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Ensuring the principle of zero tolerance to antisocial manifestations: The important condition of the constitutional state creation

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Abstract

Article is devoted to relevant and practically significant problem. Ensuring the principle of zero tolerance to any antisocial manifestations gives the chance to look at the general system of crime prevention in general. The term Zero Tolerance has develop a familiar feature of the crime control landscape. In new times it has been organized regularly by police managers, politicians, policy-makers and media. The novelty of this approach of counteracting crime is to gain the opportunity to improve the effectiveness of existing forms and prevention methods and also will allow finding the new directions of activity, previously unknown to law enforcement practice.

Keywords: zero tolerance; antisocial manifestations, causes of crime, criminal policy, constitutional state.

Garantizar el principio de tolerancia cero a las manifestaciones antisociales: La condición importante de la creación constitucional del estado

Resumen

El artículo está dedicado a un problema relevante y prácticamente significativo. Garantizar el principio de tolerancia cero a cualquier manifestación antisocial, brinda la posibilidad de observar el sistema general de prevención del delito en general. El término Tolerancia Cero ha desarrollado una característica familiar del panorama del control del delito. En los nuevos tiempos, ha sido organizado regularmente por gerentes de policía, políticos, legisladores y medios de comunicación. La novedad de este enfoque para contrarrestar el crimen es obtener la oportunidad de mejorar la efectividad de las formas existentes y los métodos de prevención, y también permitirá encontrar las nuevas direcciones de actividad, previamente desconocidas para la práctica de la aplicación de la ley.

Palabras clave: tolerancia cero, manifestaciones antisociales, causas del delito, política criminal, estado constitucional.

1. INTRODUCTION

Kazakhstan pays special attention to the counteracting crime problem. There is a legal basis of counteracting crime, rather mobile law-enforcement system, and the most important – it is developed a negative attitude at the most part of the population to criminal manifestations in a society. According to the famous erudite criminologists, in modern society it is observed serious confrontation between crime and the state. Moreover, the forms and methods of criminal activity become more

perfect, so the activity of law enforcement bodies is more actively observed.

At the same time, it is not possible to reach notable superiority in this confrontation of the specified parties in full for the objective and subjective reasons. So, according to the famous scientist-criminologist Antonyan crime is the social phenomenon as it is a result of generation of people social life, its big and small conflicts. Its existence is impossible out of social life therefore the fight against it can be conducted only by those means which are developed by social practice, social life of the person and society (Pajarillo-Guadamor, 2016). Nazarbaev (2003), the President of Kazakhstan, in the address to the nation of Kazakhstan “Strategy “Kazakhstan-2050: a new political course for the State” offered absolutely new action program of all our society for immediate future. Special attention was paid on the need of further strengthening of statehood and development of the Kazakhstan democracy including ensuring the principle of zero tolerance to a disorder. Head of state noted that the developed society is begun with discipline and an order in everything: comfortable entrance, accurate yard, clean streets and friendly persons. We should not be reconciled even with the smallest offenses, hooliganism, lack of culture because it violates public order, reduces quality of life. The feeling of the disorder and permissiveness creates the basis for more serious crimes (Nazarbaev, 2012). Integrated and conceptual approach which will allow for society to use all available leverages and possibilities of the constitutional state is necessary for realization of policy-making principles, specified by the Head of state. Realization of the principle of zero tolerance to the disorder, except criminal and legal and criminological measures assumes implementation

of economic, social, political and other tasks. At the organization of counteracting crime it is necessary to take into account an opinion of the famous erudite criminologist G. A. Avanesov that crime is generated by conditions of public life, but it is a part of these conditions (Avanesov, 2017). Considering the social nature of crime, counteracting crime has to cover besides legal questions and other spheres of activity as crime is no other than a product of the society. The modern theory of criminal law should investigate the criminal and legal legislation and law-enforcement practice first of all, in order to establish, and then and to resolve the available problems in the field of criminal law, morals, rationality and justice. Development of scientific knowledge allows noting that today the great number of methodological problems is investigated in the field of criminal and legal science. The tasks of law-understanding and law enforcement consist in, on the one hand, to have the correct conception on the developed reality, and on the other hand help to orient the theory for the needs and requirements of law-enforcement activity.

