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Anti-criminal policy: moral foundations

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Abstract. The low effectiveness of traditional power options for solving the problem of crime determines the need to search for a broader state approach, to develop the foundations of a holistic anti-criminal policy. The purpose of this study is to determine the methodological and moral foundations of state influence on crime. In the author's approach, criminal policy is presented as an important, but still not the main, but a subordinate element of anti-criminal policy. The aspect is studied, in particular, related to the spiritual and moral content of the policy in the field of combating crime: the impact on crime should have a moral dimension, the means of countering it should be moral, and the effectiveness is determined, among other things, by the degree of moral impact on the consciousness of citizens - both those who have violated the criminal law and all others, including victims. The moral "price" of the impact on crime, the punishment system and its individual types should also be of great importance. The author comes to the conclusion that not only Russian, but also foreign policy in the field of combating crime should change radically, turn towards the full promotion of harmonization of public life, eliminating the causes of conflicts, reducing the severity of social contrasts, ensuring a balance of interests of the individual, society and the state, social solidarity. The trends taking place in anti-criminal policy today can have negative, including moral, consequences both for the country as a whole and for each individual citizen. The task of criminologists is to see possible criminal consequences and warn society about their threat.

Keywords: criminal policy, anti-criminal policy, methodological foundations of criminal law.

Introduction

The problem of the moral principles of criminal law and criminal policy has recently, which is encouraging, begun to attract more and more attention [1].

In October 2022, an interesting discussion of the problem of the moral foundations of criminal policy took place at the Institute of Comparative Law and Legislation under the Government of the Russian Federation as part of scientific readings dedicated to the memory of M.N. Gernet. And although a fairly wide range of issues were considered, one of them, in my opinion, required a special approach. In the field of state influence on crime, two opposite models are possible, which I would conditionally designate as "repressive-forceful" and "humane-harmonious". The first model is a traditional one. Its essence is based on various options for state coercion to law-abiding behavior. It originated initially and is modified over time under the influence of certain political decisions. Criminological studies have shown a direct dependence of the state and dynamics of crime not so much on the good or bad work of law enforcement agencies, but, above all, on the originality of the causal complex of crime. Historically, a humane and harmonious model seems to be more promising, focusing primarily on solving socio-humanitarian problems in order to minimize criminogenic factors. All this is well known, but the real anti-criminal policy of many states, including Russia, still relies little on this model.

What should be the anti-criminal policy today? The answer to this question is possible in at least two main aspects: in the aspect of digitalization, information technology. This is a very important issue, and it is now being widely discussed. But no less important is another aspect that remains in the shadows for now: what should be the spiritual and moral content of this policy.

An increasing number of experts in the field of criminal law and criminology in the world are making a disappointing conclusion about the failure of state counteraction to crime. Humanity has been fighting drug addiction, alcoholism, corruption and other social deviations for a long time and to no avail. Only the lazy are no longer talking about the crisis of punishment as a traditional method of criminal legal influence. We return again to the search for an answer to the question: what should anti-criminal policy be? Should it be war, struggle, counteraction or control? At different times, different specialists have answered and are answering this question in different ways. The nature of the response depends on the content that is embedded in this policy.

Traditionally, the policy in the field of combating crime is associated with criminal policy, which includes criminal law, criminological, criminal procedure and penal enforcement policies [2].

It is well known that crime is a consequence of systemic deformation, both of society and of individuals. Therefore, the impact on crime should also be systemic in nature and include not only legal and special criminological, but also political, organizational, economic and ideological measures. Therefore, it seems that there is a need to substantiate a broader state approach, to develop the foundations of a holistic anti-criminal policy [3].

The methodology

In the research, such methods as analysis, synthesis, induction, deduction, comparative legal analysis, statistical method, axiomatic, abstraction and other scientific research methods

were used to achieve the set goals and objectives. These scientific methods made it possible to objectively and comprehensively reveal the topic of the study and develop measures to counteract.

Findings/Discussion

With this approach, criminal policy can be presented as an important, but still not the main, but a subordinate element of anti-criminal policy. So far, as it seems to me, this has not been done.

