



THE ADVOCACY IS ONE OF CRIME PREVENTION SUBJECTS



V. KOVALENKO,
Chancellor of the National
Academy of Internal Affairs,
Doctor of Laws, professor,
Correspondent Member of the
National Academy of Laws of
Ukraine

O. KOLB,
Director of the Scientific and
Educational Institute of Law
and Psychology of the National
Academy of Internal Affairs,
Doctor of Laws, professor



SUMMARY

The article analyses the socio-law character of the Advocacy in Ukraine and necessary creation of the real realization mechanisms of crime prevention aims ascertained before the subjects of so-called general crime prevention is substantiated in the article as well.

* * *

Статья посвящена анализу социально-правового характера информационно-пропагандистской деятельности в Украине и необходимости создания реальных механизмов реализации мер по предупреждению преступности, с целью установления мер так называемого общего предупреждения преступлений.

Problem Statement. *Backed up by statistics the level of repeated crime makes up more than 22% in the general structure in Ukraine annually. [1, p.25]*

In addition to this tendency the same criminological symptoms have been developed since 1991 [2, p. 22-23] and have been acquired in 2001 – with the acceptance of a new Criminal Code [hereafter - CC] of Ukraine [3, p. 44]. It all means, that the nation and social institutions including the Advocacy reacts to these types of crimes inadequately, in this regard their determinants are not ruined, they are neutralized, and blocked.

In this regard, owing to the aim of the research work and the basis of measures directed on improvement of effectiveness of the repeated crime opposition from so-called non- specialized subjects of prevention, the theme of this research is topical.

At the same time other crime prevention subjects use their possibilities in the area of opposition of these social-dangerous phenomena not enough. The scholars, for which are referred in particular:

- state agencies and authorities from the highest to the lowest- from Verkhovna Rada (Supreme Council) of Ukraine – the highest legislative body, the Secretariat of the President of Ukraine to the local councils and local state authorities;

- bodies of administrative and cultural activities; ministers and agencies; administration of enterprises, organizations and establishments, bringing-up and cultural services;

- public organizations: trade unions, voluntary public services (law and order services); prevention councils and others;

- labor teams;
- separate citizens (patrons, mentors, public instructors and others). [5, p. 65].

As a whole, A.P.Zakalyuk has divided all crime prevention subjects basically into some categories:

- bodies and organizations which administer this activity, organize it, create the system of management (bodies of state government and authority, bodies of local authorities);

S tate of Research. Traditionally the scholars propose only the list of the general crime prevention subjects and discuss their legal availabilities, as a whole, tasks, forms and methods of the activity are not specified. On the whole, it is refers to the Advocacy too. The studies of doctrine sources has shown that the problems of crime prevention subjects and their powers are researched deeply by L.V. Bagryi-Shakhmatov, V.V. Golina, I.M. Danshyn, L.M. Davydenko, O.M. Dzhuzha, A.P. Zakalyuk, A.F. Zelinskiy, O.Y. Kalman, O.M. Kostenko, P.P. Mykhailenko, V.O. Gulyakov, V.I. Shakun and others.

However, the scientific publications and other research works, devoted to the role and location of the

Advocacy in the system of crime prevention subjects are insufficient and it has been led to the choice of this research.

Summary of the Main Provisions of Scientific Work. Crime prevention tasks have been determined in Criminal Law (art.1 Criminal Code of Ukraine - CC), in Criminal Procedural Law (articles 23-23-2 of the Criminal Procedural Code of Ukraine - CPC) and in art. 1 of the Criminal Executive Code of Ukraine (CEC). In practice, only the subjects for which crime prevention is one of the main tasks and functions (Prosecution agencies, Law enforcement agencies, Security Service of Ukraine and others), are engaged its solution on the whole. [4, p. 351-356].

- bodies and organizations concerning of which crime prevention and crime reveals have been referred to the main tasks (Ministry of Internal Affairs, Security Service of Ukraine, Prosecution services, courts, specialized public organizations);

- bodies, establishments, organizations which functions and powers have no single-mindedness, crime prevention and crime reveals but their activity influences on preventive processes of criminality determinant and separate crimes (educational, cultural, healthcare, social aid establishments, administrations of enterprises, establishments, organizations and others).

