

About Necessity of Strengthening of the Preventive Direction for Criminal and Legal Policy of the Republic of Kazakhstan

¹Akimzhanov Talgat Kurmanovich, ²Adrahmanov Boris Amirzhanovich
³Dilbarkhanova Zhanat Rakhimzhanovna and ⁴Begimbayev Serik Askarovich
¹Humanities University of Transport and the Right of D.A. Kunayeva,
Ministry of Internal Affairs of RK, The Colonel of Justice in Resignation, Russia
²Central Asian University, Department of Jurisprudence, Japan
³Department of Jurisprudence, RK Ministry of Internal Affairs Almaty Academy,
RK Ministry of Internal Affairs Almaty Academy Chair of an Expert
Hardware of Disclosure and Investigation of Crimes,
⁴Department of Law, Department of Jurisprudence, Central Asian University,

Abstract: This study is considered the ways and methods of the preventive direction for criminal and legal policy of the Republic of Kazakhstan. The accepted new criminal legislation of the Republic of Kazakhstan has to be directed first of all on realization of the preventive functions following from contents of the section of punishments of the general part and the provided sanctions of articles of special part of the criminal code of the Republic of Kazakhstan.

Key words: Right-comprehension, law enforcement, prevention of offences, criminal and legal policy of the Republic of Kazakhstan, state policy of fight against crime

INTRODUCTION

April 29, 2010 adoption of the Law RK “About prevention of offences” demands to look on in a new way at a problem about necessity of strengthening of the preventive direction for criminal and legal policy of the Republic of Kazakhstan as in the specified law is put the huge potential as one of unused reserves in counteraction of crime is need of strengthening of a preventive orientation of the State and its bodies.

So in Article 3 of the Law RK “About prevention of offences” the purpose of the law is determined establishment of a uniform state policy in the field of prevention of offenses and as tasks are specified:

- Ensuring protection of the rights, freedoms and legitimate interests of the person and citizen from criminal encroachments
- Decrease in level of offenses
- Perfecting of system of prevention of offenses and also identification, studying, elimination of the reasons and conditions promoting them
- Social adaptation and social rehabilitation of the persons which are in a difficult life situation

- Coordination of activity of subjects of prevention of offenses
- Increase of level of legal culture of citizens
- Providing of the citizens and the organizations in prevention of offenses

In Kazakhstan for this problem it is paid enough attention from the state. There is a legal basis of counteraction of crime, rather mobile law-enforcement system and the most important it is created negative attitude to criminal manifestations in society at the most part of the population.

The important norm is consolidated in Article 1 of the Constitution of the Republic of Kazakhstan that the Republic of Kazakhstan approves itself as the democratic, society, constitutional and social state where the supreme values are the person, his life, the rights and freedoms.

For ensuring implementation of these regulations of the country constitution in Kazakhstan from the moment of getting of the sovereignty measures for perfecting of all main directions of the state, economic, social, political development of society are actively undertaken.

According to famous scientific criminologists in the modern society the serious antagonism between crime and the state is observed.

And the forms and methods of criminal activity become more perfect, the activity of law enforcement agencies more actively is observed.

At the same time, the notable superiority in this opposition of the specified parties for the objective and subjective reasons, it is not possible to reach in full.

One of the reasons of such situation is that accepted on April 29, 2010 with changes and additions (as of February 16, 2012) the Law RK "About prevention of offences" practically does not work. Before adoption of law of RK "About prevention of offences" the active work on an explanation of need of its acceptance was carried out in society (conference, round tables, etc.). However, after acceptance of the Law RK "About prevention of offences" this research was completely unreasonably stopped.

In the society, people have already forgotten, except experts, about existence of this Law RK. Though the formulated purpose in article 3 of the Law RK "About prevention of offences", "establishment of a united state policy in the field of prevention of offenses" is not carried out.

MAIN PART

Laws will not work with themselves. The modern theory of criminal law should investigate the criminal and legal legislation and law-enforcement practice and first of all to establish and then to resolve the available problems in the field of criminal law, morals, a reasonableness and validity. Development of scientific knowledge allows noting that today in the field of criminal and legal science the set of methodological problems is investigated. Problems of right-comprehension and law enforcement are consisted in on the one hand to have the exact conception on the developed reality and on the other hand help to orient the theory for needs and requirements of law-enforcement activity.

The researchers Starkov (2005) is absolutely right that any even the most deep theory, remains lifeless if it does not receive an embodiment in practice. It concerns also the criminological theory of the prevention of crimes. Implementation of the theory of the prevention of crimes is possible only at the exact organization of this process as from the specialized law-enforcement state and non-state organizations and it is from the side of non law enforcement agency bodies and the organizations (Starkov, 2005).

In the modern conception of right-comprehension has to be offered the idea allowing to increase effectiveness and quality of law-enforcement activity of law enforcement agencies in the solution of questions of counteraction of crime in Kazakhstan.

