

УДК 343.9

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РОЛЬ СОВРЕМЕННЫХ НАУЧНО-ТЕХНИЧЕСКИХ СРЕДСТВ В КРИМИНОЛОГИЧЕСКОЙ ПОЛИТИКЕ: ПРАВОВЫЕ ОСНОВЫ И МЕЖДУНАРОДНЫЙ ОПЫТ

АННОТАЦИЯ. В данной статье приводится обзор современных технических средств, таких, как системы видеонаблюдения и системы сбора и хранения информации об отпечатках пальцев, применяемых в целях предупреждения преступности в различных странах; также приводятся примеры правовых актов, составляющих нормативную базу их применения. Авторы упоминают различные подходы к криминологической политике; дают обобщение соответствующие теоретическим концептам, получившим развитие за последние столетия, таким, как критико-криминологическая, нео-биологическая теории теории повседневности. Тем не менее, основное внимание уделяется современной криминологической ситуации на международном уровне и международному сотрудничеству в области прогнозирования, предупреждения и расследования преступлений. В статье приводится ряд государственных институтов, ответственных за разработку и реализацию криминологической политики, с целью чего рассматривается криминологическая ситуация в различных странах с целью сравнения различных правовых систем.

КЛЮЧЕВЫЕ СЛОВА. Криминологическая политика, правовая политика, транснациональная преступность, международная преступность, международные полицейские организации, Интерпол, ООН, криминологические теории, санкционированный перехват информации, электронное наблюдение, видеонаблюдение, ДНК, отпечатки пальцев, мессенджеры, терроризм, радикализм, преступное поведение, международное сотрудничество.

ИНФОРМАЦИЯ О СТАТЬЕ. Дата поступления 11 января 2020 г.; дата принятия к печати 15 декабря 2020 г.; дата онлайн-размещения 31 декабря 2020 г.

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ROLE OF MODERN SCIENTIFIC AND TECHNOLOGICAL SOLUTIONS IN THE CRIMINOLOGICAL POLICY: LEGAL FRAMEWORKS AND INTERNATIONAL EXPERIENCE

ABSTRACT. The article provides an overview of certain technical solutions, used in different countries for crime prevention along with the basic legal framework. The authors mentioned various approaches to the criminological policy; summarized certain basic theoretical concepts developed within the last centuries, such as neo-biological, critical criminological and “everyday” theory. Discussing modern criminological situation at the international level, the authors stressed the importance of the international cooperation in the field of crime prediction, crime prevention, and crime investigation. Referring to the topic of governmental institutions responsible

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Baikal Research Journal

электронный научный журнал Байкальского государственного университета

for the criminological policies, the authors examined the situation in different countries to compare different legislative systems.

KEYWORDS. Criminological policy, legal policy, transnational criminality, international criminality, international police, INTERPOL, United Nations, criminological theories, lawful interception, electronic surveillance, video surveillance, DNA, fingerprints, messengers, terrorism, radicalism, criminal behavior, international cooperation.

ARTICLE INFO. Received January 11, 2020; accepted December 15, 2020; available online December 31, 2020.

Criminological policy as a practical implementation of the programs developed by the criminology dates back to the deviant behavior study of Emile Durkheim [1], “classic liberal” conceptions of legal rights known from sociological and philosophical works of Cesare Beccaria and Jeremy Bentham [2]. In its basics, it also applies to the principles of the Roman Law that turned barbarism of the Europe as a periphery of the Roman Empire to the civilization by providing a legal basis for creating “safe cities and adequate housing... supplies of water, food, clothing, arms, and other necessities” [3].

The basic idea of criminological policy is that by influencing determinants of criminal behavior one would be able minimize its manifestations. The variety of these determinants presented in all fields of social interaction — economy, policy etc. — makes criminological policy an interdisciplinary sphere of activity.

Furthermore, due to the internationalization of the criminality, research findings from different countries start to influence national criminological policies in a more and more significant way [4]. The richest nations of the world representing only 20 % of its population account about 86 % of its income [5]. The “open door policy” adopted by certain European and other states already made “refugee” the Germany’s “Word of the Year 2015” [6]. Although certain political implications of the recent years, like Donald Trump’s election, reflect some opposite tendencies as well, we can state that the world nowadays is “opened” like never before with 7,5 % of foreign population living in EU Member States in 2017¹ apart from the former migrants who already obtained the EU citizenships.

