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The substrate of criminal-legal influence

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Abstract

The aim of the article is found on the idea of measure as a substrate of criminal-legal influence. The publication proposes to consider the measure as a substrate of external forms of legal influence and criminal-legal measure as a primary element of all external forms of criminal-legal influence (in connection with the commission of a criminal act). The analysis allows us to conclude that the substrate of legal influence is a basic element of socio-legal regulation (which substantively combines a system of techniques and methods of influence used to obtain a positive and socially significant result). It should be understood that a criminal-legal measure is a system of techniques and methods of coercive and rehabilitation-encouraging influence of the state on criminal practices (criminal offenses, objectively illegal acts, abuse of law) and lawful post-criminal behavior, which is carried out by the law, determined by the socio-cultural environment. It is concluded that such ideas of Leonardo Polo as coexistence, the abandonment of mental limit, his thoughts on ethics, knowledge, and law can be applied successfully when the criminal-legal measure is characterized by several features that distinguish it from measures of the legal influence of another industry.

Keywords: sociocultural environment; substrate of criminal-legal influence; criminal-legal measure; coercive and incentive influence methods; judicial discretion.

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El sustrato de la influencia penal-legal

Resumen

El objeto del artículo se encuentra en la idea de medida como sustrato de influencia penal-legal. La publicación propone considerar la medida como sustrato de formas externas de influencia jurídica y la medida penal-legal como elemento primario de todas las formas externas de influencia penal-legal (en relación con la comisión de un acto delictivo). El análisis permite concluir que el sustrato de la influencia jurídica es un elemento básico de la regulación sociojurídica (que combina sustantivamente un sistema de técnicas y métodos de influencia utilizados para obtener un resultado positivo y socialmente significativo). Debe entenderse que una medida penal-legal es un sistema de técnicas y métodos de influencia coercitiva y de fomento de la rehabilitación del Estado sobre las prácticas delictivas (infracciones penales, actos objetivamente ilegales, abuso de la ley) y conductas posdelictivas lícitas, que se lleva a cabo por la ley, pero determinada por el entorno sociocultural. Se concluye que ideas de Leonardo Polo como la convivencia, el abandono del límite mental, su pensamiento sobre la ética, el conocimiento y el derecho pueden aplicarse con éxito cuando la medida penal-legal se caracteriza por varios rasgos que la distinguen de las medidas de la legalidad.

Palabras clave: entorno sociocultural; sustrato de influencia criminal-legal; medida penal-legal; métodos de influencia coercitivos e incentivos; discreción judicial.

Introduction

Law, as a unique social phenomenon, arises with the emergence of the state, because an indispensable attribute of any legal norm is the possibility of using state coercion in case of non-compliance with its instructions. On the other hand, it is with the help of legal norms that states are able to perform their functions properly (Tkalych *et al.*, 2020). Only taking into account the interests of as many members of the human community as possible while adhering to clear rules and principles of coexistence can lead to the development of a full-fledged society and state (Shyshka and Tkalych, 2020). In civil society, citizens are not the subjects of political-power relations and public law, but private individuals with their interests, subjects of private law, participants in civil-legal relations (Kharytonov *et al.*, 2019).

In the modern criminal-legal doctrine, several complex and actual problems are under the attention of scholars. We can mention here three of those problems. First, the need to severely limit the scope of criminal law

exclusively to those public relations that allow state intervention through the use of the criminal-legal method and to ensure regulation exclusively within the framework of criminal law (focuses on the need to treat criminal law as a basic or as the only source of criminal law). Secondly, the permanent problem of criminal law should be recognized as the objective principles of determining the grounds for application (criminalization), or refusal to apply (decriminalization) of criminal-legal influence. Third, the search for effective and acceptable (from the standpoint of humanity) forms of criminal-legal influence.

The last problem is complex, where the issue of sentencing (penalty) or waiver of punishment (depenalization), while remaining central, increasingly give way to the search for alternatives to punishment measures of legal influence, and those that ensure the effectiveness of the latter in the process of simultaneous punishment application. The solution of the outlined problems, related to the implementation of proper criminal-legal influence requires the study of the basic element – the substrate of criminal-legal influence, which is a criminal-legal measure, and the substrate of the latter is a measure. It should be noted that recently only the first attempts are made to determine the substrate of criminal-legal influence, which is the basis for all statutory external forms of criminal-legal influence.

Current criminal-legal studies need to be taken into account. It should be noted that scholars mostly focus on the analysis of certain types of criminal-legal measures (Vecherova, 2012; Yermak and Kuts, 2018; Krizhanovsky, 2019), their classification (Yaremko, 2014; Ponomarenko, 2020), and problems of application (Yashchenko, 2014; Provotorov, 2018), which gets us to assist that recently only the first attempts are made to determine the substrate of criminal-legal influence.

