Caracteristicas de la ley penal

You read the free preview page 2 not displayed in this preview. We explain what criminal law is and what its three aspects are. It is also common characteristics and why it is proportional. Criminal law provides for sanctions to maintain public order. What is criminal law? Criminal law is an industry of domestic public law. This can be considered a scientific discipline, as it is a systematic set of principles. We are talking about: crimes, punishments, security measures. The goal is to create public order and maintain it, by imposing sanctions to avoid behaviors that are considered dangerous (crimes). The means of social control is defined as a set of cultural models and symbols that are defined and applied through a set of acts. Criminal law is one of the means of control that the state must overcome social tensions and conflicts. While criminal law may seem like a modern concept, different societies and civilizations throughout history have had norms similar to those established by criminal law. The Law of Talion (eye for eye, tooth for tooth) or Roman law are some examples of the evolution that criminal law has undergone throughout history. See also: Sources of law. Criminal law characteristics: Criminal law is a means of control, monopolized by the state. The punishment is imposed not in the interests of the person who committed the crime, but in the interests of the collective. Thus, punishment can only be imposed by the state, i.e. criminal law is a means of control, monopolized by the state. It does not deal with relationships between individuals, but the relationship between a sovereign state and individuals. Goal. As a set of criminal norms. They establish a civil liability related to the crime. Thus, the application of criminal law implies a crime as a fact, the legitimate consequence of which is punishment or measure of restraint. Subjective. As the right of the state to sanction, Ius Puniendo. The power of the state to create and apply sanctions to those who violate these criminal and legal norms (objective criminal law). These powers are exercised through primary criminalization (definition of conduct, under sanctions) and secondary criminalization (execution of punishment). Scientific. As a doctrine, the Science of Criminal Law is a discipline that systematically interprets and studies current objective criminal law. Criminal law protects legal systems through punishment. Legal assets were created not by criminal systems but by legal systems, but the latter were responsible for protecting those legal systems by imposing fines. That is why it is called an accessory and secondary to the branches of law that create legal assets. It does not involve government intervention in all situations, but determines what behavior is punished (those that are most dangerous to the goods it protects). That is why criminal law is considered valiant, since it attaches great importance to its harmful nature when choosing the most dangerous behaviour. Criminal law has nothing to do with the sphere of thought, but punishes facts. It concerns only the actions of people who exceed their thinking, those that manifest themselves on the outside of the person. In other words, criminal law has nothing to do with the realm of thought. Acts or committed facts are punished. Only if an act has been committed can an act be punished, and criminal law can never be applied to a person for his ideas. Criminal law functions as the last legal instance, sanctioning activity, i.e. its intervention becomes necessary to criminalize the most dangerous behavior, to which no other state intervention is effective. Over time, the state amended the criminal law. The notion of what a crime is depends on each culture, so criminal law does not authorize the same action in all countries and even changes over time in the same state. The rule defines permitted and prohibited behavior. Pointing to conduct to be sanctioned, criminal law is normative because it defines what is prohibited. The punishments used also have a preventive function. It has a specific purpose, a collective purpose, it may be to maintain public order, ensure the well-being of society, ensure justice, etc. This applies the punishment imposed on anyone who breaks the laws. In addition, these punishments also have a preventive function, since, although they cannot override the acts already committed, they can serve to prevent possible future violations. It punishes only the perpetrators of the crime, i.e. the punishment cannot be extended to their descendants or any other person. In addition, the controller cannot be replaced by another in the execution of the fine. Criminal law applies punishments proportional to the crime committed. Criminal law is based on the principle of proportionality, i.e. sanctions or penalties must be consistent with the crimes committed. In addition, the principle of minimal intervention was applied, which stated that the offence or misconduct must be serious in order to be punished and the least serious punishment associated with the crime should always be applied. How to quote? Criminal law. Written by Julia Meshima Uriarte. On: Caracteristicas.co. Last updated: September 20, 2019. Received on October 15, 2020. Criminal law 1. Acquaintance. The theory of sources in criminal law is led by the validity of the principle of legality: only (criminal) law can be, in our law, a formal or direct source of