2. RESULTS

Disorderly, antisocial behavior causes distress and alarm, heightens fear of crime and if unconstrained can lead to mounting criminal behavior to sub-criminal. Antisocial behavior is a broad term used to describe the day to day incidents of crime, disorder and nuisance that make the lives of people like unhappiness and encapsulates performances such as littering and defacement to public noisy or abusive neighbors. Such a wide range of behaviors means that incidents can range from the relatively minor to targeted and repeated incidents. As the first two quotations specify, the

term Zero Tolerance is now regularly organized in a wide range of circumstances when there is a need to indicate strong measures and clear resolve. Additionally, particularly, the term has developed a recognizable feature of the crime control landscape. In the next section, we will consider approximate approaches of counteracting crime at the present stage.

2.1. Expansion of the sphere of counteracting crime

It will be corrected to consider the process of fight against crime not only as impact on crime, as a negative component of society, but also on society which generates this crime. Our law-enforcement system was concentrated the attention only on that part of the population which commits crimes, that is potential offenders and criminals. And the main part of representatives of society, law-abiding citizens, remains out of sight. Though the special border dividing the law-abiding population and persons, committed or inclined to commission, does not exist in the nature (Akimzhanov, et al., 2014). Any law-abiding citizen can appear on a dock. And each person, serving sentence in correctional facility, to seek for return to normal life. Therefore fight against crime has to be considered much more widely and should not come down only to identification of concrete crimes and persons committed them. This process has to assume broader and large-scale actions which realization would promote not only elimination of the concrete reasons and crime conditions, but also would include an impact and on a healthy, law-abiding part of society. Complex crime prevention – is a wide nation-wide task of social character. Scientific bases of the theory of crime preventions, committed at our

society, are created as a result of numerous researches of a problem for fight against crime in various spheres of economy and social life, development of methods and means of its prevention (Garey, 2012). In criminology for a long time there is a concept of crime preventions as set of various interconnected measures which are carried out by public authorities for crime preventions and elimination of the reasons generating of them. Moreover, the adopted Law of the Republic of Kazakhstan “About prevention of offenses” aims at the implementation of this direction.

2.2. Formation of new state criminal policy

From our point of view, the criminal policy has to cover, first of all, the questions of punish ability of acts, the content of the punishment and its prescription. Therefore determination of criminal policy has to cover the specified directions. As a result of carrying out criminal policy, firstly, there must be carried out monitoring of the existing criminal legislation regarding its compliance of the reality; secondly, how much the criminal legislation is effectively applied, what its norms are not put into practice or difficult applicable; thirdly, whether all the acts, committed in reality, are covered by criminal law; fourthly, whether there are difficulties in use of these or those norms of the criminal legislation in practice; fifthly, social consequences of enforcement of a penalty and many other things. The Ancient Greek philosopher Plato wrote in the early works that punishment – is the good for the criminal which is capable to restore harmony in his soul. But he admitted the death penalty. At the same time Plato paid attention to legislative process, noted that

there is the need to consider human imperfection, and it is necessary to seek to prevent a crime, to try to obtain the person was getting better as a result of punishment. Also Plato noted the personal nature of punishment; he considered that it should not extend to the criminal's descendants even in cases of infringement of the state order (Pajarillo-Guadamor, 2016). The happening changes of quantitative and quality indicators of crime (the general growth of the committed crimes, especially its most dangerous types, including organized forms, decrease in percentage of criminal cases solved, growth of number of the "prison" population, etc.) testify to the available unresolved problems in the questions of legal regulation, law enforcement, organizational support and the need of search of new ways of counteracting crime. Therefore, main beliefs of criminal policy are the concepts null and void regardless of whoever has made it. Providing the basis for the elaboration of laws, bylaws Therefore, the criminal policy principles should be carrying out the activity of state bodies and officials guidance for theoreticians of criminal policy and law, in the ant criminal fight. The principles of criminal policy originators of criminal policy, law makers, law may contain:

- Justice;
- Legality;
- Complexity;
- Conformity of tasks, powers and resources;
- Forward-looking character of strategic decisions.

