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PECULIARITIES OF LEGAL CONTROL OF THE ACTIVITY FOR PREVENTION OF CRIME IN RUSSIAN EMPIRE IN THE END OF XIX – BEGINNING OF THE XX CENTURY

Annotation

This article deals with investigation of problem of legal control for crime preventing activity and its peculiarities, and it is the activity of the Russian Empire of late XIX and early XX ths. It reveals regulatory acts that were used to prevent crimes directly or indirectly in the Russian Empire. This project contains description of that times single special regulatory act, which was used exactly to control crime preventing activity – the Statute “About crime preventing and crime suppression”.

Crime preventing – is a kind of public social-preventing activity, the functional content and goal of which are aimed at preventing the action of crime determinants and its manifestation, first of all their reasons and conditions by means of restrictions, neutralization and, if possible, full removal of those.

Just like any other public activity the crime preventing needs an appropriate legal control. Today the question about adopting a special legislative act is one urgent question for Ukraine, and such act should control crime preventing activity overall. Considering this situation the timing is perfect for investigating historical experience of adopting and utilizing special regulatory acts in our country. Considering a huge quantity

of historical and regulatory documentation it is suitable to limit the scopes of investigation and concentrate our attention on analyzing the special crime preventing law of Russian Empire for the period of XIX-XX ths only.

It is suitable to limit the timeframe to the period of 1870-1917. It is appropriate to briefly describe a general history of Russian Empire's Law by pointing out certain regulatory acts and then go to the general analysis of special regulatory act – the Statute “About crime preventing and crime suppression”, considering the Russian Empire had no such regulatory act for long enough and people were using general legislative regulations to control preventing activity.

The historical aspect of crime preventing and fighting was covered by works of such scholars as V.O. Glushkov, V.V. Golina, V.K. Gryshchuk, I.M. Dan'shyn, A.I. Dolgova, V.M. Dr'omin, A.P. Zalal'yk, V.S. Zelenets'kyj, L.V. Il'jina, I.I. Karpets', O.M. Kostenko, V.M. Kudryavtsev, P.P. Mikhajlenko, V.O. Tulyakov, O.V. Filonov, O.N. Yarmysh and others.

This project takes as a goal to investigate problems and peculiarities of legal control for crime preventing activity in the Russian Empire of late XIX and early XX ths, by means of general analysis of regulatory basis, existed at that time.

The goal defined also determined as urgent such problems, and its solution, as: investigation and systematization of regulative acts in force for the Russian Empire of late XIX-early XX, which were used for direct or indirect control of crime preventing activity, and also pay special attention to the special regulatory act, which was used exactly to control crime preventing activity - the Statute "About crime preventing and crime suppression".

To determine the main problems of legal control for crime preventing activity in the Russian Empire, to suggest ways of using such experience of special law realization, the crime preventing law, and its integration into the law practice of Ukraine, basing on the results of the analysis.

For a certain period of time the Military articles of Peter I was the very first regulatory act that totally consisted of criminal-law norms and was adopted in 1715. Though it was fully concentrated on military-criminal law, it also contained some general norms and regulations, as well as norms borrowed from criminal law of

European countries. The Statute of benefaction is also dated to this period and was adopted at times of Catherina II reign [1]. As the matter of fact Catherina II was one of those rulers who first paid their attention to criminal law as to a serious factor of crime preventing (probably because of her professional-juridical knowledge of S.L. Montesquieu's and C. Beccaria's works) [2, c. 76]. The early XIX is also known for preparation of several Criminal code projects. Criminal law norms and regulations were also included into The Code of Laws of the Russian Empire of 1833, and were represented in The Book I of Volume XV "About crime and punishment in general". The first full and complete code of criminal laws – The Code about criminal and remedial punishments – was signed by Nickolas I in 1845. It was 22nd the June of 1903, times of Nickolas II reign, when new Criminal code was adopted. This code was made considering economical and social-political changes of that times Russia. The Code was progressive enough, from the point of view of criminal science and juridical techniques, though it never came in force fully [3, p. 5-16].

During the period between the February and October revolutions of 1917 the criminal laws of revolutionary period were used: The Code of 1845 and 1903. At the same time the Temporary government was adopting new criminal norms and regulations [1]. Besides, for the period of 1870 – 1917 the Russian Empire also had such special criminal and criminal-executive acts as:

- Statute «About crime preventing and crime suppression» 1876.
- Statute «About custody» 1886 and 1890
- Directives of Head prison authority for the period of 1879-1917.

- General prison order from 28.10.1915 etc.

As for the more recent period, it should be noted that a formation of the special crime preventing law of the Russian Empire was greatly influenced by theoretical researches of O.M. Radyshev, who paid a great attention to an importance of criminal law preventing function in his work "About statutes" [5, p. 145-171]. According to all mentioned above we can see that The Code of Laws "About crime preventing and crime suppression" (1832) was the only special regulatory act aimed at control of crime preventing activity. Therefore, we should pay closer attention to this exact regulatory act further.

So, the Statute was first published in 1832p, and was later developed (the changes were made and it was republished in 1842, 1876, 1881, 1882, 1890, 1900, 1904, 1905 and 1906) [6, p. 16-70].

The Statute always consisted of:

- Section 1 About preventing and suppressing against belief crimes (5 Chapters);

- Section 2 About preventing and suppressing against civil order and governmental bodies crimes (7 Chapters);

- Section 3 About preventing and suppressing public meetings, leisure-time disorders, and about preventing obvious temptation and lecherous behavior (6 Chapters);

- Section 4 About preventing and suppressing against personal safety crimes (3 Chapters);

- Section 5 About preventing and suppressing against property crimes (8 Chapters);

So, total quantity of structural items of the Statute (1890) was 5 Sections, 29 Chapters, 310 Articles, besides, in different times different official and non-official appendixes were on and off in the Statute [7].