The article is aimed at defining the substrate of criminal-legal influence, its objective and subjective features through the philosophical prism, particularly, Polo's heritage, the substantive features of which are inherent to ontological, epistemological, and ethical dimensions of the subject of our study.

1. Historical context for the formulation of the concept of substrate of criminal-legal influence

In some sense, it is a grace that cultural and philosophical studies on criminal-legal influence, which takes form in criminal-legal measures, are possible nowadays in Ukraine, even though USSR fell apart almost 30 years ago. By mentioning that, we would like to emphasize, that it is impossible to separate the subject of our research from the historical context of its formation. In this regard, it is essential to point out that the place for an individual in the Soviet Union was far from acceptable in a civilized society.

As it was mentioned by Polo (2008), the right to move freely was grossly violated in the Soviet Union. Moreover, research for any philosophical foundation of the criminal law and corresponding legislature were primitively reduced to the Marxism-Leninism ideology, the dialectical materialism of Marx, and the dictatorship of the proletariat (Berman, 1948; Pipes, 2011). It will not be a surprise to say that these ideologies had little sympathy for a certain class of people, as well as for the law or legal system built on the rule of law, private property, and liberties respect (Pipes, 2003).

All that fit perfectly into the outline that public administration was a single possible form of government power-given supposedly from the people of the USSR. In case of state violation of the law or its inability to ensure human and civil rights, even those enshrined in the Soviet Constitution, citizens did not have the possibility of legal remedy (Berman, 1979). Accordingly, the role of courts was reduced to the announcement of the verdict, which was predetermined in the highest power structures. State lawyers had no choice but to play their part in this scheme, which practically meant that one could only dream of any effective defense. In this way, it is difficult to name the Soviet law system anything other than misanthropic and inquisitorial. Thereby, its influence on Ukraine's jurisprudence can be acknowledged as hazardous, although it is hard to object that our legislature has not left some harmless acquisitions of it. Nonetheless, as we have mentioned that the problem of finding a substrate of criminal-legal influence has little research base even nowadays, it is valuable to take an effort of its philosophical substantiation as our country is moving towards Euro-Atlantic integration.

For example, in 1922 (after the revolution) corruption, about the fight against which the Bolsheviks talked so much, did not go away. Literally in the very first days after the creation of the extraordinary commitment of Dzerzhinsky, it turned out that two of its investigators took bribes for the termination of cases and the release of those arrested. After that, what could one say about ordinary militiamen, investigators and members of the tribunals, not endowed with high political trust? (Romanova, 2019).

Although, in Ukraine, a criminal legal tradition started partially in the Soviet Union authors, we do not consider that this part of the law should be understood in a misanthropic and inquisitorial, but in a more rational way with the objective of achieving the common good or human flourishing.

2. Results and discussion

2.1 Terminological basis of the study

Before we move on to direct analysis of the research results, it is necessary to clarify what is meant by certain expressions. We shall start

with the explanation of some crucial points, first of which should be the substrate of criminal-legal influence.

The substrate, or the root cause, the foundation of the criminal-legal influence may be fully comprehend as an essential humane characteristic, i.e., human nature. Hence, that is an unchanging set of properties, which affect all men thoughts and actions. Thereof, it also has an impact on a larger scale, which has its representation through a group of people, society, civilization, humanity and the Universe itself. This idea provides us the basis to refer our study to the area of interest of criminal law theory, philosophy of law and philosophical (transcendental) anthropology as well.

As Polo (2015) stated: “All men are of the same nature, but we are not all the same person” (2015: 44). We can also find a justification to our vision of human essence in the continuation of this line of thought by Polo: “If one accepts human essence, then with more reason one must say that there is a human nature, because the essence is the culminating consideration of nature” (2015: 78).

There is also an appearance of the terms “criminal-legal influence” and “criminal-legal measure” throughout the article. Here we will leave a hint to their better understanding. By doing so, it should be bear in mind that criminal-legal influence has its external representation in criminal-legal measures, while its internal part contains legal awareness and legal culture. For example, ethical norms can form criminal-legal sanctions that have the force of law, and this will be the representation of legal awareness and legal culture of a society in the state. While they are certainly exercised on a broad scale of citizens, ethics and morality are still not the criminal-legal measures; rather, they influence the algorithms of applying the criminal-legal measures, but not reduced to them. That is why criminal law is not about applying penalties and punishments only. That means the influence and the measure are correlated as a whole and a part. Criminal-legal measures are applied only when a person commits a crime.

