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Субъекты реализации криминологической политики в Кыргызской Республике

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Subjects of Implementation of Criminological Policy in the Kyrgyz Republic

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Аннотация

В данной статье рассматриваются наиболее актуальные общетеоретические вопросы эффективной реализации современной криминологической политики в Кыргызской Республике. Упоминаются различные подходы к криминологической политике и дается обобщение соответствующих теоретических концептов, получивших развитие за последние столетия. Тем не менее основное внимание уделяется современной криминологической ситуации на международном уровне и международному сотрудничеству в области прогнозирования, предупреждения и расследования преступлений. Обращаясь к теме государственных учреждений, ответственных за криминологическую политику, авторы рассматривают ситуацию в нескольких разных странах. Подчеркивается важность адаптации правовых институтов к новым социально-экономическим условиям. В связи с этим криминологическая политика рассматривается как комплекс наиболее эффективных и в то же время наиболее гуманных инструментов предупреждения преступности. Отмечается стратегический характер криминологической политики по отношению к мерам кратко- и среднесрочного характера, ее тесная связь с социальными и политическими науками и, как следствие, важность междисциплинарного диалога. Обосновывается авторское видение классификации субъектов, обеспечивающих реализацию криминологической политики. Подробно описываются существующие спорные теоретические проблемы и предлагаются механизмы их разрешения в ближайшей перспективе. Наряду с этим формируются основные задачи криминологической политики Кыргызской Республики.

Ключевые слова: криминологическая политика, субъекты, криминология, парламент, правительство, прокуратура, суд, права, юридическая наука, философия, терроризм, радикализм, преступное поведение, международное сотрудничество, транснациональная преступность.

Abstract

This article discusses the most relevant general theoretical issues of effective implementation of modern criminological policy in the Kyrgyz Republic. Various approaches to criminological policy are mentioned, and a generalization of the relevant theoretical concepts that have been developed over the past centuries is given. Nevertheless, the main attention is paid to the current criminological situation at the international level and international cooperation in the field of forecasting, prevention and investigation of crimes. Turning to the topic of state institutions responsible for criminological policy, the authors consider the situation in several different countries. The importance of adapting legal institutions to new socio-economic conditions is emphasized. In this regard, criminological policy is considered as a set of the most effective and at the same time the most humane tools for crime prevention. The strategic nature of criminological policy in relation to short- and medium-term measures, its close connection with social and political sciences and, as a consequence, the importance of interdisciplinary dialogue is noted. The author's vision of the classification of subjects ensuring the implementation of criminological policy is substantiated. The existing controversial theoretical problems are

described in detail and mechanisms for their resolution in the near future are proposed. Along with this, the main tasks of the criminological policy of the Kyrgyz Republic are being formed.

Keywords: criminological policy, subjects, criminology, parliament, government, prosecutor's office, court, rights, jurisprudence, philosophy, terrorism, radicalism, criminal behavior, international cooperation, transnational criminality.

"Subject" as a term comes from the Latin word "subjectus" ("subjacent") and is considered in various meanings. In the explanatory dictionary of the Russian language, in general terms, a “subject” means a person or a group of persons, a collective, an organization that is an active participant in any act or process[1].

This term has received wide scientific development in philosophy, which plays an important role in the development of the initial provisions of any science, including legal science. The significance of the developments of the categorical apparatus in philosophy and influence thereof on the legal sciences is expressed in the fact that philosophy carries the methodological principles subjacent to any science or field of knowledge. On this occasion, the well-known technologist M. S. Strogovich rightly pointed out the need to pay due attention to the philosophical substantiation of legal problems. “The most important problems of legal science,” he noted, “can be correctly solved only if they are deeply and seriously philosophically substantiated. There are errors and ambiguities in questions about the objective and subjective in social phenomena and relations, and these issues are extremely important in the legal regulation of social relations” [10].

In philosophy, "subject" is a concept used already by Aristotle, as well as in the later Middle Ages, in the sense of substance – an objective reality, something unchanging as opposed to changing states and properties. Only since the 17th century, this concept has been used in its modern sense, i. e. as a designation of a psychological-theoretical-cognitive "I" opposed to something else – "not-I", an object, an object, or as a designation of an objectified "I", i. e. an individual who is opposed, opposed by an object and who directs his cognition or action on this object – in this respect, it acts as a "subject of knowledge", "subject of action"[2].

As philosophical science develops, a consistent process of profiling the category of “subject” takes place, which, speaking in various guises, is certainly directed to a certain “object”. Thus, the famous German philosopher Kant, already proceeding from the objective identity of the subject and object, believed that real things affect the subject and induce him to the activity of cognition. “The entire content of thinking,” wrote Kant, “depends on external experience, is subject to objective necessity” [6].

Thus, in philosophy as a fundamental science about the most general patterns of development of nature, human society and thinking, the "subject" is considered in conjunction with the "object". The subject has consciousness and will, the ability to purposeful activity, focused on a particular object.