2.3. Strengthening of the preventive orientation for the process of fight against crime

One of unused reserves in counteracting crime is the need of strengthening of preventive orientation of the state and its bodies. Kazakhstan created the necessary prerequisites for strengthening of this field of activity which foundation is laid in the Constitution RK and the new laws adopted on its base. Thus, for the first time in the history of our country the Law RK of April 29, 2010 “About prevention of offenses” was adopted. It should be noted “The concept of legal policy of the Republic of Kazakhstan for the period from 2010 to 2020”, approved by the Decree of the President Nazarbaev (2003) on August 24, 2009 No. 858. So, according the subsection 2.8 of section 2 is fixed that it is necessary an expansion of scope of the criminal penalties which are not connected with imprisonment including an exception of separate punishment sanctions in the form of imprisonment or decrease in the maximum terms of imprisonment.

In the light of implementation of the Address of the President of the Republic of Kazakhstan – the Leader Nation N.A. Nazarbayev to the nation of Kazakhstan “Strategy “Kazakhstan-2050: a new political course for the State” as a result of active work of scientists, practitioners and deputies, in 2014 there were adopted Code of Criminal Procedure, Criminal Code, the Penal Enforcement Code of the Republic of Kazakhstan and the Code of Administrative Offences of the Republic of Kazakhstan which entered into force (Nazarbaev, 2003). The state task consists in that, on the one hand to provide inevitability of punishment for the committed crime, and on the other hand to make this punishment the most fair and effective, having as much as possible reduced the social

consequences, both for the convict, and for the state, in general. Thus, the State was taken real steps for a humanization and democratization of judicial and legal system which are the major components of the undertaken reforms in Kazakhstan. Together with it, the integrated and conceptual approach which will allow for society to use all available leverages and possibilities of the constitutional state is necessary for realization of policy-making principles, specified by the Head of state.

2.4. Formation of new ideology of counteracting crime and consideration of process for fight against crime as ensuring national security of the country

The world community realized that the most important task for mankind in the third millennium is ensuring national security as in separately taken state and, in general, on all world space. Kazakhstan's President N.A. Nazarbayev in his book "Critical Decade", speaking about security concerns, noted that national security is intended to provide guarantees of invulnerability of the main, vital interests of the country — national sovereignty, a territorial integrity, protection of the population. In this sense, national security acts as a *life support system* of the state: if there is no national security, then there is no state (Nazarbayev, 2012). The strategy of safety deserves attention which was described by the famous erudite criminologist V.N. Kudryavtsev (2003) in the book "Strategy of fight against crime". The quoted author suggests to define the security measures as undertaken for people protection, industrial, military, scientific and other objects against criminal encroachments of unknown (unidentified) persons. At the same time the gravity center moves from

preventive, and therefore the repressions, concerning “suspects” or “unreliable” elements on implementation of measures for the state protection and public objects and also citizens from possible criminal encroachments, are illegal. In fact, it is about elimination of the conditions promoting commission of crimes (Aitken, 2009).

It is known that the concept of safety from a position of various sciences is, as a rule, treated ambiguously. The psychology represents safety as feeling, perception and experience of the need for protection vital (spiritual and material) requirements and the people interests. The philosophy and sociology consider safety as a state, tendencies of development and a condition of activity of society, its structures, institutes and orders at which it is provided preservation of an optimum ratio of various categories and contrasts. From the positions of jurisprudence, safety is considered as the system of establishing legal guarantees for the protection of the personality and society, ensuring their normal activity, the rights and freedoms. For example, according to S.V. Stepashin safety is a state, development tendencies (including latent) and conditions of society activity, its structures, institutes and establishments at which it is provided maintaining their qualitative definiteness with objectively caused innovations in it and free, corresponding to own nature and it, determined functioning (Stepashin, 2004). N.D. Kazakov defines safety as “dynamically steady state in relation to adverse effects and activities for protection against internal and external threats, for providing such internal and external living conditions of the state which guarantee a possibility of stable comprehensive progress of society and its citizens” (STEPASHIN, 2004). M.A. Leskov considers safety as the phenomenon identical to a system homeostasis, “where it is necessary to understand the type of

dynamic balance, characteristic of difficult self-regulating systems and states in maintenance essential parameters, important for preservation of system in admissible limits. Godzimirski (Godzimirski, 2000) considers that safety is a measure of security of the environment for life, honor, dignity, values of the personality, social groups, the state, society, a civilization in general. Generalizing safety definitions given above, it is possible to draw the generalized conclusion that safety is result of social activities for safety of the personality, society, state. Concrete threats of danger (information, ecological, military, political, economic and so forth) and also separate material carriers of these threats (the natural and social and public phenomena, etc.) act as object of activities. The law of the Republic of Kazakhstan “About national security of the Republic of Kazakhstan” has fixed “a concept of a threat of national security as set of external and internal factors (processes and the phenomena) interfering or able to interfere with realization of national interests of the Republic of Kazakhstan” (Carter, 2004).

