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Conceptual Basis of Mechanism of Criminal Legislation Creation and its Realization

*With regard to absence of thorough researches of mechanism of criminal legislation creation and implementation in theory of criminal law, and taking into account correlation of this category with criminal law and criminal-legal relations, the **purpose** of this article is to study the conceptual framework of mechanism of criminal legislation creation and its realization. Taking into account the specifics of the topic, goals and outlined objectives, various general scientific, special-scientific and philosophical **methods** were used for an objective study of the subject and for formation of sound conclusions. Among them, in particular, systematic method was used in studying mechanism of criminal legislation creation and its implementation as a single integral phenomenon consisting of component elements; dogmatic method – to identify shortcomings and explore the possibilities for improving of structure of mechanism of criminal legislation creation and its implementation; logical-semantic – in the process of in-depth study of categorical-conceptual apparatus concerning the structure of this mechanism. In order to ensure the formation of new proposals (based on already existing in special literature) with regard to definition of structure of mechanism of criminal legislation creation and implementation, a method of generalization was applied. **Scientific novelty.** The article deals with the conceptual grounds of mechanism of criminal legislation creation and implementation. It is substantiated that criminal legal regulation is a process that covers both the creation of criminal legislation and its implementation. It has been proved that in the narrow sense criminal legal regulation can be reduced to the implementation of criminal legislation in forms of observance, execution, use and application. Its subject, rules of regulation, stages and forms of realization have been defined. **Conclusions.** It is argued that the subject of criminal legal regulation form four groups of social relations that arise in connection with: 1) omission from committing of socially dangerous acts stipulated by Special part of Criminal Code of Ukraine (within the limits of positive criminal responsibility); 2) committing crimes; 3) causing harm in the circumstances excluding the criminal character of the act; 4) commission of socially dangerous acts stipulated by Special Part of Criminal Code of Ukraine which are not recognized as crimes. The author states that criminal legislation is created specifically for the settlement of social relations that arise in connection with the commission of a crime or other socially dangerous act stipulated by Criminal Code of Ukraine. The rules for regulating these social relations are enshrined in the relevant criminal legal norms which are the basis for the implementation of criminal legislation. In addition, it has been proved that the creation and implementation of criminal legislation should be regarded as separate, albeit interrelated, but independent stages or levels of criminal legal regulation. The initial stage of the mechanism of criminal legal regulation of social relations is the creation of criminal legislation, and the final one – its implementation. Creation and implementation of criminal legislation are components of not only of criminal legal regulation, but also forms of implementation of criminal legal policy, elements of the mechanism of criminal law, components of criminal legal practice, etc.*

Keywords: criminal legislation; realization; mechanism; criminal responsibility; criminal legal regulation; criminal legal relations; criminal legal norm.

Introduction

The mechanism for the creation and implementation of criminal legislation is functioning within the framework of criminal legal regulation of social relations. This, on the one hand, obliges to find out the place of processes of creation and implementation of criminal legislation in the criminal legal regulation of social relations, and from the other, provides an opportunity to establish the correlation of these phenomena and their interconnection. This fact also allows to use the doctrine of the mechanism of criminal legal regulation for the development of the theory of the mechanism of criminal legislation creation and implementation. With regard to absence of relevant researches on the problem of the mechanism of criminal legislation creation and implementation in criminal law science (unlike of studies of the problem

of criminal legal regulation of social relations), this issue becomes of particular relevance.

Analysis of recent research. The topical issues of criminal legal regulation of social relations were investigated by such scholars as Yu. Baulin, P. Berzin, N. Gutorova, O. Dudorov, I. Mitrofanov, O. Naden, V. Navrotsky, A. Naumov, M. Panov, Ye. Skulish, V. Shakun, S. Shapchenko and others. (Babanina, 2018, p. 81). It is hardly possible to overestimate the value of work performed and contribution to science of criminal law, both to the scientific school in general and its individual representatives in particular (Panko, 2014, p. 294). Despite of multi-faceted fundamental premises un criminal law doctrine researchers are still going back to its study and discussion (Babanina, 2018, p. 133).

Despite the considerable work of the aforementioned scholars, there is still no substantial

development in the theory of criminal law regarding the mechanism for the creation and implementation of criminal legislation. Only some aspects of the concept of the mechanism and the realization of certain branches of law were investigated in the writings of domestic and foreign scientists (Beskova, 2016; Chirkov, 2009, p. 36; Tarusina, 2014, p. 314-324; Trofimov, 2013, p. 1770).

Since the implementation of criminal legislation takes place within the framework of legal and criminal legal regulation of social relations, it is worth starting with the mechanisms of these legal categories. Criminal legislation requires a thorough and system monitoring as well as a comprehensive study of its improvement (Babanina, 2018, p. 163). Criminal legal regulation of social relations is the subject of research of specialists in various fields of knowledge (Anthony, 1994; Freudenthal, 1960, p. 125-126; Summers, Schwarzenegger, Ege, & Young, 2014; Lon, 2018, p. 87-93; Grin, 2018; Belonosov, 2018, p. 27-34).

