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Some questions of further development of the criminal legislation according to the concept of criminal policy of the Republic of Kazakhstan

Abstract. The concept of criminal policy is submitted as system of the provisions which are officially adopted in the state determining essence, the purpose, the directions, priorities and criteria of efficiency of rule-making and law-enforcement activity in the field of protection of the personality, society and the state against criminal encroachments, and first of all by means of the criminal, criminal procedure and criminal and executive legislation today. Article is devoted to studying of the modern concept of criminal policy. The Republic of Kazakhstan from positions of definition of the main directions of improvement of the criminal legislation.

Key words: criminal policy, criminal legislation, concept, humanization, reform.

Introduction

In domestic jurisprudence there are many basic researches of a concept and the maintenance of criminal policy, including carried out last decade.

The criminal policy is treated by us as a part of social policy of the state in crime control. Its contents makes use in this sphere of action of a complex of economic, legal, social, organizational and other measures, definition of strategic tasks of improvement and effective application of the legislation, and also prevention crimes. The purpose of criminal policy — growth minimization crime and, in the long term, its reduction on quantitative and to quality indicators. Criminal policy, in our opinion includes a complex interconnected and interdependent, but at the same time rather independent components: criminal and legal, criminal procedure, operational search, and also, being in process of formation, penitentiary.

Methods

The dialectic method of knowledge of the socio-political phenomena and processes considering them in continuous change, development, close

interrelation and interdependence became a methodological basis of a research. In work state and political installations according to the prevention and crime control, resocialization of criminals, legal bases in this sphere, and also practice of law enforcement agencies in dialectic unity are considered.

In the course of the research the general scientific and private and scientific methods of knowledge of social reality allowing to reflect interrelation of the theory and practice, forms and the maintenance of a subject of a dissertation research were applied. The methodological principles and traditional technology of the complex cross-disciplinary analysis were observed that in general promoted ensuring reliability and reliability of results of scientific search. In the course of the research the complex of special methods was applied: historical, system and logical, legalistic, comparative and legal, statistical, etc. Also synergetic methods of studying and assessment of nonequilibrium systems to which, according to the author, both crime, and system of punitive justice belongs, counteracting it were used.

Research object - a complex of the theoretical and practical problems connected with development of methodological, legal and organizational fundamentals of criminal policy of modern Kazakhstan.

Object of research - the criminal legislation (material, procedural, executive), set of scientific views and conceptual ideas of modern criminal policy of Kazakhstan.

The legal reform undertaken in the Republic of Kazakhstan is directed on construction in our country democratic, secular, social, constitutional state. This purpose is enshrined in the basic law states – Constitutions [1] where respect for the rights was proclaimed and freedoms of citizens – as priority activity of the state.

For further realization of an objective on September 20, 2002 the Presidential decree of the Republic of Kazakhstan accepted the Concept of criminal policy where the main activities of the state in the field of reforming of legal system in the conditions of rise in crime received reflection [2].

The accepted Concept of criminal policy of RK for the period from 2010 to 2020 is logical continuation of the criminal policy of the state begun in 2002 and the main program of further development and improvement of the legislation of the Republic of Kazakhstan where key parameters of further improvement of the criminal legislation which, as before, have to be carried out taking into account of criminal policy [3] are determined. First of all, will raise the humanization question concerning mainly the persons who for the first time committed crimes of small and average weight, and also socially vulnerable national groups – the expectant and lonely mothers having dependent on minor children and people of old age. On the other hand – for achievement of safety of the personality, society, the state from criminal encroachments, it is necessary and to pursue tough criminal policy in commission of the heavy and especially serious crimes disappearing from criminal prosecution and at a recurrence of crimes from now on.

The head of state N.A.Nazarbayev pays much attention to the legal strategy which is the most important factor of strengthening of bases of statehood, to rule of law, independence of judicial system, protection of the rights and freedoms of the person and citizen, law enforcement and law and order.

The concept is directed to further improvement of domestic legal system, is guided by the evidence-based analysis of a current trend of development of the right and the state, provides updating of the codified branches of the right, systematization and

consolidation of the legislation. The legal system is main for forming of model of public administration on the principles of effectiveness, transparency and the accountability.

The importance and scale of the priority directions of criminal policy have to be professionally estimated as the Concept defines the main priorities of criminal policy of the state to the next decade. It will become the main for development of annual and long-term plans of lawmaking works for the forthcoming period, a reference point for formation of new generation of the legislation with the conventional international principles and standards, and also ratified by Parliament of conventions. This document promotes preservation and strengthening of political stability and sustainable social and economic development of the country: Implementation of the Concept – task not only public authorities. For this purpose it is important on the consolidated basis comprehensively and to objectively discuss the most effective ways of implementation of the tasks, with involvement of representatives of civil society and scientists-lawyers.

It would be desirable to pay attention to installation of the Concept which is directed to achievement of level and compliance with the international standards, a humanization of criminal policy, i.e. reevaluation of severity of certain types of crimes by mitigation of punishments, and also the translation from the crimes which are not constituting big public danger in category of administrative offenses and a crime on which criminal prosecution can be carried out in a private order.

