

THE CRIMINAL LAW POLICY AS A CONSTITUENT ELEMENT OF THE LAW-ENFORCEMENT POLICY

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Abstract: The paper discusses the role of criminal policy as an instrument of law-enforcement policy. The definitions of the criminal policy are given within the framework of different concepts; the principles of criminal and executive policy of the state are revealed.

One of the main elements in the system of the law-enforcement policy of the state is the criminal law policy. As R.H. Kubov points out, “today the criminal policy is built into the state and political matter, and the criminal policy is its component, possessing thus all constituent features” [18]. On the one hand the legitimacy of the criminal policy is conditioned by its position in the technical (i.e. formal and legal) field formed by the state, and on the other hand – it is conditioned by the subjectness of its realization – by the state and its competent structures. The legitimacy of the criminal policy is reflected to the full by its target-setting which coincides to the full with the target-setting of the law policy as a whole. V.N. Kudryavtsev, for example, formulates the mentioned above as follows: 1) determination of the types of public relations which are subjected to legal regulation; 2) determination of the methods of legal regulation of the corresponding types of public relations; 3) working out of optimum systems of the organization of law-making and law-enforcement activities of the state authorities; 4) planning of the basic directions of legislative and law-enforcement activities for the current and long-term perspectives; 5) determination of the content and methods of legal education of the population and increase of its legal culture [25].

Such an integrative and legitimizing approach determines the definition of the criminal policy, presented in the national science. S.S. Boskholov understands the set of the following elements as the criminal policy: “1) state policy (doctrine) of crime prevention, registered in the corresponding directive

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certificates (laws, edicts of the President of the Russian Federation, decrees of the government of the Russian Federation); 2) a scientific theory and synthesis of the corresponding political, sociological and legal knowledge; 3) a special kind of the social activity directed to the active, offensive counteraction of criminality and other offences” [5]. According to I.A. Ismailov, it is possible to characterize the criminal policy as “a priority area of activity of the state which is carried out at a level of the political guidance, authority, decision-making and realization of concrete decisions and problem identification and implementation, and it is also the determination and implementation of the forms and content, task-oriented measures of crime prevention (and influence on it), the organization and support of the optimum functioning and development of this system on an appropriate ideological, legal, information, resource base and due to the interaction with other social systems” [16, p. 124]. V.P. Revin also underlines a strategic character of the criminal policy as its required quality along with a legal component: “The criminal policy is a purposeful dynamic activity of the state for the protection of the society against criminality, working out and realization of the optimum strategy, called to provide the achievement of the purpose of stabilization and restriction of a crime rate, creation of preconditions of positive tendencies of criminality” [34]. A program and strategic character of the criminal policy is also underlined by J.G. Stahov [31]. In this context we should agree with O.V. Grebtsov that the criminal policy is a component of the policy of the state, and it is its rather independent kind and its direction. And as a part of the policy of the state and due to the specificity of the object of social control, i.e. criminality, it has the direct and powerful influence on the policy of the state as a whole, up to the change of the state matter [8]. The most complete definition of the criminal policy is presented in the modern literature by G.J. Lesnikov: “The criminal policy is a system of principles, political and political and legal instructions, legal and other social norms of the anticriminal cycle, criminological programs and programs of the resocialization of a criminal, developed on a scientific basis and carried out by the state together with entities of the Russian civil society on the enforcement of the law, crime prevention and crime control, safety of the person, and in some cases, national safety” [19]. However in spite of the clearness of state and political, program target-setting of the criminal policy, some contradictory approaches to the matter of the directions of its realization remain up to the present moment.

Some authors define the criminal law policy as a criminological policy [29], and some oppose a criminological policy to a criminal one [20, 21], mentioning that in “conditions of superfast criminalization of the society, universal and large-scale corruption of the government of all levels and accruing criminal scandals with its representatives, «criminal authorities» entering the power, the total control of the criminal world over economy, business, law-making activity, etc., the criminal policy of the state is involuntarily associated with a policy of newly appeared «authorities»” [37].

The criminological policy is also an important element of the ethnic policy for Russia due to the fact that the state policy is an important regulator of public relations, including ethnic. “Such tendencies as xenophobia, anti-Semitism, manifestation of nationalism in one of its most severe forms – fascism, condition the aspiration to oppose these negative tendencies in the field of ethnic relations to the rational policy directed to the decrease of intensity of

international confrontation, protection of interests of ethnos, blocking of negative developments of considered public relations” [1].

In the Soviet juridical science the position was formed which by inertia remains actual until now: the criminal policy can be carried out by exclusively special measures of social prevention of crime, including the toolkits of criminal law, criminal procedure law, penal law and criminology [3, 4, 12, 13, 16, 26, 32]. Such an approach is distinctly presented into the definition of the criminal policy offered by N.I. Zagorodnikov and N.A. Srtuchkov: “The criminal policy represents such a direction of a policy within which frameworks it is formed the initial requirements of crime prevention by means of working out and realization of a wide range of precautionary measures, creation and application of the legal norms of the material, procedure and executive criminal law establishing the criminalization and penalization and when it is necessary – the decriminalization of acts; and also by means of the determination of a circle of admissible in prevention of crime measures of the state compulsion” [14]. Actually the given concept confronts the combination of actually legal and social measures of influence on criminality.

