Criminological policy and legislation in the area of combating crime related to trafficking in persons

Lyudmila A. Bukalerova1 and Alimzhan B. Bekmagambetov2

1. Head of the Chair of Criminal Law, Criminal Procedure and Criminalistics of the RUDN Peoples’ Friendship University of Russia (RUDN), Doctor of Law, Professor. Russian Federation.

2. Ph.D. in Law, Deputy Director for Science Chelyabinsk State University, Doctoral candidate of the RUDN Peoples' Friendship University of Russia

ABSTRACT

1. The objective of this publication is to once again focus on the issue of improving the combating trafficking in persons from the perspective of global approach - developing the optimal integrated policy model that includes a number of elements (subsystems).

2. The methodology used by the author includes, first of all, an interdisciplinary analytical approach along with the system-structural-functional characteristic of genetically related elements of a single complex system as a product of theoretical modeling.

3. In accordance with the author's approach, the global and national policies on criminal and penal law, criminally-remedial, operational search and criminalistical subsystems should be included among the subsystems of the policy on combating crime related to trafficking. Author also underscores the necessity of clear reflection of the official terminological turnover within the framework of an integral conceptual-categorical apparatus of the Concept of Legal Policy of the Republic of Kazakhstan.

4. Addressing to further theoretical modeling of trafficking crime prevention policies, the issue of the concept, content, and position of criminological policy in the structure of an anti-criminal state mechanism is being considered. Hence, the researcher focused on the correlation of penal and criminological policies; in this reference there are two polar scientific contemplations (where penal policy is a part of the criminological structure and vice versa), which also evolved due to the discrepancy between criminal law and criminological science. Therefore, the legal writer expresses solidarity with the position of leading experts on the necessity to strengthen integration between relevant branches of science, including such challenging areas as criminal science and criminology of penal law (justice). Based on the fundamental scientific concepts, the author presents the structure of criminological legislation in the area of combating trafficking crime; and also underscores the criminogenic gap expressed in the absence of a basic law on combating trafficking.

5. The results obtained will serve the purpose in the area of law-
making, law-enforcement and human rights policies, aimed at ensuring the proper level of criminological security of the personality, society and the state.

6. The social consequences of the development and implementation of a holistic concept of anti-crime policies related to trafficking in persons will be expressed in enhancing the effectiveness of law enforcement in protecting citizens from relevant criminal encroachments.

Introduction

2017 was the year when the Action Plan of the Government of the Republic of Kazakhstan to Combat and Prevent Human Trafficking Crimes, approved by the resolution of Kazakhstan Government (decree no. 23) on January 28, 2015, was completed. The Action Plan included the following key areas: policy-making on improvement and alignment of legislation, which consequently contained such sections as standard-setting work on the improvement and alignment of legislation (4 paragraphs); organizational and practical activities for the combating trafficking in persons (8 paragraphs, including 7 sub-paragraphs); organizational and practical measures in rendering of assistance to victims of trafficking (6 paragraphs); cooperation with the proper authorities of the CIS member states and international non-governmental organizations (6 paragraphs), organizational and preventive countermeasures on trafficking (6 paragraphs); advisory and scientific-methodological support (4 paragraphs); and human resourcing (3 paragraphs) [1, P. 211-223]. It stands to reason that it will be subjected to a thorough analysis by the interdepartmental commission, following which the final documents with practical recommendations will be adopted.

The author of this article as a member of the expert council of the Commission on Human Rights under the President of the Republic of Kazakhstan is up to take part in this legislation, as well as he participated in the international presentation of the analytical report on “Current Problems in the Protection of the Rights of Migrant Workers and Victims of Trafficking in Persons in the Republic of Kazakhstan” held on September 14, 2017 in the Ministry of Foreign Affairs. This report also states that “In this respect, Kazakhstan has to solve a complex problem of the creation of a modern migration management system that would prevent an outflow of skilled personnel abroad” (Analytical Report: Current Problems in the Protection of the rights of Migrant Workers and Victims of Trafficking in Persons in the Republic of Kazakhstan, under the general editorship of Kuanysh Sultanov and Tastemir Abishev, Astana, 2017. 179 p.: Commission on Human Rights under the President of the Republic of Kazakhstan) (Page 6).

All of the above aspects of diverse activities testify, or at least give grounds to assert about the prerequisites for the formation of a separate direction - criminological policy in the area of combating criminal challenges and threats, where human trafficking occupies one of the leading positions. And this is of the constant attention of the relevant UN structures; besides, the Republic of Kazakhstan has become the President of the United Nations Security Council since January 1, 2018.