The purpose

Today it is timely and necessary to study the conceptual foundations of the mechanism for the creation of criminal legislation and its implementation. The urgency of the study of this category is determined by its connection with criminal legal regulation and criminal and legal relations.

Therefore, the purpose of the article is to study conceptual foundations of mechanism for creation of criminal legislation and its implementation.

According to the purpose, the following task must be solved: to reveal the content of criminal legal regulation, its subject, rules of regulation, stages and forms of implementation, as well as the relationship with the mechanism for creation and implementation of criminal legislation.

Presentation of the main material

The correct definition of the concept of criminal legal regulation, its subject makes it possible to clearly define the essence and limits of the effect of investigated mechanism for the creation and implementation of criminal legislation. The Criminal Code of Ukraine does not contain a number of concepts (Truntcevskii, 2015), the content of which should be the essence of the most significant for the doctrine of criminal law categories. Therefore, we will analyze views of scientists on the subject of our study.

Yu. V. Baulin proposes criminal legal regulation to regulate the criminal activity of the state activity regarding the application of criminal liability and other criminal justice response of those who commit crimes (Baulin, 2018, p. 24). Of course, criminal law generally covers the activities of scholars. However, this understanding of criminal legal law category is somewhat narrowed, since it is limited to the

application of certain criminal legal measures only to those who committed crimes.

For the same reason, it is impossible to agree with N. Henrych, who argues that criminal legal regulation is subject to only those relations that are formed between a person who committed a crime and the state, since it regulates the regulation of the rights and obligations of participants in these relations through specially created criminal law (Genrikh, 2011, p. 12).

A. Vozniuk criminal and legal regulation of social relations determines too widely as implemented by the state through the means established in the Criminal Code of regulation of social relations, their consolidation, protection, protection and development (Vozniuk, 2016, p. 159). The above definition, on the contrary, has a broader meaning, however, in order to understand its content, it is necessary to find out what the author understands under the means fixed in the Criminal Code. Moreover, it is unclear what the indicated means are and what exactly they concern?

G. Petrova proposes the following definition of criminal and legal regulation – it is an independent element of the system of legal regulation of social relations, which allows to organise the activities of people and carried out with help of criminal and legal norms relations (Petrova, 2003, p. 259). The limitation of this definition is due to the fact that, in addition to criminal law and criminal and legal relations, there are other components of criminal law regulation. At the same time, it is unclear what relations the researcher attributes to criminal law.

Criminal and legal regulation (in the broadest sense) V. Smirnov defines as the influence of the norms of criminal legislation in the order of exercising the function of protection on various social relations. The author reduces this influence to the creation of conditions for the implementation of certain regulations, but not to their organization (direct regulation). Criminal regulation in the narrow sense – is the establishment through the rules of criminal law of rights and obligations of parties in social relations, arising in the case of a crime (Smirnov, 2014, p. 16-17, 30-32). The defects proposed by V. Smirnov are due to a limited view of criminal law regulation if it is viewed as social relations that arise in the case of a crime, which has already been emphasized.

We can not agree neither with broad nor with a narrow understanding of the term «criminal legal regulation» proposed by the author. If we already consider criminal and legal regulation in the broadest sense, then it is worth pointing out the creation of a criminal law, and then on its implementation. That is, in our opinion, criminal legal regulation is a process that covers both the creation of criminal legislation and its implementation. At the same time, the influence of the

author speaks precisely after creation of criminal legislation, when available means of such influence, primarily in the form of criminal law. At the same time, in narrow sense, criminal legal regulation can be reduced to implementation of criminal legislation in the form of observance, implementation, use and application of criminal law.

More conscientious, in our opinion, is the statement of N. Gutorova that regulation of criminal legal relations is an ordering with the help of norms of criminal law and combination of legal means of social relations between a person who committed a socially dangerous act envisaged by criminal law, and the state regarding the application of criminal liability and (or) other criminal legal measures (Ghutorova, 2018, p. 107). The emphasis on organization of social relations confirms our hypothesis that criminal law regulates the mechanism of creation of criminal legislation and its implementation.

According to N. Hutorova, the legal fact that creates these relations is the commission of a person, foreseeable by criminal law, a socially dangerous act, which is the basis for the application of criminal legal measures. That is, it refers to both crimes and other socially dangerous acts (in particular, committed by persons on whom, according to criminal law, coercive measures of medical or educational nature may be applied) (Ghutorova, 2018, p. 107). This position is rational in that it concerns not only the person who committed the crime but also other persons who committed socially dangerous acts, but are not subject to criminal liability. After all, except for the subjects of the crime within the limits of criminal legal regulation, their rights and duties are implemented by other subjects, in particular, those who committed a socially dangerous act, but are not recognized as the subjects of the crime. Such a conceptual vision of criminal legal regulation was also taken as the basis by individual scientists carrying out criminological research. In particular, A. Vozniuk, it is obvious that it is correct that the term «prevention of crimes» is also imperfect, since it does not cover cases of making socially dangerous acts that can not be considered crimes, for example, because of the insanity of those who committed them, or failure to reach the age from which criminal liability may arise. Therefore, the scientist proposes to apply a broader term – «prevention of socially dangerous acts» (Vozniuk, 2016, p. 158).