However, criminal liability as a part of criminal-legal measures is not always applicable, since there are some exclusions to it. For example, when a minor or insane commits a crime, there are rules, which exclude their criminal liability, although criminal-legal measures such as detention or involuntary hospitalization still can be applied. Other manifestations of criminal-legal measures can be listed. They include measures such as (house) arrest, place of stay change ban, expatriation (citizenship revocation (loss) and expulsion), forced community service, confiscation, fines, the prohibition to hold certain positions or perform certain work, the prohibition of communication with or approaching certain people, freedom restrictions, imprisonment, etc. Overall, this conceptual scheme is investigated in more detail in the second half of the article with regard to the criminal-legal implications.

It is also worth mentioning what do we mean by the usage of the word “transcendental”. In the context of our paper, it is referred to as a substantively higher level of being to the level subordinate to it. Wherefore, something transcendental occurs in the process of transition, or transcendence, which can be determined by ascendance and descendance, insofar as they have vectors in time and space.

The history of such terms like aforementioned can be traced far back in time. For example, Saint Augustine of Hippo (1996) used to popularize them in *De Vera Religione*: “Noli foras ire, in te ipsum redi. In interiore homine habitat veritas. Et si tuam naturam mutabilem inveneris, transcede et te ipsum. Sed memento cum te transcendis, ratiocinantem animam te transcendere. Illuc ergo tende, unde ipsum lumen rationis accenditur” (1996: 39-72).

Do not go outward. Return within yourself. In the inward man dwells truth. If you find that you are by nature mutable, transcend yourself. But remember in doing so that you must also transcend yourself even as a reasoning soul. Make for the place where the light of reason is kindled (Hippo, 1959: 39-72).

Finding everlasting beauty, truth and harmony was essential for the Christian philosopher in the process of ascendance from sensual to intelligible (Cambronne, 1982; O’Donnell, 1992).

We will also not be mistaken if we say that before proceeding to a detailed examination of the subject of research, we should briefly characterize Polo’s approach to questions of law, that is, jurisprudence. It should be emphasized here that it was important for him to focus on ethical norms initially, which in general constituted his approach for determination of law. As we remember, ethics according to Polo (2008) consists of not only goods, but also virtues and moral norms, which are the norms of the law as their expression. Therefore, the law has only a formal nature as we understand it when we say, for example, that this is a specific legislature. Nevertheless, its true meaning is of the constitution of a moral norm, which is, so to speak, the forerunner of jurisprudence itself.

Polo (2008) notes that the existence of exclusion rules is a capacious formulation of what is definitely undesirable, thus cuts off what is not worth doing both for society and for man and nature as such, an incorrect and unhappy act. The reason – is unhappy lies in the fact that true happiness is worth seeking only in following pure duty, not in replacing it with pleasure. Polo (2008), like Kant and Aristotle, draws an important axiological line between them. It would be much more difficult, Polo (2008) notes, to summarize or to count finitely of what should be done than to outline the opposite, and we cannot but agree with this. Thus, the aforementioned conceptual schemes serve as axiological support in the study of the issue of law, the branch of criminal law, and the problem of criminal-legal influence in this article.

2.2 Philosophical acknowledgements concerning the issue

To formulate a point of view on the possibility of penalization or, conversely, the depenalization of an act, it should be noted that significant in this context is the idea of transcendence of the social environment. In general, it can be described as the process of going beyond the prior state, the abandonment of former condition. However, it is necessary to turn to the remarks, the essence of which is to characterize the features of the very construction of what is meant by the transcendence of the social environment (transcendental social environment). Wherefore, there is also a need to answer the question of why is it so important to call it an environment instead of just naming it a “transcendental society” and what does it mean for a society to be transcendental. Moreover, the role they play in the essence of criminal-legal influence, or criminal law *per se*, should be considered as well.

First of all, we would like to emphasize that we as individuals, as humans, live and develop in connection with each other. Here is important to consider Polo’s notion of coexistence and the idea that only a free society can outgrow itself (Polo, 2008; 2015). By postulating that insight, he leads the argumentation that to emerge means to be in cooperation with others, which takes a voluntary decision of a free (and a good) will, wherefore the concept of freedom comes into play. On the contrary, he admits, isolated systems lack evolution, in so far as they have no such options as a free choice, therefore they are not free by themselves (Polo, 2008). Inasmuch as the idea of coexistence is integral for society and by changing itself society impacts everything around (which happens to be a reciprocal influence), we would like to operate within the term “transcendental social environment”. With that being said, we can now move on to the philosophical implications of the subject of our research, which enable criminal-legal influence to arise.