The humanization of penal law is a vector of the instructions given by the President of the Republic of Kazakhstan within the Message to the people of the country “New decade - new economic recovery - new opportunities of Kazakhstan” [4]. In my opinion, distinctive feature of manifestation of our humanity have to become a humanization of the criminal legislation.

The list of articles sub giving to a humanization can be increased. At the same time a possibility of expansion of categories of criminal cases by which criminal prosecution and charge of court can be carried out in a private, and also private and public order demands careful studying and is our forthcoming task.

When carrying out decriminalization of crimes it is necessary to consider the following factors: need of protection of constitutional rights and freedoms of citizens; international obligations of the republic; the realized criminal policy of the state (The concept

of criminal policy, the President's letter of RK of N.A.Nazarbayev to the people of Kazakhstan – new decade); a criminogenic situation in the country; degree of possible harm, etc.

The new Concept of criminal policy is aimed at further improvement of the relations in the sphere of execution of punishments. Minimization of involvement of citizens to the sphere of punitive justice as the task which is set by the new Concept cannot be reached only by efforts of law enforcement and judicial authorities. In this important process also civil society, nongovernmental organizations have to be actively involved. Broader application of measures of criminal sanction alternative to imprisonment depends not only on the legislator and judicial authorities. Growth of heavy and especially serious crimes in the country leads inevitably to increase in application of such type of punishment as imprisonment, in the Concept it is offered to expand application of the criminal sanctions which are not connected with imprisonment; definition of a penalty as one of types of punishment, it in general is economic for the state [5].

In the presents time at a recurrence of crimes, first of all property which share exceeds 40% in structure of crime the law obliges to impose custodial sanction. As a result the petty larceny made repeatedly attracts long imprisonment. The experience of developed countries providing repeated imprisonment only at commission of especially serious crime and application of the punishments which are not connected with imprisonment at simultaneous development of service of a probation is of interest.

Therefore now questions of a ratio of punishment and deeds, expansion of scope of a penalty and search of other alternative types of punishment are one of urgent problems for any civilized society and the most discussed at us [6].

Besides, within the concept time to legislatively handle an issue of implementation of the international experiment on release of the person from a criminal responsibility, in connection with reconciliation of the parties came. The institute of mediation will be able to become optimum means of effective realization of institute of reconciliation in criminal trial of Kazakhstan. Proceeding from essence of mediation its detailed legal regulation is impossible, but nevertheless the basic procedural laws and guarantees of participants have to be fixed in a legislative order. As the idea of mediation in the last decades attracted great interest in society, more than once was a discussion subject at conferences and round tables. The relevant legal base is necessary for

full ensuring functioning of this institute. To a state and development of democratic institutes of our republic the attention of the European community is increased. And it is important that the sphere of criminal and legal system and the legislative base regulating it met the European and world standards and standards [7].

Thus, for achievement of the maximum heights of quality and transparency of the law, the criminal legislation has to be exposed to further reforms, is in continuous process of improvement, to fill, the available gaps and defects, to eradicate the holes giving the grounds for abuses. The accepted Concept of criminal policy creates conditions of development of the legislation and promotes legality strengthening, respect for constitutional rights and freedoms of citizens and the person, thereby allows realizing the main ideas and the principles of the Constitution of RK.

Conclusion

Weakening of legal control over a situation in the Republic of Kazakhstan made real threat of comprehensive criminalization of society. At the same time it is possible to refer to the burdened historical heritage, difficulties of a transition period connected with ecological crisis, the sharp social and international conflicts, political struggle and to other objective reasons. It explains a situation, but is of no use for its improvement. Definition of ways and means of opposition of criminal expansion, overcoming a criminal lawlessness, development of strategy and tactics of counteraction of crime is much more important to stop, and then to turn back its adverse dynamics. The criminal policy of modern Kazakhstan also has to be subordinated to this purpose.

The conducted research allows to draw conclusions which in the set form the concept methodological, legal and organizational fundamentals of criminal policy of modern Kazakhstan:

The retrospective analysis of scientific ideas of criminal policy showed ambiguity and discrepancy of the concept existing for two hundred years, and also change of views of it at different stages of development of society and in the different countries. Ideas of criminal policy arose in a situation when the dogma of penal law constructed on a civil law system (which fundamentals the Roman Law made), was insolvent for illumination of the crime existing then, its reasons and measures of fight against it.

Besides the organization of crime control assigned to criminal policy also tasks which are

carried out now by modern criminology. Further the periods of keen interest in criminal policy alternated with the periods of its full rejection.

Further the theory of criminal policy and continued to keep the value of general-theoretical and methodological base of disciplines of a criminal and legal cycle. However in process of

their development process of dispersal of criminal and political researches on separate branches of jurisprudence began to be observed.

At the same time it should be noted that the criminal policy which is directly connected with application of the law does not replace at all it as the law represents expression of criminal policy.

References

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