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COMPARATIVE LEGAL ANALYSIS OF THE SOURCES OF CRIMINAL LAW IN FOREIGN COUNTRIES

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Abstract
The article analyzes the system of sources of criminal law in the Anglo-Saxon and Romano-Germanic legal traditions and mentions the tendencies in the formation of criminal law in certain states.

The topic of the article seems to be relevant, since such a study allows carrying out a wider – through contrast and comparison of existing regulations – study of the advantages and disadvantages of domestic experience in legal regulation and, if necessary, putting forward proposals for borrowing foreign countries' experience. The main specific legal methods are: the comparative legal method and the formal legal method. With regard to the practical plane, the conclusions of the article can become the basis for future changes in the Republic of Moldova.
Keywords: sources of criminal law, legal system, statute, judicial precedent, codified criminal law.

ANALIZA JURIDICO-COMPARATIVĂ A IZVOARELOR DREPTULUI PENAL DIN ȚĂRILE STRĂINE

Abstract
Prezentul articol analizează sistemul izvoarelor dreptului penal din state străine, acestea fiind examinate și caracterizate în contextul familiei de common law (dreptul anglo-saxon), al familiei de drept continental (dreptul romano-german) și al familiei dreptului religios (dreptul musulman). Abordarea comparativă a dreptului penal, inclusiv a izvoarelor acestuia, este necesară pentru elaborarea unor metode eficiente de combatere a criminalității, având în vedere atât experiența națională, cât și cea internațională.
Cuvinte-cheie: izvoarele dreptului penal, sistem juridic, statut, precedent judiciar, lege penală codificată.

Introduction. The criminal law of a state possesses its own particularities, which are determined by the form of government, national and historical development, religious concepts, and the level of legal culture.

The diversity of legal systems, including in the field of criminal-law regulation, allows us to establish the tendencies in the formation of criminal law in certain states, to determine the main sources of criminal law, and to identify the consequences of international cooperation and its influence on the formation of the criminal policies of states. At present, there is a tendency toward the harmonization of legal systems, as a result of which certain sources of criminal law from one legal system are also used in other legal systems.

Within the framework of a comparative legal analysis of the sources of criminal law in foreign countries, we shall characterize these sources and examine them in the context of the common law family — Anglo-Saxon law, the continental law family — Romano-Germanic law, and the religious law family — Islamic law.

The comparative approach to criminal law, including the sources of criminal law, is necessary for the development of methods for combating crime, taking into account both national and international experience.

These considerations have predetermined the choice of the research subject. The study of any legal system must begin with the examination of its sources. By source is understood the form of expression of legal norms.

Methods and materials applied. In the process of the respective investigation, the comparative method of study was used. In addition to the comparative method, a series of other methods were also applied, such as: the method of logical analysis, logical interpretation, classification, etc.

Discussions and result obtained. It is generally unanimously accepted that the main sources of law are the normative legal act, legal precedent, legal custom, and the contract.

From a historical point of view, the division of law into statutory law and case law has taken shape. The system and structure of the sources of law, as well as the form of expression of basic legal concepts, depend on the manner in which criminal provisions are expressed in normative acts or in court decisions concerning specific cases.

The normative legal act is generally accepted and is considered the most convenient source of law. In the sphere of criminal-law regulation, the main normative legal act is the Criminal Code. First, in the traditional Criminal Code, the General Part and the Special Part are distinguished. Second, the basic principles of criminal law are established. Third, specific categories of offences are characterized and the sanctions for committing them are determined. The Criminal Code is considered a source of criminal law in France, Germany, and the USA. The absence of a codified legal act is associated with the historical development of the English legal system — England and Wales.

A particularly important source of criminal law in foreign countries is constitutional legislation. In particular, the Constitutions of France, the USA, and Germany contain criminal-law norms. For judicial practice in the USA, a direct reference to constitutional norms in the reasoning of a court judgment may serve as a norm of criminal law. However, the uncodified constitution of the United Kingdom does not exclude the role of other acts of constitutional importance, for example, The Bill of Rights, in defining the principles of criminal law.

The sources of criminal law in foreign countries may also include doctrinal works in the field of criminal law. We note that, in countries where legislation is codified to the maximum extent, references to such sources are absent — France and Germany — whereas in countries where judicial precedent is predominant, references to extensive scholarly works of jurists are recognized as a norm and, therefore, are regarded as a source of criminal law — England and the USA. English law may be viewed as a set of rules based on the old common law of England, modified and developed through authoritative decisions of courts throughout history and significantly expanded through legislative acts of Parliament.

