

THE ROLE AND OBJECTIVES OF CRIMINAL LAW

Jaafar Yahay Jaafar Al-Saeed

Research Scholar, Legal Department, Ministry of Higher Education and Scientific Research, IRAQ

Received: 14 Sep 2022

Accepted: 20 Sep 2022

Published: 21 Sep 2022

ABSTRACT

The rules of criminal law can be considered legal rules that have the necessary characteristics, and these rules are intended to achieve the most important vital goals related to the social and political entity, especially since criminal law is a branch of other public law branches, and it is possible to employ general criminal law in order to achieve and ensure rights related to the public interest, and thus preserving the entity of the state and not harming it socially at the level of the individual, family and group, as well as politically by respecting the general basic principles of the state constitution and its political institutions.

KEYWORDS: *Criminal Law, Legal Rules, Role and Objectives*

INTRODUCTION

The law is defined as a set of general, abstract rules that regulate the behavior of individuals in society, and these rules are accompanied by a material penalty that guarantees and guarantees their respect and optimal application of the law. According to this definition, the general law is the meaning that is used in applying the word law when it is launched, and this is the general meaning intended by the term law. But at other times, the term law may not express this general meaning, as it may mean a set of legal rules (representing the law) that the legislative authority can set to organize a specific case, for example, it is said that the law of lawyers or the law of organizing universities. In the literature of criminal law, the focus has been continue when needed of apply the principles of criminal law in assessing criminal-legal activities (1). So we can say that the law is a set of rules that the state enacts in order to regulate its rights to impose and apply punishment. It can also be said that it is a set of rules by which criminal responsibility and penalties are determined as a result of a dangerous human behavior in society, and the resulting social, cultural and other effects. In analyzing the criminal law philosophy, the soulful plurality of authors understands this as an exhaustive lists of basic provisions set by law (2).The law can be expressed as a set of legal rules specific to abstract acts and the penalties prescribed for them, either in the form of applying penalties or resorting to preventive measures. The crime in the broad sense represents the actions carried out by one person or several persons, which are determined by the state in accordance with positive law, and which would cause serious disturbance in society, as it would result in damage or a threat to the public interests of the society or the individual. The court has the main function of arbitrator, but hasn't any participation in the question, or investigate and collected of evidences. The criminality trialed may be itself be only a composed of crime (3).These rules may set and specify the most important conditions that must be met to inflict punishment on the perpetrator of the crime, as well as work on organizing the rules and procedures for research in the investigation of crimes and the procedures of the courts, and thus the implementation of the sentence imposed by the criminal.

CHARACTERISTICS OF CRIMINAL LAW

In fact the matter of punishments regulation occurs by law(4).The criminal law must be based on realistic foundations and conform to it, and the legislator does not have the right to rely on assumptions in order to enact a specific criminal rule. This is what is called the legal model of the crime, the fact that the criminal base must include different types of constitutive elements for a specific criminal incident or a specific criminal event.

- The criminal law must be based on reality and it must be completely identical to it, and it is not possible to use the assumption or rely on it in the enactment of a specific criminal rule, and this is what is known as the legal model of the crime, that the criminal rule must include various basic formative elements It is necessary to provide them in the criminal incident when it occurs, and there is a necessary measure for this rule represented in the punishment, which in turn is supposed to match the realistic model of the crime with its legal model, and the main purpose of this congruence is to reveal accurately the acts committed during the crime, all for the sake of Implementation of the principle of “no crime and no penalty except in the presence of a previous legal text.”
- We can say that the nature of criminal law can't stop only at the idea of the legal model of crime, but adds jurisprudence in addition to the characteristic of accurate and precise identification of its texts, through clarity, simplicity and accuracy, and this in turn leads to the removal of criminal law from the field that Interpretation and avoidance of decisions results in angles of interpretation that are inconsistent with the true principle which says “there is no crime and no punishment without the presence of a text”. in fact, there are some Europe\and America criminologists, who thought that the reformation of the individual necessary to be the only rightful object of retribution (5). In **figure no. (1)** the most characteristics of criminal law are shown.



Figure 1: To Show Characteristics of Criminal Law.

- Apologetic defenses are bind to the external context and removed criminal responsibilities as well as civil responsibility (6).several types of behaviors are illegal in many countries (7). Continental law is high plains and articulates in questions of easement, and warrant than Anglo\American law (8).

OBJECTIVES OF CRIMINAL LAW

- One of the most important goals of criminal law is that we find stability in the law and ensure the achievement of justice and the defense of public and common interests, and that reaching the stage of legal stability is the only considered goal of criminal law, and that achieving justice and common interests are the two important elements necessary to achieve stability in criminal law.
- With regard to legal stability, we can understand from it how to reach the codification of the punitive or criminal rules that must be applied in order for individuals to know more details about the legal controls in human life, knowing what is prohibited and what is permissible in them. their activity, and they have the right to live a beautiful and quiet life far from all kinds of dangers and possible disturbances.
- The pursuit of justice is one of the main important goals of the criminal law, because the criminal rule is divided into **two parts**:
 - The first part is commissioning or criminalization.
 - The second part is retribution, and the idea of justice is linked to punishment.
- Punishment must be fair and have **two main functions**: (a utilitarian and corrective function), which are generally to protect society from crime, and then a moral function.