In a broad sense, criminological policy coincides with anti-criminal social policy, includes so-called general social measures - political, legal (legal policy: constitutional, administrative, civil law measures), organizational, economic, socio-cultural, ideological, educational and educational (pedagogical), psychological, religious.

General social measures, in essence, are measures not so much against crime, as they contain efforts "for" the approval of law-abiding responsible behavior worthy of the spiritual and moral image of citizens. The best crime prevention is the introduction and consolidation of positive factors aimed at the comprehensive physical, spiritual and material development of the population in general and every citizen in particular. Criminal behaviors are being replaced, displaced from both consciousness and real behavior. An adequate optimal social policy of the state is, at the same time, the best anti-criminal policy.

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The study of the problem of anti-criminal policy in a broad social context shows the insufficiency of traditional approaches and, accordingly, the need for a deeper immersion in the subject in terms of the essential characteristics of both the policy itself and its object - crime. Anti-criminal policy has as its object criminality as a negative social phenomenon formed by the mass of crimes committed - acts isolated by the Criminal Code from other malicious offenses on the basis of their increased public danger, as well as their authors - perpetrators and/or their associations. But there remains a question that criminologists, willingly or unwittingly, bypass - and what is the essence, the main root feature of crimes? It is often understood as a social danger - the infliction of real or possible harm to society or an individual by crimes. Dangerous, as is known, can be the actions of minors, the insane, the natural forces of nature, etc. It seems that any crime has the property not only to cause physical, property or political harm, it is always a moral evil [4].

No wonder Marx called crime the moral physiognomy of society. But an important conclusion follows from this: if the problem of crime is, first of all, a moral problem, then its solution should also be mainly on the moral plane. That is, the impact on crime should have a moral dimension, the means of counteraction should be moral, and effectiveness should be determined, among other things, by the degree of moral impact on the consciousness of citizens - both those who

have violated the criminal law and all others, including victims. The moral "price" of the impact on crime, the punishment system and its individual types should also be of great importance.

Today, the world is clearly dominated by two main trends with opposite vectors – on the one hand, we see the growth of technological power (digitalization, robotization, chipization). The current crime has been virtualized. Of the two million crimes that are registered in the country, a fourth of them are committed using computer technology today. This creates the problem of increasing the level of digital literacy and crime prevention technologies. But for now, another, no less, and perhaps even more serious problem remains without due attention - the general spiritual and moral degradation of people. The growth of the technological power of mankind is in no way linked to an adequate ideology and morality that contributes to the task of survival in the future.

We all see that today Russia is experiencing an acute crisis that affects literally all spheres of society and also affects the state of public morality. In general, we can state the stagnation of the economy, the aggravation of property differentiation, the expansion of the poor layer against the background of the defiant luxury of the "upper classes", the lack of a real separation of powers, the dominance and arbitrariness of the executive branch, the criminalization of the state and total corruption, as well as an obviously inadequate anti-criminal policy. In our very difficult time, which the country is going through, it is important to determine what role anti-criminal policy plays or should play in combating crime. Today, there is a clear trend towards the use of illegal methods, excessive criminalization of acts, expansion of the scope of judicial discretion, corruption-related norms in the Criminal Code, etc.

In my opinion, the well-established reliance on the omnipotence of power solutions to social problems, including crime, needs to be critically rethought. Calls for a war on crime and strengthening the fight against it, argues Prof. S.S. Bosholov, in fact, set a meaningless goal for the criminal justice authorities, the state and society. Any call for a war on crime means, in fact, a call for violence and cruelty. Meanwhile, violence in response generates only violence, and cruelty — only cruelty [5].

I think we should listen to legal theorists that violence should be defined as unfair coercion. Coercion coming from the authorities on just grounds should not be regarded as violence. The concepts of "coercion" and "violence" have different meanings. Violence characterizes the dictatorial side of state activity and is characterized by a higher degree of suppression of the will [6].