The main sources of law in the common law family — the Anglo-American type of the criminal-law family — are statutes, namely parliamentary legislation, and judicial precedents. England is the homeland of common law. The specific feature of English criminal law consists in the absence of a single codified criminal law. However, there is a significant number of statutes, whose role has recently increased. The role of judicial precedents as sources of criminal law in England remains relevant. Judicial precedent is understood as a court decision in a specific criminal case, which is binding upon the respective court and the lower courts with regard to the interpretation of the principles and rules of common law. At present, in English jurisprudence, each court is obliged to follow the decision of a higher court in the hierarchy, while courts of appeal are bound by their previous decisions.

There is an exception to this rule. The House of Lords, since 1966, has had the right to modify judicial practice where necessary. In addition, higher courts have the right to annul the decision of a lower court, as well as, in certain cases, their own previous decision. Any legal norm, including judicial precedent, may be modified by an Act of Parliament.

Over several centuries, court decisions in criminal cases were published in judicial reports. Today, the best-known and most authoritative are the English judicial reports, which are published weekly [1, p.109-111].

In specialized literature, among the sources of common law, including English criminal law, the works of renowned jurists are noted; at present, they do not have the value of a source of law, yet they still possess significant authority. When analyzing the sources of criminal law in the common law family, contemporary guides must be taken into consideration, for example, W. Blackstone's Commentaries on the Laws of England, published in 1765. This work is frequently referred to as an authoritative source [3].

The main sources of criminal law in the common law family also include statutes, or statutory law. There is a large number of statutes — over 8,000 — which contain rules concerning the criminal liability of natural and legal persons. In general, legislative acts in the field of criminal law regulate liability for specific categories of offences. In this context, the basic principles of criminal liability continue to be based on the rules of common law.

It is noteworthy that, alongside modern statutes, old laws continue to exist, such as the Treason Act of 1351.

The official publication of legislative acts is carried out by the King's Printer, either in the form of separate acts or in the form of an annual collection of Acts of Parliament. With regard to the territorial application of the law, the presumption is used that an Act of Parliament applies throughout the entire territory of the United Kingdom, unless the act itself provides otherwise.

However, sometimes an act may specify that its provisions do not apply on the territory of Scotland or Northern Ireland. There are also cases in which the applicability of a law extends beyond the territorial borders of the United Kingdom, for example, in the case of legislation on combating terrorism. According to the rules on the temporal application of the law, it enters into force from the date of Royal Assent, unless the law provides for another date.

As a rule, if a law is clearly drafted, without ambiguous terminology, it does not require judicial interpretation. In other cases, in practice, its interpretation is necessary. In English criminal law, three methods — or approaches — of statutory interpretation are applied: the "literal" rule, the "golden" rule, and the "mischief" rule. Literal interpretation presupposes that the text contained in the law is interpreted word for word. If the law is drafted in such a way that two or more literal interpretations are possible, the court applies the interpretation that is the most consistent and leads to a logical result. In this case, the "golden" rule of interpretation is applied. According to the "mischief" rule, interpretation is reduced to correcting an error. For this interpretation, the law is read as a whole. In this process, the court carefully analyzes both the long title and the short title of the law. Provisions relating to criminal law are interpreted restrictively. If a law establishing criminal liability contains ambiguous or undefined terms, it must be interpreted in favor of the individual. From this rule derives the presumption that liability is excluded in the absence of guilt. The latter, according to a general rule, constitutes a mandatory element of the corpus delicti.

Alongside statutes, there also exists such a source of English criminal law as delegated legislation [2, pp.96-106]. Its advantage consists in the fact that it allows for the rapid adoption and amendment of regulations, without the need for approval by Parliament. Among the forms of delegated legislation, its superior form is distinguished: the "Order in

Council", by which laws are implemented. The "Order in Council" is issued by the government and sanctioned by the Privy Council. Delegated acts are published by His Majesty's Stationery Office in a special collection.

With reference to the continental legal family, it may be stated that law, in the broad sense, prevails over other sources of law and represents the basic source of criminal law. The norms of French criminal law are determined in the form of a system: first — constitutional and international norms; then — codified and uncodified criminal laws; and subordinate normative acts adopted by the bodies of executive power. In this context, the role of judicial precedent is limited. Nevertheless, the decisions of the Criminal Chamber of the Court of Cassation of France are of considerable importance for French criminal law. We note that constitutional norms as a source of criminal law include the constitutional act — the Declaration of the Rights of Man and of the Citizen of 1789 [4, p.576].

