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EFFECTIVE CRIME CONTROL AS GUARANTOR OF PUBLIC SECURITY

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Abstract: Securing of a democratic order is a vertical process (“from above downwards”) responding to the needs and concerns of certain persons and community groups and looking for the public trust, consent and support. Thus it is based on transparency and dialogue. There are social scientific and moral debates over what practices are most conducive to a democratic police (e.g., centralization vs. decentralization, specialists vs. generalists, internal vs. external controls, closeness or distance from those policed, maximum or minimum discretion, single vs. lateral entry). But it is clear that a democratic police can take many forms.

Key words: democratic order, police, public security, crime control, community policing.

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1. Introduction

The theory of control over crime is based on the doctrine that crime is a social phenomenon that eternally exists in a society with which it is impossible and inexpedient to fight, and which should only be controlled so that it does not go beyond certain limits. The modern world is characterized by an increase in the diversity of manifestations of deviance – types of behaviour that violate norms established by the state (law) or worked out by society (morality). There is a blurring boundary between “deviant” and “normal” behaviour. At the same time, there is a “crisis of punishment” – the ineffectiveness of traditional forms of social control over criminal (generally deviant) behaviour. In these conditions, the development of strategy and tactics of social control over crime is gaining in importance.

The authorities and most scientists see the main tasks of the police in ‘crime control’ – keeping the crime at a certain level with the means allowed by the law.

2. What does the doctrine of “crime control” mean?

In the Soviet legal literature the crime control doctrine and its nature and basic features were characterized from a critical position limited by the ideological framework. By the way, an independent analysis of this doctrine has a major significance in the evolution of opinions about the problems of maintaining the legal order, the

activity of the law enforcement bodies of the European and other countries, including the police. The practice of the former USSR whose influence is still felt today, evidences that the government authorities were tended to the protection of the interests of the state, the enforcement of legislative provisions, but not to the protection of human rights.

The crime control doctrine emerged in the early 1960s. At the time it became evident to the Western, particularly American lawyers and political scientists that worsening of the criminal situation is a permanent trend and may have unpredictable consequences in the future. The doctrine of due legal procedure, which had originated as a means of protection of an individual from illegal acts by the state in the early period of development of democracy in the late 17th century and placed the interests of an individual above the interests of the state and emphasized the protection of the accused against the formal power, did not meet the interests of the society. The supporters of legal sociology G. Pecker, A. Goldstein, R. Pound, a.o. believed that this obstructs an adequate reaction of the criminal justice system to the increase of crime. Therefore the authors of the crime control doctrine and their followers saw the main and decisive importance of the theory "in the protection of the interests of the state as a whole from perpetrators". The latter were to be put under "a heavy control of the police and the judicial institutions" whose primary aim was the social prevention of illegal actions (Roberts, McMahan 2007).

While supporting the necessity to preserve the protection of the basic procedural safeguards of rights of an individual, the supporters of this theory fought for the elimination of an archaic, abstract formalism in the criminal procedure (Teivāns-Terinovskis, Jefimovs 2012), on the one hand, and for the restriction of application of criminal sanctions, on the other hand, providing for decriminalization of acts that do not pose serious danger to the society. At the same time, the law enforcement had to concentrate their efforts on combating serious offences against person, property and the basis of the political system.

This theoretic approach became one of the determinant factors of the development of the legal policy in the USA, Canada, and the Western Europe, and later, in other parts of the world. Many scholars and jurists who rightfully deplore the excessive punishments in our system of criminal justice - excessive in both length and cruelty - place the blame for this excess on the influence of retribution and what they view as the vile emotions of anger, hatred, and vengeance that drive retribution. This understanding of retribution is totally mistaken and, indeed, the best corrective for the evils in our present system of punishment is to be found in retribution properly understood. When properly understood retribution will be seen as grounded not in vengeance but in respect for human dignity and a concept of desert grounded in human dignity (Luna 2017).