THE MAIN SOURCES OF CRIMINAL LAW

The Constitution

If we note that the 1996 and 2011 constitutions and previous constitutions contain basic principles related to criminal law, and are considered its main source, among them we mention the principle of equality, the principle of fundamental freedoms, the principle of legality or (the presumption of innocence), as well as the principle of non-retroactivity of laws...

Law

It is defined as the legislative text that Parliament votes and is published in the Official Gazette. Everyone, unlike individual administrative decisions, which in turn deal with special cases. There are many examples of this, such as; the Moroccan criminal group was influenced by the principles of European codification of the principle of criminal legality, as well as the written law and other legal paragraphs related to criminal law.

Foreign Laws and International Treaties

The international criminal law legislator can stipulate reciprocity in criminalization, and this is considered a kind of criminal similarity in acts when international law is considered a source of legal base. A side can prove any circumstances relevant with the facts in issue, but no any others (9). There is a role for international treaties that can be a source of general criminal law if most of the necessary conditions are met, and this shows the extent of overlap between private criminal law and international or public law. In the other hand we can put the main sources of law in **figure no. (2)**, as shown below:



Figure 2: To Show the Main Sources of Law.

The 1st source of law is constitutional-law, two constitutions are applicable in any state; the federal\or U.S constitution, which is in forces through the United-states of America. The 2nd source of law is represented by statutory law. While the government action represented by the application of constitution, by regulation of individual\private actions.

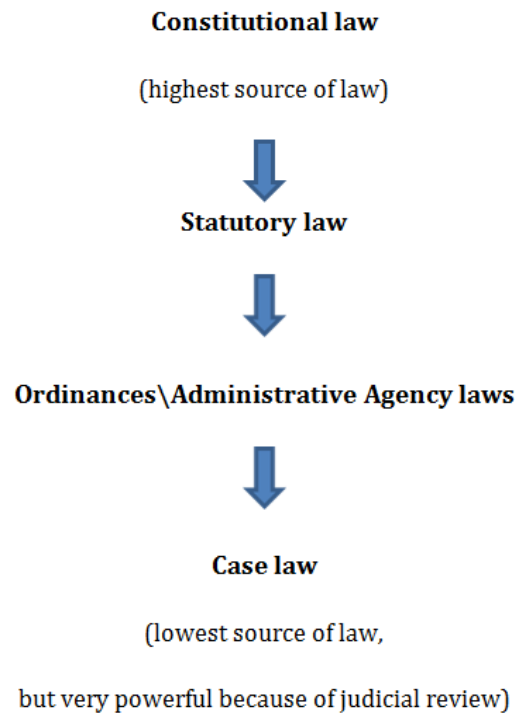


Figure 3: To Show the Followed Serious of Criminal Law Sources.

RELATIONSHIP OF CRIMINAL LAW WITH OTHER BRANCHES OF LAW

There is a close link, and a real and clear relationship between criminal law and all other branches of law, and this relationship appears whenever there is a need to strengthen the penal rules in order to protect them, as follows:

Criminal Law and Civil Law

The link between the criminal law and the civil law is evident through the right to property, which includes imposing the penalty for theft, fraud and breach of trust, in addition to fire and damage. Criminal law may occur with an ordinary person, because of the limitation of the ideas of crime to the legal wrongs which violently offend moral-feelings of people. Criminal and civil wrongs, then, are not severely separates groups of actives but are alwise one and the same activity as considered in several viewpoints, this being one not of nature but just of relation (10).It is known that the criminal law is related to the personal status laws, and this relationship is clarified by the protection of marital rights by imposing punishment on adultery and desertion of the family, in addition to protecting the right of custody by establishing a system and a financial penalty for that in the event that one of the parents refuses to hand the child over to the one who has the right his custody.

Criminal Law and Constitutional Law

The relationship of criminal law with constitutional law appears through the protection of the constitution and the system of government in the state through the criminal law, and imposes penalties on those who attempt to prejudice the security of the state, and the constitutional law determines the principles on which criminal law is built, such as considering that the accused is innocent Unless proven guilty by the judicial authority.

Criminal Law in Administrative Law

The link between criminal law and administrative law through the criminalization of bribery or embezzlement of public funds through the abuse of influence and abuse of power. It also protects the public authority from attacking it by anyone, as the criminal law criminalizes assaulting employees during the performance of their work or humiliating them. It also protects public institutions, as it criminalizes exposure to public safety, roads, transportation and other public facilities.

Criminal and Commercial Law

The relationship of the criminal law to the commercial law is revealed through the protection of dealing with money and bills, by imposing penalties for anyone who withdraws a trust receipt on a bank without a balance.

Criminal Law and Public International Law

Criminal law has a close link with public international law by regulating solidarity and relations between states in order to combat crime and impose punishment on criminals by defining the legal authority of penalties with regard to crimes and criminals in the territory of the state and also outside it, as well as regulating the issue of extradition of criminals to their original country.

