirming the words of the scientist, but only statistics, reflecting the number of migrants living or arriving annually in different EU countries, which, in our opinion, cannot serve as a justification for the conclusions of M. Platzner. Of course, social exclusion has a great impact on a person's daily life, but it cannot justify terrorism.

The study of Katarzyna Laskowska, which is reflected in the article "Organizational structure of organized criminal groups involving foreigners that are active in Poland in the light of the results of studies of criminal case files" is very interesting (pp. 542-556). The study was conducted on the basis of the study of the structure of 101 criminal groups with a total of 170 foreign citizens, which confirms the representativeness of the conclusions that the author made in the effective part. The article is presented in the form of tables and analysis of the information contained in them, which show the various grounds for the creation of an organized group; factors affecting the structure and nature of criminal activity of the group, the number and nationality of its members and organizers. Thus, the author points out that 79% of the total number of participants in the studied organized groups are Polish citizens. Of 170 foreign citizens, participants of organized groups, 34.7% - Ukrainians, 14% - Vietnamese, 10.6% - Latin Americans. In the course of the study, K. Laskowska found that 73 convicted foreign citizens who are part of an organized group, got into it "by acquaintance", while 64 people were involved in criminal activity on a national basis, 23 convicts became members of a criminal group with the help of family ties. She also studied other factors that affect the entry into the group, such as physical data, ingenuity, courage, stress resistance, etc.

On the basis of the conducted analysis, research, statistics and surveys of convicted criminals, members of criminal groups, K. Laskowska concludes that the differences between the groups, including foreign citizens, and groups consisting of citizens of Poland are virtually absent. It is particularly worth noting that the structure of criminal groups with a foreign element is rather simple, while nationality in such a group plays a smaller role than the social ties of the members of the criminal group. Thus, the presence or absence of foreigners in an organized group does not affect the main characteristics of the criminal group, the purpose of its establishment or the management of such a group.



In conclusion, we would like to note the work of the Australian scientist Rick Sarre, dedicated to the modern tasks facing criminology (p.768-780). In the abstract of the article, he emphasizes that he would like to present his own vision of the challenges facing science, and ways to address global issues of crime.

R. Sarre notes that at present there is a large number of criminological studies, but the governments of the countries, conducting their criminal policy, do not always turn to science, while continuing to use force solutions in the fight against crime, and instead of crime prevention, new prisons are being built, the number of police officers is increasing. The author draws attention to the research on the dependence of criminal behavior on social welfare and the environment in which the child is. Prevention of child abuse, socialization, prohibition of the sale of cheap alcohol can directly affect the further desire of adolescents to commit crimes, which is confirmed by the programs implemented in a number of countries, although they are still local. R. Sarre notes that public confidence in law enforcement agencies also affects the quantitative and qualitative indicators of crime: in a society where there is high confidence in the police and the judiciary, in the administration of justice in General, crimes are committed less. Another important factor is the resocialization of criminals serving sentences in places of detention. This measure is necessary to ensure that convicted criminals, released not feel superfluous in society and did not seek to commit crimes again. At the same time, each statement, each submitted thesis of the author are justified by references to scientific sources and long-term studies, which clearly show the qualitative changes in the state of crime in society, where new programs aimed at preventing criminal behavior are already being used and implemented. These provisions support the idea of reviving the system of General and special crime prevention, which was so successfully developed and implemented in our country in the 70-80-ies of XX century.

In General, in our opinion, familiarization with any article of the reviewed book expands the thesaurus of Russian criminal law and criminology. The use of the information contained in it can contribute to the development of the best possible solutions of the law – making nature, improve the effectiveness of law enforcement practice, but – most importantly-the choice of research areas.

Translation by Kseniya A. Barysheva