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Criminal Recidivism Prevention as One of the Determinative Directions of the Agenda of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders

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Abstract

Crime structure of any country in the world always has recurrent crime, the scale of which is not amenable to reduction practically. This crime is the most dangerous manifestation of criminal behaviour of a person, because the return of a person to committing new crimes indicates that the measures which were taken to re-socialise them have proved ineffective. Therefore, the problem of criminal recidivism and combating with it occupies a prominent place among issues which are discussed at the level of UN Congresses on the prevention of crime and the treatment of offenders.

In the article the provisions of the materials of these Congresses on criminal recidivism and the practice of its prevention are analysed in detail. At the same time, approaches to the calculation of recurrent crimes on the example of separate countries (USA, UK and Ukraine) are clarified. It is concluded that the scale of recidivism because of different methods of counting recurrent crimes is very different in different countries. This leads to the inability to draw a single picture of the prevalence of criminal recidivism in different regions of the world.

Vladislava S. Batyrgareieva, Sandra Kaija. Criminal Recidivism Prevention as One of the Determinative Directions of the Agenda of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders

It is concluded that to achieve appreciable results in the combating recidivism first of all, some methodological issues need to be resolved. One of them should be an attempt at an international level to develop a more or less standardised method of accounting for recidivism in national practices, which would include: firstly, a clear understanding of which offenses should be considered as recurrent; and secondly, the definition of terms based on which quantitative indicators of recidivism are provided.

Keywords: recidivism, recidivist, United Nations Congress on Crime Prevention and Criminal Justice.

Introduction

A significant event in 2020 will be the 14th UN Congress on the prevention of crime and the treatment of offenders in Kyoto, Japan. It should be noted that such an event is not the first time in Kyoto. Fifty years ago, the 4th UN Congress was held here. However, those issues that were put to the agenda half a century ago would once again be on the focus of attention of the international community. These are, in particular, questions such as connection of economic and social development of the world with the state of offenses, generating new criminal challenges by modernity, youth and crime, introduction of effective measures to coordinate efforts in the field of crime prevention in the context of social and economic development, etc. [6]. In this connection, we cannot disagree with V. Yu. Kvashysa, that is the fact that "... these issues are once again on the international agenda and, moreover, they have become even more important lately, saying that the international community should take decisive action to find effective solutions" [21, 16].

As we can see, the "old" problems of crime, which are prone to constant modernisation, still force us to look for ways to neutralise them, even in a post-industrial society. Among the oldest problems of crime, a prominent position is given to the problem of criminal recidivism, which the world has been trying to cope with for a long time. The urgent issues of need and decisive measures to prevent recidivism were specifically discussed at the UN Third Congress on the prevention of crime and the treatment of offenders (1965, Stockholm). At the same time, this problem was also touched by the Fourth (1970, Kyoto), the Fifth (1975, Geneva), the Seventh (Milan, 1985), the Eighth (Havana, 1990), the Ninth (Cairo, 1995), and the Twelfth (El Salvador, 2010) and the Thirteenth (Doha, 2015) of the UN Congresses. However, no universal approach to its solution has been found yet, that is why discussions on this matter are not subsiding. This state of affairs promotes to the fact that again and again the topic of recidivism becomes one of the main topics for discussion at the UN Congresses on the prevention of crime and the treatment of offenders.

Criminal recidivism as the most dangerous part of all crime, the scale of which is practically impossible to reduce (even if the overall level of crime is reduced) and strategies to reduce it are constantly on the focus of attention of domestic and foreign scholars of past times and present. The well-known lawyers of the second half of 19th – first third

Vladislava S. Batyrgareieva, Sandra Kaija. Criminal Recidivism Prevention as One of the Determinative Directions of the Agenda of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders

of the 20th century made a significant contribution to the development of the problem on which modern views are based: M. M. Hernet, M. M. Hrodzynski, A. F. Kystiakovski, V. I. Kufaiev, M. D. Serhiievski, M. S. Tahantsev, I. Ya. Foinytski, M. P. Chubynski and others. Among Ukrainian scientists, whose views on the issue under consideration are well-grounded, should be mentioned M. I. Bazhanova, V. V. Holinu, I. M. Danshyna, O. M. Dzhuzhu, A. P. Zakaliuka, A. F. Zelinskoho, O. M. Lytvynova etc. At the same time, of particular interest to us is scientific research by foreign criminologists and sociologists (S. L. Brown et al. (2008) [5], A. N. Cimino et al. (2015) [7], D. J. Cooke et al. (2004) [8], Y. Dandurand (2016) [9], D. Finklehor et al. (2007) [12], P. Gendreau et al. (1996) [13], K. M. Hennigan et al. (2014) [16], P. D. Howard et al. (2011, 2013) [17; 18], N. J. Jones et al. (2010) [19], T. P. LeBel et al. (2008) [22], R. E. Mann et al. (2010) [23], D. S. Nagin (2009) [24], L. J. Rettinger (2010) [27], P. Smith et al. (2009) [29], S. J. Wormith (2007) [32] etc.). This is conditioned by the need to familiarisation of the approaches to combating criminal recidivism and methods of counting the number recidivists and recidivism. Because foreign practice shows, at first sight, very high numbers of criminal recidivism, which forces to deal with these issues more carefully and answer the questions whether the problem of recidivism is so acute, for example, in the countries with sustainable democracy, as the numbers show. However, in any case the problem under consideration should be discussed at high-level international forums on the prevention of crime and the treatment of offenders, because the public cannot wait for the time when research results allow one or another action to be taken, and that it is now necessary and desirable to act on the basis of serious professional conclusions [14].

Aim

The aim of the article is firstly to analyse congressional provisions on criminal recidivism and the practice of preventing it, and secondly, to clarify approaches to counting recidivism on the example of some countries – USA, UK and Ukraine.

Materials and methods

The methodological basis for the study were: 1) materials of the UN Congresses on the prevention of crime and the treatment of offenders; 2) the official statistics of the Department of Information and Analytical Support of the Ministry of Internal Affairs of Ukraine and the Unified Register of Pre-trial Investigations and Informational and Analytical Work of the General Prosecutor's Office of Ukraine; 3) analytical materials of the Ministry of Justice of United Kingdom and U.S. Department of Justice; 4) provisions of the legislation of different countries (in particular, Ukraine, USA, Germany, Switzerland, etc.) regarding combating recidivism.

The study is grounded on dialectical, historical, comparative, analytic, synthetic and statistic methods.

Results

Recurrent crime in the structure of general crime is a kind of constant the presence of which is conditioned by certain factors – objective (there are persons who always commit repeated crimes among criminals), and subjective (special definition by the legislator of similar cases in criminal law). Herewith, despite the specifics of the criminal law of certain countries, crime recurrence is always defined as a special case of multiple acts of crime that requires appropriate treatment of such manifestations of criminal behavior.

In order to understand the concern of the international society about the problem of recidivism, it is first of all necessary to analyse the scale of this evil. It seems appropriate to look at the state of recidivism both from the standpoint of foreign practice and taking into account the existing system of accounting for such crimes in Ukraine.

Regarding the practice of accounting of recurrent crimes in UK then according to the methodology of the Ministry of Justice of this country basic statistics on proven recidivism of adult and juvenile offenders who have been released after serving a sentence of imprisonment, including parole, or who have received a non-custodial conviction, or so-called reprimand or warning, are calculated every three months, i.e. quarterly. Herewith, any recurrent crimes committed within one year of the courts sentencing or release, issuance a warning or reprimand to her are taken into account. Based on such a methodology for assessing recidivism, at least two conclusions can be drawn. Firstly, there are different accounting periods in the UK and Ukraine (in Ukraine this period is one year and in the UK quarter) secondly, the recidivism in our country is counted all crimes committed during the year, including primary crime. As regards the United Kingdom, only the proportion of criminals who have already entered the orbit of criminal justice is taken into account when assessing the extent of recidivism. This, in fact, explains the much higher level of criminal recidivism in the Western country under consideration. For example, from July to September 2017, the overall rate of proven recidivism among the listed persons was 29.3 %. Herewith, the recidivism among adult offenders was 28.7 %, among juveniles – 38.1 %. Data on adults who have not previously been imprisoned are given separately. This number was 37.2 %. It should be noted that the recidivism rate among adults who were punishment of less than one-year imprisonment and were released from jail was 62.2 % [26].

According to the practice of recurrence assessment in the United States of America, new offenses by former prisoners are counted within nine years of their release. For example, concerning 401,288 people released in 2005, there were 1,994,000 arrests over the nine-year period, which means an average of 5 arrests for each prisoner released. From the fourth to the ninth year, 60 % of arrests occur. Herewith, 68 % of those released in 2005 were arrested in the next three years, 79 % for six years and 83 % for a total of nine years [1]. Therefore, the full accounting period during which quantitative and qualitative indicators of recidivism are identified is 9 % in the United States. In addition, any estimates of recidivism in the United States are being made (as in the UK) for those who have already served sentences.