In legal science, the category "object" is considered through the prism of its specific properties, features, purpose. In the general theory of law, the term “subject of law” is widely used, the development of the content of which is given considerable attention. In general terms, the subject of law is understood as a person (physical and legal), who, in accordance with the law, has the opportunity to have and exercise directly or through a representative the rights and legal obligations[3]. Pointing to the general theoretical definition of the subject of law, G. V. Ignatenko rightly notes that it "..." is connected with the statement of the subjective right to participate in relations regulated by legal norms"[4]. Thus, the immanent quality of a subject of law (both an individual and a legal entity) is the possession of certain rights and obligations provided for by law, and the ability to implement them in certain social relations regulated by legal norms. The rules of law give subjects subjective rights to perform certain actions and at the same time impose legal obligations on them, the implementation of which contributes to the implementation of the rules of law, “the implementation of legal relations through the relevant rules of law, which are a way to implement the rules of law." [10].

[1] Big Explanatory Dictionary of the Russian Language / Chief Ed. S. A. Kuznetsov. – Saint Petersburg : Norint, 1998. – P. 1286.

[2] Ibid.

[3] Ibid.

[4] International Law: Textbook / Executive Editor G. V. Ignatenko, Prof. O. I. Tiunov. – M. : NORMA – INFRA-M, 2001. – P. 624.

The subjects of law exercise their rights and obligations within the framework of certain social relations, the legal form of which is legal relations that proceed on the basis of legal norms. According to O. O. Mironov, "such a transformation is possible due to the regulation by the norms of law of objectively existing relations between the subjects of public relations, which in legal relations act in the form of mutual rights and obligations" [8]. Considering that social relations are an object of law, which follows from the nature of one of the main functions of law – the regulation of these relations [3], we can assume the following: subjects endowed with subjective rights and legal obligations interact with each other depending on social relations (object), thereby giving them a certain specificity, allowing them to be distinguished from the general mass of relations.

Let us recall that public relations in the field of criminological policy, regulated by the rule of law, represent a wide range of individuals and organizations endowed with mutual rights and obligations, which characterizes them as subjects of law.

"...The study of any branch of law and the area of public relations regulated by it," – V. P. Bozhev, it is important to determine exactly whose actions are regulated by this branch of law, firstly, and who enters into specific legal relations in the process of implementing the rules of law, secondly. In other words, it is necessary to determine who is the subject of law and who is the subject of the legal relationship" [3]. It seems that ignoring these terms would be unjustified. In this regard, we will also point out some provisions of the general theory of law on the ambiguity of the concepts "subject of law" and "subject of legal relationship". In particular, S. S. Alekseev, noting the differences between them, writes: "the subject of law is a person with legal personality, that is, potentially capable of being a participant in legal relations, and the subject of legal relations is a real participant in these legal relations" [1].

S. F. Kechekyan proposed to abandon the concept of the subject of legal relations and be content only with the concept of "subject of law", understanding by it both potential and real participants in the legal relationship [7]. O. O. Mironov, it seems, reasonably criticized this point of view and noted that "the subject of a legal relationship is a participant in a specific legal relationship, and the subject of law is a person who is not yet such, but under certain conditions can become one" [8]. One should agree with this statement, since "not every subject of law is a subject of a legal relationship, but every subject of a legal relationship is a subject of law" [3].

It should be noted that the term "participant of the legal relationship" stands out in the literature. Fundamentally not objecting to the concept of "subject of legal relations" as narrower in content than "subject of law", R. O. Halfina considers it unsuccessful due to the similarity of the names. More acceptable and accurate, in the opinion of this author, is the term "participant of the legal relationship" [5]. It seems that the author's argument is quite convincing.

In view of the foregoing, it seems necessary to give a gradation description of the two concepts – "subject of law" and "subject (participant) of legal relations", based on the content of criminological policy and the features that take place in this area of legal relations.

The subject of law is the one who, by virtue of his legal properties, by virtue of his actual situation, has the opportunity to participate in specific legal relations, assuming appropriate rights and obligations[1]. Accordingly, the subject of the implementation of criminological policy can potentially be a participant in legal relations arising in this area, in cases where he is the bearer of certain subjective rights and legal obligations. The opportunity to be the subject of legal relations in the implementation of criminological policy is manifested in the actual implementation by the subject of his legal rights and obligations, regulated by the norms of the relevant law.

"Obviously," wrote V. Ya. Boitsov, "the position that the subjects of legal relations of any kind can be understood only as their participants, acting as parties to the relevant legal relations, does not need special proof" [2]. Therefore, the subject of the legal relationship can be a specific participant in public relations, which, with the help of the rule of law, is endowed with various powers (permits, permissions, instructions), duties (prohibitions, obligations) and thereby becomes the subject of legal relations arising in the implementation of criminological policy.

