
ХАЛЫҚАРАЛЫҚ ЫНТЫМАҚТАСТЫҚ ЖӘНЕ ШЕТЕЛДІК ТӘЖІРИБЕ
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The conceptual framework of the criminal legal impact institute

Annotation. The article considers the institute of the criminal legal impact, studied in the framework of the scientific study "Punishment Institute in the system of measures for the prevention of criminal offences" at the Academy of Law Enforcement Agencies under the Prosecutor General's Office of the Republic of Kazakhstan. The analysis of the conceptual apparatus of the criminal legal impact institute and its system is carried out based on the current criminal legislation and a review of the scientific literature in the criminal law field devoted to this topic. The criminal legal impact definition is proposed, its constituent features and measures included in its system are identified, and the necessity of its goals consolidation in the Criminal Code is raised.

Keywords: criminal law, Criminal Code, criminal offence, crime, punishment, measures of influence, criminal law impact, goals of criminal law impact.

With the entry into force of the Criminal Code on January 1, 2015, a new stage in the development of the criminal law policy of Kazakhstan began.

In the new Criminal Code of the Republic of Kazakhstan (after this — CC), the classification of criminal offences has undergone a significant change. Accordingly, this has affected the system of measures of criminal law, including the institution of punishment.

The main punishments imposed depend on which criminal offence the person is found guilty of — a criminal misdemeanour or a crime (parts 1 and 2 of Art. 40 of CC). In contrast to the differentiation of the main punishments depending on the type of criminal offence, additional punishments do not have such a gradation; that is, they can be applied both for criminal misdemeanour and for crimes (part 3 of Art. 40 of CC)

At the same time, although the CC was adopted relatively recently, the process of its improvement, including the criminal legal influence institution, continues. Thus, the Law of the Republic of Kazakhstan "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Further Improvement of the Public Administration System" dated November 7, 2014, No. 248-V ZRK, the CC was amended before it was put into effect.

It should be noted that in the CC of 1997, the need to make the first changes arose only two years later (Law of the Republic of Kazakhstan «On Amendments and Additions to Certain Legisla-

tive Acts of the Republic of Kazakhstan on State Regulation of the Production and Turnover of Ethyl Alcohol and Alcoholic Products» dated July 16, 1999 year No. 430-I).

Laws amending the current CC were adopted on average every one and a half to two months. However, sometimes two Laws were adopted in one day and made changes. For example, in 2015, 2018 and 2019, two Laws were adopted on one day, amending CC (Law of the Republic of Kazakhstan dated November 24, 2015, No. 419-V ZRK; Law of the Republic of Kazakhstan dated November 24, 2015, No. 422-V ZRK; Law of the Republic of Kazakhstan dated July 2, 2018, No. 168-VI ZRK; Law of the Republic of Kazakhstan dated July 2, 2018, No. 170-VI ZRK; Law of the Republic of Kazakhstan dated December 28, 2018, No. 208-VI; Law of the Republic of Kazakhstan dated December 28, 2018, No. 211-VI ZRK; Law of the Republic of Kazakhstan dated December 27, 2019, No. 290-VI ZRK; Law of the Republic of Kazakhstan dated December 27, 2019, No. 292-VI ZRK).

Specific provisions of the CC have been amended two or more times (part 3 of Art. 44, paragraphs 1, 2 and 3 of part 5 of Art. 46, paragraph 5, part 2 of Art. 48, part 2 of Art. 50, h. 2, Art. 51, Art. 72, etc.).

At the same time, the content analysis of the norms of the CC carried out within the framework of the study «The Institute of Punishment in the System of Measures for the Prevention of Criminal Offenses» at the Academy of Law Enforcement Agencies under the General Prosecutor's Office of the Republic of Kazakhstan, indicates the need for its further improvement. In particular, the normative consolidation of the concept and types of criminal legal impact measures is still relevant, which seems to be reflected in the coherence of the criminal law norms presentation and, in turn, on its perception by the law enforcement officer. To clarify, the correct interpretation and application of the criminal legislation norms are essential since «it is associated with the restoration of violated rights on the one hand, and with the restriction of rights on the other hand» [1, p. 66].

The legislator uses the phrase «criminal legal impact measures» only in part 2 of Art. 2 and in the second sentence of the title of section 7 of the CC. Based on the content of these norms, the application of the criminal legal impact measures is envisaged for the commission of the criminal offence. The reader should determine what is meant and what specific measures relate to them independently, excluding the punishment and measures specified in Section 7 of the CC.