All violence is not so much a manifestation of strength as, on the contrary, weakness. It has long been known that the state is strong in the "consciousness of the masses" - their cohesion, high morality and a single ideology. When society is torn apart by contradictions and conflicts, the state resorts to violence to achieve obedience.

The famous American researcher, psychiatrist D. Hawkins, based on extensive practical and theoretical material, came to the conclusion that the most powerful force is simple kindness to oneself and to all things. Strength is always associated with something that supports life. It appeals to the noble principle in man, as opposed to violence, which appeals to what we call gross energies. Power strives for that which elevates and makes a person worthy - nobility. He identifies violence with inferiority, and force with integrity and perfection. Violence always generates a force of resistance; its influence is to divide, not to unite. Separation always implies

conflict; therefore, its price can be very high. If force appeals to our higher nature, then violence appeals to our baser instincts. It is limited, but the power has no boundaries. Spirituality is always accompanied by the absence of violence [7].

D. Andreev, in his famous "Rose of the World", came to the conclusion that "violence can be recognized as suitable only to the extent of extreme necessity, only in mitigated forms and only until the highest authority, through improved education, prepares humanity with the help of millions of highly ideological minds and wills to replace coercion with voluntariness, shouts from the outside the law is the voice of a deep conscience, and the state is the brotherhood." And further: "it is necessary to understand the ailments of the human soul and the correct concept of how to eliminate them. The idea of the value of the human person and the duty of a medical judge, which has entered into the flesh and blood, will stimulate an extremely careful, careful, warm approach to the defendant. Because he will be viewed as a patient who can be treated - not necessarily a patient in the modern psychiatric sense, but a patient in the sense of damage to the ethical structure of the soul. The role of such judicial figures cannot be overestimated: they are the saviors of human souls, and humanity needs them no less than doctors, teachers and priests. The scale of punishments will be softened and the principle of punishment itself will begin to give way to the principle of healing the criminal," so that the "punitive system" (how vile this expression alone is!) it has turned into a healing system"[8].

It was all written by a man who was in the Stalin camp! Of course, speaking about the inadmissibility of exaggerating the role of coercive methods of ensuring public safety, about increasing the degree of tolerance of society to deviant behavior, of course, one must also see a certain boundary, threshold, line beyond which one cannot cross, so as not to upset the delicate balance between human rights and the interests of public safety.

It seems that not only Russian, but also foreign policy in the field of combating crime should change radically, turn towards all possible assistance in harmonizing public life, eliminating the causes of emerging conflicts, reducing the severity of social contrasts, ensuring a balance of interests of the individual, society and the state, and social solidarity.

Criminologists have long seen the connection between criminal behavior and the phenomenon of so-called alienation. Detachment from society, other people, property, and even, quite often, one's own personality underlies such behavior [9]. This rupture of the organic connection of the individual with society traumatizes and deforms it, makes a person unhappy and flawed.

Any crime - and always - is not only a fault, but also a disaster, a dramatic mistake by a person (or, as an exception, the state) in choosing a life path or a specific behavior option. But how to make the guilty person realize this? How to achieve repentance, without which there is a high probability of repeating such a mistake?

Conclusion

A person commits a violation of the norms of morality and law in an attempt to compensate for his own sudden or chronic, social, psychological, moral, mental or even physical disability. Two main motivations arise: aggression and/or self-interest. Aggression allows, as it were, to elevate oneself at the expense of one's neighbor - humiliation of the victim and/ or violence against him. Self-interest consists in striving for personal property gain, appropriation of

someone else's, obtaining an undeserved / illegal advantage, i.e., as if to rise above others (or even everyone) in material terms. Both the first and second motivations are possible, insofar as other people are perceived only as means to achieve their goals.

It should be understood that the trends taking place in anti-criminal policy today can have negative, including moral, consequences both for the country as a whole and for each individual citizen. The task of criminologists is to see possible criminal consequences and warn society about their threat.

The contribution of the author. Developed the design of the study, processed and analyzed statistical data from law enforcement agencies and other organizations. Researched materials from scientific and educational literature, and also analyzed reports and materials from international organizations. Defined the purpose and objectives of the study, formed proposals and conclusions to address the issues raised.