Based on the above said positions, in our opinion, it would be advisable to take the formulated by N. Gutorova understanding of criminal legal regulation as the basis for determining its subject.

Defining the subject of criminal law allows to establish what criminal law regulates. After all,

before securing certain provisions in criminal law, it is necessary to know what regulates this branch of law and legislation. You can also implement only what is regulated by the relevant branch of law.

Interesting and original is the position of V. Navrotsky, which refers to the subject of criminal law norms regulating social relations, which are formed in connection with existence of such phenomena as: a crime; punishment; measures alternative to punishment; grounds and conditions for exemption from criminal liability or from punishment for a crime; circumstances that exclude the crime of an act containing certain features of a crime (Navrotskyi, 2013, p. 19-20). As a whole, not denying this position it is worth emphasizing that some of the phenomena allocated to them can be conventionally called primary (for example, a crime), while others are secondary (for example, punishment, grounds and conditions for exemption from criminal liability). However, the list of phenomena proposed by scientists seems inexhaustible, and therefore it should be supplemented by other, in particular, socially dangerous acts provided for by the Special Part of the Criminal Code of Ukraine, which is not recognized as a crime.

One of the most common concepts of subject of criminal legal regulation is its definition through the prism of social relations. The views of scientists within this concept differ significantly. G. Petrova considers criminal law to be the subject of criminal legal regulation (Petrova, 2003, p. 259). However, such an author's statement does not allow to the full cover the content of this concept, since it does not reveal the content of criminal law relations.

O. Naden defines the subject of criminal legal regulation as a criminal legal relationship that arises from the moment of the commission of a criminal offense and exists until the moment of realization of the criminal liability for it, unless the state for certain reasons (exemption from such liability) will not terminate them earlier (Naden, 2012, p. 29). However, this understanding of the subject of criminal law seems to be somewhat incomplete, since in criminal law, along with criminal liability and exemption from it, there are other norms and institutions that are not part of it. This includes compulsory medical treatment, compulsory treatment, special confiscation, criminal measures against legal persons.

In this connection, attention is drawn to a wider approach, in particular, proposed by A. Naumov, who calls three main types of relations that together constitute the subject of criminal legal regulation: 1) the criminal legal relations that arise in connection with the crime committed between a

person who committed a criminal act and a state represented by a court, an investigator, a prosecutor, a body of inquiry; 2) relations related to the detention of a person from the commission of a crime, with the threat of punishment contained in the criminal law; 3) relations regulated by criminal law, which grant citizens the rights to cause harm in defense against dangerous encroachments in the necessary defense, as well as in acute need and other circumstances that exclude the crime of the act (Naumov, 1996, p. 5-10). A similar position is taken by I. Mitrofanov arguing that criminal law regulates social relations: 1) directly related to the detention of a person from the commission of a criminal offense; 2) arising in connection with the commission of a person of a socially dangerous act, which contains the composition of a criminal offense established by the legislation of Ukraine on criminal liability; 3) arising in connection with the granting of the right to a person to cause damage to the interests of a person, society, state and humanity protected by law in the presence of certain legal facts – circumstances that eliminate the criminal offense of the act (Mytrofanov, 2016, p. 97). Some of the criteria acquire new content, more substantiated and relevant to modern reality (Danilenko, 2009). In our view, it is impossible to reduce criminal law only to social relations that arise in connection with the commission of a crime or lawful actions of a person within the limits of the circumstances excluding the crime of the act. After all, there are still persons who committed socially dangerous acts provided for in the Criminal Code of Ukraine, but are not recognized as the subjects of crime.

In view of the above, it is important to clearly identify which varieties of social relations form the subject of criminal law regulation. In our opinion, these are four groups of social relations that arise in connection with: 1) keeping a person from committing socially dangerous acts provided for by the Special Part of the Criminal Code of Ukraine (within the limits of positive criminal liability); 2) committing crimes; 3) causing harm in circumstances that exclude the crime of an act; 4) the commission of a person of socially dangerous acts provided for by the Special Part of the Criminal Code of Ukraine, which are not recognized as crimes.

In this regard, one of the most acceptable seems position of A. Vozniuk, which suggests the subject of criminal law regulation defined as a set of criminal legal rules of social relations that arise in connection with the commission of a crime or other socially dangerous the act of the envisaged Criminal Code of Ukraine (Vozniuk, 2016, p. 159). This definition is consistent with the position of

N. Gutorova regarding the understanding of criminal legal regulation (Ghutorova, 2018, p. 107).

On this basis, it can be concluded that criminal law is created specifically for the settlement of social relations that arise in connection with the commission of a crime or other socially dangerous act provided for in the Criminal Code of Ukraine. The rules for regulating these social relations are enshrined in the relevant criminal legal rules, which are the basis for the implementation of criminal law.