As for Ukraine, until November 20, 2012, relevant criminal statistics were kept by law enforcement agencies. Thus, the Department of Information Technologies of the Ministry of Internal Affairs of Ukraine provided information directly related to the problem of recurrent crime in several ways: 1) in the statistical reporting in the form No. 1 “Unified crime report” – data on the number of crimes committed by previously convicted persons; 2) in the Express information of registered crimes (by region) – the number of crimes committed by previously convicted persons, and the number of crimes committed by persons who have previously committed crimes; 3) in the statistical reporting in the form No. 2 “Report on persons who committed crimes in the territory of Ukraine” – data on the number of persons from whom the conviction was not expunged; 4) in the Express information of registered crimes (by region) – the number of persons who have previously committed crimes and the number of persons whose convictions have not expunged. Starting from the end of 2012, the relevant statistical reports are kept by the prosecuting authorities. Currently, such forms of criminal reporting are provided as the “Unified Report on Criminal Offenses” and the “Unified Report on Persons Who Commit Criminal Offenses”. In 2019, according to the Unified Criminal Report, 57,423 crimes were committed by persons who have previously committed such crimes (12.3 % of the total number of reported crimes). Taking a broad view of recidivism, these figures give an idea of what is known as criminological recidivism, which covers crimes committed by both repeat offenders and persons whose convictions are expunged, and those who was convicted of committing negligent crimes [3, 159–160]. The highest rate of recurrent (29.71 %) was observed in the first three months after the release of a person from serving a sentence or convicting to a non-custodial sentence.

As for persons whose criminal record has not been expunged, according to another reporting form, the Unified Report on Persons Who Have Committed Criminal Offenses, it was registered at least twice less than the number of offenses, namely 25,018 (21.0 % of the total number of offenders). At the same time, it can be concluded that this indicator also includes offenders who have a criminal record for committing negligent criminal acts. Thus, firstly, in the national plane we have to operate with sometimes not quite comparable figures; secondly, the weight of criminal recidivism is calculated based on the total number of crimes or offenders; thirdly, the duration of the accounting period is one year. Approximately the same approach is observed in most post-Soviet states. However, the numbers of the incidence of recidivism, for example, in Belarus and Russia is much higher than in Ukraine. For example, in 2018, the rate of recidivism in Belarus was 38 % [4]. According to the data of the Prosecutor General’s Office of the Russian Federation, currently more than half of the crimes (57.6 %) are committed by persons who have already violated the criminal law [25]. By the way, if in the Russian Federation the share of recidivism in the structure of crimes in 2006 was 28.8 %, in 2012 – 32.3 %, then only in recent years it has increased almost twice [2, 4]. We emphasise again that although the accounting systems are approximately the same, the figures are different, which is probably due to the causes of criminalisation of society.

However, the main conclusion that can be drawn from considering the systems of record of cases of recidivism only in the example of several countries is that any country actually has its own peculiarities of vision of the problem of criminal recidivism and practice of its counting it, not to mention the system of counteraction to it. Nonetheless, the problem of recidivism is still relevant today for countries with established democracies as well as for countries of the so-called third world. It is emphasised “Although there are currently no reliable global statistics on recidivism, both developed and developing countries are facing it” in the Discussion Guide of the 14th UN Congress on the prevention of crime and the treatment of offenders [6, 28]. Therefore, it is no coincidence that the recurrence of the crimes suffered by both Western and Eastern societies has become a permanent topic for discussion at the UN Congresses on the prevention of crime and the treatment of offenders. Indeed, the long-standing observations of jurists on the development of criminal reality, the results of scientific research unanimously ascertain the qualitative difference between recidivism as a phenomenon in the structure of the total mass of criminal manifestations, which is associated primarily with the fact of increasing social danger of such crime [3, 33]. So it is worth remembering the “contribution” of the existence of recurrent crime to the destabilisation of society, which is mainly related to the increased social danger of this criminal phenomenon. Thus, increased social danger of recidivism is defined, in particular, by its considerable power in its desire to reproduce in comparison with the primary crime; large proportion in the structure of recidivism of serious and especially serious crimes; the prolongation of the harmful effects of former detention and, in some cases, inequality in the administration of justice¹; the ability to be a transmitting mechanism of criminal craft and experience, thievery traditions, etc., which leads to the emergence of a special social layer in the structure of society and its significant ideological influence on the minds of criminals and the mass consciousness of law-abiding members of society; in general increased latence of these criminal acts; the intensity of measures that society and the state should take to prevent recidivism, and which (measures), unfortunately, are not effective enough for any tangible impact on the recidivism; the cultivation in the public mind of the need to strengthen the severity of criminal policy as the only possible effective means of combating recidivism etc.