We found five prerequisites for the effectiveness of the criminal-legal influence:

First one is that it takes time for the social environment to change and transcendence to occur. From this point of view, a time difference is necessary to re-evaluate the compliance of measures of social-legal influence with the goals and objectives of society, which are built to achieve the positive result of multi-sectoral transformations.

The second reason for the criminal-legal influence to occur is quantitative and qualitative changes between the prior and the following conditions of the social environment. Their essence is the interconnection and correlation with each other and their carriers are individuals. Likewise, this process takes place both at the micro- and macro- levels. They are the consciousness and self-awareness of each individual, and the social environment, respectively.

The meaning of such metamorphoses is to rethink ideas, principles, positions, knowledge from a new point of view through the prism of social necessity and expediency of applying a criminal-legal influence, which in turn crystallizes based on the intention of positive change. However, do to so, we need to take an attempt to know one's max capacity of thought and ability to overcome the mental limits, wherefore, one should find its own cognitive restrictions to overcome them. In other words, this process can be called rational reasoning, as well as rational knowledge by virtue of cognitive act. Here it is important to mention the term from Polo's philosophy, which is named "the abandonment of the mental limit". Briefly, this method can be explained as "the detection of the mental limit and conditions such that it can be abandoned" (Polo, 2015: 10).

The third prerequisite of criminal-legal influence is the coexistence. In this way, the fulfillment of self is possible in society only. As an example, various scholars (Mulgan, 1974; Kullmann, 1991; Yack, 1993; Miller, 2017) point out the famous idea of man as a political animal, the original concept of which belongs to Aristotle. Indeed, as we feel the need of communication with others, we seek their help, understanding and support. Hence, this is one of the factors of social organization. Accordingly, a man knows oneself not in the pursuit of the categorical imperative, but in interaction within society, which allows distinguishing one's being from the being of other people (Polo, 2015; Vdovina, 2019). The factor of freedom is also important to consider in this regard.

The fourth issue that has to do with the reasons of criminal-legal influence is the levels of its occurrence. One way or another, but changes in the social environment are possible only based on the experience gained at the level of self-awareness. Polo used to deal more with conscience as its ethical dimension. In this way, moral consciousness was of his particular interest as well. We, in turn, want to emphasize that the solution of the questions of whether this or that phenomenon corresponds to the very concepts of good and evil is taken individually, in no way denying that ethical issues exist objectively. In so far as it is natural for a person to choose between, roughly speaking, A and B, decision-making and the responsibility for it lies on the individual. Nevertheless, the choice itself does not exalt the role of decision-maker, rather hints at the objective existence of good and evil, which are represented as A and B correspondently.

We can find similar implications in Polo (2008: 129): "Ethics moves between the alternative of the ethically positive and the ethically negative: virtues and vices, good and evil". However, for him, the concept of freedom goes beyond the voluntary acts or the freedom of choice as it is more of a principal characteristic of freedom being transcendental than the derivative from the metaphysical being of a person (Polo, 2015). The reason for this is that a person co-exists with being, neither grounded in it nor grounds it (Polo, 2015).

In this way, the ethical dimension as the fifth characteristic of the transcendental social environment must be taken into account. Polo (2008) wrote on this issue:

The human spiritual tendency, the will (the same thing happens with the intellect), does not derive its purpose from the species, but from complete happiness, which can only be obtained through the virtuous adherence to the true and highest good. The human species is neither the end nor the highest good, as the humanism closed to transcendence claims (2008: 104).

Thus, we have characterized the main qualities that determine the substrate of criminal-legal influence from a philosophical perspective. Now we will consider in more detail the general picture with the help of the synthesis of all reasons for the subject, and through the prism of Polo's ideas, which demonstrate their effectiveness in the framework of our study.

In the initial point of Polo's (2005) system of transcendental anthropology the postulates that human nature is equally to being, the cosmos, or anything metaphysical in this regard. At the same time, the philosopher leaves the right to metaphysics to take on fundamental roles, however, in the issue of primacy, he insists that man is neither a foundation nor founded, but the same primary principle, which gives rise to the system of transcendental anthropology (Polo, 2010). This is a significant idea for our research, since human nature lies in the substratum of criminal-legal influence. This, in turn, means that the issue of criminalization or decriminalization of an act will be resolved both at the individual and at the general social, or collective level. That implies it is necessary for the members of society to have a sufficient level of legal culture, which is achieved by their own thoughtful efforts and unswerving adherence to ethical norms. Here Polo's ideas of coexistence and the abandonment of the mental limit are applicable and their consideration is possible both at the individual and at the collective levels, which enables us to deal with the notion of transcendental social environment.

