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Structure of Mechanism of Implementation of Criminal Legislation

*Due to the lack of thoroughly conducted research in theory of criminal law regarding the structure of mechanism for implementation of criminal legislation, as well as the connection of this category with criminal legal regulation and criminal legal relations, the purpose of this article is to study the conceptual framework of mechanism of implementation of criminal legislation. **Methodology.** Taking into account the specifics of the topic, goals and outlined objectives of the study, various general scientific, special-scientific and philosophical **methods** were used to ensure an objective study of the subject and development of ground-based conclusions. Among them, in particular, the systemic that was used in the study of mechanism of implementation of criminal legislation as a single integral phenomenon, consisting of individual components of the elements; dogmatic – was used to identify shortcomings and explore the possibilities of improving the structure of the mechanism for the implementation of criminal law; logical-semantic – was significant in the process of in-depth study of categorical-conceptual apparatus regarding the structure of mechanism for implementation of criminal legislation. In order to ensure the formation of new proposals based on opinions presented in the special literature on the definition of structure of mechanism for the implementation of criminal legislation, method of generalization was applied. Using these methods, the structure of mechanism of implementation of criminal legislation has been considered. **Scientific novelty.** It was stated that mechanism of implementation of criminal legislation should include the following elements: 1) subjects of implementation, their rights and obligations enshrined in criminal law; legal consciousness, legal culture, experience, skills; 2) forms of implementation; 3) results of implementation (consequences of implementation); 4) implementation procedure. It is proved that mechanism for the implementation of criminal legislation should be considered in statics (as a system of these elements) and in dynamics (as an interaction of these elements). **Conclusions.** It is justified that mechanism for implementation of criminal legislation is a peculiar system of objective and subjective elements. The subject of implementation of criminal legislation is understood as a person who embodies criminal legal norms in life. The subjective side of implementation of criminal legislation is the legal culture, experience, sense of justice of the abovementioned subjects. Rights and obligations of subjects must be recognized as object of implementation of criminal legislation; in is contained in criminal legal norms. The objective side of implementation of criminal legislation primarily covers its forms – compliance, use, enforcement, application. It also includes the consequences of implementation of criminal legislation.*

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

Introduction

Under the mechanism of implementation of criminal legislation of Ukraine it is necessary to understand the totality of processes (system or method) of implementation of rights and obligations of subjects of criminal legal relations in the form of observance, enforcement, use and application in the life enshrined in criminal law. The mechanism of implementation of criminal legislation of Ukraine can be represented in the form of a system of certain elements. In this regard, its structure should be considered. Since there are no substantive developments on this issue in the theory of criminal law, the structural elements of adjacent legal as well as criminal legal mechanisms must be explored.

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 et al., 2014; Lon, 2018, p. 87–93; Grin, 2018; Belonosov, 2018, p. 27–34).

We can assume that elements of mechanisms of criminal legal regulation and implementation of criminal legislation, although they have different content, but to some extent, coincide.

Despite of multi-faceted fundamental premises un criminal law doctrine researchers are still going back to its study and discussion (Babanina, 2018, p. 133). The topical issues of mechanism of implementation of criminal legislation 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. Despite the considerable work of the aforementioned scientists, there are currently no substantive developments in theory of criminal law regarding the structure of mechanism of implementation of criminal legislation. In this regard, it is timely and necessary to study the problem of structure of such mechanism. The urgency of this study is determined by its connection with criminal legal regulation and criminal legal relations.

The purpose

Therefore, the purpose of the article is to study conceptual foundations of structure of mechanism of implementation of criminal legislation.

According to the goal, the following tasks need to be performed: taking into account the current achievements of theory of domestic criminal law, to reveal controversial issues regarding mechanism of implementation of criminal legislation in the form of a process and to consider the theoretical provisions regarding the peculiarities of realization of criminal legal relations by subjects of criminal law with regard to acts of implementation of criminal legislation envisaged by legislation on criminal responsibility within one of four forms – compliance, enforcement, application or use; to substantiate new approaches to understand the mechanism of implementation of criminal legislation as a system of objective and subjective elements; to formulate and substantiate concrete proposals concerning its structural elements.

Presentation of the main material

Scientists express conceptually distinct views on the structure of mechanism of realization of law in general, as well as in relation to its certain branches. As for the problem of implementation efficiency, T. Falkina argues that mechanism of the realization of law – a system of legal means, which includes the following elements: 1) related to the activities of the subject of law itself; 2) connected with the state-power activity; 3) which determine the legal procedure for implementation of subjective law and legal obligation; 4) which characterize the level of legal awareness and legal culture of subject of law (Tarusina, 2014, p. 314–324). Instead, K. Kaverina notes that in its content the mechanism of implementation of administrative law rules includes three blocks: normative-institutional, administrative-procedural and instrumental, the leading of which is the normative-institutional. The concept of "mechanism" in the usual word-formation has a rather voluminous content (Beshukova, 2016). Components of structure proposed by scientists are certainly entitled to exist. Researchers use different approaches to designing mechanism by expanding the relevant elements in different styles. Obviously, further development of the problem will give an opportunity to take a new look at the system (structure) of law and its branch divisions, in particular the system of criminal law (Chirkov, 2009, p. 36).