It is possible that the cause of this imperfection is insufficient development of the considered issue among Kazakh criminal law scholars. For example, a search at the monographic level from open sources found only the works of A. T. Baiseitova, devoted to the systematisation of the criminal legal impact measures under the legislation of the Republic of Kazakhstan [2].

In the literature of the Soviet and post-Soviet period, devoted to the topic under consideration, along with the term «criminal law impact measures», is also used «measures of a criminal law nature». S. Yu. Skobelin quite reasonably considers them to be identical. However, he thinks it is more acceptable to use the phrase «measures of criminal law impact» [3, p. 157].

There is also no consensus in the conceptual apparatus of the term «criminal legal impact». According to V. K. Duyunov, it is a purposeful punitive-educational-preventive influence on persons who have committed a crime and a preventive effect on the so-called «unstable» citizens to establish social justice, strengthen law and order, prevent crimes, as well as educate citizens in the spirit of unswerving observance of the Constitution and other laws and are expressed both in the form of bringing the perpetrator to criminal responsibility and in the form of releasing him from such [4].

A. T. Baiseitova defines the criminal legal impact as «the state's reaction to a socially dangerous act provided for by the criminal law, to ensure personal, public and state security, as well as resocialisation of persons sentenced to imprisonment» [2, p. 21], subsequently adheres to the exact definition, but without the phrase "as well as resocialisation of persons sentenced to imprisonment [5, p. 7].

Undoubtedly, the criminal legal impact is the state reaction to a socially dangerous act prohibited by the CC. However, in our opinion, this definition does not reveal the essence of the impact itself. In explanatory dictionaries, the meaning of the word «impact» is explained as an action according to the meaning of the verb to influence; any action (system of activities) directed at an object to affect it, cause a change; the action rendered by someone, something on someone, something; influence; a measure aimed at someone, something to achieve, to achieve a particular result [6], that is, it involves activities to accomplish a specific outcome.

In this regard, the point of view of A. P. Firsova seems to be more acceptable. This is because she understands under criminal legal impact as «purposeful, active activity of the state, which consists in coercive influence based on criminal law by depriving or restricting the rights and freedoms of a person who has committed a socially dangerous act» [7, p. 165].

Nevertheless, given that only the state in the face of the court has the power to deprive or restrict the rights and freedoms of a person who has committed a socially dangerous act, it seems inappropriate to indicate the impact subject. Accordingly, under the criminal legal impact, it should understand the activity, which is based on Criminal Law; influence a person who has committed a socially dangerous act by depriving or restricting his rights and freedoms.

Signs of the criminal legal impact are:

1) the criminal legal impact is a legal consequence of a socially dangerous act. That is, it is applied only for its commission. Meanwhile, in one case, in a committed socially hazardous action, there may be all the signs of the composition of a criminal offence; in the other, there may be no sign of any element of the composition, for example, the commission of such an act by an insane person;

2) the criminal legal impact consists in deprivation or restriction of the rights and freedoms of a committed a socially dangerous act person provided for by the CC;

3) the criminal legal impact is applied only by the court verdict (decision); any other body cannot use this measure. For instance, if the authority carrying out criminal prosecution as the court has the power to release from criminal liability, which also entails certain consequences, then only the court applies the criminal legal impact;

4) only measures provided for by the CC are referred to the criminal legal impact. By the current CC, the system of the criminal legal impact measures is composed of punishments, various types of exemption from criminal punishment and other measures (conditional conviction; parole from the sentence; replacing the unserved part of the sentence with a milder type of punishment, or reducing the term of the assigned punishment; postponement of the punishment for pregnant women and women with young children, men raising young children alone; postponement of the punishment due to illness; postponement of the punishment due to a combination of difficult circumstances; compulsory educational measures; compulsory medical measures; compulsory payment);

5) the criminal legal impact is a state coercion measure, that is, a court verdict (decision) that has entered into legal force is binding on everyone on the territory of the Republic of Kazakhstan (Article 472, Part 1 of the CPC, Article 6 of the PEC);

6) the criminal legal impact measures aim to ensure the safety of the individual, society, and the state and prevent the commission of new socially dangerous acts, both by convicts and other persons. These goals can be determined from the general tasks facing the criminal legislation of the Republic of Kazakhstan (Article 2 of the CC). It would be advisable to fix the criminal legal impact goals at the legislative level according to the experience of the CC of the Republic of Belarus [8, p. 185].