Creation and implementation of criminal legislation are important in the criminal and legal regulation of social relations. However, the question of their role in this regulation is controversial, and the views of scientists are ambiguous. Often, the creation and implementation of rights are associated with the stages of legal influence and regulation.

S. Alekseev argues that the legal influence in all cases takes place in three main stages: 1) the general effect of legal norms, which regulates the behavior of subjects, the definition of the content of this behavior, the conditions for the emergence of rights and responsibilities, etc.; 2) the emergence of subjective rights and obligations (legal relationships), in which specific subjects become carriers of subjective rights and obligations; 3) the realization of rights and obligations, in which rights and obligations are realized in life, are embodied in the actual behavior of subjects (Alekseev, 2010, p. 153). Analysis of the position of S. Alexeyev in the context of the creation and implementation of criminal law allows to identify some defects in it. In particular, the second stage, in our opinion, should be combined with the third, since it is impossible to imagine the mechanism for the implementation of criminal law outside the criminal law relationship or in isolation from them. Relevant rights and obligations enshrined in criminal legal rules, are realized only as a result of the emergence of criminal-legal relations. Therefore, S. Alekseev interprets the concept of realization of rights and obligations too restrictively.

It is noteworthy M. Panov statement that this regulation is carried out in different ways: by recognizing in the law of criminal liability the acts of crime and establishing criminal liability for them; influence of the legally established system of norms of criminal law which entered into force, on public life, consciousness and behavior of people, and also by means of realization of criminal responsibility in the presence of the grounds stipulated by law and in the manner prescribed by law for persons who commit such acts (Panov, 2018, p. 29). The opinion of a scientist, although not reflecting all aspects of criminal law regulation, however, confirms the concept of the relationship between mechanisms for

the creation of criminal legislation and its implementation.

Interesting is the position of O. Groshev, according to which criminal legal regulation is a complex process, which has a three-tier structure: 1) the level of criminal legal regulation of social relations; 2) the level of implementation (actions) of the rules of criminal law; 3) the level of application of the rules of criminal law. In the dynamic mode, these levels can be considered as stages of criminal legal regulation (Groshev, 1997, p. 49-50). However, this position also gives rise to certain remarks. After all, if you follow logic of author, we can conclude that the implementation of criminal legislation is an independent and equal process in relation to application of criminal law. However, such a statement offset theoretical developments regarding the forms of implementation of criminal legislation, where application is one such form. At the same time, the author's assertion about the criminal and legal regulation of social relations is impressive, since we consider that this level is most closely connected with the mechanism of the creation of criminal legislation.

A. Abramova argues that the initial stage of the mechanism of legal regulation should be marked as the implementation of the legal fact provided by the rule of law. The second stage of the mechanism of legal regulation is the implementation of legal regulations. The realization of subjective rights and responsibilities proceeds within the framework of legal relations, and not beyond their borders. The emergence of rights and obligations of subjects is absorbed by the stage of implementation of the law (Abramova, 2006, p. 179). Disadvantages A. Abramova's position lies in the fact that the implementation of criminal legislation, in our opinion, is impossible without certain legal facts. The corresponding legal facts, on the contrary, should be considered within the framework of the mechanism for the implementation of criminal law.

Somewhat ambiguous is the statement of A. Abramova that the process of lawmaking is in the field of legal regulation, but not covered by category «mechanism of legal regulation» (Abramova, 2006, p. 179). Interpreting this position in the criminal law should agree that the creation of criminal law is in the field of criminal law. However, it is obvious that illogical is the fact that creation of criminal legislation is not covered by mechanism of criminal legal regulation.

The legal basis for legal regulation on the conviction of S. Alekseev is the legal norms – that from which the legal effect «everything begins» (Alekseev, 2010, p. 155). Therefore, criminal law is the basis of criminal legal regulation. Consequently, the creation of criminal legislation is directly related

to criminal law regulation. As S. Alekseev rightly observes, legal regulation has its own, so to speak, «prehistory». This is the formation of the law, on which the quality of the normative basis of legal regulation, its power and effectiveness (Alekseev, 2010, p. 155).

One of the most branched-out conceptual views at the stage of criminal law regulation was expressed by P. Berzin. According to the scientist, the following stages are recognized as obligatory stages of criminal legal regulation:

1) the formation (or creation) of criminal legal norms-permissions and norms-prohibitions. At this stage, criminal law is created as a «component» of the criminal law, as well as the subjective rights and legal obligations of the participants in criminal and legal relations are established;

2) «objectification» of criminal legal relations, it is associated with the onset of specific life circumstances, which are stipulated in the already established norms-permissions and norms-prohibitions as a «factor», which predetermines the existence (occurrence or change) of criminal law relations. The specified circumstances of life are called legal facts and «engage», they result in special security criminal relations;

3) the implementation of criminal legal norms-permissions and norms-prohibitions is associated with the implementation of the existing criminal-legal relations (that is, those criminal-legal relations that have already arisen or changed) the legal obligation to refrain from violating the norms-prohibitions (to adhere to such prohibitions);

4) application of criminal legal norms-permissions law and norms-prohibitions. Since the implementation of the rules of criminal law is impossible without the involvement of law enforcement agencies authorized by the state, the stage of application of criminal law should be recognized as mandatory for criminal law regulation, and the relevant acts of the application of the rules of criminal law as a phenomenon of legal reality – the basic, relatively independent element of the mechanism of criminal-legal regulation (Berzin, 2018, p. 50-52).