Due to the aforesaid in conceptual terms apparatus of legal practice in the sphere of counteraction of crime it is necessary to introduce into terminological circulation the concepts, bound to fight against crime from positions of ensuring national security of the country. So, the concept of national security as the condition of security of national interests of the country from actual and potential threats providing dynamic development of the person and citizen, society and the state is legislatively fixed in the Law of the Republic of Kazakhstan from January 6, 2012 "About national security of the Republic of Kazakhstan" (with changes and additions as of January 13, 2014).

That is we have all legal causes to consider the crime as one of the main sources of threat of national security of the country. And process of fight against crime is process of ensuring national security of the Republic of Kazakhstan. What such treatment of process of fight, opposition of crime gives us.

In official documents, regulations in the theory it is also used the terms "state policy of fight against crime" and "state and legal policy in the field of fight against crime". Thus, it is necessary to notice that the state policy of fight against crime can be carried out only on a legal, including criminal and legal basis and in legal forms.

In the international agreements of the universal character (for example in the International convention on fight against financing of terrorism in the Shanghai convention on fight against terrorism separatism and extremism) by the United Nations Organization at the holding seminars, the congresses on fight against crimes and work with offenders use the term "fight against crime".

We are offered the approach to an assessment of process of counteraction of crime from positions of ensuring national security which gives the following advantages.

First, the relation to fight against crime will change in society in general. Significance in the opinion of citizens of process of counteraction of crime will increase. It will be considered not as the common phenomenon, bound to fight to concrete types of crimes and criminals and as the process aimed at providing national security of all state. And each citizen participating in this process or rendering assistance will realize that fighting crime he promotes realization of the major national objective to ensuring national security of all country.

Secondly by such consideration of process of counteraction of crime the role of the law enforcement agencies, urged not only to carry out crime control within the functions and powers but also to provide preservation of national security of the state along with special bodies of the Republic of Kazakhstan.

Thirdly in society the analyzed approach to fight against crime has the right for existence. It is known that counteraction of crime is carried out also not by specialized subjects of the prevention of crimes which do not possess law-enforcement functions and apply other measures, complicating commission of crimes or interfering it.

So, the certain citizens, various bodies and institutions, considering not obligatory the participation in process of fight against crime for various reasons, will not have the moral right not to participate in process of ensuring national security of the state in which they live.

Taking into account above-mentioned circumstances it is possible to note that the offered approach to reconsideration of separate aspects of counteraction of crime will promote the solution of many tasks, facing law enforcement agencies and to increase of effectiveness of their participation in this process in the conditions of the happening changes in an operational situation in the country.

Other approach to activization of the Law RK "About prevention of offences" from our point of view, it would be expedient to accept at the government level the Program for implementation of the Law RK "About Prevention of Offences" with concrete actions which have to be provided organizationally and financially from the State, both at the republican level and on the local.

It would be necessary to oblige all bodies specified in the Law to strict execution of all its requirements with reclamation of annual reports on its realization.

It is necessary to create within the country at the republican, regional, city and regional levels, on constantly operating basis the coordinating bodies for implementation of this law. It is necessary to attract all bodies and public organizations, citizens for implementation of the Message of the President of the Republic Kazakhstan, the Leader Nation, N.A. Nazarbayev to the people of Kazakhstan "Kazakhstan 2050": A new political policy of the established State" about following of the state to the principle of zero tolerance to a disorder (Nazarbayev, 2013).

It is necessary to use the capacity of the country at the highest level (perhaps Presidential Administration or security council).

It is necessary to use possibilities of the Law RK "About prevention of offences" for join of efforts of all bodies and the public on formation of new ideology in society in the sphere of counteraction of crime. Also, it is necessary to explain to all society that counteraction of crime is a task of all society and not just law enforcement agencies.

At the organization of counteraction of crime it is necessary to take into consideration opinion of the famous scientific criminologist G.A. Avanesov that the crime is generated by conditions of public life but it is also a part of these conditions itself.

The following aspect of activization and strengthening of preventive measures in the country. It will be exact to consider process of fight against crime not only as impact on crime as negative compound societies but also on society which generates this crime.

Our law-enforcement system concentrated the attention only on that part of the population which commits crimes that is potential offenders and criminals. And the main part of representatives of society, law-abiding citizens, remains out of sight. Though the special border dividing the law-abiding population and persons of crimes, made or inclined to commission, does not exist in the nature. Any law-abiding citizen can appear on a dock. And each person serving sentence in correctional facility to seek for return to normal life. Therefore, fight against crime should be considered much more widely and it (fight) should not be reduced only to identification of concrete crimes and persons who did it. This process has to assume broader and scale actions which realization would promote not only liquidation the concrete reasons and conditions of crime but also would include impact and on healthy, law-abiding part of society.