In addition, as summarized this scholar, and it is worth to agree with him, a body, an organization, an individual, which executes one of such functions of the activity such as: organization, coordination, acting or connected directly with acting could be acquired as a subject of crime prevention activity. Others, ensuring some measures (e.g. studies, editing of literature, preparing recommendations, financing and others) do not give functional grounds to spread the term “ a subject” of crime prevention and prevention of crime reveals on their executives. [4, p.346].

However, as O.M. Dzhuzha has recognized, it should be remembered, that “The theory of criminological prevention has complex functional dependence from related sciences... Thus, the groundwork of the theory of criminological crime prevention, in which the complex scientific mechanism of inter-subjected cooperation with these crime prevention would be represented identically, is necessary and possible nowadays. [6, p.174].

Consequently, the classification of crime prevention subjects can be realized on the others (not only criminological) standards and approaches. At the same time it is

indisputable that the criminological prevention is directed on:

1) crime prevention that provides groundwork of measures and means by which the tasks of the inevitability of punishment for committed crime are decided that could be expressed in:

- comprehensive, full and objective reveal, investigation of every crime and uncovering of a guilty;

- assurance of persons with the low level of legal and moral consciousness in the inevitability of punishment with the aim of general preventive influence;

- directed, oriented purposefully crime prevention, which guaranteed by means of:

- obtaining of the information about crimes, which are prepared;

- discontinuance of committed crimes timely;

- single-minded influence of preventive and bringing-up character;

- disclosure and elimination of reasons and terms, promoted to the commitment of the actual crime.

Thus, if to be on the basis of the theoretical principles of crime prevention above, the Advocacy should be related to the third category of crime prevention subjects.

In the scientific literature the activity of the Advocacy in this direction is reduced to the promotion of the realization of articles 23, 23-1, 23-2 of CPC of Ukraine with regard to the protection of legal rights and interests of citizens and legal entities.[4, p.356], and it is impossible to be agreed with it, if to be administered by the rules of the in-force legislature of Ukraine on issues of the activity of the Advocacy.

So, among the tasks of the Advocacy established in the article 1 of the Act of Ukraine “The Advocacy” December 19, 1992, next to the pointed out above, by which the crime prevention functions are realized, the tasks on giving legal advice to individuals and legal entities have been determined.[7].

It could be said about multi-format of functions of the Advocacy connected with crime prevention, as following:

a) in the article 5 of the Act “Types of Lawyer’s Activity”, namely: to exercise their responsibilities in accordance with the Criminal Procedural Law in the process of the enquiry and preliminary investigation;

b) in the article 6 of the Act “Occupational Rights of a Lawyer”: to collect information about the facts, that could be used as evidence in criminal cases; to exercise other actions unpredictable by the law;

c) in the article 7 of the Act “Lawyers’ Responsibilities”: to use all measures predictable by the law on protection rights and legal interests of citizens and legal entities;

d) and other rules of the Law.

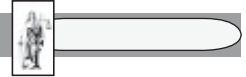
If the tasks, determined for lawyers, are to be summarized, crime prevention should be exercised by realization of such measures as:

-general prevention as combination of socio-economical, ideological, cultural, managing, legal and other measures, that not be oriented directly on the opposition of crime, makes up material and inner basis for special criminological prevention [8, p.22].

- the individual prevention as combination of measures of influence on actual person [9, p.163].

In addition, as all other crime prevention subjects, the Advocacy realizes this activity on three levels [10, p.78-82] by:

1) the solution of the important social, economical and other problems of social life, intensifying ideological and fostering work in a state, improving social relations. So, nowadays, the Advocacy has been involved directly and indirectly to discussion of various drafts of the CEC, Constitution of Ukraine [11] and other law-making acts on the issues of crime opposition;



2) the influence on actual social groups, in which conflict situations and negative phenomena are appeared. In particular, it is developed on the issues of legal advice for convicts, that are made accountable before the administration of penitentiaries to different types of legal responsibilities. (art.8, 107, CEC of Ukraine);

3) the implementation of individual fostering with a suspect, an accused, a defendant and a convict in the process of inquiry, preliminary investigation, court proceedings and enduring punishment allocated by the court. In addition, from the article 9 of the Act of Ukraine "The Advocacy" a lawyer is obliged to keep safe lawyer's secrecy on the subject of applying issues of citizens and legal entities for lawyers' advice, the gist of consultations, advises, clarifications and other information taking into consideration by a lawyer.