It is necessary in a conceptual terms framework of legal practice in the sphere of counteracting crime to introduce into terminological circulation the concepts connected with fight against crime from positions of ensuring national security of the country. So, in the Law RK of January 6, 2012 “About national security of the Republic of Kazakhstan” the concept of national security as the condition of security of national interests of the Republic of Kazakhstan from real and potential threats, providing dynamic development of the person and citizen, society and state is legislatively fixed. The same Law RK, to one of the sources of threats for national security, along with others, were referred: decrease in legality level and law and order, including increase of crime, including its

organized forms, merging of public authorities with criminal structures, the terrorist and extremist organizations, protection of officials illicit trafficking in the capital, corruption, arms trafficking and the drugs, promoting to decrease in degree of security of national interests. That is, we have all legal bases to consider crime as one of the main sources of threat of national security of the country. And the process of fight against crime is process of ensuring national security of the Republic of Kazakhstan.

Our presented approach to assessment of process of counteracting crime from positions of ensuring national security gives the following advantages. First, the relation to fight against crime will change in society in general. The importance in the opinion of citizens on process of counteracting crime will increase. It will be considered not as the ordinary phenomenon connected with fight against concrete types of crimes and criminals and as the process, aimed at providing national security of all state. And each citizen, participating in this process or rendering assistance, will realize that fighting crime he promotes to implementation of the major national objective – to ensuring national security of the whole country. Secondly, by such consideration of process of counteracting crime the role of the law enforcement agencies will raise considerably which designed not only to carry out fight against crime, but also to provide preservation of national security of the state along with special bodies RK within the functions and powers. Thirdly, the analyzed approach to fight against crime has the right for existence in society. It is known that counteracting crime is carried out also by non-specialized subjects of crime preventions which do not possess of law-enforcement functions, and apply other measures, complicating commission of crimes

or interfering to them. So, the certain citizens, various bodies and institutions, considering not obligatory the participation in process of fight against crime for various reasons, just will not have the moral right not to participate in process of ensuring national security of the state in which they live. Fourthly, using this approach to process of fight against crime, it would be possible to formulate more accurately the tasks, facing law enforcement agencies.

2.5. Further improvement of the existing Criminal Legislation RK is necessary

Despite the small term of entry into force of the new Criminal Legislation RK (on January 1, 2015), for the last two years law-enforcement practice has been testifying to the available problems and separate omissions. For example, today it is already became obvious that many provisions of the existing Criminal Code of Kazakhstan of 1997 have become outdated for a long time and needed radical processing. However, they have smoothly turned into the new edition of the Criminal Code of Kazakhstan of 2014. That is a fair conclusion arises that tasks of the Head of our State in respect of a humanization of the current legislation are implemented not in full. Criminal legislation has to be rigid, even cruel concerning the ardent criminals who are repeatedly judged, committing crimes is deliberate and their stay in society represents the increased danger to people around. They should be isolated from society, certainly. At the same time the criminal legislation has to show humanity concerning persons for the first time committed crimes, especially if it is about the crimes committed on imprudence. The seven

years ago, on January 29, 2010, the President RK, Nazarbayev (1997), has paid attention in the Address to the people of Kazakhstan “About need of change of the developed negative practice for application of such type of punishment as imprisonments”. He was specified that we have in the punishment system the penalties which make less than 5%, corrective works – 0,4%, public works – 0%. The main type of punishment is imprisonment (Pravda, 1991).