Turning to the specific steps taken by the international community to limit the impact of criminal recidivism, it should be noted that as early as 1965, at the UN Third Congress on the prevention of crime and the treatment of offenders which was held in Stockholm, Sweden, a good opinion was expressed on the great social importance of the problem of recidivism and selected important issues as a result of which discussion it was considered that a useful contribution could be made to the extension of knowledge and practice of combating in all countries to reduce recidivism [14, 57–58]. No wonder

¹ This aspect is especially emphasised in the report of the UN Third Congress on the prevention of crime and the treatment of offenders (Stockholm, 9–18 August 1965). For more details see [11].

Vladislava S. Batyrgareieva, Sandra Kaija. Criminal Recidivism Prevention as One of the Determinative Directions of the Agenda of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders

this topic, along with the issues of social progress and crime, social preventative measures, the role of social factors in crime prevention and special preventive measures for young offenders, was specifically put on the agenda for discussion at the high-level forum. In addition, in discussing the issue of combating recidivism, Congress members have been able to accurately disclose the causes of youth connection and criminal recidivism. To break this vicious relationship, there is an emphasis on more active application to young offenders and first-time offenders measure outside correctional facilities as the one who gets back to the detention facilities and other correctional facilities, as a rule, it becomes more solid to embark on a new crime if there has previously been experience in placement in these institutions. This is very relevant given the fact that in Ukraine, with recurrent juvenile delinquency, an alarming situation has emerged: in recent years, there has been a significant increase in the proportion of such offenders in the structure of both recidivism and general juvenile delinquency. At the same time, every fourth or fifth minor recidivist is 14–15 years old. Juvenile offenders are increasingly committing crimes related to drug trafficking that were not typical of juvenile relapse in the past.

At the same time, understanding the reduction of the prison population is important from the standpoint of trying to resolve the age-old dispute that continues to this day: should the state first and foremost concern about the security of society as a whole, protecting it from socially dangerous “elements” for as long as possible, or should it take care of the humanisation of criminal policy as a manifestation of the civilisational dimension of the modern system of social life? It is interesting to note that not all issues were unanimous. However, many of them, fifty years ago, were recognised as important and deserve of further study and research (for example, the consent of people held in custody to application programmes of remedial measures to them; the practice of involving such persons on a voluntary basis to work, keeping persons awaiting trial in isolation from prisoners, expediency of removing young people from the sphere of operation of the traditional criminal law system, including the jurisdiction of juvenile courts or children, etc.). At the same time, participants in the Third Congress recognised that the court, in carrying out tasks related to the administration of impartial justice, should be better informed of the results of scientific research aimed at establishing the impact of different sentences on different groups of offenders. It is not difficult to guess that the proposal to use as much as possible the open correctional facilities, instead of those providing rigorous isolation (closed prisons), is an attempt to widely introduce the institution of probation measures, which has been actively discussed in Ukrainian society recently.

As a result of the discussion of the issue of criminal recidivism at the Third Congress, it was stated that scientific research should be continued on a regular basis that can be used to evaluate current and promising methods of preventing recidivism to protect society from offenders, reduce human suffering and avoid excessive financial costs [14, 65]. Many further congresses have addressed these issues, but mostly fragmented. Moreover, finally, at the workshop within this year’s Congress, the issue of reducing recidivism in terms of identifying risk factors and developing solutions will be discussed

Vladislava S. Batyrgareieva, Sandra Kaija. Criminal Recidivism Prevention as One of the Determinative Directions of the Agenda of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders

again. The roadmap for discussing this issue covers three blocks of questions: 1) reduction of recurrence; 2) rehabilitation and social integration; 3) sentencing policy, variants for corrective measures, and alternatives to imprisonment [6, 28–31]. It is important that there are possible issues for discussion national experience in collecting data on the nature of repeat offenses and in assessing the impact of different approaches to reducing recidivism were also noted. From that what is the position to be taken in resolving these issues depends also on the ways in which the recommendations can be unified in order to reduce recidivism, which will lead, in particular, to reducing the number of victims of crime, ensuring greater community safety and reducing the burden on law enforcement body and the criminal justice system.

