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SOME ISSUES OF VICTIMOLOGICAL COUNTERACTION OF CRIME

In this article, the authors draw attention to the victimological counteraction of crime. The purpose of this article is to investigate the main directions of victimological policies in the field of combating crime.

The article discusses the problematic issues related to the implementation of the victimological policy. Different points of view of scientists on the concepts of «criminal policy», «victimological policy» and «victimology» have been analyzed. A comprehensive approach to the concept of «victimological policy» has been proposed, and it is also noted that, in general, it is a measure of victimological counteraction.

The methodological basis of the study is the scientific provisions of criminology and victimology. During the study of the modern theory of determining the directions of victimological counteraction to crime, the findings have been obtained through a qualitative and quantitative analysis of socio-legal, criminal-legal phenomena and processes.

The legal analysis carried out by the authors makes it possible to present recommendations for identifying new promising areas of Kazakhstan's victimization policy in the area of combating crime, it can contribute to solving and overcoming the international aspect in the field of victimological fighting crime, which implies the need to establish interaction with other states. The results obtained in this article can be used in the educational process, for writing textbooks or teaching aids and publishing articles on this subject.

Key words: victimology, victimology policy, victimization, crime victim, crime prevention, warning, prevention, crime counteraction, criminal policy.

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Қылмыстылыққа виктимологиялық қарсы іс-қимылдың кейбір сұрақтары

Мақалада авторлар қылмыстылыққа виктимологиялық қарсы іс-қимылға назар аударған.

Мақаланың мақсаты – қылмыстылыққа қарсы іс-қимыл аясындағы виктимологиялық саясаттың негізгі бағыттарын зерттеу.

Мақалада виктимологиялық саясатты жүзеге асырумен байланысты өзекті сұрақтар қарастырылған. «Қылмыстық саясат», «виктимологиялық саясат», «виктимология» ұғымдарына қатысты ғалымдардың әртүрлі көзқарастары талданған. «Виктимологиялық саясат» ұғымын қарастыруға байланысты кешенді көзқарас ұсынылып, виктимологиялық қарсы іс-қимыл шаралары қарастырылған.

Зерттеудің әдіснамалық негізін криминология мен виктимологияның ғылыми ережелері құрайды. Қылмыстылыққа виктимологиялық қарсы іс-қимылдың бағыттарын анықтаудың заманауи теорияларын зерттеу барысында, қорытындылар, әлеуметтік-құқықтық, қылмыстық-құқықтық құбылыстар мен үдерістерді сапалық және сандық талдау жолымен алынған.

Авторлармен жүргізілген құқықтық талдау қылмыстылыққа қарсы іс-қимыл аясындағы Қазақстанның виктимологиялық саясатының жаңа ұтымды бағыттарын анықтауға қатысты ұсыныстар енгізуге, қылмыстылыққа виктимологиялық қарсы іс-қимыл аясындағы халықаралық аспектілерді, басқа мемлекеттермен өзара байланысты оңтайландыруды шешу және жеңуге үлес қоса алады.

Мақалада алынған нәтижелерді оқу үдерісінде, аталған мәселе бойынша оқулықтар мен оқу құралдарын жазу барысында қолдануға болады.

Түйін сөздер: виктимология, виктимологиялық саясат, виктиматизация, қылмыс құрбаны, қылмыстылыққа қарсы іс-қимыл, сақтандыру, алдын алу, қылмыстылықпен күрес, қылмыстық саясат.

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Некоторые вопросы виктимологического противодействия преступности

В настоящей статье авторы обращают внимание на виктимологическое противодействие преступности.

Цель настоящей статьи – исследовать основные направления виктимологической политики в сфере противодействия преступности.

В статье рассматриваются проблемные вопросы, связанные с реализацией виктимологической политики. Анализируются различные точки зрения ученых о понятиях «уголовная политика», «виктимологическая политика» и «виктимология». Предлагается комплексный подход к рассмотрению понятия «виктимологическая политика».

Методологическую основу исследования составляют научные положения криминологии и виктимологии. В ходе исследования современных теорий определения направлений виктимологического противодействия преступности выводы получены посредством качественного и количественного анализа социально-правовых, уголовно-правовых явлений и процессов.