So, in the Kazakhstan’s Criminal Code of 1997 the most presented type of the main punishment, prescribed in sanctions of Articles of the Criminal Code RK, is imprisonment (658). On the second place is a penalty (341). The third place is taken by such type of punishment as limitation restriction of pretrial freedom (332). Further follow deprivation of the right to hold a certain position or to be engaged in a certain activity (223), corrective works (166), community service (76), being at a guardroom (43), restriction on military service (16), life imprisonment (19), the death penalty (16). In the new Kazakhstan’s Criminal Code of 2014, which was taken in force since January 1, 2015 such type of punishment prevails again as imprisonment (744), then goes further a penalty (471), after the correctional works (468), restriction on service (342), property confiscation (264), community services (152), arrest (150), death penalty (12). It would be necessary to change this ratio, having reduced such type of punishment as imprisonment and having increased the types of punishment which are not connected with isolation of the person from society. According to the famous scientists, being in general the positive instrument of impact on the criminal, punishment in the form of imprisonment in itself generates the certain negative consequences which are often poorly depending on law enforcement

agencies. The famous scientist V.N. Kudryavtsev paid attention that one of paradoxes of people isolation in jails consists that being placed there for the crime commission and in order to change, they commit in these places the new crimes, sometimes not less heavy. This fact, according to the quoted scientist, indicates inefficiency and powerlessness of correction of criminals by means of isolation from society once again (Musabaev, et al., 2017). Further V.N. Kudryavtsev specifies that the strategy of isolation of the criminal from society becomes obsolete (Kudryavtsev, 2003).

3. CONCLUSION

The policing practices that became related with Zero Tolerance policing were presented to the New York Police Department (NYPD) following the election of Rudolph Giuliani as Mayor in 1993, and the appointment of William Bratton as his first Chief of Police in early 1994. In the Kazakhstan, experiments with so-called Zero Tolerance policing have been limited to a few localized initiatives that have in practice accepted only elements of the New York approach. In our opinion, it is necessary to reduce application of such type of punishment as imprisonment by its exception of many articles of the Special part of the Criminal Code of Kazakhstan. And the most important, at deficiency of the population and Kazakhstan's big territory, the state should fight for each citizen who has followed a criminal way and seek to return him on service to society and state. The modern theory of criminal law should continue a research of the criminal procedural legislation and law-enforcement practice first of all, in order to establish, and then and to

resolve the available problems in the field of criminal law, morals, rationality and justice.

In Kazakhstan as a result of such law-enforcement practice for the last decades, on average, annually courts applied such type of punishment as imprisonment to 18-20 thousand persons who stay in correctional facilities. Therefore, there is a continuous process of intensive increase in number of the “prison” population. According to the Committee of a penal correction system of the Ministry of Internal Affairs of the Republic of Kazakhstan, for the entire period of sovereign development of Kazakhstan over one and a half million people passed through correctional facilities, and maintenance costs on execution of the punishment in our country in recent years increased more than 4, 5 times and has increased to over 50 billion tenses a year. Unfortunately, the new Criminal Code of the Republic of Kazakhstan which was come into force on January 1, 2015 did not solve all problems which were for that period. Proceeding from it, we will consider some suggestions for improvement of the existing criminal legislation. This article describes the consequences of the writers' comprehensive investigation of the essence and principles of such area of state activity as criminal policy. At the current day in the world, the criminality advances and generates new types and habits of crimes commission. Therefore, states need to revise current criminal policy for the purpose of effective countermeasure to criminality.

3.1. Reduce application of such type of punishment as imprisonment.

It is necessary to work a possibility of the maximum exception of this type of punishment from separate articles of the Special part of the Criminal Code RK, for the acts which do not constitute serious public danger, having replaced it with other types of the punishments which are not connected with isolation from society. A clear example of such discrepancy is article 273 deliberately false reports of acts of terrorism of the Criminal Code RK which provides only one uncontested type of punishment as imprisonment up to six years. In our opinion, imprisonment should be applied only in those exceptional cases when the person committed the crime represents danger to people around and society in general and needs immediate isolation.