If we analyze the Statute's norms and regulations, we will see the main aim of domestic crime preventing policy of the Russian Empire.

Some items of the Statute were detailed enough in regulating the behavior of empire's subjects in the scope of preventing measures. Though, some published legal scholars of late XIX and early XX (e.g. M.S. Tagancev) had pointed out that some norms and regulations of the Statute opened a wide opportunity for lawless actions of the police through unreasonable widening of police staff authority [8].

Some of the Statute's items were rather ancient, though still existed as they were in close connection with the political order of the Russian Empire of those times. Some norms and regulations provided for custodial arrest for actions rather innocent and even ridiculous from the modern point of view. Though, let's not forget that norms like these were used indeed and influenced peoples' lives.

Even the Statute's title emphasizes its main goal – crime preventing, though the body of it contains no terminological definition for preventing activity and terms related to it, which is why some contradictions and conflicts of items in the Statute appear [9].

The first section is called "About preventing and suppressing against belief crimes". The articles to defend orthodoxy are dominant in this section. According to the quantity of articles this section is a third part of the Statute.

Five chapters contained numerous rules and restrictions. Some articles regulated exactly behavior of people when they are in church, during a mass, when it was religious holiday and even routine lifetime. Other articles were pointing out activities to avoid (drinking, begging,

boisterous life style etc.) under penalty. In fact all these norms and regulations were called to protect the existing religion from any encroachment and disobedience [10].

When applied (considering real historical situation of widely spread drinking and begging) the Statute's norms and regulations of Section I had no practical influence and sense, though vested police officers with an authority to arrest and punish almost every person in the Empire.

A legislator showed an extremely class nature of the approach when it was about lecherous behavior. Some subdivisions were providing for preventing of lecherous behavior of peasants, philistines, defrocked persons, clerks and so on [12, p. 34-45].

The Statute's last two chapters were providing for preventing against personal safety and property crimes. When applied, widely by the way, these two chapters provided police with free discretion, especially, when it was about arrested people.

From a particular angle, the Statute "About crime preventing and crime suppression" looks more like "a memo" for a police officer.

Such kind of sentence as an imprisonment was a rare one in theoretical version of the Statute, but most often used in practice [13].

It was 1881 when the Statute was supplemented with a clause "about measures to protect state order and civil peace", and in 1882 the clause "about police watch" was added. Both addenda were called to regulate police activity when fighting against revolutionary movement. The Statute republication of 1890 resulted into huge changes and was aimed at regulation of existing norms [9].

In 1990 the articles restricting drinking were excluded from the Statute. During the revolution of 1905 some other clauses of the Statute were also excluded (e.g. an order from 17.04.1905 canceled some articles about denomination, and orders of 1904-1906 changed some articles of the chapter "about illegal and secret organizations"). Separately were changed some articles about lecherous behavior of philistines and clerks.

The changes mentioned above affected last two chapters of the Statute: about preventing against personal safety and property crimes [14, p. 101-125].

Till the last day of the Russian Empire the Statute provided for: "each and every citizen to live in chaste love, to show respect for each other, to prevent quarrels and offences" (Art.225). It is how the law determined conditions of routine life of the Russian Empire subjects.

The norm mentioned, in spite its positive content, found no realization in society. Most likely it never happened due to a great difference between economical, social-cultural and legal changes. Though, police officers gained a right to "prevent" anything they considered a threat to conditions mentioned above.

The clause about improving power assistance let police and gendarmery departments off the leash and gave them every right to meddle into private life of citizens in any way. The Statute's supplementing restricting fights and abusive words was in no way applied to police and gendarmery departments representatives, who beat up and tortured people on regular basis [9].

The articles of chapter about preventing against property crimes consisted of clauses about preventing robberies, frauds, gambling and

so on, though when applied these, once again, gave police an opportunity for violence, bribery, illegal arrests and so on and so forth.

So, no matter the fact that the Statute “About crime preventing and crime suppression” was a great deal for development of crime preventing institute of country, its positive realization was totally ruined by unconsidered external factors of social, cultural, ethnological and economical nature. Moreover, when examining historical situation, we may also point out other problems of preventing activity realization, such as: moral and professional immaturity of preventing activity subjects, low level of social consciousness for such activity, discord in social relations, unconformity and imperfection of law in force etc. [18, p. 802].

Nowadays the criminological situation in Ukraine calls for great improvement of managing and performing preventing activity. The adoption of special legislative act to regulate exactly the crime preventing activity overall is urgent for Ukraine.

A history of crime preventing institute development shows that repressive and revolutionary influence on criminality results into negative consequences.

It is common for law collision to impossible practical utilization of the appropriate norms, and sometimes it results into unreasonable widening of legal departments authority and into violation of rights of citizens. To avoid a situation when every next law adopted comes into conflict with the previous one, one should be more attentive when reforming crime preventing law, and pay more attention to historical experience of preparation and utilization of similar legislative acts. In due course the Russian Empire attorney-

general K.P. Pobedonoscev mentioned: “Life must be followed by reform, but not be changed by it”. Such expressions of the famous Russian personality had good grounds as this man saw the results of “imperfect law” with his own eyes, due to his profession. No doubt, law reformation must be hand-in-hand with reformation of social, cultural and economical content.

When summing up, it is necessary to one more time mention the fact of evolutionary development of crime preventing institute in our country. Both scholars and practitioners suggested universal and individual ways of influencing the crime. If utilize the predecessors’ theoretical and practical experience correctly, the Ukrainian state leaders of XXI will gain a real opportunity to find a solution for legal securing of crime preventing activity.

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