Проведенный авторами правовой анализ позволяет представить рекомендации по определению новых перспективных направлений виктимологической политики Казахстана в сфере противодействия преступности, может внести вклад в решение и преодоление международного аспекта в сфере виктимологического противодействия преступности, что предполагает необходимость налаживания взаимодействия с другими государствами.

Результаты, полученные в настоящей статье, можно использовать в учебном процессе, для написания учебников или учебных пособий и публикации статей по данной проблематике.

Ключевые слова: виктимология, виктимологическая политика, виктиматизация, жертва преступления, противодействие преступности, предупреждение, профилактика, борьба с преступностью, уголовная политика.

Problems of fighting crime have always interested humanity. So the main issues facing the state is to ensure reliable protection of society from crime. In order for the state to achieve the most positive and effective results in the fight against crime, it is necessary to conduct a special criminal policy. Considering criminal policy as the main direction and means of influencing crime, experts identify its various sectoral areas – criminological, criminal law, criminal preventive, criminal organizational, etc.

The problem of protecting victims of criminal offenses requires a new approach. The increase in the number of victims of crime, the unresolved nature of their problems give rise to new, more complex problems that can be solved using the potential of victimology. In the legal literature there are

different positions in relation to victimology. Some scientists distinguish victimology as an independent science, while others consider victimology to be one of the trends in criminology.

Victimology («the doctrine of the victim», Lat. Victima – the victim, Lat. Logos – the doctrine) – this is quite a young direction in criminology, which studies everything connected with the victims of crimes, and, most importantly, the conditions and circumstances that contribute to becoming a victim. The main questions of victimology are why a person became a victim of a crime and what is necessary in order not to become the victim. Victimology contains its own subject, as well as goals and objectives, but at the present stage, the second position is preferable. In order for victimology to become an inde-

pendent science, it will take some time, enriching it with new knowledge about the victim in general, and not just about the victims of crime and creating their own methods peculiar only to this science.

The founder of this concept is considered to be the German criminologist Hans von Hentig. In his article «The Criminal and His Victim» (1941), the criminologist analyzes criminal cases and comes to the conclusion that there are victims who either succumb to, or provoke, or contribute to criminal offenses (Hentig, 1941).

The purpose of victimology (in a broad sense) is a comprehensive, complete, in-depth study of the victim's personality, its role in the mechanism of a specific crime and victimization, i.e. The subject of the study of victimology are persons who have been harmed by a crime (moral, material, physical); victim behavior; the relationship of the victim and the offender to the time of the crime; situations in which the process of becoming a victim of crime has occurred. The concept of «victimization» is used both in a narrow and in a broad sense. In the narrow sense, victimization is the process of turning a person into a victim of crime associated with victimization. Victimization is understood to mean a potential or realized increased subjective ability to become a victim of a crime, provided that this could be objectively avoided. Victimization in a broad sense means the transformation of any person or other subject of a crime into a victim, regardless of their vulnerability or victimization

The task of victimology is the study of persons who have been in the role of the victim, as well as those who have never acquired the status of a direct victim of crime, in addition, victimology solves the problem of concentration and understanding within the framework of a single victimological concept of scientific information about the victim's personality.

Modern life realities put forward new requirements for specialists. Thus, in the legal literature, the question constantly arises about the need to develop victimology, enrich it with new knowledge, train specialists in this field, study the social and legal principles of victimological theory and practice. The relevance of the topic proposed for consideration, in our opinion, will not cause doubts, especially for our country and other post-Soviet countries, which, as S.L. Sibiriyakovs are «in a rather complicated socio-demographic, ethnic-cultural, moral-psychological, criminal-anomic situation» (Сибиряков, 2007)

The weakening of legal control over the situation in a state can lead to a real threat of a comprehensive criminalization of society. So the goal of the state is: to clearly define the ways and means of

confronting criminal expansion, overcoming criminal lawlessness, developing strategies and measures to influence crime in order to stop its dynamics. This goal is subject to the criminal policy of the state. Along with fulfilling the duties of security entities, the use of criminal policy tools is at the same time an active way to protect and ensure the legitimate interests of citizens themselves.

Let's consider for a start the very concept of politics. Thus, the word «politics» (politike from the Greek.) Means «the art of governing the state.» Politics is participation in the affairs of the state, the direction of the state, the definition of the forms, tasks, content of state activity. Politics is an area of relations between classes, social strata, parties, nations and nationalities, states and other social formations about power, domination and control in society. Thus, politics expresses the functions of the state in managing a particular area of public life. The policy in the field of combating crime, or criminal policy, is the direction of the state's activities in the field of combating crime, defining the forms, tasks, content of the activities of the state and its bodies in this sphere. It is an integral part of the internal policy of the state.