More similar are views of scientists on the elements of mechanism of legal regulation, although here the thoughts of scientists also vary. A. Abramova include legal fact, norm of law, legal relationship, an act of application to the elements of the mechanism of legal regulation; O. Zakharchenko states the same on norms of law, legal relations, legal personality, legal facts and legal consciousness; L. Volodina – on norms of law, legal relations,

acts of law implementation, legal consciousness and legal culture; S. Alekseev – on legal norms (normative basis), subjective rights and duties (legal relationships), acts of realization of rights and obligations. In addition, the latter among the main elements names acts of use, expressing the state-forced, individualized operation of the mechanism of legal regulation. Legal consciousness, as well as legitimacy, has general significance of this mechanism forming its grounds, core of the whole mechanism. The system of mechanisms, specific methods of forming the law, through which the legal system of society moves, is determined at the level of basic legal acts of the state (Trofimov, 2013, p. 1770).

So, in legal science, the main elements of mechanism of legal regulation are: norms of law, legal facts, legal relations, acts of the application of norms of law, acts of the implementation of norms of law, legal personality, legal consciousness, legal culture. Point of view expressed by S. Alekseev that all other legal phenomena – normative acts, interpretation, legal technique, legal liability, etc. – join to one or another of the main links of the mechanism (can be attached to them) should be paid an extra attention. Some of the criteria acquire new content, more substantiated and relevant to modern reality (Danilenko, 2009).

In modern legal science, two approaches have been formed to identify elements of the legal regulation mechanism.

1. Broad approach, characterized by a set of elements involved in the organization of social relations: 1) the rule of law, which determines the model of possible and necessary behavior of subjects of social relations; 2) regulatory act – legal document that provides a legal norm of a formal, determined, official and obligatory nature; 3) legal facts – specific life circumstances that result in the rule of law; 4) legal relations – a kind of social relations, regulated by legal norms which perform functions of interaction of such norms with a specific subject and the definition of specific behavior for the personified entities; 5) interpretation – activity aimed to determine the true meaning of rule of law in case of its incomprehensibility or non-compliance with the requirements of legal technology; 6) realization of right – implementation of legal norm by observance, enforcement, use and application; 7) legality, as one of the principles of implementation of legal norms through compliance with requirements of law by subjects of law; 8) legal awareness, as the level of awareness of legal prescriptions by subjects of law; 9) legal culture, as a kind of general culture, consisting of spiritual and material values that relate to legal reality; 10) lawful conduct – a conscious activity of subjects in accordance with the law, for socially useful purposes and within the limits established by legislation; 11) unlawful behavior – behavior contrary to legal requirements; 12) legal responsibility – a

measure of state coercion (personal, property or organizational nature) applied to actors who committed an offense and involves imposing on them a new additional obligation.

2. A narrow approach to the structure of the legal regulation mechanism covers only those elements that form the basis of the regulatory function of law. Among them – norms of law, legal acts, legal relations, realization of law, legality. Each of the elements of this system performs a kind of function in satisfying the interests of subjects, regulating social relations, achieving the effectiveness of legal regulation (Bostan, 2013, p. 242–243).

These elements are also characteristic to the mechanism of criminal law regulation.

Yu. Baulin argues that mechanism of criminal legal regulation includes: 1) relevant norms of criminal law, hypotheses of which involve signs of a crime committed by a person, and dispositions (sanctions) – criminal legal sanctions, which authorities bodies of power are authorized to apply to a certain offender; 2) legal fact – the commission of a crime (completed or unfinished, one-person or in complicity, for the first time or repeatedly, etc.); 3) acts of application of a certain criminal law – hypotheses at the stage of pre-trial investigation and hypotheses and dispositions of the criminal legal norm by court. P. Berzin believes that structure of mechanism of criminal legal regulation includes the following main elements: a) criminal law; b) legal facts; c) criminal legal relations; d) acts of application of criminal law; e) acts of the implementation of criminal law. According to S. Shapchenko, structure of mechanism of criminal legal regulation includes the following main elements: a) criminal legal norms (criminal law in its proper sense); b) legal facts; c) criminal legal relations; d) acts of application of criminal law; e) acts of implementation of criminal law (Shapchenko, 2000, p. 64).