The forth planned systematic and effective countermeasures of crime in modern conditions are mainly dependent on the quality of modeling and modernization of criminological policy as one of the subsystems of global criminal (penal/executive) policies.

At the official level, this aspect is constantly prevailing not only under attention of the government and criminal justice, but also is a subject of a “field practice”. This is evidenced by the establishment of the Interdepartmental Research Institute of the Academy of Law Enforcement Agencies under the General
Prosecutor's Office of the Republic of Kazakhstan. Those establishments have already conducted a number of meaningful and constructive dialogue platforms, training seminars and meetings. Among them are the International Scientific Conference “From criminological legislation to the combat crime justice (problems of law criminology)” (held on May 19, 2017 by Kostanay akimat; prosecutor's office of Kostanay region and Kostanay branch of Chelyabinsk State University); International Scientific Conference “Actual issues of public security and combating crime” (November 16, 2017, Academy of Law Enforcement Agencies of the Prosecutor General's Office of the Republic of Kazakhstan); Legal Forum on Criminology “The suspect and the accused: are their rights really protected?” (December 14, 2017, also by Academy of Law Enforcement Agencies of the Prosecutor General's Office of the Republic of Kazakhstan); and joint meeting with the Prosecutor's Office of the Kostanay region under the name of “Crime Prevention through Criminological Conceptual Foresight” (December 25, 2017, Astana - Kostanay, Academy of Law Enforcement Agencies of the General Prosecutor's Office).

From the point of view of theoretical and instrumental analysis, the criminological direction of the counteraction policy should have its own legislative basis, which should represent the new branch - criminological law, - a proposed product of the Neva-Volgian scientific school; criminology of law (by D.A. Shestakov); or criminology of penal law (justice) (by S.F. Milyukov). As an apotheosis of the entire process of theoretical modeling in this area it is possible to consider the construction of a single law system to counteract crime. Therefore, it is entirely essential to agree with Anatoly P. Danilov that “foreign colleagues are lacking similar proposals; and the Russian criminological theory is ahead of its western development” [2, page 71].

Results obtained from the conducted sociological survey, in which the legal writer participated as a respondent, are also very challenging. The majority of the respondents (55 individuals or 65.5%) required the adoption of a single crime prevention legislation (as stated by the above-mentioned researcher); 13 people among them had a degree (81.3% of the total number of such) [3, p. 72]. The concept of Yuri D. Goncharov is essentially similar; and excellent in content. In the structure of combating crime he allocates laws on counteraction and prevention policy [4, p. 264; p. 89].

However, in context of this report the dominant object will be such an object of study as the policy on criminology, which has not only been insufficiently developed, but has not yet firmly established itself in the corresponding literature; and has not received in-depth study and development. At the same time, it is naive to ignore the fact that the policy in the area of combating crime existed and exists in any civilized state - and not only there. This goal is pursued in many studies, such as the one by Elizbieta M. Gozdziak, Elizabeth A. Collett, Research on Human Trafficking in North America: A Review of Literature // International Migration Volume 43, Issue 1-2, January 2005, P. 99-128 DOI: 10.1111 / j.0020-7985.2005.00314.x), p 99, advising to “note of the research gaps that need to be filled in order to establish appropriate and effective policies and programs for trafficked victims”.

Yes, there are differences in approaches and results; however, this is a separate issue. Since the moment of realization of ensured protection necessity of a person, society and the state from criminal threats and challenges, counteract measures immediately appear. And the process of institutionalization, reformation and modernization takes place up to date.

In this respect the causes and factors are taken into account; it is ought to agree with Jill Robinson, stated that “at the institutional level of trafficking is viewed as a vastly complex social problem with structural (macro) level causes” (Public Perceptions of Human Trafficking in Moldova // Psychosocial Intervention Vol. 20, No. 3, 2011. P. 269-279 http://dx.doi.org/10.5093/in2011v20n3a4) (p. 270).
However, we cannot confine ourselves with a study of determinants only, since we are setting a global task to develop models of criminological policy and legislation. In this direction, one should be guided by international experience. As it was fair-mindedly noted by Jeana Fowler, Nicolette Che and Lindsay Fowler that “… most developing countries have yet to develop their national machineries to be strong enough to protect and rehabilitate victims” (Jeana Fowler, Nicolette Che, Lindsay Fowler // Innocence lost: The rights of human trafficking victims. Proceda Social and Behavioral Sciences 2 (2010) 1345-1349) (p. 1243).