The approach which can be designated as social and legal, expanding the influence directions on criminality by inclusion and all-social measures became an alternative one to the legal approach to the understanding of the matter of the criminal policy. According to the supporters of the given concept, the criminal policy should cover all directions of the state activity either expressly or by implication providing prevention of crime, i.e. measures not only special – such as criminal law, criminal procedure, penal, criminological, but also measures which are traditionally referred to social, – economic, ideological, medical and so on [6, 7, 9, 17].

An attempt of “reconciliation” of two designated approaches is undertaken by I.E. Zvecharovsky, with the reason believing that prevention of crime not simply penetrates the matter of all without an exception branches of the legislation and not only a criminal profile, but acts as one of the main tasks facing to each of them, and the question in this case considers only the specificity of branch means of the solution of this problem [15]. Further away in this direction there is M.M. Babayev who formulates the concept of the criminological social policy and suggests that we should consider it as one of the elements of the criminal policy or as an independent kind of the social policy of prevention of crime, existing along with the criminal policy [2].

In the conditions of democracy it is necessary to change the state policy of the determination of prevention of crime from the penal treatment of a criminal (it is a criminal law sphere) to the area of reduction of the disproportion in all spheres of the public human life and society (and it is a sphere of criminology). The mentioned above circumstance demands the integration of the efforts of experts of many areas of the science. As I.S. Noi says, the inexhaustible theoretical potential of criminology is put in its objective integration with others legal and extralegal sciences [22]. Modern criminology requires knowledge, methods and techniques of newer and newer sciences, which are applied incompletely by native criminologists. It is conditioned by the fact that criminological researches are carried out more for the purpose of the studying of criminality and less for the purpose of the studying of the factors determining it. It is impossible to influence the criminality to the full without knowing these factors. One of such criminogenic factors is a disproportionate development of

the regions. The criminality in the country is basically appeared in the regions. More than 2/3 of the registered crimes are committed by local residents of the regions [36]. As it is supposed the reasons and conditions of committing crimes are mostly determined by the regional, but not federal criminogenic circumstances. Regional specificity of criminality is based on the objective and subjective disproportions of the development of regions.

Today many theorists and experts agree with the opinion that on the basis of the carried out researches of various aspects of the criminal law policy it is necessary to develop the concrete measures of its improvement [27] which should be reflected in the uniform concept of the criminal law policy [11].

The criminal law policy is closely connected with the criminal and executive policy which in the Russian reality, according to the author of the publication, is not a component of the criminal policy, and represents in many respects an independent direction of the state law-enforcement policy. It is reasonable to agree with the opinion of E.A. Sizaya that the principles of the criminal and executive law lie at the root of the principles of activity of establishments and bodies executing punishments and these principles are in unity with them have a decisive impact on their formation, development and improvement. It explains the existence of similarly-named principles of the criminal and executive law, and the principles of the criminal and executive policy, and the principles of activity of establishments and bodies executing punishments.

Hence, the principles of the criminal and executive law are realized by the task-oriented activity of establishments and bodies executing punishments. In the course of this activity the principles are transformed to the corresponding principles of the activity of correctional facilities and other bodies executing punishments [28].

Among academic lawyers representing the branch of the criminal and executive law, there is no single opinion about the principles of the criminal and executive law, about their correlation to the principles of the criminal and executive policy, and also about the principles of activity of the criminal and executive system and the principles of correction of condemned [23, 24, 30, 35]. The solution of the question at issue is possible from the positions of methodology of the law, as the law is one of the forms of expression and stabilization of the policy. "It means, – as Professor N.A. Struchkov specified, – that the principles of the policy, being expressed in the law rules, also become the principles of the law" [33]. The principles of criminal and executive or penitentiary legislation are the basic positions of the criminal and executive policy.

Really, in relation to the principles of the criminal and executive law the criminal and executive policy has a defining, supervising value as the formation and development of the criminal and executive policy is in the close connection with the development of social relations. However, being fixed in the law, legal principles get certain independent values as elements of the legal system reflecting the matter of the criminal and executive policy.

It is reasonable not only to agree with a position of Professor N.A. Struchkov, but also to ascertain that the principles of the criminal and executive policy have the right not only to exist, but also for the further working out by a science of the criminal and executive law.

Speaking about the principles of the criminal and executive policy as independent principles, it is necessary to mention that the criminal and executive policy is an independent direction of the policy of crime prevention which consists of working out and realization of the strategy and tactics of activity of the state in the sphere of execution of criminal punishments and other measures of criminal law influence, and also resocialization of persons, serving criminal sentence [10].

On the basis of the stated in the present publication it is possible to draw a conclusion that the criminal law policy and its elements are in the centre of the attention of scientists. Now there is a sufficient theoretical base for effective construction and realization of the criminal law policy which, unfortunately, is out of the field of the legislative and law-enforcement activity.

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Правоохранительная политика как неотъемлемый элемент правоприменительной политики

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Ключевые слова и фразы: борьба с преступностью; законодательство, регулирующее деятельность исполнительной власти; легитимность; легитимный подход; правоохранительная политика; правоприменительная политика.

Аннотация: Рассмотрена роль правоохранительной политики как инструмента правоприменительной политики. Представлены определения правоохранительной политики с точки зрения различных подходов; выявлены принципы криминальной и исполнительной политики государства.

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