In the 14th Congressional Discussion Guide on the prevention of crime and the treatment of offenders it is argued that reducing recidivism and supporting offenders in order to become useful members of society requires a multilateral approach. This approach includes, inter alia, the introduction of offender rehabilitation programmes both in prisons and in communities, the implementation of effective crime prevention strategies and the use of penalties alternative to imprisonment. At the same time, prevention of recidivism requires effective measures based on an understanding of the factors that create a risk for the offenders and complicate their successful reintegration into society [31, 10]. Thus, the effectiveness of such activities depends on various factors (such as drug abuse, lack of family support, mental and physical illness, antisocial awareness, early victimisation, etc.).

In its resolution 56/119 on the role, functions, frequency and duration of UN congresses on the prevention of crime and the treatment of offenders The General Assembly decreed that each Congress be preceded by regional preparatory meetings when it is necessary [28] as one of the key mechanisms for preparing these forums. Their purpose is to discuss issues of the ensuring taking into account actual problems for individual regions in the work of the relevant UN Congresses and, in fact, to identify such problems. At the European Regional Preparatory Meeting, the problem of the need to reduce recidivism was also raised [10]. As we can see from the example of criminal recidivism, both the Regional Forum and the UN Congress on the prevention of crime and the treatment of offenders perform in tandem of discussing urgently issues for all of humanity.

Discussion

Considering the need to constantly take measures to combat recidivism, one should not mention the idea of returning to criminal law the concept of a particularly dangerous recidivist, especially since the draft law “On Amendments to the Criminal Code of Ukraine on Responsibility for Crimes Committed by the Criminal Community” is currently under consideration in the Verkhovna Rada of Ukraine No. 2,513 of December 2, 2019, which is intended to supplement the Criminal Code with new articles 255¹ “Creation of a criminal community and stay a person in the status of “thief in law””, 255² “Appeal to “thief in law” or other member of the criminal community” and 255³ “Organisation,

Vladislava S. Batyrgareieva, Sandra Kaija. Criminal Recidivism Prevention as One of the Determinative Directions of the Agenda of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders

meeting (congregation) representatives of criminal organisations or criminal communities, facilitating or leading it”.

Many years ago, we wrote that abandoning the notion of a particularly dangerous recidivist it is an act of humanising the state’s anti-crime policy because the greater severity of punishment cannot be mechanically linked to just one fact of previously recognising a person as a particularly dangerous recidivist without first considering the gravity of the new crime [3, 86]. But the improvement of the criminogenic situation in the country did not happen: crime is dominated by grave and especially grave crimes against the life and health of the individual, outstripping even the crimes in the field of drug trafficking. Recidivists are the most typical representatives of the underworld, distinguished by a fully conscious attitude to commit new intentional crimes. The criminal “career” of the average recidivist totals about 5–6 convictions and lasts 25–30 years. Therefore, we can conclude that humanisation in the attitude of the state and society to the offenders did not justify itself. That is why, we should again refer to the practice of combating recurrent crime in different countries. In this regard, it is advisable to analyse the criminal law of Switzerland according to which the experienced criminals (persons who premeditated committed repeated criminal offenses, for which they have been imprisoned at least twice) are initially exposed to so-called security measures security measures in the form of internment (placing the offender in a special institution), and then punishment [20, 138]. We should also mention the legislation of Germany, which in 1933 passed the “Law against dangerous recidivists and regarding measures of protection and rehabilitation” according to which a person who was repeatedly detained in connection with a re-commission of a crime was considered a dangerous recidivist [15, 23]. To such persons were applied increase criminal penalties and impose additional coercive measures of a criminal nature in the form of a pre-emptive restraint of liberty that had already taken place after serving a sentence of imprisonment. Interestingly, the system of these coercive measures against repeat offenders continues to operate in Germany to this day. The provisions of Chapter 6 of the Correctional and Security Measures of the Criminal Code of Germany, as amended in 1998, provide for a measure such as preventive detention for repeat offenders [30].