Legislative consolidation of the criminal legal impact goals in the CC is essential, firstly for the law enforcement of the court. Since the use of the criminal legal impact for the sake of deprivation or restriction of rights and freedoms can lead to the appointment of an illegal, unjustified, unjust punishment and the issuance of an unfair decision (sentence).

Determining the criminal legal impact goals is also necessary for research on their application effectiveness. For example, an increase or decrease in the total number of criminal offences committed can indicate the degree of achievement of the general prevention aim. A similar indicator for special prevention and the correction of the culprit will be the rate of recidivism.

In philosophy, the goal is usually understood as anticipation in thinking of the activity result and its implementation ways with the particular means help [9, p. 731]. Thus, each state coercion measure has its own mission, specific goals. In turn, the particular branch of the law has purposes and objects of influence are specified in terms of the goals and objects of its main institutions. The goals and objectives of the institutions are a means to achieve common goals and objectives facing the entire industry, and vice versa; the branch's objectives will be successfully solved if the aims of its main institutions are achieved [10, p. 34]. Regarding the criminal legal impact measures, it seems possible that their ultimate goal is to prevent criminal offences. Since the essence of the criminal legal impact measures is the deprivation or restriction of rights and freedoms, they will, in this respect, be a means of achieving the above-named final goal.

It is impossible to prevent criminal offences by criminal law alone. As E. I. Kairzhanov noticed, «social, organisational, economic, cultural and educational measures are of decisive importance in the prevention of crime» [11, p. 185]. However, even among special measures of influence on crime, preventive and educational work is of primary importance. The criminal legal impact measures, in particular punishment, cannot and should not occupy a decisive place in countering criminal offences.

Thus, the criminal legal impact «can be considered as a complex system of the state legal response, including several measures of a criminal-legal nature. At the same time, each criminal legal impact measure is a relatively independent means of state coercion, possessing its own individuality, characterised only by its inherent set of restrictions on the rights and freedoms of the individual» [2, p. 21].

In conclusion, the criminal legal impact institution needs further development to increase the preventive potential of criminal legislation in general and the effectiveness of criminal legal impact measures in particular.

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Қылмыстық-құқықтық ықпал ету институтының ұғымдық-категориялық аппараты

Аннотация. Мақалада Қазақстан Республикасы Бас прокуратурасының жанындағы Құқық қорғау органдары академиясында «Қылмыстық құқық бұзушылықтардың алдын алу шаралары жүйесіндегі жазалау институты» ғылыми зерттеу шеңберінде зерделен генқылмыстық-құқықтық ықпал ету институты қаралады. Қылмыстық-құқықтық ықпал ету институтының ұғымдық аппаратына және оның жүйесіне қолданыстағы қылмыстық заңнама негізінде және осы тақырыпқа арналған қылмыстық құқық саласындағы ғылыми әдебиеттер арқылы талдау жасалған. Қылмыстық-құқықтық ықпал етудің дефинициясы ұсынылды, оның құрамдас белгілері олардың мазмұнын аша отырып және қылмыстық-құқықтық ықпал ету шаралары жүйесіне кіретін шаралар айқындалды, сондай-ақ осы институттың мақсаттарын қылмыстық заңда бекіту қажеттілігі туралы мәселе қойылды.

Негізгі сөздер: қылмыстық құқық, Қылмыстық кодексе, қылмыстық құқық бұзушылық, қылмыс, жаза, ықпал ету шаралары, қылмыстық-құқықтық ықпал ету, қылмыстық-құқықтық ықпал ету мақсаттары.

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Понятийно-категориальный аппарат института уголовно-правового воздействия

Аннотация. В статье рассматривается институт уголовно-правового воздействия, изученный в рамках научного исследования «Институт наказания в системе мер предупреждения уголовных правонарушений» в Академии правоохранительных органов при Генеральной прокуратуре Республики Казахстан. Осуществлен анализ понятийного аппарата института уголовно-правового воздействия и его системы на основе действующего уголовного законодательства и обзора научной литературы в области уголовного права, посвященной данной тематике. Предложена дефиниция уголовно-правового воздействия, определены составляющие его признаки с раскрытием их содержания и меры, входящие в систему мер уголовно-правового воздействия, а также ставится вопрос о необходимости уголовно-правового закрепления целей данного института.

Ключевые слова: уголовное право, Уголовный кодекс, уголовное правонарушение, преступление, наказание, меры воздействия, уголовно-правовое воздействие, цели уголовно-правового воздействия.

