

Features of the use of punishment when providing social control over crime

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The article deals with the concept of “social control of a crime”, and the role of punishment in the system of social control. It is proved that at all times the state and society have tried to minimize (to eliminate and overcome) undesirable behaviors and their carriers. In each country, a system of social control over crime and negative deviant manifestations (alcoholism, drug addiction, prostitution, corruption and the like) is being created to this effect. However, none of the unwanted, negative social phenomena, including crime, could have been eliminated. The crime control is one of the forms of social control, which is a mechanism of self-organization (self-regulation) and the preservation of society through the establishment and maintenance of a normative order and removal, neutralization and minimization of deviant behavior in a given society. The system of social control over crime includes two main methods: punishment and prevention. The article also emphasizes that at present imprisonment does not fulfill its main function, i.e. reducing crime and is an ineffective measure of punishment with numerous side effects. The prison is a school of criminal professionalism, but not a place of correction. However, the prison remains indispensable, as humanity has not found anything “better” to protect society from serious crimes. It is claimed that the most important areas of Ukraine’s modern crime policy should be: further decriminalization of insignificant acts that are not dangerous; implementation of the principle of “minimum repression”; more consistent implementation of inevitability of punishment principle, regardless of the social status of a perpetrator; absolute inadmissibility of unlawful violence, including torture; penitentiary reform systems; refusal of repressive conditions of detention of persons sentenced to imprisonment; strict compliance with international norms; making crime prevention a priority; formation of alternative “restorative” justice, aimed at ensuring the rights and interests of victims outside criminal justice; formation of juvenile justice; promoting legal awareness amongst the population, aimed at establishing unconditional respect for a right.

Особливості застосування покарання в разі забезпечення соціального контролю над злочинністю

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в'язниця, девіантна поведінка, злочин, кримінальна політика, позбавлення волі, смертна кара, суспільство.

У статті розглянуто особливості застосування покарання у виді позбавлення волі як провідного методу в забезпеченні контролю над злочинністю. Доведено, що в усі часи суспільство та держава намагалися мінімізувати (ліквідувати, подолати) небажані для суспільства види поведінки. У кожній країні із

цією метою створюється система соціального контролю над злочинністю та іншими проявами негативної девіантності. Проте жодне з небажаних негативних соціальних явищ, у тому числі злочинність, не вдалося «ліквідувати». Контроль над злочинністю – це один із видів соціального контролю, який являє собою механізм самоорганізації та самозбереження суспільства шляхом встановлення й підтримки в цьому суспільстві нормативного порядку та усунення, нейтралізації, мінімізації девіантної поведінки. Система соціального контролю над злочинністю включає два основні методи – покарання та профілактику. Також у статті наголошено на тому, що сьогодні позбавлення волі не виконує свою основну функцію – скорочення злочинності – та є неефективною мірою покарання із численними побічними наслідками. В'язниця є школою кримінальної професіоналізації, а не місцем виправлення. Однак в'язниця залишається незамінною, оскільки людством не знайдено нічого іншого, що було би «краще» для захисту суспільства від тяжких злочинів. Стверджується, що найважливішими напрямками сучасної кримінальної політики України мають стати такі: подальша декриміналізація малозначних діянь, що не є небезпечними, з «переводом» деяких із них до розряду адміністративних проступків або цивільно-правових деліктів; реалізація принципу «мінімум репресій»; більш послідовна реалізація принципу невідворотності покарання незалежно від соціального статусу винного; абсолютна недопустимість застосування незаконного насильства, у тому числі тортур; реформа пенітенціарної системи; відмова від репресивних умов утримання осіб, засуджених до позбавлення волі; неухильне дотримання міжнародних норм; пріоритет превенції злочинів; формування альтернативної «відновлювальної» юстиції, спрямованої на забезпечення прав та інтересів потерпілих за межами кримінального правосуддя; формування ювенальної юстиції; формування правосвідомості населення, спрямованої на утвердження безумовної поваги до права.

Formulation of the research problem and its significance. At all times the society and the state tried to minimize (eliminate, overcome) negative social behaviors and their carriers. For this purpose in every country a system of social control is provided to prevent crime and other negative manifestations of deviant behavior (alcoholism, drug addiction, prostitution and the like). However, the ever-changing social conditions require new elaborated studies of the theoretical and practical aspects of this important problem of modern jurisprudence.