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Қылмысқа қарсы саясат: адамгершілік негіздері

Андатпа. Қылмыс мәселесін шешудің дәстүрлі күш нұсқаларының төмен тиімділігі кеңірек мемлекеттік тәсілді іздеу, тұтас қылмысқа қарсы саясаттың негіздерін әзірлеу қажеттілігін анықтайды. Бұл зерттеудің мақсаты-қылмысқа Мемлекеттік әсер етудің әдіснамалық және адамгершілік негіздерін анықтау. Авторлық тәсілде қылмыстық саясаттың маңызды, бірақ әлі де негізгі емес, бағынышты элементі ретінде ұсынылған. Қылмыспен күрес саласындағы саясаттың рухани-адамгершілік мазмұнымен байланысты аспект зерттелді: қылмысқа әсер

етудің адамгершілік өлшемі болуы керек, қарсы тұру құралдары адамгершілік болуы керек, ал тиімділік, басқалармен қатар, азаматтардың санасына моральдық әсер ету дәрежесімен анықталуы керек – қылмыстық заңда қылмыскерлердің де, басқалардың да, соның ішінде жәбірленушілердің де. Қылмысқа, жазалау жүйесіне және оның жекелеген түрлеріне әсер етудің моральдық «бағасы» да маңызды болуы керек. Автор тек ресейлік ғана емес, сонымен бірге қылмысқа қарсы іс-қимыл саласындағы шетелдік саясатты түбегейлі өзгерту керек, қоғамдық өмірді үйлестіруге жан-жақты ықпал ету, туындаған қақтығыстардың себептерін жою, әлеуметтік қарама-қайшылықтардың ауырлығын төмендету, жеке адамның, қоғам мен мемлекеттің мүдделерінің тепе-теңдігін қамтамасыз ету, әлеуметтік ынтымақтастық жағына бет бұру керек деген қорытындыға келеді. Бүгінгі таңда қылмысқа қарсы саясатта болып жатқан тенденциялар жалпы ел үшін де, әрбір жеке азамат үшін де жағымсыз, соның ішінде моральдық салдарға әкелуі мүмкін. Криминологтардың міндеті-ықтимал қылмыстық салдарды көру және қоғамға олардың қаупі туралы ескерту.

Түйін сөздер: қылмыстық саясат, қылмыстық саясатқа қарсы саясат, қылмыстық құқықтың әдіснамалық негіздері.

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Антикриминальная политика: нравственные основы

Аннотация. Низкая эффективность традиционных силовых вариантов решения проблемы преступности определяет необходимость поиска более широкого государственного подхода, разработки основ целостной антикриминальной политики. Цель данного исследования заключается в определении методологических и нравственных основ государственного воздействия на преступность. В авторском подходе уголовная политика представлена как важный, но всё же не главный, а подчинённый элемент антикриминальной политики. Исследован аспект, в частности, связанный с духовно-нравственным наполнением политики в области борьбы с преступностью: воздействие на преступность должно иметь нравственное измерение, средства противодействия должны быть нравственными, а эффективность определяться, помимо прочего, степенью нравственного же воздействия на сознание граждан – как преступивших уголовный закон, так и всех остальных, включая потерпевших. Немаловажное значение должна иметь и нравственная «цена» воздействия на преступность, системы наказаний и её отдельных видов. Автор приходит к выводу, что не только российской, но и зарубежной политике в области противодействия преступности следует измениться радикально, повернуться в сторону всемерного содействия гармонизации общественной жизни, устранения причин возникающих конфликтов, снижения остроты социальных контрастов, обеспечения баланса интересов личности, общества и государства, социальной солидарности. Тенденции, происходящие в антикриминальной политике сегодня, могут иметь негативные, в том числе нравственные, последствия как для страны в целом, так и для каждого отдельного гражданина. Задача кримиологов – видеть возможные криминальные последствия и предупредить общество об их угрозе.

Ключевые слова: уголовная политика, антикриминальная политика, методологические основы уголовного права

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