In practice the principles of the crime control doctrine and the following concepts of legality in the manifested themselves in the abolishment or mitigation of sanctions for the criminals who repented their acts and/or cooperated with investigators. In these cases the criminal liability was substituted with the administrative one for petty thefts, possession of a small amount of marihuana, prostitution, distribution of pornography, some traffic offences and others (Simons, Kenneth 2008).

At the same time, some offences not provided in the criminal law were criminalized due to their social danger (computer fraud, illegal distribution of nuclear materials, human trafficking, sexual abuse of children etc.); punishments for terrorism, participation in organized crime etc. became harsher.

Major changes took place in the procedural sphere: the results of application of investigative equipment gained the status of evidence, the role of application of methods of the sciences and the role of expert opinions in proving the guilt has increased, the terms of pre-trial custody have increased.

Today, according to the crime control doctrine's mainly pragmatic approach to the law enforcement tasks and competence, the legal and actual widening of police powers takes place. Firstly, in many countries (Germany, France, Italy, Spain, and elsewhere) police officers often perform the largest part of investigation in crime cases as the judiciary and the public prosecutor's office delegate many of their functions to them. Besides, the procedure of performance of many procedural activities (arrest, search, seizure etc.) has been simplified. Scandina-

vian countries an arrest with the aim of taking an individual to court to prosecute for a crime can be performed at a police officer's discretion if the person was arrested during the commission or the officer had legal grounds for suspicion of a crime. In England and Wales police officers and other law enforcement officers have wide powers to arrest persons. In Italy and Germany terrorist laws authorize the police to search persons, dwellings and vehicles and arrest the suspects without a court warrant. France anti-terrorism law authorizes the Minister of the Interior to confine suspected Islamists, even those who are not accused of a specific crime, to the town or city of their domicile. Any individual for whom there are "serious reasons to believe that his or her conduct constitutes a particularly serious threat to public security and public order," may be placed under house arrest - without the prior approval of a judge - for a period of three months, renewable for additional periods of three months to a maximum period of one year (France: New Anti-Terrorism Law Takes Effect. 2017). Criminal law authorizes a police officer to detain for 24 hours a person who can give information about the case or seized items and documents as well as if he believes that the identity has to be verified (Vouin 2017). Typically most West European countries have simplified proceedings of a trial for hearing illegal actions that may be classified as minor and evidence provided by the police officers often is the main and only grounds for prosecution.

Under the given circumstances, the legality of the actions of the police themselves has become topical. In Europe and other countries the situation is far from the ideal.

This leads to the conclusion that violations of law and human rights are currently a part of the policing and actually there is no solution yet.

The tendency to dissociate police officers from their liability and abuse of power and to set strict liability for resisting the police or disobeying their legitimate demands is evident and it has to be noted that this approach is common to both authoritarian and traditionally democratic countries. In the latter case it is determined by two conditions.

Firstly, it is impracticable to regulate all actions in the fight against crimes and other offences against the law.

Secondly, there is a wish to preserve certain "freedom" of police officers, which is absolutely grounded taking into account the risks they face in their job.

As we see, pragmatic approaches to the crime control doctrine, the legal methods of their implementation and the policing practice in many cases do not comply with the canons and principles of democracy. These facts must not be ignored. The author of the given research believes that it is a reflection of the increase of authoritarian trends in the superpowers in Europe and the rest of the world.

At present, in Europe there is no common opinion about the methods of determination of the 'acceptable' level of crime and the efficiency of policing. Many researchers think that on the national level the priority should be the parliament and on the regional level – the local authorities, since they are able to objectively assess the situation on the basis of the public response even if there is a lack of appropriate methodological basis. It has to be noted that at present there is no universal scientifically grounded methodology of determination of the acceptable level of crime and other offences against the law and it seems unlikely that such methodology will ever be developed.