Thus, it should be admitted, that crime prevention as a type of social activity of the Advocacy belongs to such important directions of one, as social monitoring and social prevention, by which scholars imply single-minded activity with regard to prevention of breaches of some social norms, elimination of reasons that bearing these breaches. [12,p.20].

On the basis of it, one of the types of social activity that should be implied on the carrying out of the Advocacy of Ukraine is crime prevention, the obstruction of crime determinant functioning is one of its functional content and its reveals, first of all reasons and terms because of limitation, neutralization and the presence of possibilities, - elimination their effect as on the person of a suspect, an accused, a defendant, a convict, as on the other persons and a society as a whole.

In accordance with the Act of Ukraine "The Advocacy" (art.5) the sub-types, within the types

of lawyer's activity in the area of crime prevention, could be referred as following:

- consultations and clarifications on legal issues in criminal proceeding, in particular, with regard to legal effects of crime commitment repeatedly (article 32 CC) and crime recidivism (article 34 CC), and on execution and enduring of criminal punishment issues, namely: terms of discharge from enduring of criminal punishment with regard to the articles 152-154 CEC of Ukraine; the order of ascertainment of administrative supervision (art-s 158-159CEC); and others, that gives possibilities to exercise the individual crime prevention;

- implementation of the court's representation and representation in different state bodies before citizens and legal entities that creates necessary circumstances for crime determinants' reveal (articles 23-23-1 CPC) and preventive behavior of a crime victim [13, p.105-123];

- assignment of legal advice for enterprises, establishments, organizations allowing to develop the substantiated measures on elimination of reasons and terms of a committed crime;

- implementation of law security of business and foreign economy activity which allows to carry out as generally-social as individual crime prevention;

- fulfillment of the responsibilities in accordance with the Criminal Procedural Law of Ukraine in the process of inquiry and preliminary investigation (art-s 48, 52 CPC of Ukraine);

- implementation of the others types of legal assistance, predictable by the legislation (in particular, assignment of legal assistance for convicts – articles 8, 107 and others CEC of Ukraine).

It is necessary to implement such measures for creation of right mechanisms of preventive activity in the area of crime opposition, as following:

1. The article 6 "Occupational Rights of a Lawyer" is should be added by the right on crime prevention activity as convicts as others persons, that logically follows from the content of the article 5 "Types of Lawyer's Activity", the article 59 of the Constitution of Ukraine concerning rights of citizens on legal assistance [14], articles 1 and 50 CC, articles 23-23-2 CPC and the art.1 CEC of Ukraine and the theoretical principals of criminological prevention, as is known from this research work, because of harmonization of norms of the Law of Ukraine "The Advocacy".

2. The article 5 of the draft of the Law of Ukraine "Crime Prevention" [15, p. 182-193] is should be added by such prevention subject as the Advocacy that logically follows from its legal character, in particular, from the article 1 of the Law "The Advocacy of Ukraine and its Tasks" for realization doctrine provisions about the role and the location of the Advocacy in the system of crime prevention subjects.

3. The rules of CPC of Ukraine connected with the lawyer's activity are should be modified in the same context, as following:

3.1. The article 23 of CPC "Reveal of Reasons and Terms Assisted a Crime" is should be added by part 2 of the content: "The defender must reveal reasons and terms assisted a crime commitment for the ensuring protection right of the suspected, accused and convicted persons".

3.2. Part 2, art. 48, p. 14 CPC "Defender's Rights and Duties" is should be added by the sentence of such content: "Come to the light reasons and terms assisted crime commitment for ensuring of person's right on qualified protection".

4. Part 2, p.16 of the Plenum resolution of the Supreme Court of Ukraine October 24, 2003 №8 "Implementation of Law Ensuring the

Protection Right in Criminal Proceeding” is should be added by the sentence of such content: ”In particular, the petitions are referred to the terms connected with the reasons and requirements revealed by the defender and which assisted crime commitment in the course of art.23 CPC of Ukraine” [16, p.348-357].