The punishment of up to life imprisonment for the first time (repeat and multiple felonies) is also being discussed in the New York State Criminal Code. In accordance with the criminal law for committing violent felony for the second time not only more severe punishment is imposed in the form of imprisonment by raising its lower limit, but also the type of sentence changes from indeterminate to definite. The perpetration of violent felony multiply, that is, at least for the third time, again entails the appointment indeterminate sentence for a guilty the maximum term of which is life imprisonment. As we can see, the status of a repeat offender with a certain number of convictions automatically raises the punishment (although the notion of a particularly dangerous offender is not used in American criminal law).

Vladislava S. Batyrgareieva, Sandra Kaija. Criminal Recidivism Prevention as One of the Determinative Directions of the Agenda of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders

Thus, the practice of democratic countries testifies to the need to take into account a person's past criminal experience when sentencing him to commit a new premeditated crime. In this way, we believe that the protection of society from extremely socially dangerous persons through their long-term isolation as securely as possible.

Conclusions

Addressing the urgent issue of combating recurrent crime has become almost a tradition of high-level meetings within the United Nations Congress on the prevention of crime and the treatment of offenders. One of the key issues for discussion at the 14th Congress is how to reduce criminal recidivism in the world, which includes, in particular, identifying the risk of offenders returning to committing new crimes and developing appropriate solutions to counteract those risks. At the 2020 Congress which will be held in Kyoto, discussing the recurrence of crime has a threefold purpose: 1) develop measures to reduce recurrence as a whole; 2) propose rehabilitation and social integration programmes for former prisoners; and 3) to elaborate on the directions of punishment policy, application corrective measures, and alternatives to prison. However, to achieve a tangible breakthrough in this case, we first need to address some methodological issues in approaches to this phenomenon. One of them is to develop a more or less uniform methodology for accounting for recidivism in national practices, which would include at least, firstly, the allocation of a contingent for whom the recurrence of new offenses is considered to be recidivism and, secondly, the determination of the reporting period.

Noziedzīgo nodarījumu recidīva novēršana kā viens no būtiskiem virzieniem Apvienoto Nāciju kongresa programmā par noziegumu novēršanu un sankcijām attiecībā uz likumpārkāpējiem

Kopsavilkums

Jebkuras pasaules valsts noziedzības struktūrā vienmēr pastāv recidīvs, kura mērogu praktiski nav iespējams samazināt. Recidīvā noziedzība ir visbīstamākā personas noziedzīgās uzvedības izpausme, jo personas atgriešanās pie jaunu noziedzīgu nodarījumu izdarīšanas liecina, ka pasākumi to socializēšanai ir izrādījušies neefektīvi. Tāpēc recidīva problēma un tā apkarošana ir būtisks jautājums, kas tiek apspriests Apvienoto Nāciju kongresos par noziedzības novēršanu un sankcijām attiecībā uz likumpārkāpējiem.

Rakstā analizēti šo kongresu materiāli par noziedzīgo nodarījumu recidīvu un tā novēršanas praksi, raksturotas atsevišķu valstu (ASV, Lielbritānijas un Ukrainas) pieejas

noziedzīgo nodarījumu recidīva aprēķināšanā. Secināts, ka dažādās valstīs recidīvisma mērogs atšķirīgu atkārtotu noziegumu skaitīšanas metožu dēļ ir ļoti atšķirīgs. Un tas noved pie tā, ka nav iespējams izveidot vienotu ainu par noziedzīgo nodarījumu recidīva izplatību dažādos pasaules reģionos.

Secināts, ka vērā ņemamu rezultātu sasniegšanai recidīva apkarošanā ir jāatrisina daži metodoloģiski jautājumi. Vienam no tiem vajadzētu būt mēģinājumam starptautiskā līmenī izstrādāt vairāk vai mazāk standartizētu recidīvisma uzskaites metodi nacionālajā praksē, kas ietvertu: pirmkārt, skaidri definētu izpratni par to, kuri nodarījumi uzskatāmi par atkārtotiem; un, otrkārt, tādu terminu definēšanu, uz kuru pamata tiek sniegti recidīvisma kvantitatīvie rādītāji.

Atslēgvārdi: recidīvisms, recidīvis, Apvienoto Nāciju kongress par noziegumu novēršanu un sankcijām attiecībā uz likumpārkāpējiem.

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Vladislava S. Batyrgareieva, Sandra Kaija. Criminal Recidivism Prevention as One of the Determinative Directions of the Agenda of the United Nations Congress on the Prevention of Crime and the Treatment of Offenders

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