Analysis of the research into this problem. Some issues of the theme were dealt with in the works of O. Yakovlev, Y. Glinskyi, I. Halperin, I. Karpets, A. Zhalinskyi, A. Oliynyk, M. Foucault. Based on the findings of above mentioned researchers, the author **aims to** analyze the contemporary state of constructing a system of social control over crime in the developed countries of the world, to specify its acceptable forms for Ukraine, to suggest solutions on improvement of the criminal policy of our country at the present stage of its development.

Statement regarding the basic material of the research and the justification of the results obtained. Despite of all the efforts of society and state none of the undesirable social phenomena

are completely eliminated. According to O. Yakovlev, “the existence, the permanent maintenance of criminality in society, is impossible without acknowledging the fact that crime performs a specific social function, serves as a form of either regulatory or adaptive (adaptable) reaction to social processes, phenomena, institutions” [1, p. 14].

Control of crime is one of the types of social control, which is a mechanism of self-organization (self-regulation) and self-preservation of society by establishing and keeping normative order in a given society, the elimination of neutralization, minimizing of breaking the norms (deviant) behavior [2, p. 380].

Since the crime (no matter what meaning has been implied in it by different nations at different epochs) has long been accepted as one of the most dangerous forms of “deviation”, the extent and means of influence on the people who were considered to be criminals, were used as the most cruel (brutal) ones. All imaginable and unimaginable forms of torture, qualified ways of execution and disfigurement are known throughout human history [3]. However, the crime does not leave the society. Moreover, there is every reason to believe that the harder the punishment the state employs, the more violent crimes are. It was C. Beccaria who warned about it in his classic work [4].

Social control over criminality includes:

- determining what exactly is regarded as a crime (criminalization of acts) in a given society;
- the establishment of a system of sanctions (penalties) and specific sanctions for specific crimes;
- the formation of institutions of formal social control over criminality (police, prosecution office, courts, department for the execution of sentences, including the penitentiary system, etc.);
- order establishing for the activity of agencies and officials representing the institutions of crime control;
- the activity of these institutions and officials, aimed at the identification and registration of committed crimes, detection and disclosure of individuals who have committed them, the imposition of punishment for such individuals (criminals), the enforcement of the penalties imposed;
- the activity of institutions, organizations and individuals for the implementation of informal control of crime (from family and school to community, clan, friendly association, “the neighbour’s control”);
- the activities of numerous institutions, agencies, officials, public organizations as to the prevention (precaution) of crime [2, p. 381–383].

Ultimately, the system of social control over criminality includes two main methods: punishment and prevention. The ineffectiveness of punishment in general and particularly imprisonment as a means of reducing crime has long been highlighted by researchers. C. Beccaria, M. Foucault, I. Bentham wrote about it [5, p. 397–398]. Criminal, legal and criminological problems of punishment are being actively discussed by modern men of law [6–7].

One of the most important indicators of civilization/civilized society, democracy/authoritarianism (totalitarianism of the political regime is the retention of the death penalty in the system of criminal penalties or a refusal of it. Another important element of the system of punishment, indicating a more or less civilized society and the state, is imprisonment, or rather its place in the system of punishment, the measure of applying, maximum term of imprisonment, conditions of imprisonment.

At the same time, not without reason the majority of specialists in crime detection and theorists of criminology tend to believe that punishment (especially imprisonment) is not fulfilling its main function that is the reduction of crime. At the present stage of development of society “the crisis of punishment, the crisis of criminal policy, the crisis of police control” are acknowledged in most developed countries. Firstly, “crisis of punishment” shows that after the Second World War despite all the efforts of the police and criminal justice (and from the late 1990s – early 2000s – reduction of the crime level does not depend on the activity of the police and criminal justice system) a rise in crime has been

observed all over the world. Secondly, humanity has tried all kinds of criminal repression without obvious results (inefficiency of general prevention). Thirdly, as sociological studies show, the relapse rate remains relatively stable for each country and is not reduced, which indicates the inefficiency of special prevention [8, p. 172]. Fourthly, according to psychologists, long-term (over 5–6 years) being in prison can lead to irreversible changes in the psyche of the individual [9, p. 42].

The prison was, is and will be the school of criminal professionalization, and not a place of correction. Nobody has ever been “corrected” and “re-educated” with the help of punishment. Rather, on the contrary. Individuals, against whom the criminal and legislative violence was legally or illegally committed, form a segment of population with excessive aggressiveness, alienated from society [10, p. 18]. Imprisonment is an inefficient measure of punishment with numerous negative indirect consequences. At the same time a prison remains “indispensable” in the sense that mankind invented so far nothing else to protect society from serious crime. In that respect M. Foucault wrote: “all the flaws of the prison are known. It is known to be dangerous, if not useless. And yet no one “sees” what to replace it with. Prison is a disgusting decision, without which, obviously, is impossible to do” [4, p. 339].