O. Naden notes that mechanism of legal regulation is a consistent chain of changes in individual legal phenomena: the norm of law, which regulates criminal social relations – the legal fact – the rights and obligations that exist in criminal legal relations that arose on his grounds, – realization of these rights and fulfillment of duties. M. Kropachev under mechanism of criminal legal regulation understands the system of successively interconnected elements: the subject of legal regulation, whose peculiarities determine the limits of measures used by society that restrict the will, honor, dignity and property interests of the individual, and hence the possibility to encroach on them; legal norm; legal facts; regulatory and security criminal legal relations; criminal responsibility. O. Groshev argues that mechanism of criminal legal regulation includes three main elements – criminal legal norm, criminal legal relations, criminal responsibility. This is due to the fact that Criminal Code does not contain the concept and list of both types of measures of criminal legal

influence (Truntcevskii, 2015), as well as elements of mechanism of criminal legal regulation.

So, in theory of criminal law criminal legal norms, legal facts, acts of criminal legal norms application and criminal legal relations are recognized as elements of mechanism of criminal legal regulation.

Similar components of mechanism of legal regulation are distinguished by scientists in the field of criminal proceedings. So, A. Bakhta understands a single system of legal means, which consists of norms of criminal procedural legislation, criminal procedural relations, application of criminal procedural norms, applicable criminal procedure acts that provide effective legal regulation and influence in the field of criminal justice as a mechanism of criminal procedural regulation. This is confirmed by the fact that some of these elements have virtually universal character for several branches of law.

At the same time, assignment of realization of rights and fulfillment of duties to such elements, as it offered by O. Naden, is illogical. Realization of rights and fulfillment of duties is a certain process both within mechanism of criminal legal regulation and in implementation of criminal legislation. We consider the stress on the subject of legal regulation (among elements of mechanism of criminal legal regulation) proposed by M. Kropachev also excessive.

Criminal responsibility, which some scientists consider as an element of criminal legal regulation, is clearly part of such mechanism, but to stress on it as on independent element is inappropriate at least because this is only one of the measures of criminal legal influence within the criminal legal regulation of social relations, for example, along with coercive measures of educational nature or measures of a criminal legal nature with regard to legal entities. By the way, some scientists correctly point out the mechanism for implementation of criminal responsibility, given that this is one of the most important and most common mechanisms for implementation of criminal legislation.

To the structural elements of the mechanism of realization of legal responsibility O. Samusevich includes: a) organizational (the totality of subjects involved in the process of legal responsibility); b) normative (normative legal base, regulating the behavior of all subjects involved in the process of legal responsibility); c) instrumental (legal means which implement legal responsibility); d) functional (legal relations within which rights and obligations of subjects are realized).

Instead, mechanism of implementation of criminal responsibility, according to E. Skulish and I. Mitrofanov consists of a set of legal elements that contribute to its normal functioning and could be conventionally combined into several interdependent units. For example, this is a block that provides the beginning of implementation of criminal responsibility (the legal framework for implementation), a block of

legal relations, a block of criminal legal enforcement, through which criminal responsibility is implemented, and a block of individual legal regulation (which is singled out conditionally for its study – it permeates all the other blocks of the mechanism), which joins the previous units in case of necessity to specify the certain circumstances necessary for continuous realization of the criminal legal norms that establish penalties for one or another act.

The closest for its legal nature to mechanism of implementation of criminal legislation is the mechanism of implementation of criminal legal norm. A. Litvinov notes that the latter includes: the legal norm, legal means, actions of officials and citizens. But structure proposed has certain flaws. First of all, the question arises whether criminal legal norms are included to legal means or not. In addition, the list of such elements seems inexhaustible and in our opinion cannot create a complete mechanism of implementation of even one criminal legal norm.

According to the results of study of mechanism of implementation of criminal legislation and other legal mechanisms, we can conclude that its structure primarily includes criminal legal norms and legal facts.

It is interesting to stress on position of scientists, which are distinguished legal and factual basis within the doctrine of mechanism of realization of law. In this regard, the position of T. Falkina that legal (regulatory) basis of mechanism of implementation of subjective rights and legal obligations are legal norms is quite interesting. The actual basis is legal facts and acts of legal enforcement. Scientists in the field of criminal law, in particular P. Berzin, refer to criminal law as the basis of «functioning» of mechanism of criminal law regulation. 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).

Scientific novelty

Criminal legal norms are the legal basis for implementation of criminal legislation, and legal facts and acts of the implementation of criminal legal norms are actual basis of this mechanism.

Of course, the mechanism of implementation of criminal legislation is within the framework of criminal legal relations, so the latter are an integral part of it.

Taking these elements into consideration mechanism of implementation of criminal legislation can be described in the form of this process: subjects of criminal legal relations on the basis of criminal legal norms implement acts of criminal legal implementation provided by the law on criminal responsibility within one of the four forms – compliance, enforcement, use or application.