We follow a conceptually different view at the stage of criminal an legal regulation. In this regard, in our opinion, «objectification» of criminal and legal relations, as well as the application of criminal law is an integral part of the implementation of criminal legislation, and not independent stages.

Thus, the creation and implementation of criminal legislation should be considered as separate, though interrelated, but independent stages or levels of criminal and legal regulation. Therefore, it can be argued that the initial stage of

the mechanism of criminal and legal regulation of social relations is the creation of criminal legislation, and, ultimately, its implementation.

It is correct by P. Berzin that the content of the stages of criminal and legal regulation depends on how the process of formation, objectification, implementation and application of criminal law influences the regulation of the behavior of participants in criminal law relations, as well as the significance in this process of the means and methods of criminal legal regulation (Berzin, 2018, p. 50).

It is also important that mechanism of creation and implementation of criminal legislation is an integral part of not only criminal law regulation, but also other criminal categories, which only increases its scientific and practical value.

Creation and implementation of criminal legislation can be attributed to the forms of implementation of criminal law policy. M. Lopashenko offers to forms of realization of criminal and legal policy include law-making and law-enforcement activities (Lopashenko, 2004, p. 317). Yu. Permyakov highlights the following forms of implementation of criminal policy as law-making, law enforcement activities, legal education, legal propaganda (Permyakov, 2003, p. 9-10). Instead I. Zvecharovsky emphasizes that there are three main forms of the implementation of criminal policy: lawmaking, the application of law, influence on legal consciousness and legal culture (Zvecharovskii, 2001, p. 76).

If we proceed from the statement of A. Abramova that the mechanism of law enforcement covers its content of such legal categories as «mechanism of legal influence», «mechanism of legal regulation», «mechanism of law-making» (Abramova, 2006, p. 178), it can be concluded that the mechanism for the creation of criminal legislation is not only in the mechanism of criminal law regulation, but also in the mechanism of the criminal legislation. V. Lenchik defined the following stages (stages) of the functioning of the mechanism of the law (the mechanism of law-making, the mechanism of law-making and the mechanism of law-enforcement) (Lenchik, 2002, p. 162).

O. Naden notes that criminal legal regulation is carried out on two levels: the normative (legislative, law-making) and individual (law-enforcement), that is, includes both law-making and law enforcement (Naden, 2012, p. 243). In fact, what other scientists call the stages O. Naden interprets as levels. In general, the idea is interesting, but in our opinion, needs some refinement. For law enforcement does not exhaust all forms of the implementation of

criminal law. In view of this it is more logical to talk about the right implementation or implementation of criminal law.

In the dissertation of I. Vishnevetska the wide understanding of criminal legal practice as a practical legal activity on the publication, interpretation, realization of criminal legal requirements, which is inextricably linked with accumulated criminal legal experience, is substantiated. Thus, the concept of criminal law practice is not limited to questions of law enforcement, in particular, judicial practice in criminal cases, but covers the whole spectrum of practical legal activity in criminal law-making, interpretation (interpretation) and implementation of criminal law, accumulation, accumulation (selection) in the process of such a certain social and legal experience. Such a broad approach to defining the concept of criminal legal practice can provide an association within the same category of processes and criminal law-making, and right-realization (Vishnevetskaia, 2008, p. 182).

Thus, the creation and implementation of criminal law should be recognized as certain components of not only criminal legal regulation, but also the forms of implementation of criminal legal policy, elements of mechanism of criminal law, components of criminal and legal practice, etc.

Scientific novelty

In accordance with the goal, based on the study of the conceptual foundations of the mechanism for the creation of criminal legislation and its implementation, the content of criminal and legal regulation, its subject, rules of regulation, stages and forms of implementation, as well as the relationship with the mechanism for the creation and implementation of criminal legislation are disclosed. The main forms of the implementation of criminal law is the observance, execution, use and application of criminal law. Although in the narrow sense, criminal and legal law regulation can be reduced to the implementation of criminal law in these forms, however, it generally covers the mechanism for the creation and implementation of criminal legislation. Rules of regulation, which are the basis of the implementation of criminal law, are enshrined in the relevant criminal law. It is argued that the creation of criminal legislation is the initial stage of the mechanism of criminal and legal regulation of social relations, and its realization as the final. In addition, it is proved that the mechanism for the creation and implementation of criminal law functions within the framework of criminal and legal regulation of social relations.