Regardless of the economic, political, philosophical matters adopted by the interest groups, the cross-border population flow worldwide determines the emergence of so-called globalized society and, naturally, globalized crime in all its manifestations: drug, weapon and human trafficking, political and religious extremism, illegal financial operations. Currently, UN divides all international crimes into 11 sections including crimes against property, crimes against public order, sexual crimes, crimes involving drugs, acts of corruption etc.²

An eminent international organization in the field of counteraction to criminal activities is International Police Organization (INTERPOL), General Secretariat located in Lyon, France, uniting 186 Member Countries. Main functions of INTERPOL are as follows: securing police communications services, operating databases, operational police support services, training and development³. Apart from the INTERPOL, may could mention among the others the International Criminal Court (ICC), UN Interregional Crime and Justice Research Institute, a number of regional cooperation platforms like the Regional Anti-terrorist Structure of the Shanghai Cooperation Organization.

Nowadays, only few countries can afford a criminological policy targeting the determinants of criminal behavior on their most initial stage — from birth of an individual. These and other international organizations focus mainly on the criminal and post-criminal stages of the

¹ Migration and migrant population statistics // Eurostat. URL: <https://ec.europa.eu/eurostat/statistics-explained/index.php?oldid=333323>.

² Ibid.

³ International Criminal Police Organization (Interpol). URL: https://www.un.org/sc/ctc/wp-content/uploads/2017/02/icpo_background-Information.pdf.

criminal act. This policy is based on the fact that imminence of the punishment will influence the determinants of criminal behavior on different stages of the criminal act. In this paper, the authors focus on modern investigation and surveillance technics adopted by different countries and international community.

Certain factors would constitute obstacles to the creation of the truly “international” criminological policy. Nowadays, among the broad masses of population there is a tendency to call adopting the practices imported from the most “developed” countries the “internationalization”; it should be mentioned, that by adopting any methods of criminological policy the governmental institutes should take into account special characteristics, historical experience and sovereign interests of their nations. Thus, Memorandum of Freiburg composed by a group of German criminologists is expressing their dissatisfaction of the domination of the Anglo-American influence in this field [7].

Moreover, it is not a secret that interests of different countries can contradict to each other in terms of fighting or supporting criminal activities. In 2000, when holding the governor position in Fujian Province, President of China Xi Jinping characterized American asylum policy as follows: “China and Fujian alone cannot solve the problem of human smuggling; the international community must join hands in eradicating it. It would be hard to stop human smuggling as long as some countries make a fuss over political [and] human rights...” [8].

In the last two centuries, criminological theories have undergone numerous transformations. However, all of them gravitate either to the “biological” theories first developed by Cesare Lombroso in 1876 or to the “sociological” theories by the French School, first represented by Alexandre Lacassagne and Gabriel Tarde. At the present time, we can mention three most influential criminological schools:

Critical Criminology, also known as Labeling Approach, emerged during the “Cultural Revolution” in Western Europe and USA in the 1960s and represents the point of view, according to which responsibility for increasing criminal activity lies, at least partly, on the system of criminal justice;

“Everyday” theories are defying criminality as “rational choice” between legal and illegal ways to achieve one’s targets. They apply economic models to the social reality and therefore are often called “economic theories”;

“Neo-Biological” theories correspond with conservative political theories and apply to the cognitive categories and their relations to the predisposition to criminal behavior, combining them with critical analyze of the modern social support programs [9].

Accordingly, surveillance and investigation technics on the pre-criminal stage or earlier can influence those individuals whose actions are determined mainly by “reasonable”, logical decisions. It corresponds with the domination of market ideology; accordingly, we assume that “Everyday Theories” influence the criminological policy in a very significant way.

From the organizational perspective, in different countries, criminological policy is implemented by different governmental departments. In United States, the tasks of criminal policy implementation are usually entrusted to Department of Justice (especially by the Office of Justice Programs — OJP) and Police Departments along with other organizations like White House Office of National Drug Control Policy [10]. In Germany, as departments in charge, we could call Ministries of Internal Affairs (different for each Land), Ministries for Work and Social Order, Ministries for Justice [11]; the work is coordinated by the Standing Committee of the Ministry of Internal Affairs and Standing Committee on the Crime Prevention. In Russia, these tasks are assigned to the Ministry of internal Affairs, cultural-, sport- and leisure-related governmental institutions [12].