Awareness of the ineffectiveness of traditional means of crime control, furthermore, negative consequences of such a widespread form of punishment as deprivation of freedom requires a search for alternative solutions of not only strategic, but also of tactical kind. First, a complete rejection of the death penalty (as provided by the article 51 of the Criminal code of Ukraine where the maximum punishment is lifelong imprisonment [11, p. 19]) that the deprivation of freedom is transformed into “capital punishment”, which should be applied only in extreme cases, mainly for violent crimes and only in respect of adults (young adult) criminals. Secondly, short-term imprisonment dominates in the countries of Western Europe, Australia, Canada and Japan. As a rule, the period will run for weeks and months, at least up to 2–3 years i. e. before irreversible changes in the psyche. Thirdly, as the preservation or degradation of the personality depends strongly on the conditions of serving sentence in penitentiary institutions, so modern developed countries, if possible, provide a decent level of convicts’ life (nutrition, hygiene, and “living” conditions, medical care, opportunity to work, play sports and meet up with relatives). The regulations, which do not assault human dignity, are being set. In addition, there is a system of probation (testing), which allows to strictly differentiate the conditions of the sentence depending on its duration, the convict’s behavior, etc. [12]. Fourthly, the idea of formation and development of alternative, non-criminal justice for settling differences between

“criminal – victim”, the transition from “retributive justice” into the justice of reparation, rehabilitation is being strongly suggested [13]. The essence of this strategy is that with the help of friendly and impartial mediator we can adjust the relations between victim and criminal. In general, we are talking about the transition from the strategy of the “war on crime” to strategy of “harm reduction”. In the 11th Recommendation of the report of the US National Commission on criminal justice it is directly emphasized “<...> to change the agenda of criminal policy from “war” to “world”, to reduce hopes for imprisonment and to pay more attention to the public correction” [8, p. 172]. A notable example of the reduction of prevention can be found in Finland. As a part of a new criminal policy in Finland, the idea of prevention is not completely abandoned, and is being understood not as a product of intimidation, which causes criminal punishment, but as a result of changing morals and values. In other words, prosecution and punishment are intended to express public condemnation of certain acts, so that people restrain from them not out of fear, but out of the undesirable condemnation. In this case, there is a process of returning to the deontological principles of legal liability [14, p. 104].

This is especially important at the modern stage of functioning of society and the state, as the researchers rightly indicate “the implementation of the criminal law may become completely intolerable to society by blocking other social processes. <...> A reasonable decrease of legitimate violence may considerably ensure the interests of the country. <...> The punishment is obvious expenditure and vague benefit. <...> It is necessary to take into consideration well-known qualities of criminal law, which is extremely unprofitable and very dangerous method of influence on social relations” [10, p. 9, 15, 18, 56, 68].

The most essential areas of modern criminal policy of Ukraine should be: further decriminalization of minor offences, which are not

dangerous from in case of “transference” of some of them into the category of administrative offences or civil offences; implementation of the principle of “minimum of repression”; a more consistent implementation of the principle of inevitability of punishment, irrespective of the social status of the perpetrator. The principal issue is the police reform, the main activity of which must be service – rendering services (protection, security and suchlike) to the population, the taxpayers, and not “crime-fighting”; the absolute inadmissibility of the use of unlawful violence, including torture, which police is famous for [15]; penal system reform; the refusal of the repressive conditions of detention of individuals sentenced to deprivation of freedom; the steadfast implementation of international norms, including the “Standard Minimum Rules for the Treatment of Prisoners” (1955) and “European Standards of Detention in Places of Deprivation of Freedom” (2006); the priority of crime prevention; formation of the alternative “restorative” justice system aimed at ensuring the rights and interests of victims outside of criminal justice; creating the juvenile justice system with the transfer of all cases involving juvenile offenders to its jurisdiction; the formation of legal consciousness of the population, directed for approval to the unconditional respect for the law, awareness of the need and importance to follow the standards by all participants of public relations.

Conclusions and perspectives for further research. Without taking these and some other measures to improve the criminal policy in modern Ukraine it is difficult to speak about the implementation of the ideas and principles of a democratic and legal state. Further research in this area will focus on the study of the current state of the penitentiary system in Ukraine, the formation of juvenile justice in our country, and the prospects of minimizing crime among different segments of Ukrainian society.

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