Many scientists and practitioners hold a pessimistic view of the ability of people who have no experience of policing to objectively evaluate the legal order situation, the efficiency of policing, and provide constructive help in the improvement of policing. There is an opinion that public participation cannot be constructive.

Indeed, most people that are not directly involved in maintaining the legal order can judge its condition only based on their subjective, limited thinking; they are unable to perceive the totality of all factors that are to be considered when assessing the efficiency of policing. However, publications in the mass media and special literature show that the society and scientists are aware that the police are functioning in very complicated

conditions today. The violent crime increases, criminals become increasingly organized, aggressive and inventive; they use modern technologies and employ huge financial resources. There is also a sharp increase of crime among juveniles and people with low income. Also the repeat criminal offences are committed by those juveniles, who (in places of confinement) have faced the traditions of criminal world subculture (Zahars, Stivrenieks 2015).

In recent years, criminal organizations have expanded their activity. “Simple” offences of the racket-type mafia have grown into large-scale secret actions, penetration of the economy through corruption. On many occasions, the mafia capital not only infiltrates the legal business, but also takes full control over it (Kordík, Kurilovská 2017). Experts consider that only a part of the proceeds of crime is used for the continuation of criminal activity. Most of the proceeds are transferred to foreign financial centers or invested. In their turn, the banking institutions are interested in the preservation of confidentiality of their clients and this is a serious obstacle for the law enforcement.

Attempts have been made to influence the national elite.

The study of the policing practice shows that today in the world there are no ways and means, including legislation for deep infiltration into the economic channels of crime communities. Crimes in the activity of political parties and governments, election campaigns, in the spheres of ideology, propaganda, culture and administrative bureaucracy often are left beyond the limits of police influence.

Therefore, there is some, though indirect connection of such phenomena as organized crime, activity of groups of political extremists etc.

The situation is made more complex by increasing of the transnational character of crime (Tumalavičius, Ivančiks, Karpishenko 2016; Šišulák 2017; Limba et al. 2017). It is a side effect of the globalization resulting from a wide trade, economic cooperation, open borders, achievements in the spheres of transport and communications. Transnational crime manifests itself primarily in the establishment of huge global black markets for illegal trade and services. According to the Interpol data, most criminal offences are committed in the spheres of illegal transactions with drugs, trading in stolen vehicles, arms and industrial secrets, exploitation of prostitutes, etc. Recidivism is increasing as well. All this turns crime into one of the major national problems in many countries.

There are three strands of thinking on how globalization has changed policing: the notion of a risk society, the com-modification of security, and the concept of a security sector and security sector reform (Matvejevs 2016).

Crime is a social phenomenon typical of all societies. There also existed crime, in one or another its ways of manifestation. Crimes have changed from the different types of corporal punishment, torture and the death penalty, in their various forms, to a variety of alternative punishments, which are not related to violence against the guilty person. (Zahars, Stivrenieks 2016). Therefore, in this context it would be wrong to speak about any rules or exceptions from them. We can speak about more or less stable trends of crime development, including the ones dealt with in the given research.

The experience with many countries with low living standards indicates that social and economic development is usually accompanied by crime increase and decrease of the law enforcement ability to combat it. The practice of the European countries shows that a high living standard, active use of the achievements of technical progress, the evolution of national policy not only lead to the “traditional” decrease, but also create new types of crime and facilitate their commission. Of course, this has an adverse effect on the efficiency of policing. Previously, under the influence of Ch.Lombrozo, E. Ferri, R. Garofalo, S. Freud, J. Bethanam, K. Goring and founders of other bio-social theories, many lawyers saw the roots of criminal behavior in the individual features of a particular person (Criminology... 2017). Today it is an accepted opinion that the legal order is equally influenced by social economic conditions.

This leads to a conclusion that the crime control problem cannot be solved by the law enforcement alone.

