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MORAL CONFLICT AND TYPES OF CRIMINAL PROCEEDINGS

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Abstract

The article presents the new knowledge about the historical development of the criminal process. Also, it contains the knowledge about its social, axiological, political, legal foundations, as well as about the legal institutional heritage for modern criminal procedural legislation in the context of the possibility to resolve the moral conflict occurring in criminal procedural activity. It is proved that the type of criminal proceedings is determined by the position of the individual in relations with the state. It can affect the moral conflicts in the criminal process through its general axiological orientation, pre-determining the value contradictions that are the source of the conflict, the composition of its subjects, the predominant strategy of behavior in it and out of it. At the same time, each type had unique social and legal mechanisms that determined the course of the conflict – positive or negative from the standpoint of modern requirements to ensure the dignity and legal capacity of the person involved in criminal proceedings. In this regard, the article presented the conclusions about the advantages of a mixed type of criminal process in this area, but only if it is improved by expanding private basis and changing some of its characteristics in the forms proposed by the authors. The results of the study can become the basis for further scientific research and for the modernization of criminal procedure legislation in terms of its type and strengthening the position of the individual in the moral and legal conflict with the public authorities.

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Keywords: Types of criminal proceeding, moral conflicts, public and private basis of criminal proceeding.



1. Introduction

Moral conflict and the type of criminal proceeding are unique phenomena. The first is a kind of social conflict, originating from the moral and value contradictions typical for criminal proceeding as a system of moral and legal interaction of participants defending their divergent interests. The second is one of the complex and ambiguously solved by science issues, which is key to understanding the essence of the entire criminal proceeding system and the strategies of its improvement.

2. Problem Statement

Moral conflict has a clear link with legal relations arising, developing and ending in the institution, investigation, trial and resolution of criminal cases. It is plurilateral social interaction of subjects, in which the emergence and transformation of contradictions into a conflict, as well as its resolution are influenced by social, axiological, legal, economic and other factors. Such can be considered acting in society axiological system, and its unformed structure, contradictory and imperfection of the law, and miscalculations in the organization of professional procedural activities, and poor personnel policy, and low availability of legal support to the population. However, these factors are sources of moral conflicts, they are transient and require timely and systematic legislative correction. Much more fundamental to their emergence and development is the systemic environment of the course, which on a historical scale presented by type of criminal proceeding, because "with the development of society develops criminal proceeding, its essence and objectives. The sequence of this reflects the doctrine of types" (Nazhimov, 1977, p. 73).

3. Research Questions

The concept of the type of criminal proceedings – one of the most difficult issues in criminal procedure science. Its theoretical appeal is due to the works of pre-revolutionary (I.I. Foinitskii, S.V. Poznyshchev, V.K. Sluchevskii, D.G. Talberg, N.N. Rozin and others), soviet (M.A. Cheltsov-Bebutov, M.S. Strogovich, N.N. Polianskii V.P. Nazhimov) and modern (Iu.V. Meshcheriakov, A.V. Smirnov, K.B. Kalinovskii, S.D. Shestakova) lawyers led to the formation of a cohesive doctrine of the types, forms and types of criminal proceedings – the typology of the criminal proceeding (Foinitsky, 1996; Nazhimov, 1977; Meshcheryakov, 1990; Smirnov, 2000; Smirnov, 2001; Kalinovskiy, 1999; Shestakova, 2001). The merit of the latter is that the dependence of the type of criminal proceedings on the position of the individual in the system of procedural relations was justified.

As a result, the necessary scientific basis for complex studies of the course of moral and procedural conflict was formed, whose subject area should determine the trinity: moral conflict, criminal procedural form and its historical and typological properties.

4. Purpose of the Study

The purpose of this study is to determine the genesis of the types of criminal proceedings and their impact on the moral conflicts arising between the participants of criminal procedural legal relations, to develop ways of optimization the type of modern criminal justice system.