John Barner, David Okesh and Meghan A. Camp are of the same opinion: “Many international anti-trafficking efforts are veered towards the criminal aspect of the phenomenon while placing less emphasis on the psycho-social services that victims and survivors require” (John Barner, David Okesh and Meghan A. Camp., Socio-Economic Inequality, Human Trafficking, and the Global Slave Trade // Societies. 2014, 4 (2), 148-160; doi: 10.3390 / soc4020148) (p. 145).

Louise Shelley, focusing attention on the transnational nature of this phenomenon, notes that: “By defining human trafficking as a crime problem rather than as a migration, human rights or security issue, the international community is recognizing that criminal law and law enforcement institutions must play a key role in addressing the problem of transnational human trafficking” (Louise Shelley / Human Trafficking in Human Trafficking (Maggie Lee Routledge (2007) P. 117 -232).


Materials and methods

A review of doctrinal approaches and views in corresponding literature shows that in Kazakhstan, unlike the Russian Federation, the question of the essence, role and purpose of criminological politics is not so actively and widely discussed (what reflects the current state of domestic criminological science). The corresponding scientific knowledge area in our republic is connected with the names of many outstanding criminological scientists, and, of course, has its own serious basis; and therefore, appears to be a topic of a separate analysis. It should be noted that in this case neither in textbooks [5] and study guides [6], nor in monographic [7], dissertational [8] or grant [9] studies, criminological politics is not clearly distinguished and not covered in detail. Unfortunately, a number of scientific articles devoted to the problems of criminal policy (by concept and content) and strategies for combating crime do not contain information on criminological policy. In particular, it is possible to mention current publications by R. Dzhansaraeva [10], A. Eshchanova [11], M. Zholumbaeva [12] and R. Mukanova [13]. A monograph by Zh. Zhunusov and single purpose publications by professors T. Akimzhanov and G. Rustemova can be considered as an exception. More about them is discussed below.

Results

Statute: Criminological policy is a self-sufficient direction of state-legal activity in the area of combating crime, including the one related to trafficking in human beings; with its tools in the form of criminological legislation.
Nature: Criminological policy has a genetic relationship with the criminal law, a number of points of contact within the aspects of criminalization and decriminalization of acts that represents the fundamental foundations of criminal policy.

Concept and essence: Criminological policy is scientifically grounded activity of authorized state bodies, institutions, and their officials, concerned public organizations in the area of crime prevention, including a complex of criminological legislation measures relevant to international standards.

Criteria for optimal criminological policy (the concept of M. Kleimenov is taken as reference point):
1) Correspondence of national ideology, which is a synthesis of traditional national values of the country, including the inadmissibility of encroachment on personal freedom;
2) Increase of the spiritual and moral potential of society; implementation of cultural and moral policies in the direction of humanistic personal qualities education, including overcoming the deviations of the consumer society;
3) Attention priority to the prevention of crimes, including those related to trafficking in persons in the context of increasing the supply of “human commodity” to many foreign countries;
4) Severance of business and government by excluding the participation of civil servants in entrepreneurial activities, as well as of businessmen “bearing the same representation” in government;
5) Elimination of all legal immunities, with exception of diplomatic immunity;
6) Establishment of procedures for the public certification of certain categories officials with the participation of community leaders;
7) Formation of a curtain structure for revision of the property status and sources of income of state officials and employees of governmental organizations and institutions regardless of the form of ownership; as well as the compliance of their expenditures with legal income;
8) Strengthening of the state response and regulation of the economy;
9) Improvement of state social policy, elimination of unemployment, indigence and poverty; restoration of labor resources;
10) Reduction of alcohol and narcotics consumption;
11) Strengthening of the family values;
12) Protection of children from all kinds of exploitation, physical or psychological abuse, corruption and depravation;
13) Maintenance of the state of publicity and scientific character at legislative acts preparation;
14) Introduction of the institute of criminological expertise of normative legal acts;
15) Integrated utilization of all legal means (criminal law, administrative law, civil law, etc.) for the purpose of combating crime;
16) Correction of strains in the human resources policy in federal, regional and municipal authorities, law enforcement and judicial bodies; exclusion of corruptive practices of cronyism and nepotism;
17) Optimization of processes of criminalization and decriminalization;
18) General social responsibilities of business;
19) Further development of criminological legislation;
20) Protection of potential and rehabilitation of real victims of crime;
21) Education in the law;
22) Improvement of criminological management;
23) Decriminalization of regions, branches of economy and fields of activity;
24) International engagement and cooperation in the detection, suppression and prevention of crimes, including those related to trafficking in persons.

The purpose of criminological policy: generation of effective ways to identify the causes and prevent crimes, including those related to trafficking; and to contain it at a socially acceptable level in terms of adequacy to its resource arsenal.