As we have already hinted above, it makes sense to talk particularly about the notion of environment, since society itself is in interaction with everything around. By that, here we mean nature, architecture, technology, etc. This implies reciprocity, a mutual impact. Thus, it is important to consider namely the notion of the social environment here, as humans are the members of society and the driving force of that effect. From this perspective, it makes sense to assume that in characterizing society as a transcendental environment, one can talk about the coexistence of man and society, of human and being, and in this regard, to highlight the human coexistence with nature (environment).

At the same time, these transformations do not always have positive or ethically welcomed results. We can find the same acknowledgment of this insight in Polo (2008). There, he assessed that in so far as human societies

are generally free systems, it enables either their flourishing or decadence and this is a normal state of affairs as soon as a free system has options. Here it is essential to trace the demarcation between the natural order of things and the influence of man on this order. In this way, a person can act contrary to the natural order of things. Polo (2008) notes that the will as such can be considered as *voluntas ut natura* and *voluntas ut ratio*. While the latter is part of the former and is purely humane, the former exists objectively and does not depend on human decisions. Therefore, Polo (2008) continues, that *voluntas ut natura* is a radical act of desire, a characteristic of a person. Hence, a person cannot influence it, insofar as it is his attribute. Polo (2008) agrees with ideas of Aristotle and Aquinas and insists that it is natural for a person to strive for happiness, and this trait is exclusive to the natural will of a person, as one cannot strive for anything else but happiness.

Polo's ideas of the abandonment of the mental limit and the coexistence are significant to consider while dealing with the appearance of criminal law and criminal-legal influence. He firstly described his methodology of the abandonment of the mental limit in his book "*El acceso al ser*" [Access to Being], in which he formulated, that by following this line of thought four consequences, or themes, can be achieved (Polo, 1964a). They are extra-mental being and extra-mental essence on the side of metaphysics, and human coexistence and human essence on the side of anthropology (Polo, 2015). For him, to use this approach means to deal with the unicity, which express itself in the form of mental presence. In turn, mental presence exists as mental operation and this is the precise limit, described by Polo (2015). He notes, that the act of knowing is an immanent operation: "I see what I see while I see, I think what is thought (the object of thought) while I think" (2015: 20). Therefore, to abandon it means to put a division between personal being and metaphysics, which enables transcendental anthropology to arise. According to this conceptual scheme, human essence is the central point of considering the application of criminal-legal influence, and coexistence figures out to be its habitable sense.

3. Theoretical-legal justification of applied approach to transcendental anthropology in order to define the concept of criminal-legal influence and its measure

To some extent, it is especially exciting to study the relationship between Polo's ideas and jurisprudence, since he was related to it directly at the beginning of his philosophical path (Franquet, 1996; Yepes Stork, 2006; Selles and Esclanda, 2015). Thereof, Polo as a lawyer is rather a potential that has fully revealed himself in the broader hypostasis of Polo as a philosopher. In this section, we will touch upon his achievements of thought in the area of law, as well as the purely legal theoretical constructions in the sphere of the penal law.

Thereby, some of the questions that have their consideration below arise in this regard. For example, is the emergence of criminal law norms dictated by nature or by rationality? Alternatively, how do we know what are their origin and background? In this way, to comment on them requires an acceptance of the fact that both of the mentioned factors play a role in the existence of criminal law norms. However, the main point here is the natural reason, or ethical principle, by which criminal-legal influence appears. What is called rationality rather affects the form, while expressing it mechanically as the technical legal language. At the same time, moral norms, which are an attribute of the essence of law, rather than an instrument, fill these norms with meaning. We can claim also, that Polo (2008) characterized normativism and ethical rationalism as a way to consider ethics reductively (Polo, 2008).

Here is what Polo (2008) himself thought about the notion of law in its correlation with moral norms:

Law and cultural customs are norms derived from ethical norms. What we call ethical norms are the laws most distinctive of the human being, most exclusively his, because their fulfillment is free. And since freedom is responsible for this, they are not mechanisms; rather, freedom can decide not to fulfill them (2008: 34).

At the same time, such transcendental as love figures out to be the main positive norm, when dealing with natural law, according to Polo (Polo, 2010; Pia Tarazona, 1999). In this regard, the concept of *synderesis* (classically is an innate habit of the intellect, that judge what is good to do, and evil to avoid) is crucial for natural law. It can be described as the fundamental element of the human act of knowledge of ethics by nature (Vanney, 2007). Polo (2008) preferred to formulate it simply this way: “Do good, act; act as much as you can and improve your actuation” (2008: 106). In addition, classical authors also used to pay attention to the *synderesis*. For example, Saint Thomas Aquinas used it in his works (Aquinas, 2020).