Conclusions

That criminal legal regulation is a process that covers both the creation of criminal legislation and its implementation. In the narrow sense criminal legal regulation can be reduced to the implementation of criminal legislation in forms of observance, execution, use and application. Its subject, rules of regulation, stages and forms of realization have been defined. That the subject of criminal legal regulation form four groups of social relations that arise in connection with: omission from committing of socially dangerous acts stipulated by Special part of Criminal Code of Ukraine (within the limits of positive criminal responsibility); committing crimes; causing harm in the circumstances excluding the criminal character of the act; commission of socially dangerous acts stipulated by Special Part of Criminal Code of Ukraine which are not recognized as crimes. Creation and implementation of criminal legislation are components of not only of criminal legal

regulation, but also forms of implementation of criminal legal policy, elements of the mechanism of criminal law, components of criminal legal practice, etc. The creation and implementation of criminal legislation should be regarded as separate, albeit interrelated, but independent stages or levels of criminal legal regulation. The initial stage of the mechanism of criminal legal regulation of social relations is the creation of criminal legislation, and the final one – its implementation. The criminal legislation is created specifically for the settlement of social relations that arise in connection with the commission of a crime or other socially dangerous act stipulated by Criminal Code of Ukraine. The rules for regulating these social relations are enshrined in the relevant criminal legal norms which are the basis for the implementation of criminal legislation.

REFERENCES

- Abramova, A.A. (2006). Effektivnost mekhanizma pravovogo regulirovaniia [The effectiveness of the legal regulation mechanism]. *Candidate's thesis*. Krasnoiarsk [in Russian].
- Alekseev, S.S. (2010). *Sobranie sochinenii [Collected works]*. (Vols. 1-10). Moscow: Statut [in Russian].
- Anthony, I.O. (1994). *Regulation Legal Form and Economic Theory*. Hart Publishing. doi: 10.5040/9781472559647.ch-005.
- Babanina, V. (2018). Definition of the Criminal Legislation and its Correlation with Criminal Law. *Naukovyi visnyk Natsionalnoi akademii vnutrishnikh sprav, Scientific Journal of the National Academy of Internal Affairs*, 4(109), 133-145. doi: <https://doi.org/10.33270/011810904>.
- Babanina, V. (2018). Significance of Some Legal Principles at the Stage of Creation of Criminal Legislation. *Yuridichnyi chasopys Natsionalnoi akademii vnutrishnikh sprav, Law Magazine of National Academy of Internal Affairs*, 2(16), 163-171. doi: <https://doi.org/10.33270/04181602>.
- Babanina, V. (2019). Structure of Mechanism of Implementation of Criminal Legislation. *Naukovyi visnyk Natsionalnoi akademii vnutrishnikh sprav, Scientific Journal of the National Academy of Internal Affairs*, 2(111), 81-86. doi: <https://doi.org/10.33270/01191112.81>.
- Baulin, Ju.V. (2018). Kryminalno-pravove rehuliuвання: osnovni problemy [Criminal law relations: main problems]. *Kryminalno-pravove rehuliuвання ta zabezpechennia yoho efektyvnosti, Criminal recovery and security of its effectiveness: Proceedings of the International Scientific and Practical Conference*. (pp. 23-28). Kharkiv [in Ukrainian].
- Belonosov, V.O. (2018). Pravovye problemy ugovno-protsessualnogo zakonotvorchestva na sovremennom etape [Legal problems of criminal procedure legislation at the modern stage]. *Pravovye problemy ukrepleniia rossiiskoi gosudarstvennosti, Legal problems of strengthening Russian statehood*, 79, 27-34. doi: 10.17223/9785946217637/3 [in Russian].
- Berzin, P.S. (2018). *Kryminalne pravo Ukrainy. Zahalna chastyna [Criminal law of Ukraine. Consolation part]*. Kyiv: Dakor [in Ukrainian].
- Beshukova, Z.M. (2016). K voprosu o ponatii mekhanizma ugovno-pravovogo protivodeistviia ekstremistskoi deiatelnosti [To a question of the concept of the mechanism of criminal law counteracting extremist activity]. *Natsionalnaia bezopasnost, National security*. doi: <https://doi.org/10.7256/2454-0668.2018.6.28118> [in Russian].
- Chirkov, A.P. (2009). Normativno-pravovoe predpisanie: obshcheteoreticheskii i ugovno-pravovoi aspekty [Legal regulations: general theoretical and criminal law aspects]. *Vestnik Rossiiskogo gosudarstvennogo universiteta im. I. Kanta, Bulletin of the Russian State University I. Kant*, 33-37. doi: <https://doi.org/10.5922/2223-2095-2009-9-4> [in Russian].
- Danilenko, D.V. (2009). Poniatie akta sudebnoi vlasti [The concept of an act of judicial authority]. *Pravo i politika, Right and politics*, 11. doi: <https://doi.org/10.7256/1811-9018.2015.1.10656> [in Russian].
- Freudenthal, K. (1960). Legal Regulation. *Social Work*, 5(2), 125-126. doi: <https://doi.org/10.1093/sw/5.2.125-a>.
- Genrikh, N.V. (2011). Predmet i metod ugovno-pravovogo regulirovaniia [The subject and method of criminal law regulation]. *Extended abstract of Doctor's thesis*. Riazan [in Russian].
- Ghutorova, N.O. (2018). Rehuliuвання kryminalno-pravovykh vidnosyn: poniattia, meta, sposoby ta ikh efektyvnist [The Revolution of Criminal Laws: Ponyathy, Endings, Methods, and Any Consequences]. *Kryminalno-pravove rehuliuвання ta zabezpechennia yoho efektyvnosti, Criminal recovery and security of its effectiveness: Proceedings of the International Scientific and Practical Conference*. (pp. 106-110). Kharkiv [in Ukrainian].