Undoubtedly, this act contains important principles of criminal law. For the first time, the principle was enshrined that "everything which is not prohibited by law may not be prevented, and no one may be compelled to do what the law does not require" (Art. 5). Another important principle established in the Declaration is that "no one may be accused, arrested, or detained except in the cases determined by law and in the form prescribed by it" (Art. 7). Also of essential significance is the principle prohibiting punishment otherwise than as provided by law, adopted prior to the commission of the offence and duly published in a lawful manner. The Declaration proclaims the principle of equality of all persons before the law. For the first time, the principle of the presumption of innocence was constitutionally recognized. At the same time, the Declaration excludes criminal liability solely for thoughts, opinions, or beliefs.

A significant source is the Constitution of the French Republic of 1958, which contains provisions directly related to criminal law. In particular, Article 17 of the Constitution stipulates that the right to grant pardons is conferred upon the President of the Republic. The Constitution also regulates matters concerning the criminal liability of the highest officials of the French Republic — the President and members of the Government. Moreover, it is specified that the President is responsible for actions carried out in the exercise of his duties, with the exception of high treason. Members of the Government may be held criminally liable during the period in which they exercise their functions.

Ratified international agreements and treaties, as a source of law, have a force that exceeds the status of law only after their official publication, provided that each such agreement or treaty is also applied by the other party [5, p.74]. In this situation, the norms of international law must be placed "at the top" of the state's legal system, since their priority in relation to national legal norms is recognized. However, the situation is complex, because the existence of a norm of international law does not mean that it may be applied to the detriment of domestic national law, if it contradicts it. In this case, the contradictions must be evident and easily identifiable. Priority may be only temporary, since the terms of validity of the agreement are usually limited. Another issue is the fact that norms of international law do not contain sanctions, which means that it is necessary for the states that sign and ratify the agreement to adopt separate laws. Therefore, it would be more appropriate to suspend the application of domestic law that contradicts the norms of international law than to repeal those norms. In the event of a conflict between French law and an international treaty, it is proposed that the respective law be considered incompatible also with the norms of the Constitution of France, which constitutes a ground for its examination by the Constitutional Council, with a view to the subsequent repeal of that law [6, p.105]. In particular, international agreements apply in criminal law, being represented by treaties on extradition, legal assistance, and conventions on combating certain types of offences. International treaties have influenced the inclusion of specific norms in the Criminal Code of France, as well as the harmonization of national criminal-law norms with agreements of international law [6, pp.105-139]. As a source of criminal law, the French Criminal Procedure Code of 1958 is traditionally considered, in which the most important principles of criminal law are enshrined. For example, the prohibition of being punished twice for the same act.

The next source of criminal law is considered to be the Code of Military Justice (1966). This Code contains norms concerning criminal liability for military offences. Criminal liability is also regulated by other sources of French criminal law, such as the Highway Code, the Labour Code, the Code of Residential and Non-Residential Real Property, the Intellectual Property Code, the Customs Code, the Tax Code, the Urban Planning Code, the Consumer Protection Code, and the Public Health Code.

In addition, criminal liability for certain offences is provided for in special laws, such as the Law on Commercial Companies (1966), the Law on Gambling (1983), the Law on the Activities of Credit Institutions and Their Supervision, and the Law on the Judicial Reorganization and Liquidation of Enterprises, which have not been included in any of the codes.

Subordinate normative acts should also be considered a source of criminal law. They appear in two main forms: in the form of subordinate normative acts having the force of law — for example, the Ordinance of the Provisional Government of France (1944), and Ordinance No.45-174 of 2 February 1945 on offences committed by minors — and in the form of acts that do not have the force of law, namely simple decrees adopted by the government.

Conclusion. In conclusion, we emphasize that, within the Anglo-Saxon legal family, the principal source of law is judicial precedent, while the essential role in the formation of law is attributed to the court. Procedural law has priority in relation to substantive criminal law. Statutory law is widely used, whereas legal customs constitute auxiliary, supplementary sources of law.

On the other hand, the continental legal family — the Romano-Germanic family — is characterized by a unified hierarchical system of sources of written law, in which normative acts play a dominant role. In this context, the role of codified acts is important, while subordinate normative acts — regulations, circulars, and instructions — have major significance. Legal custom and judicial precedent are considered auxiliary, supplementary sources of law. A special role is attributed to legal doctrine, which has developed the fundamental principles underlying the construction of this legal system.

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