Following the more legislative side of the issue, we can state that for Polo (1984), laws are something formally fictional, meaning they are not given to a man by nature; rather, they are invented by man as a tool in order to make it easier to resolve conflicts and disputes. In this sense, Polo used to treat the concept of law as *nomos* (Polo, 1984). By that was meant the Ancient Greek word (νόμος), which described laws governing human behavior mainly for the just distribution and rewards in case of litigation (Encyclopaedia Britannica, 2017; about the polian notion of the law as a strong fiction, Polo, *Quién es el hombre*, 1991; cf. also Riofrio, 2020, *pro manuscrito*). Moreover, the law as such can be considered as a strong fiction, meaning that its action prolongs physical reality, or objectivity, but does not have sole power, because, roughly speaking, it does not have a body (Polo, 1991) gives an example of a wall that does not exist in fact; instead, there is a “no trespassing” sign). Thus, for Polo (1991), the law is a cultural phenomenon and has an empowering effect on man.

In his early works, Polo tends to consider law as a normative system, which aspires to shape the order of things (Polo, 1964b). His attitude to law among other activities, or techniques, as he called them, is such that it is an art rather than science, although it has scientific features in it (Zegarra, 1991). In this way, he proposed to place law at the level of second techniques, which are higher than agriculture, military, handicraft, etc. (Polo, 1984). At the same time, politics for him is art even more subtle among the above-mentioned techniques, that is, the superior art, when compared to techniques (Polo, 1984).

It is necessary to note also that the question of coercion presence in law influences its validity. At the same time, it is not an obligatory component in order to characterize the law as such:

The law has a coercive companion. Some have even said that the essence of law is coercion and that if there is no coercion, there is no law. It is not like that, but the coercion is a sign that it is not a fiction in the sense of fantasy (Polo, 1991: 123, own translation).

This remark has strong connotations with the subject of our research, inasmuch as the criminal-legal influence implies the same idea of coercion, which overall expresses itself in the criminal-legal measures, but not reduced to them.

Herein, let us consider some theoretical legal acknowledgments of what has been expressed above. First of all, a criminal-legal influence must undergo several institutional changes to appear. It needs to be both socially acceptable and of an adequate measure. In the meantime, penalties must be closely linked to ethical considerations, which, in turn, are open to the knowledge of the person, which is always an act, according to Polo (2008). All of that requires responsible cognitive work. That means criminal-legal norms must be carefully thought out so they have a straightforward and direct, exceptional effect. In legal theory, it is called the principle of legal certainty (Panov, 2015). The rule of law also needs to be emphasized (Waldron, 2016).

Aquinas in “*Summa Theologiae*” stated that the law is “an ordinance of reason for the common good, made by him who has care of the community, and promulgated” (Aquinas, 2020). This formula has four parts (four elements, or causes) in it. They are the form (ordinance), the aim (the common good), the support (reason), and the agents of authority or community. Whereof, we will try to follow this scheme of argumentation in the same reasonable fashion if we are to define what the concepts of the substrate of criminal-legal influence and criminal-legal measure are.

Focusing on the definition of substrate of social-legal influence, it should be noted that it is appropriate to understand it as an element of regulation, which substantively combines a system of techniques and ways of exercising

coercive and incentive influence, which are used to obtain a positive and socially significant result (Kozachenko, 2011). Thus, its measure, as an external manifestation of the socio-legal influence, has the following three features:

Firstly, it is defined (in the legal sphere) or perceived (outside the legal regulation) as an independent socio-legal phenomenon used to regulate the behavior of participants in public relations (Kozachenko, 2016).

Secondly, each social-legal measure is formed based on a combination of techniques and methods of permissible influence. Traditionally, there are two independent ways of social and legal influence – coercion and encouragement. In this case, the first is used indifferently to the person's desire to be exposed to a certain influence, while the incentive depends on such a desire. In turn, coercion and encouragement from two possible patterns of behavior of the subject of influence: coercive and voluntary behavior of the person. Given the fact that the paradigm of modern socio-legal regulation is based on the principles of anthropology, which elevates human interests to the level of the core factor of social life in various forms of its existence (Kozachenko, 2011), it is necessary to emphasize the priority of encouragement over coercion (Kozachenko, 2011). Thus, the measure of social-legal influence should contain either only encouragement to a certain type of behavior, or encouragement and coercion, and the latter method of regulation is used only if the subject fails to perform his duties voluntarily (Kozachenko, 2011).