The tasks of criminological policy: generation and provision of updated criminological information on the nature, causes and state of criminality to the concerned recipients; creation of a basis of approaches and methods for criminological estimation of the “cost of crime to society”, its causal-relevant complex and personality characteristics of the perpetrator (“portrait of an offender”); definition of crime prevention measures; forms and methods development for managing subjects of crime prevention (governmental bodies, educational and other institutions and establishments) in order to implement their tasks to combat crime.

Criminological legislation: system of international and domestic legal acts of criminological content and orientation, enacted by the Republic of Kazakhstan.

To criminological legislation in the area of combating crime related to trafficking in persons:

International Legislation

- The 1926 Geneva Convention to Suppress the Slave Trade and Slavery
- The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- The 1957 Abolition of Forced Labor Convention
- The 1979 Convention on the Elimination of All Forms of Discrimination Against Women
- The 1999 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor
- The 2002 Brussels Declaration on Preventing and Combating Trafficking in Human Beings
- The 2005 Council of Europe Convention on Action against Trafficking in Human Beings
- The 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual
- The 2005 Agreement on Cooperation of Member States of the Commonwealth of Independent States in the fight against trafficking in human beings, human organs and tissues
International Bilateral Agreements

- The Agreement between the Government of the Republic of Kazakhstan and the Government of the Federal Republic of Germany on cooperation in combating organized crime, terrorism, and other serious criminal offences
- The Agreement between the Government of the Republic of Kazakhstan and the Government of the Islamic Republic of Iran on cooperation in combating organized crime and terrorism
- The Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Bulgaria on cooperation in combating terrorism, organized crime, illicit trafficking of narcotic drugs, psychotropic substances, their analogues, precursors, and other types of crime
- The Agreement between the Government of the Republic of Kazakhstan and the Government of Romania on cooperation in combating organized crime, illicit trafficking of narcotic drugs, psychotropic substances and precursors, terrorism and other dangerous crimes
- The Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Poland on cooperation in combating organized crime and other types of crime
- The Agreement between the Government of the Republic of Kazakhstan and the Government of the Arab Republic of Egypt on cooperation in the field of fight against terrorism, organized crime, illicit trafficking of narcotic drugs and psychotropic substances, and other types of crime
- The Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Croatia on cooperation in combating organized crime, illicit trafficking of narcotic drugs and psychotropic substances, terrorism and other types of crime
- The Agreement between the Government of the Republic of Kazakhstan and the Government of the Slovak Republic on cooperation in combating organized crime, terrorism, illicit trafficking of narcotic drugs, psychotropic substances, precursors and other types of crime
- The Agreement of the Government of the Member States of the Commonwealth of Independent States on the exchange of information in the field of combating crime
- The Agreement between the Government of the Republic of Kazakhstan and the Government of the French Republic on cooperation in combating crime
- The Agreement between the Government of the Republic of Kazakhstan and the Government of the Italian Republic on cooperation in combating organized crime, illicit trafficking of narcotic drugs, psychotropic substances, precursors and chemicals used for their manufacturing, terrorism and other types of crime
- The Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Estonia on cooperation in combating organized crime and other types of crime
- The Agreement between the Government of the Republic of Kazakhstan and the Government of the Kingdom of Spain on cooperation in combating crime
- The Agreement on cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the General Prosecutor's Office of the Republic of Belarus

Domestic Legislation

- The concept of legal policy of the Republic of Kazakhstan for the forthcoming period
- The Presidents of the Republic of Kazakhstan Plan of the Nation “100 concrete steps on the implementation of the five institutional reforms” (launched on May 20, 2015)
Historically the aforementioned were preceded by following conceptual and strategic documents:
● State program of legal reform
● The concept of legal policy
● On the State program of the first-order measures for combating crime and strengthening the status of law and order in the Republic of Kazakhstan for 1993-1995
● On the State program of the Republic of Kazakhstan for combating crime for 1997-1998; and the reference direction of law enforcement activities up to the year 2000
● On the program of combating crime in the Republic of Kazakhstan for 2000-2002
● On the program of crime prevention and fight against crime in the Republic of Kazakhstan for 2003-2004
● On the program of crime prevention and fight against crime in the Republic of Kazakhstan for 2005-2008
● On the field program of the offenses prevention in the Republic of Kazakhstan for 2011 - 2013

Law-Enforcement Practice
● Statistical data analysis on the state of crime related to trafficking in human beings for 2010-2012; and 11 months of 2013.
● The brief on judicial practice in criminal cases related to trafficking in human beings for 2013 and 2014 (stipulated by articles 125, part 3, paragraph “b”; 126 p. 3 “b”; 128, 132-1, 133, 270, 271 CC).
● The brief on the provision of the rights of victims in cases of human trafficking (based on the criminal cases reviewed in 2014-2015) on the legislation enforcement that establishes responsibility for trafficking in human beings.