criminal law; Thus, Criminal law is the only rule that can establish criminal conduct and punish it by serving as a guarantee of citizens, since the monopoly of the law - with all its material and formal requirements - meets the constitutional requirements of legal certainty and certainty characteristic of the rule of law. Thus, article 25.1 of the Spanish Constitution formulates the principle of the legality of offences and punishments (as well as administrative offences and sanctions): no one may be convicted or punished for acts and omissions that at the time of the event are not an offence, a misdemeanor or an administrative offence under the law in force at that time. Thus, only the law as a general and strict norm arising from the legislature can establish postdelictual crimes, punishments or security measures, and therefore the whole theory of the sources of criminal law is based on the principle of nullum crimen, nulla poena sine praevia lege (principle of legality). If required, from a formal point of view and as a guarantee of the freedom and legal certainty of citizens, that crimes, crimes and punishments should be provided in law before they are committed, the monopoly of the Criminal Law assumes that analogies and customs are excluded as sources of crime and punishment. In particular, we say with RODRIGES MURULLO, it is forbidden: a) to base punitive action in this way, except or less in range than the law in the formal sense. b) Addressing the analogy with the justification of criminal responsibility. Thus, depending on the constitutional principle of legality, the formal sources of criminal law are restricted, and the reservation of the law is established to create crimes, offences and punishments (also for the definition of administrative offences and sanctions), but not for their exclusion, in which customs, general principles of law and jurisprudence have some effectiveness. Constitutional guarantees and criminal law. There is no doubt that, as RODRIGES DERESA argues, the origin of the principle of legality and the safeguards that flow from it lies in the pursuit of legal certainty and in the struggle for the exclusion of arbitrariness in punitive law. Leaving aside the roman precedents discussed, it is often stated that the first formulation of the principle of legality was made in England in Magna Charta Libertatum, having been granted in 1215 by King John without land. But these are really liberal ideas put forward by enlightenment writers (the theory of the separation of powers of Montesquieu and Rousseau's political philosophy) that will crystallize into principle of legality, mainly by two authors: BECCARIA and FEUERBACH. In the work of BECCARIA (Dei delitti e delle pene, 1764) he emphasizes the political aspect of the principle of legality (only laws can stick sentences for crimes, and this power can only be in the legislator) and its influence on both the Declaration of Rights of the time and the Philadelphia Declaration of Human Rights of 1774, in the Austrian Josephine 1787 and in the Declaration of Human Rights and Citizen 1789 (Article 8). which is endowed with the principle of universality, he dedicated it as a substantial postulate of the rule of law and the key to so-called liberal criminal law. FEUERBACH is considered a happy start-up. For SERRANO POOL, the principle of legality requires that the law not be violated, so that the criminal legislator does not leave in the hands of the executive or the judiciary a decision on the limits of crime. In other words, in the context of general principles, it shows a guarantee of freedom and security, principles that are implemented on the basis of the reservation of the law (typical) of crimes and punishments. The principle of legality since its inception, according to RODRIGES MURULLO, has political and other scientific significance. At the beginning of its historical trajectory, this meant combating the insecurity (ius incertum) characteristic of the criminal law of the old regime, guaranteeing legal certainty as a characteristic of the rule of law aimed at ensuring the political security of citizens. This explains why totalitarian regimes reject the rule of law to replace it with the maximum no crime without punishment. In today's world, the principle of legality derives from the same inviolability of human dignity as the requirement of natural law, before and above positive law. And as a consecration of its universal character, it has been incorporated into numerous Constitutions, Article 11 of the Universal Declaration of Human Rights of 10 December 1948, Article 7 of the European Convention on Human Rights and Fundamental Freedoms (Rome, 4 November 1950) and Article 15 of the International Covenant on Civil and Political Rights of 16 December 1966. From a technical or scientific point of view, the first attack on the rule of law was based on the thesis of a positive school, since the notion of a dangerous State and security measures are not compatible with inflexibility, that the source of criminal law can only be law. However, the wording of the principle of legality opened the door to the technical-legal development of the theory of crimes and BELING can conclude about its theory of the typicality of the fundamental axiom of nullum crime, nulla poena sine praevia lege and lodge a criminal type as an important element of the concept of crime. PRICE DEVESA Consequences implied in principle of legality: 1 There is no crime without law (and this implies: a) There is no crime without a law indicating - typical - what criminal behavior consists of. b) Crimes no more than enshrined in law. (c) Courts have no right to treat acts other than those provided by law as offences. 