Thus, criminal policy is the direction of special state activity in the field of combating crime. Criminal policy is a strategy and tactics of this struggle. Based on the analysis of the concepts of «policy», «social policy», «criminal policy», «criminological policy», the necessity of identifying a victimological policy and introducing it into scientific circulation has been justified.

Victimological policy is defined as ideas, principles, goals, and attitudes related to the victimological direction of influence on crime and the ways (methods) of their implementation, which are formed in science and program documents of the state and non-governmental organizations. According to the majority of opinions, the victimological area is considered to be only a part of the activity on the definition of criminal legal protection of citizens, as well as tactics and strategies for the prevention of criminal offenses. It is obvious that in reality there is a broader phenomenon (and concept) – the criminal policy of the state, the main purpose of which is the most effective provision of law and order and the impact on crime. However, as G.Yu. Lesnikov rightly notes, «the policy should be one, but the forms and methods of its implementation can be different» (Лесников, 2014).

The consistent renewal of the legal system involves the doctrinal and legislative provision of human rights and freedoms as the highest value of the state, the implementation of practical measures to

strengthen the rule of law and order. That equally applies to the protection of the interests of persons who are victims of unlawful acts. Today in our country there is a comprehensively developed theoretical framework for the formation of a system of victimological prophylaxis and a statutory legal framework for the protection of the rights of victims and victims of crime; among the state bodies, the subjects are identified whose activities are aimed at ensuring the protection of victims and other persons to be protected; public organizations of a victimological orientation (societies, committees, movements, etc.) have been created.

The existing prerequisites for the creation of a system of victimological counteraction to crime (Janet, 2009), the applied measures of victimological prevention and protection of victims of crime, the implemented compensation mechanisms for victims of crime allow us to speak about a certain direction in the state's activities, namely the victimological policy (Ривман, 1972).

In foreign countries, in the framework of the implementation of criminal policy, great attention is paid not only to victimological prophylaxis, but also to various methods of victimological impact on crime. Foreign scientists pay special attention to victimological research not only in the framework of the study of victimization, but also in the field of combating crime, study the characteristics and needs of victims, and introduce bills in the field of criminal policy. Moreover, foreign experience shows that the initiating role in the development of the victimological impact on crime is played by civil society institutions.

As rightly noted by V.A. Tulyakov, the victimological policy is not only an activity to create an adequate legal basis, law enforcement practice, legal ideology and their resource support, but also «activities aimed at limiting the victimization of citizens, reducing conflict and deviance in society and at integrating potential victims of crime and acts of abuse of power in a normal life» (Туляков, 2000). Thus, the author points not only to the legal aspect of the victimological policy of the state, but also to the social one, which is of no small importance in management activities.

E.N. Kleschina claims that the victimological policy should be defined as a state activity to create and improve legislation, law enforcement practice, legal ideology aimed at protecting the rights and legitimate interests of victims, at reducing the level of victimization in society (Клещина, 2010). The author shares the position expressed by E.N. Kleschina, as it considers that in the framework of the

victimological countering of crime, the legislative activity of the state and law enforcement practice are of particular importance. Analysis of the criminal law, criminological and victimological situation in the modern state is a necessary element of the formation of criminal policy.

Despite the fact that «modern criminal policy requires new ideas in the theory of strategy and tactics for resolving social conflicts using extra-legal methods» (Young, 2004), special attention should be paid to the legal aspect of the considered direction of political activity of the state. It is the legal framework that is the fundamental element for creating the necessary level of legal ideology and social development in society, as well as for ensuring in the process of law-making activity the steady observance of the techniques and means of legal technology developed by science. In this regard, we believe that the lawmaking activity of the state in the field of the protection of victims of crime, based on scientific developments of domestic and foreign victimology, should be the primary task in the implementation of victimization policy. It is not by chance that the need for legislative activity of the state in the field of victimology policy has already been pointed out in the works of a number of researcher

When describing the principles for the development of the state's victimological activity, V.A. Tulyakov points to the improvement of existing institutions of law (international law, constitutional law, administrative law, criminal law and executive law, criminal procedure law) relating to the problems of protecting victims of crime (Туляков, 2007).