Thus, the characteristic features inherent in the subjects of the implementation of criminological

[1] International Law: Textbook / Executive Editor G. V. Ignatenko, Prof. O. I. Tiunov. – M. : NORMA – INFRA-M, 2001. – P. 624.

policy, which are of key importance, are: a) the likely possibility of their participation in legal relations that arise, change and terminate in this area and b) the possession of certain subjective rights and legal obligations and the possibility of their implementation. With this in mind, it can be assumed that the subject of the implementation of criminological policy is the bearer (individual or organization) of legal rights and obligations, in fact realizing which, he is able to take part in public relations regulated by the rule of law that arise, change and terminate in the field of implementation of criminological politicians.

The subjects of the implementation of criminological policy are so numerous and diverse that they must be classified, united according to homogeneous characteristics into certain groups. Undoubtedly, the classification has both scientific and practical significance for a deeper identification of the features of the status of the subjects of the implementation of criminological policy.

Classification is undertaken to identify those systematizing properties of objects that reflect their common features and specific features. A wide range of subjects performs a different role in the process of implementing the norms of the institution in question. Taking into account the peculiarities inherent in a particular subject, which are expressed in the specifics of the implementation of its activities, it seems possible to combine them into groups taking into account certain characteristic features, thereby classifying them.

The implementation of the norms of the institution under consideration is carried out within the framework of legal relations, in which, accordingly, only a certain circle of subjects can participate.

Taking into account the specifics of legal relations, the subjects of this institution can be divided into two main groups:

Subjects of law-making

Subjects of the right to apply, which are bodies and organizations whose activities are related to solving the problems of crime prevention.

Subjects of observance, execution and use of legal norms

First of all, the state belongs to the first group of subjects, the exclusive competence of which includes the implementation of the initial form of the realization of the right – the creation and adoption of the norms of criminological policy.

The second group of subjects includes subjects endowed with rights and obligations by law, capable of exercising them within the framework of these legal relations. This group includes: bodies of state executive power and their officials.

The third group includes persons who have their own legitimate interest.

With this in mind, these items can be divided into the following groups:

1) state bodies;
2) officials;
3) citizens (individuals).

The group of subjects for the implementation of criminological policy should also include some central state bodies, for example, the General Prosecutor's Office of the Kyrgyz Republic, whose competence includes the prevention of offenses.

The specificity of the subjects of the implementation of criminological policy lies in the fact that they, realizing their legal rights and obligations, act on behalf of the state or on behalf of it. This characterizes the state as a key subject of the institution under consideration. Given this, the entire system of subjects for the implementation of criminological policy can be differentiated into groups depending on the specific function of the state that they perform, which follows from its main essence - the exercise of political power. In this regard, there are two main functions of the state – law-making and law enforcement, which are associated with the legal forms of the implementation of law. They reflect the relationship between the state and law, the obligation of the state to act in the performance of its functions on the basis of law and within the law [4]. At the same time, it should be noted that in the legal literature, control and supervision over the activities of state bodies and officials is recognized as an integral part of the law enforcement function. The legitimacy of this approach is expressed in the fact that, due to the specifics of the institution under consideration, control and supervision are not only an important guarantee of legality, but often also an integral part of the activity for the application of the rule of law. Without proper control and supervision, the full implementation of all stages of law enforcement is impossible. Control is a necessary guarantee of the optimal execution of law enforcement acts and an important guarantee of respect for human rights and freedoms in the implementation of the criminological policy of the state.

Thus, depending on the subjects of the implementation of the criminological policy of certain functions of the state, they can be divided into the following groups:

1. Subjects exercising a law-making function:

a) sovereign states;

b) international organizations:

– universal (the UN as part of the main bodies and specialized agencies);

– regional (CIS and Council of Europe);

c) state bodies:

– publication of legislative acts (Parliament);

– participation in legislative activity in various forms (President, Government, central state bodies);

d) subjects that carry out the official interpretation of the norms of this institution:

– Parliament;

– The Constitutional Chamber of the Kyrgyz Republic. In some states, the Supreme Court is the subject of official interpretation (for example, in the Russian Federation). In Kyrgyzstan, the Supreme Court does not have such powers.

2. Subjects performing the function of law enforcement agencies, which include state bodies and their officials engaged in the fight against crime

3. Subjects exercising the functions of control and supervision over the legality and validity of the implementation of criminological policy.

4. Subjects exercising their rights and obligations in the form of compliance, execution and use of the right.

The unification of the subjects of the implementation of criminological policy into these groups is also based on the specifics of the implementation of their legal rights and obligations. Such a classification, in our opinion, allows us to more fully consider the features of the exercise of rights and obligations by subjects, expressed in achieving their goals, solving problems and functions, as well as in the nature of legal liability provided for by law. Law for non-fulfillment or improper fulfillment of these rights and obligations.

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