2. There is no punishment without law (which means: (a) the Law clearly defines the type of punishment that must be imposed on each crime. b) Absolutely uncertain penalties cannot be imposed. (c) Courts cannot impose penalties other than those assessed by law. (d) The circumstances of the execution of the punishments cannot be varied, and the 3rd is not punishable without a trial or judicial guarantee. For this author, the principle of legality is a postulate, a desire for an ideal and unattainable goal, absolute legal certainty that cannot be achieved through a disingenuous instrument of law. Thus, it serves very little if it does not nest in the heart of the interpreter and judge during the interpretation of the law. As SERRANO ALBERCA has seen and stressed, the Spanish Constitution recognizes in article 25.1 a guarantee of no crime without law and no punishment without a law covering the provision on the merits: (a) the principle of the clause of the Crime and Punishment Act, which prohibits both the appeal to the executive and the judiciary by analogy. b) The principle of non-reastroactive criminal law is supplemented by the declaration of article 9 of the Constitution. Criminal doctrine (COBO DEL ROSAL, BOIX REIG, RODRÍGUEZ DEVESA and RODRÍGUEZ MOURULLO) usually concrete the principle of legality in the following guarantees required by its constitutional recognition. A. Criminal warranty (nullum crimen sine lege). This means that no action or omission can be considered a crime unless previous criminal law has criminalized it. Article 25.1 of the Constitution does not explicitly reflect the formal requirement of the preliminary law criminalizing criminal conduct or imposing penalties, as it is a matter of existing legislation and not a law in the strict sense of the word. Moreover, Articles 1 and 2 of the Penal Code establish this guarantee, undoubtedly in our criminal order. This constitutional uncertainty, which is specified in the term current legislation, did not prevent most of the criminal doctrine (COBO DEL ROSAL, VIVES ANTON, BOIX REIG, RODRIGES DEVESA, RODRIGES RAMOS, CASABO, CERESO WORLD), against the position taken by RODRIGES DEVESA and CANO PERUBCHA, argue that the principle of legality expressly established in article 25.1 of the Constitution also implies a clause of the organic right to criminal law under article 81. The Constitution itself (absolute reserve of organic law) and the doctrine of the Constitutional Court. decisions of 11 November and 16 December 1986, both of the Constitutional Court, come to establish the doctrine of the High Court that: (a) The laws (criminal) establishing a penalty of imprisonment constitute the drafting of article 17.1 of the Constitution (right to freedom and security) within the meaning of article 81.1 and therefore should have the nature of organic laws. b) The wording of the principle of legality with respect to the criminal-sanctions rules contained in article 25.1 of the Spanish Constitution implies a requirement for the status of formal law for criminal norms, but does not imply, in itself, the need for symbols of organic laws under article 81.1 of the Spanish Constitution (decision of 23 February 1984 of the Constitutional Court). In the field of military criminal law, the principle of legality is recognized in Articles 1, 20 and 41 of the Military Criminal Code of 1985, introducing the traditional rule into a castran law that gave the parties (dictated in accordance with the Organic Law 4/1981, which drafted Article 116 of the Constitution) as a source of military criminal law. Therefore, since the Organic Law 13/1985 can be said that criminal law is the only source of punishment law castrense. Article 25.1 of the Constitution also refers to the temporary aspect of the principle of legality, consisting of the principle of non-de-ionability of the sanction law, confirmed by article 9.3 of the same fundamental norm (unprepared or restrictive sanctions). The constitutional provision (Article 25.1) refers to actions or omissions, effectively adopting a provision of so-called criminal law (punishment may be imposed only if specific conduct is provided by law), except for so-called copyright law. Finally, article 25.1 deals with acts or omissions that constitute an offence, offence or administrative violation. B. Criminal guarantee (nulla poena sine lege). This guarantee itself is a criminal guarantee - no punishment previously established by law - has not been explicitly established in article 25 of the Constitution, although its wording can conclude the principle of legality relating to punishments, i.e. the definition of sanctions by law, with their maximum and minimum restrictions or proportionality between the content of the sentence and the action or omission authorized. Thus, our Constitution recognizes the principle of legality with regard to punishment, and article 2 of the Penal Code stipulates that no crime or misdemeanor is punishable by punishment that is not provided by law before it is committed. When a judge considers that - the strict application of criminal law - action or omission is punished, which, in the opinion of court, it should not be or the