Police law scientists believe that governments have to intensify efforts in prevention of the most significant criminogenic factors by implementing reforms in social and economic spheres. Therefore, they have to develop and implement measures for harmonization of urban development, improve legal education, establish special agencies for division and registration of labor force in those regions that are targets for large numbers of job-seekers from other countries, and improve police officer training, etc.

It is considered that crime can be better combated with special programs that are implemented jointly by the police, other government agencies, local authorities and the community.

This approach is widespread in the USA where there are many crime combating programs that can be subdivided into two types:

- Crime control programs based on special prevention, detection and investigation of crimes and other offences against the law;
- Comprehensive crime prevention programs that are realized by both the police (usually in cooperation with the population) and the community forces and means.

The first type of programs is realized at all levels of government – federal, state and local; the second one includes mostly local programs. However, the federal government and national organizations and foundations render advisory, financial, managerial and operational assistance.

The federal crime control programs are extremely varied. They are approved by the Congress, i.e. they have the force of law. They may be either complex or special. The special programs are aimed at concrete crime aspects. In the last decades, a series of such programs – laws have been adopted (Prevention programs and policies. 2016).

According to the assessment of the scientists and the American population, the crime control programs have a considerable effect. This practice cannot be neglected. However, it has to be taken into account that law enforcement work planning is possible only during the economic and political stability and the national and local governments are to be able to fully ensure funding.

As we see in the USA it is clear that although the introduction of the crime control refers to the priority functions of the law enforcement and the police in particular, it is a matter concerning the whole society.

The police have sufficient strength, means and skills for detection of crimes like murder, rape, and smuggling. But the situation is often worse regarding detection of such crimes as computer fraud, illegal export of capital, stock exchange and information scams, profiteering with plots of land, illegal construction contracts and some other offences that have become widespread in recent years.

It has to be taken into account that many strategic decisions are influenced by the polarized views of various political groups and this complicates the situation.

The increase of such negative phenomena as crime, including transnational and organized crime, racial, national and ethnic conflicts, religious and political extremism, uncontrolled migration, ecological crisis directly and indirectly impact policing; the police have to face more complex and varied, often novel tasks, and this leads to reformation of the management, forms and methods of the work of police forces.

Moreover, among the theoreticians and practitioners there is no accord on where the emphasis of policing lies – on the prevention of crime or the repressive functions. The former is supported by the USA, Britain, Canada, Australia, New Zealand, Germany, Austria, Sweden, Norway, Finland, Denmark, Japan, Singapore and some

other countries, the latter – by the European and Latin American countries, former socialist republics in Europe and Asia, Israel, and Egypt. Of course, it would be wrong to idealize either prevention or repressive functions: they have to add to each other. But since the police resources are limited, in all countries the government has to set the priority in policing. Some researchers note that successful crime prevention can be implemented only when it involves all society as a police partner. This idea is equally correct and utopian. As history shows, the preventive efforts of the police have never involved the whole of the society and all social layers never treat the police with the level of trust and affinity that would ensure them an overall active support. One should keep in mind that the well-off Americans and Western Europeans are used to the disorganizing comfort and the resulting indifference.

Many specialists point out the danger of social isolation of the police when they lose connection with the population. They advise the police to earn the respect of the society not by adjusting to the public opinion, but by being absolutely impartial enforcers of the law and be ready to render help to any individual irrespectively of their social status, to selflessly protect people's life, health and property.

Wishful thinking is a good thing, however, in practice the police institutions in the 1980s and 1990s began to increasingly show their repressive side. This tendency is universal and linked to the increase of crimes like terrorism, illegal arms trafficking, riots based on religious extremism and national hatred because there are no means of prevention of these and similar crimes. The conclusion is that the repressive functions of the police will expand.

The spread of this trend is encouraged by imperfect laws. British lawyers point out the ambiguity of the definition of “offence against public order” as one of the reasons for the lack of efficiency and the use of excessive force by the police against persons who are passive participants of riots or just accidental onlookers. As the British lawyers note the legislation has to be clear, enforceable and efficient.