5. Research Methods

The study used a dialectical method that allows to reveal the essence of the types of criminal proceedings, their system of relations, expressing the clash of procedural interests of participants in the moral conflict, as a socio-historical phenomenon; methods of analysis, synthesis; comparative and historical methods of analysis the law, and formal-dogmatic method. The study was also based on the achievements of the General theory of state and law, criminal procedure science.

6. Findings

Types of criminal proceedings are coordinated by historical logic and, one way or another, characterized quite certain periods of development of domestic and foreign systems of administration of justice in criminal cases. However, due to the laws of social development, each type of criminal procedure enriched law-making and law enforcement practice with useful knowledge, formed a successive transfer of invaluable historical experience, even if one criminal procedure gave way to another as a result of a powerful social upheaval. Thus, the initial dismantling of the criminal procedure system of pre-revolutionary Russia in accordance with the decrees of the Soviet government on the court (1917–1918) was further smoothed by the adoption of codes, which very actively carried out the reception of institutions of pre-revolutionary criminal procedure law.

For this reason, analyzing the modern Russian criminal process, it can be noted which of its institutions originate in the accusatory or investigative types of criminal proceedings, which seem to be long gone. Thus, the institutions of private prosecution (art. 2, sect. 20, of the Russian Federation Code of Criminal Procedure), termination of the criminal case in connection with reconciliation with the victim (art. 25 of the Russian Federation Code of Criminal Procedure), proceedings before a magistrate (Ch. 41 of the code of the Russian Federation Code of Criminal Procedure) are based on private-adversarial principles which are an evidence of the ancient criminal process. At the same time, the tasks, the organization of preliminary investigation and the procedure of investigative actions came to the Russian criminal process from the investigative criminal procedure, which most clearly manifested itself in our country in the 18th and first half of the 20th century.

That is why the type of criminal procedure determined by the place of the individual in criminal procedural relations with the government (Simonson, 2019) can have a significant impact on the emergence and development of moral conflict in procedural activities.

To paraphrase Kudryavtsev's (1994) words, moral conflict, being a kind of social conflict, there is a confrontation between two or more subjects, due to the opposite (incompatibility) of their interests, needs, systems of values or knowledge, concerning the moral assessment of the world, man in it, his actions and thoughts in relation to himself and to others. Moral contradictions that are the potential of the conflict lead

to moral conflict. And the conflict is an active dynamic stage of manifestation and resolution of contradictions. Morality as a worldview system, as a social regulator of human behavior, especially reveals its contradictory value nature in extreme conditions (Kozyavin, 2014). And to those, of course, criminal procedural activities belong to.

Historically, the first was private-adversarial (accusatory) criminal proceedings, in which a dispute arose between two equal private persons - the victim and the accused - over the commission of an act prohibited by law. The increase in the number of such disputes has led the government to fix the procedure for their resolution, giving it a legal form – criminal procedure. Foinitsky (1996) rightly insisted on that occurrence of the criminal process in accusatory type. It is obvious that "the demand for rights on the part of society is more primary than the government will expressing the legitimate offer of law" (Vardanyants, 2007, p. 59), and the fact that "from the moment of origin the value of the function of justice was ... great: its administration ... brought an element of order into spontaneously developing social relations, asserted a fair law and order" (Boykov, 2002, p. 34).

The main axiological orientation of this type of system was the creation of conditions for satisfaction of private interest, which in the greatest degree depended on active steps of the victim-accuser. In fact, the individualistic system of values (Frantsiforov, 2006), the subjective-egoistic view of justice was taken under protection, and the moral conflict in the context of specific interpersonal relations had the following features.

First, the moral contradiction from which the conflict grew consisted in a multidirectional assessment of the fairness of the circumstances of the criminal case by the parties: crime and immorality of the act, its consequences, proof, responsibility in such a situation. It should be reminded, that the morality of ancient Greek and Roman societies, as well as Hellenic philosophy and culture fully encouraged the art of dispute and discussion.