However, a detached theoretical question regarding the line between encouragement and coercion arises. In famous Milgram Experiment (Milgram, 1963), the subject was given a choice between ceasing and continuing the process of what one thought to be a study of interconnection between pain and memory, but was the trial of the subject's obedience *de facto*. The method of this experiment included a gradual increase of electric shock hits up to 450 V for continual wrong answers with the involvement of the instructor, the subject as a "teacher" and the actor in the role of a "student", who was actually just pretending to take shock hits as they were fake, which subject was not aware of (Milgram, 1963).

In addition, an unconditional reward for participating was provided. The group of undergraduate students showed the same results without any participatory payment whatsoever. The continuation of the experiment could be halted by the subject's demand (Milgram, 1963). Instead, under the instructor's influence, the subjects continued to strike other participants with an electric shock. If we are to use the results of the experiment in our study, it seems appropriate to emphasize that encouragement will take place in any mechanism of criminal-legal influence where there is authority as a sociopsychological figure or stimulus.

Additionally, we need to point out that there are some sorts of criticism (Sontag, 1981; Kalmykov, 2018) regarding the idea of anthropology, the meaning of which we can trace back and find it in the works of Kant (1974; 1998) and explorers of his legacy (Sussman, 2001; Cohen, 2010). We can also find its understanding as to the justification of man in Ukrainian philosophical literature (Andros, 2002; Khanzhy, 2018a, 2018b). Nonetheless, for our study, this concept should be understood as the primacy of the human element among the principles of legal reasoning.

The third feature of the socio-legal measures is that they are aimed at exercising such regulatory influence, which brings to certain social relations (micro-level) and society and its institutions (macro-level) a positive, concrete, and public benefit (Kozachenko, 2011).

In addition, there are several approaches to understanding the notion of criminal-legal measures. The first is based on the radical denial of the criminal-legal measures independence (Grishchuk, 2007; Havronyuk, 2013). Merits of this approach lie in the fact that its use emphasizes the possibility of applying only those criminal-legal measures provided by law. However, the problems of features and properties of such measures remain unresolved.

Another is the “selfsame” approach, that is, to characterize a criminal-legal measure through the same category that is to be defined. For example, Gutorova (2014) suggested that criminal-legal measures should be understood simply as measures established by criminal law. They are applied in the case of an act provided by the Criminal Code and consist of the deterioration of the legal status of a person. Under this approach, the main task of features characterization is not scientifically substantiated either.

Other representatives of the criminal-legal doctrine suggest defining the category of “measure” by choosing a certain basic element (Vecherova, 2011; Yashchenko, 2013; Lozinskaya, 2014). This position is subject to criticism, insofar as in the process of its application, the definition does not become specific, as abstract concepts are used in its formulation.

Overall, by giving the definition of criminal-legal measures, it should be considered as a system of techniques and methods of coercive and rehabilitation criminal law practices of the state, which is carried out on the basis of the law determined by the cultural environment (Musychenko and Kozachenko, 2015) that has developed in the specific historical conditions of society (Kozachenko, 2016). These techniques and methods should be set up in a rational way for the happiness of the person (as a “an ordinance of reason for the common good” as Aquinas said), using the best active part of the person, his creativity, as Polo said. The idea of a transcendental social environment is applicable here all the more so.

4. The essential characteristics of the criminal-legal measure as a substrate

The Ukrainian doctrine has studied in deep the characteristics of the criminal-legal measures, taking into account the Soviet doctrine. According to this doctrine, the following features are inherent for the criminal-legal measures.

Firstly, the criminal-legal measure is appointed and implemented exclusively by the state. This function lies in the state authorized bodies and officials. It is possible only on a normatively defined basis, which is expressed by law or judicial precedent. This feature is also present in the case of concluding a conciliation agreement, as such an agreement requires further approval by a court (Kozachenko, 2016). The main idea about this feature is that criminal-legal measure application is public in nature. Looking ahead, it should be noted that the last feature focuses on clear adherence to the procedure for applying criminal-legal measure.

Secondly, criminal-legal measures are subject to appointment only if the grounds provided by law are established. In turn, they have general and special features. For example, the general feature is committing a crime, and special is an abuse of rights, improper post-criminal behavior, etc. (Krizhanovsky, 2019).

Thirdly, the system of criminal-legal measures is formed on a cultural and ethical basis, which explains a certain variety of types of such measures in the criminal law of different countries (Musychenko and Kozachenko, 2015; Kozachenko, 2016). The implications of that were investigated in the first half of the article.

In addition to these properties, each criminal-legal measure is characterized by features that determine its structure. They can be divided into those that are objective and which are subjective (Kozachenko, 2016).

