

Current Criminal and Legal Policy in Russia with Regard to Penalization and Depenalization: Between Press and Compromise

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ABSTRACT

This study focuses on the current stage of development of the criminal policy in Russia in the context of penalization and depenalization processes. Penalization and depersonalization processes of an overall character have been analyzed in detail, thanks to which repression must be constantly brought in line with the realities of social reality and adequately reflect the nature and degree of social danger of commit offenses. The authors argue that it is unreasonable for the legislator to lift almost all restrictions on the use of a suspended sentence. The work reveals that the peculiarity of the criminal policy in Russia is that the mitigation of the criminal repression and limitation of criminal influence is achieved to a greater extent through the establishment of various grounds for exemption from the criminal responsibility and punishment in the law and wide application in practice, and to a lesser extent through decriminalization of socially dangerous acts. The study of changes in the current legislation leads the authors to the conclusion that depenalization is chosen as the direction of the criminal policy, which allows minimizing the costs of excessively harsh criminal repression.

Keywords: *criminal law policy, penalization, depenalization*

1. INTRODUCTION

To date, more than one thousand amendments have been made to the Criminal Code of Russian Federation in one form or another. Sometimes the amendments came from the Russian parliament in a continuous sequence. Of course, this could not but affect the quality of the Code, which from the original whole and systemic act has turned into a kind of patchwork quilt, filled with internal contradictions, began to include completely unnecessary for it norms.

At the same time, it should be noted that in the criminal policy of modern Russia, within the framework of the general trend towards its humanization (despite its inconsistency and volatility), there is a gradual transition from the strictly punitive to the rehabilitative and restorative principles. However, this process, firstly, is far from being perceived by everybody as definitely positive, and secondly, it is not developing in a linear way at present.

In order to make sure that this is indeed the case, let us analyze the penalization and depenalization processes, by which repression must be constantly brought into line with the realities of social reality, adequately reflecting the nature and degree of public danger of the crimes committed.

2. METHODOLOGY

The methodological basis for this study was a universal dialectical method of cognition of phenomena and processes of the real world, considering them in constant change and development, and interdependence and interconnectedness. In addition, a combination of general and private scientific research methods, such as: comparison, analysis, synthesis, formal-logical, structural-functional, historical, comparative-legal, statistical, etc.

3. STUDY RESULTS

The analysis of available quantitative information characterizing features of criminal punishment of acts in Russia makes it possible to reveal a tendency which essence is reduced to primacy of penalization over depenalization. In total, according to our calculations, for the period of the Criminal Code of Russian Federation 1996 (as of January 1, 2019), the acts were penalized 1,757 times, while the number of depenalized acts is 1,383. From the given data it is visible that the number of acts of increase of punishment (penalization) by 21,3 % exceeds the number of acts of its weakening (depenalization).

Does the above mentioned mean that there is a clear increase in criminal repression? If we are guided only by

the nature of the sanctions, including those that have been modified, the answer is definitely yes. This is evidenced, in particular, by the fact that 92.8 per cent of the sanctions currently contained in the provisions of the Special Part of the Criminal Code provide for deprivation of liberty as a form of punishment.

The same is also true of the fact that the limits of fixed-term imprisonment have been significantly increased, the death penalty has been retained, and the Criminal Code has included life imprisonment as a penalty. Under the Criminal Code of the RSFSR of 1960, the longest term of imprisonment was 15 years, regardless of whether the punishment was imposed for a single crime, for a set of crimes, or for a set of sentences. In a number of legal situations, the time limit for the urgent deprivation of liberty was even considerably lower. According to the Criminal Code of the Russian Federation of 1996, deprivation of liberty for certain crimes is punishable by 2 months to 20 years. In the case of partial or full addition of sentences, the maximum term of imprisonment is set at 25 years (30 years for a number of crimes) and 30 years (35 years for a number of crimes). Therefore, even if we do not take into account the fact that the sanctions of the articles also include life imprisonment, we can state that the Russian criminal legislation has become tougher, as D.A. Shestakov correctly believes, at least twice, which means a significant derogation from the more humane (in terms of imprisonment) last Soviet legislation (Shestakov, 1998).

The tendency to toughen the punishment of acts existed until the end of 2011, which is typical not only for Russia (Maguire M., Williams K., Corcoran M., 2019; Korobeev A.I., Dremluga R.I., 2014). Due to the powerful "introduction" of such a new type of punishment as forced labor by the legislator into the Criminal Code of the Russian Federation, the expansion of the scope of a possible application of compulsory and corrective labor, the above trend has changed to the exact opposite. As of January 1, 2012, the total number of acts of depenalization for the previous year reached 670, while there were 236 acts of penalization.

At the same time, it should be taken into account that acts of deportation, although smaller in number, nevertheless affect the broad scope of criminal law relations, and therefore the volume of criminal repression as a result of the introduction in the law and wide application in practice of such institutions as probation, parole, delay in the execution of a sentence, other types of exemption from criminal responsibility and (or) from punishment is noticeably reduced (Guiney T., 2020).