Discussion
Traditionally, the fundamental criterion for distinguishing sub-systems of criminal policy is the existence of independent branches of law and legislation. Therefore, it seems logical that, according to L.D. Gaukhman, and S.V. Maksimova: “The subsystems include the criminal law, criminally-remedial and penal enforcement policies. These subsystems correspond to independent branches of legislation - criminal, criminally-remedial and penal, each of which, having its own subject and method, performs its specific tasks in the field of combating crime” [14, p. 57; p. 575].

In this reference, the following statement by V.S. Dzhatiev is truly eloquent: “Criminology is not tied to any particular branch of law; therefore, it is not customary in Russian legal doctrine to speak about the criminological policy of the state. I consider this restraint to be erroneous and even harmful, since it does not stimulate the state to perceive and implement the recommendations of criminologists. Without examining in depth the issues of the criminological policy of the state, I, nevertheless, have long been determined in a principled approach to assessing its essence. At the same time, I cannot name any special scientific publication devoted to this issue” [15, P. 33-34].

I.N. Kondrat expressing the similar position, when he considers as basic the six-element (legal, processual, preventive, penal, investigative and organizational) structure of the criminal policy by A.I. Aleksandrov [16, p. 99]; and emphasizes that “if we turn to the two final elements of the criminal policy - criminal preventive policy and criminal-organizational policy - we have to state that they are perhaps developed surprisingly weaker than others” [17, p.160].
G.R. Rustemova does not share such skepticism arguing that “criminological politics as an integral part of the criminal policy as a whole has found its place in criminological science” [18, p.19].

The idea of Russian and domestic criminologists about preserving the discussion of the issue of criminological legislation and its legal nature in the context of correlation with criminological policy (which is also called preventive or precautionary), has not lost its relevance.

Among domestic researchers B.Zh. Zhunusov is one of the first who turned to this problem at the doctoral dissertation level, and in the context of the relevant monograph noted the following: “It seems theoretically and practically justified to proceed from the fact that there is a single criminal policy - a policy in the field of combating crime with the help of criminal law measures - and its subspecies (subsystems, constituent parts): criminal law, criminal processual, penal and criminological policies” [19, p. 42]. The significance of this monograph is difficult to overestimate, however, from the moment it was published it took almost 12 years, and therefore, a number of provisions require a rethinking in accordance with the changed realities and the implemented and planned political and legal reforms. As known, a number of updated anti-criminal codes were adopted on the platform of the next concept of the country's legal policy. Continuous update of law enforcement reform within the framework of the triune modernization of politics, economy, and public consciousness that began in 2017 is still being implemented. Throughout recent history, it has been essentially important to study the best practices of the states of the near and far abroad. And of particular importance among them is Russia, with which centuries-old ties are established, which is reflected in the formation and evolution of the political and legal system, including some certain continuity. In this reference, a comparative legal method is put forward. A Coryphaeus of domestic criminology - U.S. Dzhekebaev emphasizes: “When developing, adopting and issuing legislative acts, it is desirable to focus on the Model Criminal Code for the CIS countries; it will be inevitable to study the legislative experience of Russia and other foreign states” [20, p. 42]. This idea is also holds truth in the problem of combating crime related to trafficking in persons. As it is known, the CIS Inter-parliamentary Assembly has developed model laws in this area, but not all of them are accepted by post-Soviet countries, including the Republic of Kazakhstan. In this reference, other saying of the aforementioned scientist's warning about the omissions of the 1994 reform is quite relevant: “One of the reasons for the incomplete implementation of the program of judicial and legal reform in the life of society was the insufficient development and application of the experience of social and legal reform conducted by others developed in solving similar problems” [21, p. 4]. Today, in the context of developing an optimal model of crime prevention policy, including in the area of trafficking, it is important first of all to have a clear understanding of its structure.