punishment is significantly excessive, it will go to the government, claiming that is appropriate, without prejudice to enforce, of course, a decision in C. Guarantee of jurisdiction or judicial. The term convict, used by article 25.1 of the Constitution, is a conviction that can only be imposed as a result of a trial. Thus, a judicial guarantee means that no one can be convicted, but because of the final decision handed down by the competent court. Article 3 of the Penal Code stipulates that punishment cannot be imposed, but by virtue of the final decision and article 1 of the Criminal Prosecution Act, it is stipulated that: No penalty shall be punished as a result of punishable acts whose repression is related to normal jurisdiction, but in accordance with the provisions of this Code or special laws, and by virtue of the decision made by the competent judge. The judicial guarantee also extends to the power to introduce security measures. D. Execution guarantee. The principle of legality applies to the legal guarantees of a convicted person in the execution or execution of a sentence. Article 3 of the Penal Code thus states that no penalty can be enforced in any other way than what is provided by law and regulations, or in other circumstances or accidents, than those expressed in its text. Legislative technology and the principle of legality. RODRIGES MURULLO says that clearly enshrining the principle of the rule of law or the legal guarantees that follow it is not enough today, but it is necessary if material implementation by a firm legal distinction of different types of crimes. Therefore, the legislator is forbidden to pass criminal laws of uncertain content, to follow vague and abstract formulas, to use the technique of transferring the executive or even the judiciary. Criminal law should be clear and exhaustive when describing typical assumptions or dangerous status, as well as accurate in establishing security measures. Criminal law. Criminal law, the only source capable of creating crimes and punishments, dangerous states and security measures, must meet the material and formal requirements of any law. However, the Criminal Law must have the status of an organic law when the penalties it imposes (punishments for possession) constitute the development of fundamental rights recognized by the Constitution (Article 81.1 of the Spanish Constitution). This range of organic law should not be in all criminal laws, and thus this reservation does not comply with the rules that impose punishment. Thus, the principle of legality (Article 25 of the Constitution) is expressed in criminal and punitive matters in the absolute reservation of the law, which in most cases should be a category of organic. This monopoly of law as criminal law is a requirement and the legal certainty characteristic of the rule of law is incompatible with the nature of the provisions arising from public administration. A. The structure of criminal law. Criminal law, as in any legal rule, provides for a provision or budget, as well as punishment or legal consequences. The criminal rule sets the budget (description of a crime, misdemeanor or dangerous state) and connects it with an imperative consequence (punishment or security measure). This happens in the criminal rates that constitute the so-called special part (crimes, in particular) of the Criminal Code, without extending this technique to the general part of the criminal texts formed to avoid a repeat of the criminal rule. Criminal law expresses the thinking of the legislator and always includes value judgment - imperative and unfavorable - on certain behaviors that disapprove and punish punishment. The role of criminal law is to punish certain conduct by implicitly prohibiting it or setting a standard of conduct. Rules describing crimes or misconduct and imposing penalties are addressed to all citizens who make up society, as well as to the judicial authorities responsible for their implementation, while these State judicial bodies are the sole recipients of rules describing dangerous States and establishing security measures. B. Empty criminal laws. Forms of criminal justice are incomplete criminal law, empty or in need of supplementation, in which the criminal law itself refers to another source of the law for the integration of a provision or sanction that may appear even in various regulations. Thus, it may be sent to another provision of the same criminal law, to another law or to a provision on the regulatory rank. In the latter case, criminal law in its own sense, the delegation of the legislature to the administration should be limited to the maximum, and it is desirable that by their very nature they cannot be defined in criminal law. C. Interpretation of criminal law. The interpretation of the Criminal Law is to find out the meaning of the rule, its contents and the scope of the application to a particular case. The purpose of the interpretation is not to discover the will of the legislator, but to the will of the law (attitude legis). Interpretation can be: authentic (performed by the same criminal text defining the concept), judicial (made by the judicial authorities responsible for the prosecution of crimes and offences) and doctrinal (or scientific interpretation made by scholars of criminal law). In interpreting criminal law, it is necessary to define the applicable law through the rules of the competition of laws (Article 8 of the Criminal Code), the