In China, from the theoretical perspective, the bridge function between public policy (公共政治) and criminology (犯罪学) takes the “Kongzhi Fanzuixue” (制度犯罪学) that can be understood as “systematized (or «institutionalized») criminology” [13]. Due to special characteristics of state management, even the Central Committee and National Congress attaches impor-

tance to these issues; accordingly, other institutions like Ministry of Justice will be included into such comprehensive projects as, for example, reduction of juvenile delinquency [14].

Concerning the implementation methods of the criminological policy, we can mention many findings that shaped the modern stage of security technologies. Among the others, these are high-resolution security cameras, GPS-tracking, body, luggage and transport scanning, global satellite surveillance, fingerprints and DNA databases. Many of them were developed as technologies for military use. Apart from that, may need to mention that emergence of such communication channels like mobile communication, social networks and instant messengers produces quite a twofold process. From one side, it expands the possibilities for information exchange for both law-abiding citizens and offenders. For example, it is known that Al-Qaeda and Islamic State along with others radical groups widely use Twitter and Telegram [15]. One of the most infamous terrorist acts coordinated with the use of them took place on 13. November 2015 in Paris [16].

From the other side, it expands the possibilities of the interception as well. In the most of the countries, interception is generally prohibited by law, at the same time the prohibition can be breached under certain circumstances. In the US, these circumstances are generally prescribed by the Electronic Communications Privacy Act 1986 (ECPA) and Foreign Intelligence Surveillance Act 1978 (FISA). The first piece of legislation is related primary to the crime investigation and the second, respectively, to the concerns of national security, which are classified and related to communications between anybody in the world, though it requires an authorization from a court or the White House [17]. Later, the Communication Assistance for Law Enforcement Act clarified the obligations of telecommunication services providers (TSPs) to assist the law enforcement in the lawful interception⁴.

More or less, the legislation in European countries applies the same fundamental principles, although interception by a foreign country without a sanction would be considered as interference⁵. Therefore, the discourse on the interception as a part of the criminological policy worldwide can be reduced to the question about the rightfulness of the interception without the authorization by court and misuse of the extracted information. In should be mentioned many systems of electronic surveillance do not require any warrant, for example: in-car video systems, body-worn video devices, CCTV (Closed Circuit Television) cameras, body, luggage and transport scanning. Biometric information technologies along with “real name registration systems” in many cases also are used without any special authorization.

Different attitudes are applied to the anonymity of the netizens. In South Korea, from 2007 to 2011 was conducted an experiment on real name registration system due to the increase of abusive comments, though only several big internet platforms were involved. The users were required to submit their Resident Registration Numbers; the experiment failed because Korean users massively moved to foreign platforms [18]. In China, Internet users must provide their real names to the providers, although they still can adopt pseudonyms for online posts [19].

Even the SMS instant messaging can constitute certain obstacle in terms of identification due to the use of the prepaid phones available without any registration in the simple stores in the countries like Germany. In Italy, however, the buyer should provide his information to the proprietor; the proprietor is required to register all such purchases⁶. In the internet cafes, normally, the identification is nearly impossible, although there are exceptions: in China, visitors are required to register with their identification cards⁷.

⁴ Current Practices in Electronic Surveillance in the Investigation of Serious and Organized Crime. New York : United Nations, 2009. 39 p.

⁵ Ibid.

⁶ Ibid.

⁷ New fears over cyber-snooping in China // The Guardian. 2008. 4 December. URL: <https://www.theguardian.com/world/2008/dec/04/china-privacy-cyber-snooping>.

Apart from the electronic surveillance systems, there are such identification methods as DNA and fingerprints. In the US, taking the DNA sample is legitimate under the Fourth Constitutional Amendment that allows taking the DNA sample when making the arrest for a serious crime. In China, a law passed in 1999 granted generally the same rights to the Ministry of Justice and Ministry of Interior; in Germany, DNA samples can be collected only from the individuals that committed a serious crime⁸. In Russia, DNA sampling was justified in 2008 by the adoption of the Federal Law 242 on the “State genome registration in the Russian Federation”. According to the seventh article of the Law, genome registration is mandatory for the individuals guilty of serious and very serious crimes or sex crimes⁹.