References:

1. Analysis of Judicial Proceeding by the Courts of General Jurisdiction in 2008. // Visnyk of the Supreme Court of Ukraine. -2009. - №5 (105).- p.19-34.
2. The Trial of Cases of Different Categories by the Courts of General Jurisdiction during 1990-2000. // Visnyk of the Supreme Court of Ukraine 2002.- №1-(29)- p.12-26
3. Analysis of General Jurisdiction Judges’ Activity in 2002 according Courts’ Statistics. //Visnyk of the Supreme Court of Ukraine.- 2003.- №3 (37).- p.41-49
4. Zakalyuk A.P. The Course of Ukrainian Contemporary Criminology: The Theory and Practice: 3 volumes- K.: Vydavnychiy Dim „In jure“, 2007 - vol.1: Theoretical Principals and the History of Ukrainian Criminological Science. -p. 424.
5. Dzhuzha O.M., Moiseyev E.M., Vasylevych V.V. Criminology: Specialized Diagrammatic Course of Lectures (General and Special Sections) Handbook.- K.: Atika, 2001.-p.368.
6. Dzhuzha O.M. Prevention of Crimes Connected with Sexual Violence: manuscript.-K.: Atika, 2009. - p.240.
7. The Act of Ukraine “The Advocacy” December19, 1992 / under amendments of the Act of Ukraine, 2008, October1 // Vidomosti of the Verkhovna Rada of Ukraine.- 2009.- № 13. – p.161.
8. Medytstkiy I.B. Crime Prevention: handbook – Ivano-Frankivsk : Publishing House , Victor Dyakiv , 2008,-p. 220.
9. Criminology:Textbook /Edited by Malkov V.D. M. : Justice inform, 2004,-p. 528.
10. Criminology/ Edited by Kudryavtsev V.N., Eminov V.E.- M.: Lawyer, 1995.-p. 630.

ЮРИДИЧЕСКОЕ ОБРАЗОВАНИЕ СТУДЕНТОВ АКАДЕМИИ «ШТЕФАН ЧЕЛ МАРЕ» МВД РМ КАК СУБЪЕКТОВ РЕАЛИЗАЦИИ УГОЛОВНОЙ ПОЛИТИКИ

В. УРСУ,
начальник факультета Право Академии „Штефан чел Маре”
МВД РМ, доктор права, доцент, подполковник полиции

SUMMARY

The article is about the legal education of students from the „Stefan cel Mare” („Shtephan the Great”) Academy of MDA of the Republic of Moldova, as subjects of criminal policy.

In order to implement the strategic course of accession of Moldova to the European Union government had identified major areas of cultural, educational, scientific and technological cooperation with EU member states. One of these areas have already been implemented by the Government of the Republic of Moldova, is joining the Moldovan education system to the Bologna Process. The purpose of this joint activity is the harmonization of national and international standards of higher education that would allow Moldovan citizens, university graduates, including departmental, to seek employment outside the Republic of Moldova - in the EU.

Next, we will focus on the problems of legal education as well as the Academy “Stefan cel Mare” of MI prepares for its faculties namely lawyers, for internal affairs Moldova, while being the only specialized institution in the country.

* * *

В статье речь идет о юридическом образовании студентов Академии „Штефан чел Маре” МВД РМ как субъектов реализации уголовной политики.

С целью реализации стратегического курса вступления Молдовы в Европейский Союз государством были определены основные направления культурно-образовательного, научно-технического сотрудничества с государствами ЕС. Одним из этих направлений, уже реализованных правительством Республики Молдова, является присоединение молдавской системы образования к Болонскому процессу. Целью такой совместной деятельности является гармонизация национальных и международных стандартов высшего образования, что позволило бы молдавским гражданам, выпускникам вузов, в том числе и ведомственным, устраиваться на работу за пределами Республики Молдова – в государствах ЕС.

Далее мы остановимся на проблемах юридического образования, так как Академия «Штефан чел Маре» МВД РМ готовит на своих факультетах именно юристов, специалистов для ОВД Республики Молдова, при этом являясь единственным профильным учебным заведением в стране.

В начале 90-х годов прошлого столетия практически все существующие на тот момент вузы открыли юридические факультеты, так как профессия юриста была очень востребована. И уже в 2000-х годах в стране отметили перепроизводство юристов. Многие специалисты с дипломом юриста не могут трудоу-