Complex prevention of crime is a wide nation-wide problem of social character. Here, it is necessary the systematic, scientific-based and economically considered work from the State.

In approved the Decree by the President of the Republic of Kazakhstan from August 24, 2009 No. 858 "Concepts of legal policy of the Republic of Kazakhstan for the period from 2010 to 2020" was noted that the most important link of legal policy of the state is the criminal policy where the perfecting is carried out by the complex, interdependent correction of the criminal, criminal-procedure and criminal and executive law and also law enforcement.

Negative changes of the quantitative and qualitative characteristics of the modern crime, expenses of law-enforcement activity of law enforcement agencies, activity and determination of the pursued state policy in fight against crime, demand searching of new approaches to right-comprehension and law enforcement, to judgment and reconsideration of the current criminal legislation of the Republic of Kazakhstan.

Existence of the criminogenic strength in society caused by crime indicates existence of problems of criminal law of a methodological order which in total define low effectiveness of criminal and legal regulation of the public relations.

Permission of this problem touches on also whole additional complex of the interdependent issues of a social and legal order, imperfection of standards of the criminal law, a problem of qualification of crimes, combinations of legality and reasonable validity at a choice and purpose of punishment.

DISCUSSION

In general, it is looked through the insufficiency of justification of criminal responsibility in this connection, and here, it is arisen the fair conclusion about obscurity in full of the legal nature of crimes.

In order to understand more deeply the maintenance of criminal policy we will find out essence of the definition of "criminal policy". As it is impossible to speak about any phenomenon, action without having studied it concept and essence.

In the explanatory dictionary of Russian language the word "criminal" is belonging to crime, crimes and their punishability (Ojegov and Shvedova, 1999).

According to the Russian scientists the term "penal law" more gravitates to punishment, than to a crime. And in this sense "penal law" is in fact, a synonym of the right of "punishable". However, when determining criminal policy by scientists more broad interpretation is given. For example, the Russian authors of the textbook criminal law, the criminal policy define as the general line developed by the state defining the main directions, the purposes and levers on crime by formation of the criminal, criminal-procedure, criminal and executive legislation, regulation of practice of its application and also by development of the measures directed on the prevention of crimes.

The Kazakhstan authors give broader interpretation of concept of criminal policy as its content connects with definition of tasks and methods (directions) of crime control. Thus in structure of the maintenance of criminal policy allocates two directions of social control over crime it is prevention of crimes and directly control over crimes.

Apparently both in the first and in the second case the criminal policy is connected with crime with its prevention and social control over it that in our opinion, it is not absolutely correct as the crime and its prevention

are the criminology subject components. And the criminal policy has a direct bearing only on such branch of knowledge as penal law.

From our point of view, the criminal policy has to cover only questions of punishability of acts, contents of the punishment and its prescription. Therefore also definition of criminal policy has to cover specified directions.

As a result of carrying out criminal policy it has to be carried out, first, monitoring of the existing criminal legislation regarding its compliance of reality; secondly, how it is effectively applied the criminal legislation which its norms are not applied in the practice or difficult applicable; thirdly, whether all acts made actually are captured by the criminal legislation; fourthly whether there are difficulties in application of these or those standards of the criminal legislation in practice; fifthly, social consequences of application of punishments and many other things.

According to Ancient Greek philosopher Platon who wrote in the early works that punishment is the benefit for the criminal which is capable to restore harmony in his soul. He admitted the capital punishment. But also Platon paid attention to legislative process; noted necessity to consider human imperfection, to seek to warn a crime, to achieve that as a result of punishment of people became better. Platon also noted personal nature of punishment, considered that it should not extend on the criminal's descendants even in cases of infringement of the state order.

CONCLUSION

Therefore, the accepted new criminal legislation of the Republic of Kazakhstan has to be directed first of all on realization of the preventive functions following from contents of the section of punishments of the general part and the provided sanctions of articles of special part of the criminal code of the Republic of Kazakhstan.

It is necessary to consider the made additions and changes in the criminal legislation from a position of strengthening of its preventive role as it is of great importance for our country.

First, it is necessary to change contents of our criminal legislation which has punitive character. The contents of the section of punishment are required to revise in the new criminal code of Kazakhstan (concept and the purposes of punishment, types of punishments, etc.).

Secondly, it is necessary to reduce in the criminal legislation of the Republic of Kazakhstan such type of punishment as imprisonment and to apply it only in

especially exceptional cases when application of other types of punishment don't give the positive result. Thirdly, it is necessary to reduce imprisonment terms in the existing criminal code of RK.

This process has to assume broader and large-scale actions which realization would promote not only liquidation of specific criminals and criminal formations but also to be directed on elimination of the reasons and conditions promoting their functioning and also commission of returns to crime and the most important it is return to society for stumbled citizens who are temporarily in isolation.

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