Second, the moral conflict is almost not related to the values of humanism, because the appeal to them of the accused, an admission of guilt and compensation for the damage would absolutely preclude the need for criminal prosecution, however, as a reference to the Prosecutor, the forgiveness of the offender would initiation of a criminal procedure meaningless.

Third, the conflict focused on the identity of the Prosecutor and the accused, without affecting the arbitrator. Of course, there were also conflicts between the parties, the court and witnesses, but they were still not systemic, but private and were resolved by public authorities through cooperation with the court or through procedural compulsion applied by the court.

Fourth, from the five strategies of behavior known to science in a conflict situation (avoidance, rivalry, adaptation, compromise and cooperation) in a moral conflict, the accusatory process stimulated rivalry (in the process of presenting evidence to the court), adaptation (in agreement with a judicial decision) and compromise (in reconciliation of the parties) (Kuzmina, 2008) Accordingly, there is less practiced a form of exit from the conflict, as violence (compulsion).

The early feudal States of Europe, which arose on the "ruins" of the Western Roman Empire, inherited many of its institutions, including the accusatory type of criminal proceedings (according to the *Russkya Pravda* (Russian Truth), written not without the influence of the canonical law of Byzantium, the crime was not accidentally designated by the category of "offense"). However, the implementation of

adversarial and prosecutorial criminal procedure in the absence of a sufficient level of General and legal culture, characteristic of the ancient Greeks and Romans, caused the need for the barbarian peoples of Europe in the first legislative monuments (Salic law) to strengthen the public (government) principle. It was used to eradicate blood feud in the barbarian peoples as a way to resolve the conflict over the crime that undermined the human resource of the States of early feudal Europe. Then to strengthen the power of the Catholic Church and the fight against Protestants, then to protect the absolutism of European monarchies. As a result, the transition from the accusatory type of criminal proceedings to the investigatory type, the most appropriate totalitarian regime of feudal States, as well as societies, fastened pronounced collectivist morality of Christianity. This fact, however, without any rational explanations noted Foinitsky (1996).

The General axiological orientation of the investigative type of criminal process was expressed in the deprivation of any procedural subjectivity of the accused, the victim, witnesses, in the usurpation by the state of the right to interpret the basic moral values – justice and humanism, in the denial of individualistic morality, in the protection of the values of collectivism (sacrifice, altruism, patriotism, etc.). This immediately affected the nature of moral conflicts in criminal proceedings. They lost the connection with legal relations, because the person in the investigatory proceedings has become an object of study, but remained within the framework of moral relations, as the active phase of confrontation between the official and the individual (for example, active disobedience of the latter, his emotional outrage and disagreement of violence in the investigation) occurred more than often.

The most important features of the emergence and flowing of the moral conflict in the investigation were, first, it is not specifically-personal, but systemic nature, because the confrontation entered the private interest and the official interest of the system – an abstract "interest". In the modern Russian criminal proceedings it is particularly clearly manifests itself as an interest in "reporting and statistics." That is why the conflicts between the victim and the accused, between the parties and witnesses disappeared from the system of moral conflicts, and the main conflict became the "person – official". However, the investigative type of criminal process is not aimed at protecting the rights of the victim or someone else's rights. There are no parties, all functions are connected in the hands of one "sovereign servant".

Secondly, the moral contradiction from which the conflict grew consisted in the non-acceptance by human nature of open violence as the main procedural means which ensure the solution of the tasks of criminal proceedings. It is in the investigation, in our opinion, significantly actualized the value of humanism.

Third, criminal proceedings of the investigative type have extremely high formal and legal certainty; they are bureaucratic and subject to the imperative method of regulation. In such a situation, there is a transfer of legal regulation to a moral conflict, and it, without being flexible, only preserves the conflict, suppressing the freedom and responsible approach of the individual to its compromise or consensual resolution.