So, the outstanding criminologist E.F. Pobegailo as components, branches, subsystems of a single policy in the area of combating crime, distinguishes: criminal-law (narrowly defined as criminal), criminal-processual (procedural), criminal-executive (penal) policy, criminological (preventive) and legal-administrative policy [22, P. 9-10]. N.A. Lopashenko writes in his monograph: “Within the framework of the state policy in the field of combating crime, it is possible to allocate a criminal-law (criminal), criminal-procedural, criminal-executive (penitentiary) and criminological policies” [23, p. 22]. E.V. Kobzeva notes that “in criminal law, in the broadest sense of the word, only such constituent elements as (again, in different variations) criminal-law, criminal procedural, criminal-executive (penitentiary), criminological (preventive) versions of policies should be included” [24, p. 82]. Yu.I. Bytko believes that “... a policy called criminal in the broad sense, it is advisable to define as a policy to counteract crime. Within the framework of this policy, it is necessary to distinguish the following types: criminal (policy in the area of criminal law rulemaking), criminal law enforcement (policy in the area of criminal
legislation application by courts), criminal executive (policy in the area of court convictions execution), and criminological (in the areas of resocialization of persons who have served criminal penalties; and other measures for the prevention of crimes)” [25, p.147]. According to L.I. Belyaeva the criminal policy “... includes: a) prevention, i.e. preventive policies, sometimes it is called criminological; b) criminal law policy; c) criminal procedural policy; d) operational search policy; e) criminal-executive policy” [26, p. 24]. V.A. Blinnikov proposes a six-element structure of criminal policy, which consists, as he calls, from the following trends: criminal law, criminal executive, criminal procedure, criminalistics, criminological and law enforcement [27, p. 29].

I.V. Shalakhin states that “whereas, the policy of restricting and preventing crime ... includes criminal policy, as a nucleus, a core element that determines the state's line with regard to active offensive influence on crime” [28, p. 87]. Thus, it can be noted that such elements (subsystems) of criminal policy as criminal law, criminal procedure, and criminal executive are most often singled out by scientists. The least frequent in the relevant literature (including challengeable one) are criminalistics, legal-administrative, operational-search, criminal-organizational, judicial and law enforcement policies. In addition, the reason for the discussion is the correlation between criminal-law and criminological, between criminological and victimological; and criminal procedural and operational-search policies.

In this regard, the opinion of I.M. Kleymenov is quite convincing, stating that “criminological policy is included in the content of the criminal policy - insofar as the prevention of crimes is connected with state coercion” [29, p. 96]. In all fairness, it should be said that Kleimenov distinctly declares independence of criminological policy in regard to criminal. Moreover, he is convinced that “criminal policy is part of the criminological one because the latter also relies on social policy” [30, p. 225]. A similar opinion showed by V.A. Shunyaeva, who, in particular, notes that criminological policy “is rooted in criminal policy”, and then transformed “into an independent direction of state policy, which is based on criminological ideas on the implementation of the criminological security concept ” [31, p.177]. In Kazakh science, T.K. Akimzhanov also considers: “the very concept of criminological politics appears most general in relation to such categories as criminal, criminal-executive, criminal procedural and other policies, since by semantic meaning it contains an indication of scientifically grounded activity on crime counteraction, development and implementation of measures on crime prevention, which is also covered by the subject area of criminology” [32, p. 21]. In the foreign criminology, the issues of criminological politics are given attention in correlation with the productivity of criminological research. In this regard, let us cite a number of interesting judgments on this subject by scientists from different countries of the world published by very authoritative scientific journals. Just note that in many respects they have similar views.

So, Alfred Blumstein writes: “There should be a natural symbiosis between the research process and the policy process. Research should be directed at issues that concern policy-makers, and policy-makers should want to seek guidance from research findings in order to attain more effective and efficient policies. This is certainly an appropriate and important ideal relationship. It is widely seen in technological areas, it is the norm in other social sciences such as economics, and one would hope that would be the case in criminology” (Alfred Blumstein. Interaction of Criminological Research and Public Policy//Journal of Quantitative Criminology, 1994 – Springer, December 1994, Volume 12, Issue 4, P. 349–361) p. 349.

Leslie Sebba notes that “The question arises, however, as to whether and to what extent there is any connection between the policy reforms and the research. This question arises, of course, in other areas of criminological


David F. Greenberg is concerned that “ever since criminology became a distinct discipline, criminologists have hoped to promote the adoption of what they have considered to be rational, effective methods for dealing with crime” (David F. Greenberg. Criminological research and crime control policy: not a marriage made in heaven//Criminology & public policy. Vol. 5, issue 2, P. 203-212, issue published on May, 2006, DOI: 10.1111/j.1745-9133.2006.00374.x) p. 203.

As will be noted below, in domestic science, as well as in foreign science, there are common problematic issues of optimal interaction between criminological theory and criminological politics.

In any case, behind all this there are challenging questions of localization, purpose and interactions of these versions of policies, their legislative tools and fundamental foundations. The mostly relevant appears the study of the correlation and productive interaction of criminology, criminal law and criminal politology.