- Grin, I.Yu. (2018). Legal regulation and ranges of international legal aid in criminal matters. *Juridical sciences and education*, 57. doi: 10.25108/2304-1730-1749.iolr.2018.57.43-59.
- Groshev, A.V. (1997). Funktsii pravosoznaniia v mekhanizme ugovno-pravovogo regulirovaniia [The functions of legal awareness in the mechanism of criminal law regulation]. *Doctor's thesis*. Ekaterinburg [in Russian].
- Lenchik, V.A. (2002). Mekhanizmy deistviia prava [Law mechanisms]. *Candidate's thesis*. Moscow [in Russian].
- Lon, S.L. (2018). Ugolovno-protseessualnaia nauka: osobennosti ponimaniia pravovogo regulirovaniia v odnoimennom prikladnoi nauke i otraslevom prave [Criminal procedure science: peculiarities of understanding legal regulation in the applied science and sectoral law of the same name]. *Pravovye problemy ukrepleniia rossiiskoi gosud-?rstvennosti, Legal issues of strengthening russian statehood*, 79, 87-93. doi: 10.17223/9785946217637/11 [in Russian].
- Lopashenko, N.A. (2004). *Osnovy ugolovno-pravovogo vozdeistviia: ugolovnoe pravo, ugolovnyi zakon, ugolovno-pravovaia politika [Basics of criminal law influence: criminal law, criminal law, criminal law policy]*. SPb.: Iurid. tsentr Press [in Russian].
- Mytrofanov, I.I. (2016). Shcho zh rehuliuetsia kryminalnym pravom? [What is the regulation of criminal rights?]. *Nashe pravo, Our right*, 1, 92-98 [in Ukrainian].
- Naden, O.V. (2012). *Teoretychni osnovy kryminalno-pravovoho rehuliuvaniia v Ukraini [Theoretical foundations of the criminal law of renunciation in Ukraine]*. Kharkiv: Pravo [in Ukrainian].
- Naumov, A.V. (1996). *Rossiiskoe ugolovnoe pravo. Obshchaia chast [Russian criminal law. A common part]*. Moscow: BEK [in Russian].
- Panko, K.K. (2014). Pravila i priemy rossiiskogo ugolovnogogo zakonotvorchestva [Rules and Techniques of Russian Criminal Lawmaking]. *Russkii zakon, Lex Russica*, 3, 294-304. doi: <https://doi.org/10.7256/1729-5920.2014.3.9702> [in Russian].
- Panov, M.I. (2018). Pryntsyp verkhovenstva prava ta yoho realizatsiia u kryminalno-pravovomu rehuliuvani [The principle of the rule of law and its implementation and criminal law]. *Kryminalno-pravove rehuliuvaniia ta zabezpechennia yoho efektyvnosti, Criminal recovery and security of its effectiveness: Proceedings of the International Scientific and Practical Conference*. (pp. 28-34). Kharkiv [in Ukrainian].
- Permiakov, E. (2003). *Vvedenie v osnovy ugolovnoi politiki [Introduction to the basics of criminal policy]*. Samara: Samar. un-t [in Russian].
- Petrova, G.O. (2003). Ugolovno-pravovoe regulirovanie i ego sredstva: norma i pravootnoshenie [Criminal law regulation and its means: norm and legal relationship]. *Doctor's thesis*. N. Novgorod [in Russian].
- Smirnov, V.G. (2014). *Funktsii sovetskogo ugolovnogogo prava [Functions of Soviet Criminal Law]*. Leningrad: Izd-vo Leningr. gos. un-ta [in Russian].
- Summers, S., Schwarzenegger, C., Ege, G., & Young, F. (2014). *The Emergence of EU Criminal Law Cybercrime and the Regulation of the Information Society*. Hart. doi: 10.5040/9781474201872.ch-005.
- Tarusina, N.N. (2014). Rossiiskoe semeinoe zakonodatelstvo: osnovnye tendentsii razvitiia [Russian family legislation: main trends of development]. *Russkii zakon, Lex Russica*, 3, 314-323. doi: 10.7256/1729-5920.2014.3.9683 [in Russian].
- Trofimov, V.V. (2013). Rossiiskoe konstitutsionnoe zakonodatelstvo i ego konstituiruiushchaia rol v voprose sozdaniia i privedeniia v deistvie pravoobrazovatel'nogo mekhanizma gosudarstva [Russian constitutional legislation and its constitutive role in the issue of creating and actuating the law-forming mechanism of the state]. *Pravo i politika, Right and politics*, 13(168), 1770-1778. doi: <https://doi.org/10.7256/1811-9018.2013.13.9872> [in Russian].
- Truntcevskii, Iu.V. (2015). Klassifikatsiia mer ugolovno-pravovogo vozdeistviia [Classification of criminal law measures]. *Finansovoe pravo i upravlenie, Financial Law and Management*, 2, 137-144. doi: 10.7256/2310-0508.2015.2.15682 [in Russian].
- Navrotskyi, V.O. (Eds.). (2013). *Ukrainske kryminalne pravo. Zaghalna chastyna [Ukrainian criminal law. The common part]*. Kyiv: Yurinkom Inter [in Ukrainian].
- Vishnevetskaia, I.N. (2008). Praktika i ee rol v mekhanizme ugolovno-pravovogo regulirovaniia [Practice and its role in the mechanism of criminal law regulation]. *Candidate's thesis*. Saratov [in Russian].
- Vozniuk, A.A. (2016). Kontseptualni zasady zapobihanniia suspilno nebezpechnym dianniam [Current Principles for Preventing Common Dangerous Diances]. *Naukovyi visnyk Natsionalnoi akademii vnutrishnikh sprav, Scientific Bulletin of the National Academy of Internal Affairs*, 2(99), 156-165 [in Ukrainian].
- Zvecharovskii, I.E. (2001). *Sovremennoe ugolovnoe pravo Rossii: poniatie, printsipy, politika [Modern criminal law of Russia: concept, principles, policy]*. SPb.: Iurid. tsentr Press [in Russian].