Basically, the objective features of criminal-legal measures have to do with their purpose. Generally, it occurs as social justice, something that Finnis (2011) described as “the fulfillment of all human persons in all societies” (2011: 451). Polo (2013) expands this consideration by the acceptance of the fact that law is justified by the need to entitle people, hence, it belongs to the moral order. In his opinion, that is why coercion is intrinsic to the law (Polo, 2013).

In this way, the enforcement of criminal-legal measures requires strict compliance with the rule of law, which is expressed in the correspondence between:

1. socially dangerous acts and coercive measures.
2. damages and restitution.

3. positive post-criminal behavior (rehabilitation) and incentives.
4. personal, community and state interests (Musychenko and Kozachenko, 2015).

In addition, it must be noted that more than one major criminal-legal measure cannot be applied at once (Kozachenko, 2016). Although, some subsidiary measures, for example, confiscation (Yermak and Kuts, 2018) or certain activity ban, can occur.

Substantive features of a subjective nature have to do with individuals to whom the measures are applied (Yermak and Kuts, 2018). Noted, that the subjective composition of criminal-legal measures is characterized by the presence of either 1) general subject, which coincides with the characteristics of the subject of the crime, or 2) special subject, which represents its additional properties, or unique subject, that lacks certain features of the subject of the crime (Yermak and Kuts, 2018).

Finally, the subjective properties of criminal-legal measures are expressed in the procedural component, which ensures the application of a particular criminal-legal measure, taking into account the characteristics of both the act itself and the person who committed it (Yashchenko, 2014; Krizhanovsky, 2019). That aspect is reflected in judicial discretion, that is, the activity of the judge as an arbiter (Kozachenko, 2016). According to Aquinas it is a matter of “reason,” but not any reason, but the reason in service to achieve the common good. According to Polo, discretion is possible because law is fiction, but fiction for the sake of the person and his coexistence on society.

All in all, the application of criminal-legal measures should be carried out responsibly in order to ensure the necessary and sufficient influence (Ponomarenko, 2020). In turn, its nature is determined by the inner convictions of the relevant procedural law, which is formed as a result of impartial, objective and fair establishment of all the circumstances (Kozachenko, 2011). Criminal-legal measures are a system of normatively defined measures of influence, and are focused on punishment, correction, prevention, re-education, medical care and treatment of persons, and criminal restitution. The basis for criminal-legal measures is considered to be the commission of an act crime and encroaches on the system of social values, which is formed based on the indisputable nature of the definition of natural human rights and freedoms and the changing nature, determined by the level of development of the nation and culture.

Conclusions

Hence, the discovery of correspondence between the philosophical heritage of Leonardo Polo and the theoretical implications of criminal law

grants access to the possibility of defining the criminal-legal measures as a substrate. In turn, its basic element should be considered as a humane characteristic. It permits us to study this issue in the field of transcendental anthropology, by means of which the role of man becomes equally significant to explore, likewise its coexistence in society, and with being. Additionally, it should be emphasized that Polo's concepts of the abandonment of the mental limit and the coexistence are interconnected, and play a crucial role in the subject of our study. Thus, while abandoning the mental limit, one acquires transcendental freedom, which is coexistence, as only a free person can genuinely co-exist with others and with being. Thereof, Polo's transcendental anthropology is an attempt to balance anthropology and metaphysics in such a way of putting a person on an equal footing with being, allowing humans to reach the level of personal existence.

Inasmuch as the essence of law deals with moral norms, the issue of criminal-legal influence arise inevitably. It is connected to ethics since obligations and prohibitions are concerned. That brings us to the legal awareness and legal culture, which constitute the internal structure of criminal-legal influence. Furthermore, its external action is expressed in the form of criminal-legal measures. Influence includes measures, but not reduced to them. The primary element of criminal-legal measures should be recognized as a legal measures of appropriate nature. That means the system of techniques and methods of coercive and rehabilitation criminal law practices of the state, which is carried out on the basis of the law determined by the cultural environment that has developed in the specific historical conditions of society.

It is concluded that a criminal-legal measure is characterized by several features that distinguish it from measures of legal influence used in other areas of both public and private law. The selected features of both objective (purpose, grounds) and subjective (the subject of application, judicial discretion) nature indicate the suitability of the proposed approach for the definition of criminal-legal measures with further use at the doctrinal, regulatory, and law enforcement levels.

At the same time, the proposed research supplements the basis for further investigation of both criminal-legal influence and criminal-legal measures in the area of transcendental anthropology and the philosophy of law, as well as for the practical application of its results.

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