In this regard, as noted by I.A. Zinchenko and A.Yu. Trapitsyn, the basis of the concept of criminal policy should be a clear criminological idea, citing the following quote as an argument: “The criminal law policy is criminological, - writes M. M. Babaev, - and criminological policy is a normative. And that contains a pledge and a condition of effectiveness for each of them” [33, P. 87-88]. Over the years, Babaev, as such an idea offers the concept of criminological security. By the way, in Kazakhstan, at the level of a doctoral dissertation V.V. Root developed this idea, making it fundamental.

Generally, as it was rightly noted by A. G. Bezverkhov, today “the methodology and methodic of criminal law, political and criminological research is also different” [34, p. 33], and, therefore, it does not contribute to their rapprochement, not to mention the development of joint products. Whereas, A.I. Boyko writes that “with regard to the current unsatisfactory situation with the crime counteraction, the reproach should be addressed to representatives of criminal law and criminology, who often does not locate the general subject of their research” [35, p. 37]. After all, as Y. V. Golik quite accurately remarked, “in recent years there has been a certain gap between criminology and criminal law. Development (if it can be called development) of criminal law went without any connection with criminological research, and in criminology a whole direction emerged, defending its right to understand what is criminal and what is not. Such positions, being brought to the extreme, cannot help improve the situation in the fight against crime” [36, p. 56]. Further, he calls for the consolidation of the efforts of specialists. V. A. Nomokonov shares the same opinion, when rightly points out that “the development of the criminal law and criminological science of our country naturally led to the conclusion that it is necessary to provide them with a closer interconnection, even a certain integration, in the framework of a broader theory, concept, paradigm” [37, p. 196]. As such, it is worthy to present the theory of criminology of the law and criminology of criminal law (justice). We are entirely agree on that with S. F. Milyukov, that “we must do everything possible to complete the formation of this branch of scientific knowledge and the legislative implementation of the ideas of Russian and foreign criminologists, tested by life, as soon as possible” [38, p. 321].
In this regard, there is mention-worthy statement by M. M. Babaev and Yu. E. Pudovochkina that “the first step in this direction can be the development of a roadmap for the integration of criminal law and criminology, the definition of those key points of their contact, which should be paid the closest attention in the organization and conduct of scientific research” [39, p. 41].

According to B.Zh. Zhunusov, “criminological policy can be designated as the direction of the state activities to eliminate causes and develop measures to prevent crime” [40, P. 36-37].

A similar interpretation can be found in works by G. Rustemova, who believes that the criminological policy “is first and foremost activity of the state in eliminating the factors of committing crimes and implementing measures on crime prevention” [41, p. 19].

Criminological or preventive policy is a policy in the area of crime prevention, encompassing norm-setting, defining the direction and ways of implementing criminological prevention of antisocial phenomena, as well as the direction of practical implementation of preventive activities; and management of this practice. Criminological policy is the closest thing to what is called a strategy to combat crime. It is well-known, that prevention is the most effective remedy to counteract criminal manifestations [42, p. 10]

The most profound researcher of this phenomenon M.P. Kleimenov gives the following broad definition: “Criminological policy is scientifically grounded policy, consistent with international standards and legislative requirements, purposeful and systematic activity of state and municipal bodies, political institutions, business entities, public organizations, religious associations and citizens in reducing crime and decriminalizing public relations by social and legal means, provision of vital personal interests, society and the state from internal and external threats” [43, p. 225].

He argues about two models of criminological politics known in history - totalitarian and liberal, each of which is characterized by 16 attributes.

However, as the author believes, none of the models is optimal, since both do not meet the requirements (criteria) he put forward, a number of which, to a certain extent, are similar to those that are characteristic of the liberal one. The latter takes place in transit societies and states.

Criteria of the optimal criminological policy by M.P. Kleimenov [44, P. 229-231] are as follows:
1. Correspondence of national ideology, as a synthesis of traditional national values of the country;
2. Increase of the spiritual and moral potential of society; implementation of cultural and moral policies in the direction of humanistic personal qualities education;
3. Attention priority to the crime prevention;
4. Severance of business and government by excluding the participation of civil servants in entrepreneurial activities, as well as of businessmen “bearing the same representation” in government;
5. Elimination of all legal immunities, with exception of diplomatic immunity;
6. Establishment of procedures for the public certification of certain categories officials with the participation of community leaders;
7. Formation of a curtain structure for revision of the property status and sources of income of state officials and employees of governmental organizations and institutions regardless of the form of ownership; as well as the compliance of their expenditures with legal income;
8. Strengthening of the state response and regulation of the economy;
9. Improvement of state social policy, elimination of unemployment, indigence and poverty; restoration of labor resources;
10. Reduction of alcohol and narcotics consumption;
11. Strengthening of the family values;
12. Protection of children from all kinds of exploitation, physical or psychological abuse, corruption and depravation;
13. Maintenance of the state of publicity and scientific character at legislative acts preparation;
14. Introduction of the institute of criminological expertise of normative legal acts;
15. Integrated utilization of all legal means (criminal law, administrative law, civil law, etc.) for the purpose of combating crime;
16. Correction of strains in the human resources policy in federal, regional and municipal authorities, law enforcement and judicial bodies; exclusion of corruptive practices of cronyism and nepotism;
17. Optimization of processes of criminalization and decriminalization;
18. General social responsibilities of business;
19. Further development of criminological legislation;
20. Protection of potential and rehabilitation of real victims of crime;
21. Education in the law;
22. Improvement of criminological management;
23. Decriminalization of regions, branches of economy and fields of activity;
24) International engagement and cooperation in the detection, suppression and prevention of crimes.