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Концептуальні засади механізму створення кримінального законодавства та його реалізації

У зв'язку з браком у теорії кримінального права ґрунтовних розробок щодо механізму створення та реалізації кримінального законодавства, а також з огляду на співвідношення цієї категорії з кримінально-правовим регулюванням і кримінально-правовими відносинами, **метою** статті є дослідження концептуальних засад механізму створення кримінального законодавства та його реалізації. Відповідно до специфіки теми, мети й окреслених завдань у дослідженні використано різні загальнонаукові, спеціально-наукові та філософські **методи**, що забезпечили об'єктивне вивчення предмета й формування ґрунтовних висновків. Серед них, зокрема, системний, який було використано під час аналізу механізму створення кримінального законодавства та його реалізації як цілісного явища, що має певні складові; догматичний – застосовано з метою виявлення недоліків і вивчення можливостей удосконалення структури механізму створення кримінального законодавства та його реалізації; логіко-семантичний – сприяв поглибленому вивченню категоріально-понятійного апарату щодо структури механізму розроблення кримінального законодавства та його реалізації. Для формування нових підходів до визначення структури механізму створення кримінального законодавства та його реалізації застосовано метод узагальнення. **Наукова новизна.** У статті досліджено концептуальні засади механізму створення кримінального законодавства та його реалізації. Обґрунтовано, що кримінально-правове регулювання є процесом, що охоплює як створення кримінального законодавства, так і його реалізацію. Доведено, що у вузькому значенні кримінально-правове регулювання можна звести до реалізації кримінального законодавства у формі дотримання, виконання, використання та застосування кримінально-правових норм. Визначено його предмет, правила регулювання, стадії та форми реалізації. **Висновки.** Аргументовано, що предмет кримінально-правового регулювання утворюють чотири групи суспільних відносин, які виникають у зв'язку з: 1) утриманням особи від учинення суспільно небезпечних діянь, передбачених Особливою частиною КК України (у межах позитивної кримінальної відповідальності); 2) учиненням злочинів; 3) заподіянням шкоди в обставинах, що виключають злочинність діяння; 4) учиненням особою суспільно небезпечних діянь, передбачених Особливою частиною КК України, які не визнають злочинами. Встановлено, що кримінальне законодавство розробляють саме для врегулювання суспільних відносин, які виникають у зв'язку із вчиненням злочину чи іншого суспільно небезпечного діяння, передбаченого КК України. Правила регулювання цих суспільних відносин закріплено у відповідних кримінально-правових нормах, які є основою реалізації кримінального законодавства. Крім того, доведено, що створення та реалізацію кримінального законодавства слід розглядати як взаємопов'язані, однак самостійні стадії чи етапи кримінально-правового регулювання. Початковою стадією механізму кримінально-правового регулювання суспільних відносин є розроблення кримінального законодавства, а кінцевою – його реалізація. Розроблення та реалізація кримінального законодавства є не лише певними компонентами кримінально-правового регулювання, а й формами реалізації кримінально-правової політики, елементами механізму дії кримінального права, складовими кримінально-правової практики тощо.

Ключові слова: кримінальне законодавство; реалізація; механізм; кримінальна відповідальність; кримінально-правове регулювання; кримінально-правові відносини; кримінально-правова норма.