Working with public associations and strengthening the victimological component in the preventive activities of the internal affairs bodies, according to K.V. Vishnevetsky, are the main directions of victimology policy. One of the directions of victimology policy, the author sees the use of public potential, the capabilities of civil society institutions, religious associations, social funds, local governments to reduce the level of criminal threats to the population, for advocacy work, to provide operational moral, organizational and, if possible, material assistance to a victim of crime.

Victimological counteraction to crime is considered as an integral system, its integrity and systemic nature are inseparably linked with each other from the point of view of dialectical materialism, which considers «the organic system as an aggregate whole» (Вишневецкий, 2008).

Victimological countering of crime is necessary in order to:

1) ensuring victimized safety of persons possessing victimization;

2) providing the maximum preventive and preventive impact on the criminogenic processes contributing to victimization;

3) increasing the level of victimization protection and eliminating threats arising in connection with the possibility of committing crimes against citizens and violating the rights, freedoms and legitimate interests of these citizens;

4) creating an effective system of social and legal protection of citizens;

5) increase and enhance the individual protective properties of various categories of citizens from criminal threats;

6) the provision of social and legal assistance to persons who are victims of criminal encroachments (Варчук, 2010).

The conceptual model of victimological counteraction to crime has its categorical and conceptual apparatus, forming a single terminological system. The logical harmony and evidence of the conclusions of the categorical-conceptual apparatus are provided by two interrelated levels of the terminological system of the developed model: the basic conceptual level and the subject conceptual level.

The basic concepts of the basic conceptual level are: «fighting crime», «crime prevention», «crime prevention», «crime prevention», «crime counteraction», etc. That is, these are the basic concepts in criminology, namely the crime counteraction process.

The subject conceptual level of the terminological system of the conceptual model is represented by the basic concepts in the field of victimology and criminology, namely: the process of victimological counteraction to crime. The main concepts of this level are: «victimization», «victimization», «victimological crime prevention», «victim safety», «victim protection», «victimological crime prevention», «victimological crime prevention», «victimization system of crime prevention» and others.

The general structure of the system of victimological counteraction to crime includes a number of interrelated and interacting elements (goals and objectives of victimological counteraction; objects of positive impact and a system of subjects; measures of victimological counteraction; mechanism for the implementation of victimological counteraction, the result of victimization countermeasures).

The main directions of implementation are: improvement of victimological policy; legal regulation in the field of victim safety, social and legal protection of victims of crime and the provision of guar-

antees of compensation for harm caused; increasing the efficiency of interaction between the subjects of the victimological system of counteracting crime; creating, ensuring and implementing the necessary conditions for the protection of life, health and property of individuals, the protection of their rights, freedoms and legitimate interests, the rights and legitimate interests of legal entities, the interests of society and the state; identifying the underlying causes and conditions that increase the level of victimization of the population, developing and implementing measures aimed at their elimination or neutralization; taking measures to improve the level of social and legal protection and ensure the safety of citizens; taking other measures in the functioning of the system of victimization counteraction. When analyzing scientific works in the field of development of the victimological policy of the state, one can single out its main directions. First, the priority of protecting the rights of victims of crime in victimological ideology; secondly, the creation and improvement of the system of enforcement of legislation aimed at ensuring the rights of victims of crime and the organization of a unified system of material compensation and restitution to the victim for the purpose of her social rehabilitation; thirdly, ensuring procedural guarantees for the observance of human rights, namely, strengthening the interaction between citizens and the criminal justice system; fourthly, legislative and financial support for the use of public potential, the capabilities of civil society institutions, religious associations, social funds, local governments to reduce the level of victimization of the population; Fifth, the compilation and use of foreign experience, scientific research and support of practical recommendations on combating crime using the victimological potential.

In all this aggregate, there are three main blocks that generally constitute the state's victimological policy: legal, social and financial. Accordingly, we consider it possible to conditionally designate the legal victimological policy, social victimological policy and financial victimological policy. All of these components form in their totality a single direction of state activity – the state victimology policy. Each of them needs a fairly deep study.