3. Police action crime controls legal issues problems

The legal problem of policing is how to regulate police authority to permit officers to enforce law while also protecting individual liberty and minimizing the social costs the police impose. Courts and commentators have largely treated the problem of policing as limited to preventing violations of constitutional rights and its solution as the judicial definition and enforcement of those rights. But constitutional law and courts alone are necessarily inadequate to regulate the police. Constitutional law does not protect important interests below the constitutional threshold or effectively address the distributional impacts of law enforcement activities. Nor can the judiciary adequately assess law enforcement practices or predict police conduct.

The problem of policing is fundamentally a problem of regulation—a fact largely invisible in contemporary scholarship. While scholars have criticized the conventional paradigm, contemporary scholarship continues to operate within its limits.

The problem of regulating police power through law has been shoehorned into the narrow confines of constitutional criminal procedure. This conventional paradigm is necessarily inadequate to regulate the police. Despite doctrinal rhetoric to the contrary, constitutional law cannot alone balance individual and societal interests when they conflict. Instead, constitutional rights establish only deferential minimum standards for law enforcement, without addressing the aggregate or distributional costs and benefits of law enforcement or its effects on societal quality of life. Even within constitutional law, the judiciary alone cannot undertake the problem of policing. As the Supreme Court's constitutional criminal procedure doctrine suggests, empirical and causal analysis is central to both defining and protecting constitutional rights, yet courts have limited institutional capacity to engage in that analysis. In short, the public policy problems presented by the use of police power necessarily extend beyond constitutional law and courts. Protecting rights and balancing competing individual and social interests require a broader set of regulatory tools and institutions.

Of course, legal scholars have often been critical of aspects of the conventional paradigm, especially of its reliance on courts to protect individuals and communities from abuses of police power. Despite those criticisms, the paradigm continues to influence scholarly efforts to understand the problem and regulate the police effectively. Even scholars who have criticized the traditional approach continue to view the problem of policing principally through the lens of constitutional law.

The ongoing influence of the conventional paradigm has obscured some of the conceptual preconditions for effectively regulating the police. First, the paradigm limits the regulation of the police to the problem of identifying and enforcing constitutional rights. Yet the problem of regulating the police extends beyond constitutional law to ensuring that the benefits of policing are worth the harms it imposes, including harms not prohibited by the Constitution. The law should promote policing that effectively controls crime, fear, and disorder without imposing unjustifiable and avoidable costs on individuals and communities. Addressing the problem of policing therefore requires determining what harms policing produces, what kinds of policing are too harmful, and what kinds are harm efficient. Scholars have not yet adequately considered the full web of state, and local laws that govern the police outside of the context of criminal investigations.

It is also emphasized that an important prerequisite for increasing the efficiency of policing is the support of the population. Therefore, in the USA, and most Eastern European countries there is the concept of “community policing”. In the United States, the Violent Crime Control and established the Office of Community Oriented Policing Services (COPS) within the Justice Department to promote community policing (Community Policing. 2015). These ideas are implemented in a multipronged approach using a variety of aspects, such as broadening the duties of the police officer and individualizing the practices to the community they’re policing; refocusing police efforts to face-to-face interactions in smaller patrol areas with an emphasized goal of preventing criminal activity instead of responding to it; solving problems using input from the community they’re policing; and, finally, making an effort to increase service-oriented positive interactions with police (Cordner 2010).