Within framework of mechanism of implementation of criminal legislation, it is possible to distinguish its normative, instrumental, subjective and functional components.

The normative component includes, first of all, provisions of the law on criminal responsibility, which determine the behavior of subjects of the implementation of criminal legislation. It also covers the provisions and other normative legal acts, in particular the CPC of Ukraine, the norms of which determine the procedure of implementation of criminal legal norms.

The instrumental component of mechanism of implementation of criminal legislation covers a set of criminal law methods, means and ways through which the implementation of criminal legislation is made.

The subjective component of mechanism of implementation of criminal legislation include subjects involved in various forms of such implementation. The following categories of persons should be recognized as such subjects: 1) subject of crime; 2) person who does not commit crime; 3) person who committed socially dangerous act and recognized as not having reached the age from which the criminal responsibility comes; 4) person who committed a socially dangerous act and recognized as insane; 5) person who acted within the limits of the circumstances excluding the criminality of certain act; 6) court.

The functional structure of mechanism of implementation of criminal legislation characterizes it in dynamics, reflects the interconnection and interaction of its elements.

Conclusions

In our opinion, the mechanism of implementation of criminal legislation should include the following elements: 1) subjects of implementation, their rights and responsibilities, enshrined in criminal legal norms; legal awareness, legal culture, experience, abilities, skills; 2) forms of implementation; 3) results of realization (consequences of realization); 4) procedure of implementation.

The mechanism of implementation of criminal legislation should be analyzed considered in statics – as a system of these elements – and in dynamics – as an interaction of these elements. This mechanism is a certain system of objective and subjective elements. Therefore, this system can be represented as a set of interrelated objective and subjective attributes.

The subject of the implementation of criminal legislation is a person who embodies criminal law in life.

The subjective aspect of implementation of criminal legislation covers the legal culture, experience and legal awareness of the abovementioned subjects.

The object of implementation of criminal legislation should be recognized as rights and obligations

of its subjects. This is what the implementation is aimed at and what is laid down in criminal legal norms. For example, it may be the duty of court to impose a punishment as well as right of the perpetrator to reimburse the damage voluntarily.

The objective aspect of implementation of criminal legislation covers, first of all, its forms – observance, use, enforcement, application. It also includes the consequences of implementation of criminal legislation.

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Структура механізму реалізації кримінального законодавства

У зв'язку з відсутністю в теорії кримінального права ґрунтовних розробок щодо структури механізму реалізації кримінального законодавства, а також співвідношення цієї категорії з кримінально-правовим регулюванням і кримінально-правовими відносинами, **метою** статті є дослідження концептуальних засад структури механізму реалізації кримінального законодавства. З огляду на специфіку теми, мети й окреслених завдань публікації, використано різні загальнонаукові, спеціально-наукові та філософські **методи**, що забезпечили об'єктивне дослідження предмета та формування ґрунтовних висновків. Серед них, зокрема, системний, який був використаний для вивчення механізму реалізації кримінального законодавства як цілісного явища, що має певні складові; догматичний – застосовано з метою виявлення недоліків і з'ясування напрямів удосконалення структури механізму реалізації кримінального законодавства; логіко-семантичний – для поглибленого вивчення категоріально-понятійного апарату щодо структури механізму реалізації кримінального законодавства. На підставі наявних у спеціальній літературі думок вчених сформульовано пропозиції щодо структури механізму реалізації кримінального законодавства, для чого застосовано метод узагальнення. **Наукова новизна.** Констатовано, що механізм реалізації кримінального законодавства повинен охоплювати такі елементи: 1) суб'єкти реалізації, їхні права й обов'язки, закріплені в кримінально-правових нормах; правосвідомість, права культура, досвід, уміння, навички; 2) форми реалізації; 3) результати реалізації (наслідки реалізації); 4) порядок реалізації. Доведено, що механізм реалізації кримінального законодавства слід розглядати в статті – як систему цих елементів, і в динаміці – як взаємодію цих елементів. **Висновки.** Аргументовано, що механізм реалізації кримінального законодавства – це своєрідна система об'єктивних і суб'єктивних елементів. Суб'єктом реалізації кримінального законодавства слід вважати особу, яка втілює кримінально-правові норми в життя. Суб'єктивною стороною реалізації кримінального законодавства є права культура, досвід, правосвідомість зазначених суб'єктів. Об'єктом реалізації кримінального законодавства слід визнати права й обов'язки її суб'єктів, на що спрямована реалізація і що закладено в кримінально-правових нормах. Об'єктивна сторона реалізації кримінального законодавства охоплює насамперед її форми – дотримання, використання, виконання, застосування, а також наслідки реалізації кримінального законодавства.

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