Legal victimological policy includes lawmaking activities of the state, improving law enforcement practice and legal ideology aimed at protecting the rights and legitimate interests of victims of crime, providing legal guarantees for compensating the damage suffered and reducing the level of victimization in society. It is the legal basis that is the foundation on which you can realize all the accumulated

experience of researchers, using the scientific potential of victimology, and to achieve the maximum reduction in the level of victimization in society and the real impact on the process of victimization.

Recognizing the main international standards relating to the protection and observance of human rights and freedoms, as well as the protection of victims (victims) from crimes, the state reinforces victimological principles at the legislative level.

In the criminal law, the victimological potential is manifested in ensuring the security of the individual, it directly follows from the tasks and principles set forth in the General Part, as well as from many other norms of criminal law contained in the Special Part of the Criminal Code. The Criminal Procedure Code, in turn, regulates the legal status of victims, including the procedure for compensation for damage caused by the crime.

In addition, V.I. Zadorozhny distinguishes the following regulations: regulating the general provisions of victimological crime prevention; regulating certain areas of activity, in particular, individual victimological prophylaxis carried out by various services and departments of the internal affairs bodies; regulatory methods, tools, techniques and methods for the implementation of victimological prophylaxis; determining the responsibilities of employees, services and units of internal affairs bodies in the implementation of victimization functions (Задорожный, 2006).

In general, the study and analysis of domestic legislation allows us to identify a certain system of legal acts and determine their functions in the framework of victimological counteraction to crime. Taking into account the conceptual approach to the victimological model of combating crime, regulatory legal acts (on the example of the RK) should perform the following functions to protect victims of crime:

- guaranteeing – the Constitution (enshrines the rights and freedoms of man and citizen, guarantees security, etc.);

- protecting – the Criminal Code (contains prohibitions in order to protect and safeguard the life and health, rights and freedoms of an individual, his property; contains preventive norms giving the right to active protection of the rights and interests of an individual, society and the state);

- defining – the Criminal Procedure Code (establishes the procedural status of the participants, determines the order and principles of the trial, etc.);

- Executive – Criminal Executive Code (determines the order and guarantees the execution of the punishment imposed by the court, ensures the

isolation of the convicted person from the company, contributes to the compensation of harm); Civil Procedure Code (provides for the procedure for compensation for harm and compensation for moral damage caused by the unlawful act);

- ensuring – the laws «On operative-search activity», «On state protection of persons participating in the criminal process», «On bailiffs», «On national security», as well as laws providing for opposition to various types of criminal activity and providing certain types of security.

Such a system of regulatory acts of victimological anti-crime provides the basis for a comprehensive approach to researching the problem of legal and social protection of victims of crime, ensuring their safety and implementing provisions on reparation for harm caused by a crime. The combination of individual norms and legal acts that independently perform their function of protecting victims of crime (victims of crime) forms a system of legal sources of victimological counteraction (Майоров, 2014).

Thus, in our opinion, a generalized analysis of the regulatory framework of the state, existing theoretical views and expressed author's comments implies a conceptually new approach to determining the victimological policy of states in the area of combating crime.

Its essence (in generalized form) reflects the following provisions:

- 1) The state policy in the sphere of victimological counteraction to crime (victimization policy) is a part of the internal policy and is a set of coordinated political, organizational, socio-economic, legal, ideological, informational and other measures taken by the state authorities in accordance with the legislation to improve the legal framework law enforcement practice, legal ideology aimed at protecting the rights and legitimate interest to victims of crime, detection and elimination of victimization factors and the reduction of victimization in society, to ensure an adequate level of legal protection and compensation for the damage suffered by the victims of crime.

- 2) The study of Kazakhstan legislation shows that most regulatory documents regulate activities to ensure the protection of the rights of victims of crime indirectly, affecting participants in public relations preventively, by the very fact of their existence.

- 3) The absence at the state level of a separate legislative act regulating the organization of the system of victimological impact on crime, loss of faith in justice and justice by the population, underestimation by the state of the preventive role of society in the fight against crime ultimately

determine the low level of protection of citizens and, as a result, a high level of victimization.

The implementation of the provisions of the proposed concept will contribute to the targeted impact on crime from both the state and society, as well as minimizing the consequences of criminal activity and ensuring an adequate level of protection for victims of crime.

Summing up the general results of the analysis of scientific material, it should be noted that the presentation of the main provisions of the conceptual victimological policy of the state on the basis of the structure described gives it a kind of holistic theory, provides a set of author's conclusions, and also determines the scope of its effective application.

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