temporal and spatial scope of the punitive rule, and as soon as the applicable law is found, it is necessary to detect its significance for the case, on us. Us. of great importance more than once the imperfections of the same law, formed by errata and shortcomings of the drafting of the legislator himself. The translator uses basically four means: grammatical interpretation (analysis of language and vulgar, legal or technical meaning of the words used), historical (projects, law-making process, explication), systematic (placement or position of criminal case in the system and comparison with other rules) and telelogical (which tends to the end of the standard) , definition of good or interest, legally protected by criminal law). According to its results, the interpretation can be declarative (identity between the name and letter of the law), restrictive (the legal will go beyond the legal will), extensive (the legal will go beyond the letter of the law and therefore prohibited if it aggravates criminal responsibility) and progressive (must always respond to the time and needs of the time when criminal law is applied). Under article 3.1 of the Civil Code, the rules are interpreted in accordance with the appropriate meaning of their words, taking into account the context, historical and legislative background, and the social reality of the time in which they should be applied, taking into account the fundamental spirit and purpose of those words. In criminal law, the analogy is prohibited as a procedure to fill gaps in the law, in accordance with the imperative of the principle of legality (Article 4.1 of the Criminal Code of 1995). On the contrary, the dubio pro reo principle (in the case of doubt in the iner) regulates that it is not a rule of interpretation of criminal law, but a valid norm for criminal proceedings and evaluation of evidence. D. Term of criminal law. Criminal law has a time frame and spatial efficiency, as well as a reality in relation to people. In the latter sense, we must proclaim that the principle of equality before the law (Article 14 of the Spanish Constitution) does not allow exceptions to the criminal rule, without compromising certain constitutionally recognized procedural immunities or prerogatives (the sanctity of the king, article 56.3, the immunity and immunity of parliamentarians, article 71) or conditionally (diplomatic status) granted for the needs of this function, not the human being. The time frame of criminal law should be examined on the basis of its validity or formal validity (from its entry into force to its direct or implied abolition) and material effectiveness or justification (criminal law applies to acts committed in accordance with its validity). The general norm is the principle of non-reactivity, and the exception is the retroactiveness of favorable criminal law. In general, the principle of non-retroactivety is formulated in article 2.3 of the Civil Code (Laws are not retroactive, unless they provide otherwise, prohibiting criminal law - by virtue of the principle of legality - criminal regulations. The principle of absolute retroactivity of criminal law, enshrined in the Constitution (Article 25.1), is also formulated in article 2 of the Penal Code. No crime or misconduct that is not provided by law prior to its commission, a provision that enhances its effectiveness by security measures, is not punished. An exception to this rule is the so-called retroactivity of the most favourable criminal law, which is generously recognized by article 2 of the Penal Code, although the publication of these cases has resulted in a final verdict and the convict is serving his sentence. The effectiveness of retroactivity of the most favorable criminal law exceeds the sanctity of res judicata and extends to a person serving a sentence. Even the Supreme Court applied this retroactivity, with disputed discretion, to decisions already enforced to calculate recidivism. The spatial scope of criminal law is governed by the general principle of territoriality, which is a consequence of sovereignty. Article 8 of the Civil Code and Articles 4.21 and 23.1 of the Organic Law on the Judicial System enshrine the principle of territoriality, which applies to all crimes committed in the territory of the State and cannot be applied to crimes committed outside the State Territory (PERDES DECE). The territory means all areas where the State exercises its sovereignty, both on land and in the territorial sea (including inland waters), territorial airspace, ships and aircraft (the distinction between war and private), and the headquarters of diplomatic missions abroad. On a real or defensive basis, Spanish criminal law applies to certain crimes committed outside the national territory (Article 23.3 of the Co.C.), certain crimes committed by Spaniards abroad (v. 23.2 COU) or, on the principle of the community of interests, to international crimes regardless of the place of commission (v. 23.4 CO). It is said that it dictates the norms of criminal law. Criminal. caracteristicas de la ley penal en mexico. caracteristicas de la ley penal en guatemala. caracteristicas de la ley penal pdf. caracteristicas de la ley penal del ambiente en venezuela. caracteristicas de la ley penal unam. cuales son las caracteristicas de la ley penal. definicion y caracteristicas de la ley penal. ensayo de las caracteristicas de la ley penal

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