Community policing is open to numerous descriptions from academics, practitioners and community members. It is not a clear concept as it now encompasses a major cultural shift in the way police do things in local communities. Community policing persuades the police to think of themselves as more than a reactive agency for calls from the public, promoting a more proactive, problem-solving role in tackling community problems. However, in adopting a closer interface with the community, the police are faced with a dilemma – how involved do they become in resolving community problems and how far should this be their job? For example, police are regularly drawn into policy discussions on issues such as drugs, prostitution, homelessness, anti-social behaviour, sectarian issues, race relations and asylum seekers, while playing a leading role in social inclusion partnerships and community safety initiatives which are at the core of local and central politics in many European states (Donnelly 2013). In the European community policing is a service-oriented policing model that invests in building public relations equally with all parts of the population. The objective is to establish trust, to be approachable and to assess the security needs of the population in order to deliver a tailored service. One intended outcome of such a model can include increased trust in the police, which ideally should result in increased levels of crime victimisation reporting – including among minority and asylum-seeking communities (Current migration situation in the EU: Community policing 2017).

However scientists point out that introduction of the “community policing” model causes a number of problems that include reorganization of the strategic and tactical tasks of cooperation with the population, the change of criteria of evaluation of the efficiency of policing, the role of the community and police institutions in joint planning of the strategy of protection of the legal order. A reasonable balance between the preventive and enforcement activities in crime combat has always been and will be one of the main strategic problems of the police.

In European and other countries there is a polarization of opinions about the perspectives of combating the crime increase. Some hold the view that when crime is increasing, the police institutions have to be strengthened in all possible ways and given exceptional powers, making a wide use of “preventive measures”. Many

others opponents believe that these activities are too costly as they lead to restrictions of democracy or denial of it.

It is not by accident that today there are disputes between the proponents of the revision of the present system of the law enforcement and those who consider that efficient fight against crime is possible on the basis of the existing legislation without the denial of the principles of democracy.

Evidently, all disputes that go beyond the professional framework cannot be settled: in any society there are both the proponents and opponents of democracy, people that hold their pragmatic interests above all and are indifferent to ideological and political motivation. The predominance of one or the other orientation in the society is determined by a number of objective and subjective factors where the ability of the government to ensure an effective control over crime is of great importance. But this task can be solved differently in different countries with both democratic and authoritarian regimes.

In Europe the efficiency of concrete aspects of policing is evaluated according to the following criteria. In preventive work they include (Matvejevs 2009):

- Number of issued warnings about inadmissibility of immoral behavior in future;
- Number of submissions sent to court requiring special supervision over persons who have committed offences against the law;
- Number of persons who illegally possess guns;
- Number of seized illegal guns, narcotic substances and explosives;
- Number of issued and revoked licenses;
- Lectures, interviews and other public presentations of preventive character aimed at informing the population about measures of protection of property, personal and public security.

A record is kept also of the number of patrolling and public order maintenance operations during pickets, rallies, demonstrations, strikes, sports and cultural events, of escorted trains and airplanes, of checked persons and cargos that cross the border and of other activities.

Although today the police are evaluated diversely, scientists of different countries admit its huge role. The idea of the police as an institution who renders service to the population in the law enforcement sphere becomes more and more widespread. The idea was embodied in many national and international documents already in the 1970s. The *Code of Conduct for Law Enforcement Officials Adopted by General Assembly resolution 34/169 of 17 December 1979*: “Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.”

Valid legislation that regulates relationship between police and society are not sufficient enough for society’s expectations in practice. More duties are requested from police by society, while funding for these additional services is insufficient, making police unmotivated and its services ineffective. So far the activity of these subjects was research more formally, that is, stating police rights and duties itself, without linking them to humanistic content, or discussing if performing these additional duties really contributes to effective protection and realization of citizen rights (Danišauskas 2017).

Conclusions

It is typical of developed countries that they have national and regional programs for the police activity encompassing juridical, organizing, administrative and other interconnected measures; these programs have a sufficient financial support. A creative use of this practice can be very interesting, but the research of these problems – very perspective. But these may be just prospects because the relevant programs function where

the social economic and political conditions are rather stable and there are vast financial opportunities for their implementation.

The aforesaid must be kept in mind during the theoretical and practical analysis of any experience elements of the policing in democratic countries and must be considered when developing recommendations for their practical application.

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