Unlike the DNA databases that are being implemented actively during the last decades, fingerprints as identification method have a long history of about 150 years. As Jilu Eapen mentions, “the Indian Evidence Act, 1872 contains provisions wherein fingerprints are considered as a valid piece of evidence” [20]. In Russia, according to the ninth article of the Federal Law #128 on the “State fingerprinting registration in the Russian Federation” apart from the criminals and criminal suspects some other categories of individuals must register their fingerprints as well, for example: military personnel, police and national security officers, refugees¹⁰. The law entered into force in 1998.

In China, in accordance with the Law on the Citizens Identification Card, revised in 2012, among the other biometrical data ID card should contain fingerprints as well¹¹. No need to mention, that foreign nationals are required to submit their fingerprints as well; for example, fingerprint-collecting machines are installed in the airports. In Germany, only foreign nationals are required to submit their fingerprints [21], however, the latest debates in EU-Commission reflects the plans to expand that requirement on EU-citizens as well “to leave no room for terrorists and criminals”, as EU-Commissioner for Internal Affairs Dimitris Avramopoulos mentioned [22]. The legislation of the fingerprints collection in USA is similar to the Russian legislation, although certain differences also exist. For example, along with military- and government-related jobs, teaching jobs also imply fingerprints submission¹².

Systems of crime-prevention dedicated to the identification of the criminal influence the individual's behavior on all stages of the criminal act: forming of the personality (by observing the overall criminal situation), pre-criminal stage (by deciding between legal and non-legal actions), criminal and post-criminal stage (by deciding between degrees of severity of the crime). Thus, measures like that can effectively suppress determinants of criminal behavior that lie in the field of economy, social conditions, religion, policy, however, they are not able to influence them directly.

Surveillance and investigation technics on their latest development stage give rise to legal, moral, social and political disputes due to the obvious contradiction of their nature and principles of privacy guaranteed by numerous legal acts both on national and international levels. In particular, 12th article of the United Nation Universal Declaration of Human Rights says that “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence”¹³. It does not specify, however, how the term of “arbitrary interference” should

⁸ Report № 271. Human DNA Profiling — A draft Bill for the Use and Regulation of DNA-Based Technology / Government of India. New Delhi, 2017. 91 p.

⁹ State Genome Registration in the Russian Federation : Federal Law 242 on the 3 December 2008 // Rg.Ru. 2008. 9 December. URL: <https://rg.ru/2008/12/09/genom-registraciya-dok.html>.

¹⁰ State Fingerprinting Registration in the Russian Federation : Federal Law #128 on the 25 July 1998 // Ministry of Internal Affairs. URL: https://мвд.рф/upload/site1/folder_page/008/688/825/mpdf128_pdf.pdf.

¹¹ Information Letter on the Fingerprint Registration and stopping of the 1st Generation Citizen ID usage. URL: http://www.chinapeace.gov.cn/2012-05/31/content_4421607.htm.

¹² Fingerprints: The First ID. FindLaw. URL: <https://criminal.findlaw.com/criminal-procedure/fingerprints-the-first-id.html>.

¹³ Universal Declaration of Human Rights // United Nations. URL: <http://www.un.org/en/universal-declaration-human-rights/index.html>; International Classification of Crimes for Statistical Pur-

be interpret. Moreover, information leakage that became usual in the era of internetization constitute additional risks for individuals in terms of personal data protection. Thus, one of the most challenging issues regarding the usage of surveillance technics in the criminological policy is the protection of the personal data and strong legal framework precluding the “unlawful” usage of “lawful” extracted materials, as well as training of the qualified specialists in electronic surveillance and other related disciplines.

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Для цитирования

Атабеков К.К. Роль современных научно-технических средств в криминологической политике: правовые основы и международный опыт / К.К. Атабеков, Г.Д. Костенко. — DOI : 10.17150/2411-6262.2020.11(4).14 // *Baikal Research Journal*. — 2020. — Т. 11, № 4.

For Citation

Atabekov K.K., Kostenko G.D. Role of Modern Scientific and Technological Solutions in the Criminological Policy: Legal Frameworks and International Experience. *Baikal Research Journal*, 2020, vol. 11, no. 4. DOI: 10.17150/2411-6262.2020.11(4).14.