Fourth, investigation in the moral conflict stimulates such a behavior strategy in conflict situations, as avoidance of conflict and the adaptation (conformity). Accordingly, it is dominated by such a form of exit from the conflict as compulsion. The conflict itself, often without being fully resolved, preserves the moral contradiction and creates conditions for its further escalation.

Subsequently, the investigatory systems of continental Europe, obeying humanitarian and political reasons (Samaha, 1974), during the bourgeois revolutions acquired the most important properties of democracy and competitiveness, became mixed, or private-adversarial. They combined positive features of the adversarial and investigative criminal procedure in terms of the real need for human rights and adequate government power. So, in science, few people deny that the adversarial more consistent with the idea of ensuring the rights of the individual in criminal proceedings, private interest, and investigation – the effectiveness of criminal prosecution, the promotion of public interest.

From the point of view of influence on the moral conflict resources of investigation allow to remove quickly tension of the conflict situation, interfering with the process of solving the case. At the same time, adversarial is able to resolve the conflict completely and without close or distant consequences. Mixed (public-adversarial) criminal procedure become certainly more complicated and subjective system of moral conflict was expressed threefold: victim – defendant – government. However, it had the ability to influence the conflict, inherent in both the accusatory type of criminal process and investigative. In fact, mixed in the course of historical development were not only the investigation in the past the criminal justice system of continental Europe, but the adversarial system of the family of common (English) law, which, however, did not relieve both of the need to solve the problem of ensuring the proper balance of interests of the individual and the public order of the fight against crime (Simonson, 2019), problems of optimization of making specific procedural decisions in accordance with the rules of law and morality in the context of the impact on them of objective and subjective beginnings of professional activity (O'Rourke, 2013; Kinports, 2007).

7. Conclusion

In a conclusion, a few comments should be made. in the Russian mixed criminal process should remove the formalization from procedures to eliminate unwanted conditions and grounds for conducting the proceedings. Excessive formalization of procedural relations leads to the expansion of the subjects of moral conflict by including an official in it, which inevitably leads to the emergence of the systemic interest in the confrontation with the person from investigation and the court and change the strategy of behavior in the conflict.

The private part objectively gives the chance of a quick exit of a contradiction to the conflict and its resolution. It is not driven deeper, the system becomes more flexible, which prevents the aggravation and escalation of the conflict that threatens the entire system. This axiom is pointed out in their works by the sociology of law (Coser, 1956; Williams, 1947; Vardanyants, 2007). It is very likely that the investigative criminal procedure for this very reason significantly brought closer such European upheavals as the reformation of the Catholic Church, the Renaissance and bourgeois revolutions.

Therefore, the most important task of the near future is to determine the proper balance between the publicity of the criminal process and its private part. A lot of scientific researchers are devoted to this problem in modern procedural science (Petrukhin, 1999; Maslennikova, 2000; Mikhaylovskaya, 2003; Bagautdinov, 2004). In our view, such a balance can be achieved by, first, increasing the number of private prosecution cases and expanding the rights of the victim in private-public prosecution cases; second, expanding the rights of the victim to initiate and terminate criminal prosecution; third, by distorting the

process of submission of evidence by the parties – the main criteria for the legal quality of evidence should be compliance with the constitutional rights of the individual in its receipt and reliability; fourth, the expansion of social cooperation between the investigator, the victim and the accused at the pre-trial stages of the criminal process by expanding the use of negotiation technologies, as well as systems of social partnership and control between citizens and subjects of public criminal procedure authorities (Capers, 2018; Kozyavin & Chistilina, 2016).

In such a situation, the system of public-adversarial criminal proceedings in Russia, becoming a system of real social interaction between the individual and the state in a trilateral subject composition (victim – accused – state), will also have the opportunity to stimulate such a strategy of behavior in a moral conflict as compromise – and without prejudice to the public beginning of criminal procedure, which, of course, will retain a certain primacy. It is obvious that the criterion of efficiency of procedural activity should be the indicator of decisions ruthlessness – instead of statistical indicators of decisions' stability.

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