According to V. A. Blinnikov, the goal of the criminological policy is to develop effective ways to identify the causes and prevention of crimes that will allow keeping crime at a level appropriate to the objective capabilities of society to oppose it.

The author believes that the objectives of this policy line are: “to formulate and disseminate ideas about the real nature, causes and state of crime, to develop the foundations, approaches and methods of studying crime, its causes, the identity of the offender, and to determine crime prevention measures, forms of development and methods of management of crime prevention subjects (state authorities and administrations, educational and other institutions and establishments) with a view of a resolution for opposing tasks of counteracting crime” [45, p. 33].

With reference to our topic, the Commission on Human Rights under the President of the Republic of Kazakhstan rightly noted: “One of the key elements in successful prevention of trafficking in persons is effective legislation. In recent years, Kazakhstan has taken a number of steps in this area” [46, p. 86]. This is very relevant in the view of the globalization of crime, especially the organized one, which many scholars are paying attention to. Among other relevant aspects, criminologist Ya. I. Gilinsky refers to “... the globalization of organized crime (drug trafficking, human trafficking, etc.)” [47, p. 93].

Relying on the latest developments of scientists (in particular, by D. A. Shestakov and M. P. Kleimenova) this document definitely can be attributed to criminological legislation. Author is convinced that such an industry exists at the time and is actively developing as a “system of international, federal and regional normative legal acts of criminological content and criminological orientation”, and whoever ignores this fact - does nothing for national security [48, p.183]. In this regard, the following idea by Shestakov gained practical importance: “The definition of the content and the boundaries of the criminological legislation, the formulation of the question of its incorporation, which has already begun, have made it possible to make a preliminary outline of its structure. The author of these notes identified groups of criminological norms established by legal acts on: 1) strategies for
combating crime, 2) criminological expertise, 3) countering specific types of crime, and 4) having a victimological orientation” [49, p. 326].

**Conclusion**

In foreign criminology, as the analysis has shown, the issues of criminological policy are more developed, although there are problems of further modernization and optimization of the interaction between theory and practice.

In the domestic legal system, and first of all in the legal doctrine, it is still necessary to conduct a large-scale and complex activity on the design of the criminological policy model.

In this regard, along with the best foreign experience, as a fundamental theoretical and methodological basis for criminological policy in the field of combating crime, including those related to trafficking, it is necessary to select the following developments:

1) **M. M. Babaev, A. G. Bezerkhov, A. I. Boyko, Yu. V. Golik, I. M. Matskevich, V. A. Nomokonov, Yu. E. Pudovochkin** and other authors of the materials of the 10th Russian Congress of Criminal Law on the theme “Criminological Foundations of Criminal Law” (May 26-27 of 2016, Moscow State University);

2) **M. P. Kleimenov** on the essence (scientific validity, compliance with international standards and national legislation, systematic and purposefulness in reducing crime and decriminalization of the society, ensuring criminological security), criteria for optimality (24 indicators), topical areas (crime prevention, improvement of legislation, optimization of law enforcement activities, criminological management, the international cooperation);

3) **D. A. Shestakov, M.P. Kleimenov, S. F. Milyukov and D.Yu. Goncharova** on criminology of the law, criminology of criminal law (justice), criminological law, the system of legislation on combating crime;

4) **O. N. Vedernikova, A. G. Kibalnik and I. M. Kleimenov** on comparative criminology and international criminal law, legal and criminological systems;

5) **A. B. Bekmagambetov** on criminological and criminal law systematization of acts related to trafficking in persons (the first key aspect) [50, P. 209-218]; and the structure of the policy of counteraction (the second key aspect) [51, P. 34-39; 763-772].

**References**