3.2. Reduce the time limit for imprisonment

According to the article 46 Criminal Code RK of 2014 imprisonment for the committed crimes provided by the Special part of the Criminal Code RK are established from six months to 15 years, and for the gravest crimes – up to 20 years or for life. The term of imprisonment cannot exceed 10 years for careless crimes. In case of partial or full addition of terms for imprisonment at accumulative sentencing the term of imprisonment cannot exceed 25 years, and on set of sentences – no more than 30 years. As we see, it is observed significant increase in terms of imprisonment in comparison with the old criminal legislation of our country. So, the Criminal Code of the Kazakh SSR (article 23 “Imprisonment”) determined imprisonment terms from three months to 10 years, and for the gravest crimes – up to 15 years. And only at substitution of the death penalty, as commuted sanction, imprisonment

could be fixed to term over 15 years, but not over 20 years. Taking into account many circumstances related to the conditions of detention of convicts, with a possibility of completion on corrective process in shorter terms, with annually increasing number of convicts, with increase in maintenance costs, and also aspiration of Kazakhstan to improve the index of “the prison population” of the country, there would be expedient to revise provisions of again adopted Criminal Code RK of 2014 regarding imprisonment terms, having established imprisonment terms not over 10, and in special cases - to 15 years.

3.3. Reconsider a parole order

In the article 72 of Criminal Code RK of 2014 “Parole from serving sentence” should be reconsidered established mandatory terms of serving a sentence:

- 1) Not less than one third of punishment term, prescribed for crimes of small or medium gravity;
- 2) Not less than a half of the sentence term, prescribed for the grave crime;
- 3) Not less than two thirds of punishment term, prescribed for the gravest crime and also if the parole applied was cancelled earlier on the bases provided by points 1) and 2) of the part seven of article;

4) not less than three quarters of the sentence terms, prescribed for the crimes, provided by points 3) and 5) of the part third of article 120 (Rape) and points 3) and 5) of the part third of article 121 (Violation of sexual integrity) of the present Code; and also if the parole, applied earlier, was cancelled on the basis provided by point 3) of a part seven of present article;

5) not less than one third of sentence term, prescribed for the gravest crime in case of implementation of all conditions for the procedural agreement by the convict.

We suggest replacing them with others: for the minor offence – up to 1 year, the offence of intermediate gravity up to 2 years, the grave crime – up to 3 years, the gravest crime up to 4 years. Such replacement does not mean mass and obligatory discharge of all convicts. It is only about that category of convicts who improved and does not need further isolation. Especially in point 5, the quoted 72 articles of the Criminal Code RK (Parole from criminal penalty) it is established the general requirement that actually served the sentence term of imprisonment by the convict cannot be less than 6 months. The offered approach will give the chance to stimulate convicts to correction and it is essential to reduce the number of the prison population and at the same time to increase the responsibility of corrections officers.

**3.4. Expand application of institute of suspended sentence.
(Article 63 of Criminal Code RK of 2014 Suspended sentence)**

The criminal legislation has to show humanity concerning persons for the first time committed crimes, especially if it is about the crimes committed on imprudence. As a rule, condemnation of the person to imprisonment is the tragedy not only for the convict (isolation from society, loss of communications with friends, fellow workers and even with relatives), but also for his close relatives, friends (negative assessment from neighbors, colleagues of the spouse, schoolmates of children and many other things). Especially if it is about the high-ranking official the former prime minister, the minister, the deputy of the minister, the Chairman of the Committee or the Akim of area, city, district, etc. Unfortunately, in Kazakhstan such examples became not a rarity recently. Especially, according to scientists, experts in the sphere of penal system, being in general the positive instrument of impact on the criminal, punishment in the imprisonment form in itself generates the certain negative consequences which are often poorly depending on law enforcement agencies. That is, during stay in correctional facility there is happened under the influence of various factors, a serious deformation, and at times and degradation of the identity of the convict. And the most important, at the population deficiency and the big Kazakhstan's territory, the state should fight for each citizen who makes a decision to be in criminal way, so it must seek to return him on service to society and state with the smallest losses. So, there should be noted that the content of the pursued criminal policy of the state can be determined by many factors of both internal and external character. It is possible to carry to them: the situation in social and economic and political spheres, a state, level and dynamics of crime, a demographic situation in the country and many other things. Taking into account above-mentioned circumstances it is possible to note that the offered approach to reconsideration of separate aspects of

counteracting crime will promote the solution of many tasks facing law enforcement agencies and increase in efficiency of their participation in this process in the conditions of the happening changes on strengthening of law and order and further liberalization of the criminal legislation of the Republic of Kazakhstan. At the same time it is easy to establish the direct dependence between the criminal policy content and the happening processes in the sphere of democratization. Thus, the conclusion: the more democratic this or that society is, the more humane the criminal policy, pursued in it. So, it is exactly the evidence of formation of the constitutional state.

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