THE RELATIONSHIP OF CRIMINAL LAW TO THE RULES OF MORALITY

Criminal law is related to moral rules, in that each of them aims to please the individual and the group by imposing a system that all people must abide by, improving their behavior and behavior and modifying their interactions with each other, provided that the appearance of the link between the two is subject to the obligations and rules it stipulates. It should be noted that seduction is not considered a crime (11). The law and its preservation, in order to achieve the basic goal of consolidating this relationship. The major crimes that must be punished by the penal code are at the same time inconsistent with the most important rules of morality. Murder, wounding, indecent assault, theft, fraud, treason and espionage are the closest example of this. However, there is no way to achieve complete conformity in all the crimes established by the penal code and ethical violations. In figure no. 4; to illustrate the relationship between law and morality.



Figure 4: To Show the Tightly Relationship between Law and Morality.

The penal codes include a number of offenses that have nothing to do with moral principles. While many of the behaviors prohibited by the rules of ethics are not punishable by the penal code. For example, lying, hypocrisy, gossip and exaggeration are prohibited in the rules of morality, but they are not punished by the penal code, while when violating the rule of driving on the road or not lighting car lights when driving at night, for example, the penal code is punished even though it is seen as far from the rules of morality. The criminal text cannot be applied unless it is in force, and it is not so until one month has passed from the date of its publication in the official gazette approved in the state, and this is in accordance with the text of resolution no. 225 of the constitution for some Arabic countries such as Egypt for the year 2014. On this basis, there is no approval of the people's assembly on the law suffices because of its enforcement, and it is not sufficient for the president of the republic to issue the indicated law, and it is also not sufficient to publish it in the official gazette in order for it to be effective, but a full month must elapse from the date of publication. In application of this, the criminalization text cannot be applied to an act that was committed before its entry into force. This is clear as define in section under (Book-2, Title-10, Chapter-3) of the Penal-Code as the deliberated terminations of a pregnancy by procuring them is-carriage, or pre-mature delivery of a woman (12). The criminal text shall remain in force, applicable to all acts or crimes committed, until it expires by cancellation, which may be express or implied. Explicit repeal is only achieved when a new law is issued that includes an explicit text deciding the expiration of the previous law, so the moment the new law comes into force is the same moment the previous law was repealed. As for the implicit repeal of the law, it is achieved only when the new law includes a text that contradicts the ruling in the previous text, or when the new law regulates the same subject that was dealt with by the regulation of the previous law. According to the rule of gradation in legislation in terms of force, criminal legislation can only be repealed explicitly or implicitly by legislation equal to it in degree or higher than it.

CONCLUSIONS

It becomes clear to us through what we have mentioned in our current research that the criminal law has an effective and prominent role in the human society in order to establish fixed controls for dealing with individuals, and thus order is achieved in every aspect of life and the absence of aggression. On this basis, the types of criminal law and its relationship with other laws were discussed, and the outputs that can be reached by looking at what researchers have documented at the state and local levels have been discussed.

REFERENCES

1. T. Kruessmann, *Russian Journal of Criminology*, 14(5), 745-757 (2020). [https://doi.org/10.17150/2500-4255.2020.14\(5\).745-757](https://doi.org/10.17150/2500-4255.2020.14(5).745-757).
2. E. Herlin-Karnell, *General Principles and EU Criminal Law*, in K. Zeigler, V. Moreno-Lax, P. Neuvonen (eds.), *Handbook on EU general principles* (Edward Elgar Publishing, 2020).
3. Minakanitsakan T. (2005). *LakKot Mai AyaPhakTuaPai [General principles of criminal law]*. Win-yoo Chon Press, Bangkok.
4. Minakanit T. (1985). *Kot Mai Aya : LakLaePanha [Criminal Law : Principle and Problem]*. Thammasat University Press, Bangkok.
5. Ua-amnoey, J., & Kittayarak, K. (2004). *Restorative justice: a paradigm shift in the Thai criminal justice system*. *Corrections Today*, 66, 86–91.
6. Reed, A., & Bohlander, M. (2016). *General Defences in Criminal Law: Domestic and Comparative Perspectives*. Routledge, New York.
7. Jubaer, Shah. (2021). *An introduction to statutory interpretation and the role of court with common law approach of legal construction*. 10.13140/RG.2.2.26073.03681.
8. Jubaer, Shah. (2021). *The election and crime relating to elections: An observation under penal code, 1860*. 10.13140/RG.2.2.11501.10728.
9. Wadicharoen M. (2004). *Kham Banyai Pramuan Kot Mai Withi Phicharana Khwam Aya [Elements of criminal law: A practical approach to criminal procedure]*. Sut Phaisan Press, Bangkok.
10. Lee, A. Y. (2015). *Public wrongs and the criminal law*. *Criminal Law and Philosophy*, 9(1), 155-170.
11. Kitisuphakarn S. (2019). *Criminal Law: Principles, Rules and Practices*. Phan Tamruat To Ying Sunthari Sansoen, Bangkok.
12. Florida, R. E. (1998). *Abortion in Buddhist Thailand*. In *Buddhism and abortion*. Palgrave Macmillan, London.