This can be illustrated with particular clarity by the example of the Federal Law of the Russian Federation of December 8, 2003, which significantly expanded the scope of the institutions and norms aimed at differentiating criminal liability, punishment and exemption from them.

In particular, the mentioned law differentiated (taking into account a number of qualifying features) the punishment for the crimes stipulated by the Articles 146, 158, 183, 189, 194, 199, 205, and others of the Criminal Code of the Russian Federation; sanctions for crimes under Art. 160,

Part 2 of Art. 161, Part 2 of Art. 162, Part 3 of Art. 163, etc. of the CCRF have been tightened; the established possibility of a suspended sentence of up to eight years' deprivation of liberty for crimes of any category; the grounds and procedure for applying the institution of parole have been significantly liberalized (Korobeev A.I., Kuznetsov A.V., 2016).

4. RESEARCH RESULTS

The criminal and political assessment of these innovations cannot be unequivocal. Quite a righteous aspiration of the domestic legislator to soften (taking into account the global trend towards humanization of criminal justice) the sharp edge of criminal repression should not lead him to the absurdity (Petersen N., Omori M, 2020), the elements of which are seen in a situation where armed group robbery by means of mitigation of the sanction in Part 2 of Article 162 of the Criminal Code is transferred from the category of especially serious crimes to the category of serious crimes. Analysis of criminal statistics does not give any grounds to believe that, firstly, the number of armed robbery attacks has decreased, and, secondly, this type of criminal activity itself has suddenly become so less socially dangerous.

Equally logical is the decision of the legislator to make the use of parole from the punishment of adult criminals the duty of the court, and the same release in respect of minors - only the right of the court.

There are certain doubts as to whether the legislator is justified in lifting almost all restrictions on probation. The practice of using this institution not only revealed its vulnerabilities but also led some scientists to conclude that the very decision to operate with it as the dominant and almost universal tool in the system of measures to combat crime was flawed. The application of this institution has become so widespread that, from the exception as it should be by its legal nature, probation has become practically a rule. As a result, the traditional link between crime and punishment is gradually being lost, and their surrogates are being used on an increasing scale instead of typical criminal law measures.

Badly guarded lobbying in the sphere of criminal lawmaking was especially noticeable in respect of confiscation of property, which at first was excluded from the Criminal Code of the Russian Federation as a type of punishment, and then was again returned to the bosom of criminal law, but already as another measure of criminal law nature (extremely reluctant to be used in court practice) (Karpov, 2012). With the abolition of confiscation as a type of criminal punishment in Russia, the preventive function of criminal law has largely lost its force. After all, it is clear that today's economic and official criminals are afraid not of being prosecuted or convicted as such, but of confiscating property, leaving them only with a "consumer basket", as most ordinary law-abiding citizens do. This is why Russian literature has yet to refute the hypothesis that the 2003 exclusion from the "ladder of punishment" of confiscation of property is such

an example of "overt and demonstratively provocative lobbying for economic crime interests in criminal law, which has never existed in the history of Russian and Russian criminal law" (Martynenko, 2011; Lopashenko, 2013; Dremluga R., 2014).

Sporadic amendments aimed at easing criminal repression and depenalization of certain categories of crimes were introduced into the Criminal Code in the following years. Thus, in 2009-2011, a series of federal laws introduced serious changes in the Criminal Code of Russia concerning penalization and depenalization. Their point is this:

- Restrictions on freedom are excluded from the scope of the basic penalties only and are classified as both basic and additional penalties. The field of possible applications of this institute has been sharply expanded;
- deprivation of the right to hold certain positions or engage in certain activities as a form of additional punishment may now be imposed for up to 20 years;
- the death penalty may not be imposed on a person extradited to the Russian Federation by a foreign state for criminal prosecution in accordance with an international treaty of the Russian Federation or on the basis of the principle of reciprocity, if, in accordance with the legislation of the foreign state that extradited the person, the death penalty for the crime committed by that person is not provided for or the non-application of the death penalty is a condition of extradition, or the death penalty may not be imposed on him or her on other grounds;
- the death penalty and life imprisonment may not be imposed on the defendants if they have concluded a pre-trial cooperation agreement;
- the commission of an intentional crime by an internal affairs officer was considered an aggravating penalty (Clause "o" of Part 1 of Article 63 of the Criminal Code of the RF);
- the Institute of Conditional Conviction has undergone detailed regulation (Articles 73 and 74 of the Criminal Code);
- the lower limits of the sanctions of deprivation of liberty for 68 crimes have been removed.

Removal of the lower threshold of punishment in the form of imprisonment in the form of sanctions of 68 articles of the Criminal Code of the Russian Federation in 2011 led to the fact that the institution of "judicial discretion" turned, in fact, into "judicial arbitrariness". The legislator's decision leads in a 30-60-fold gap between the upper and lower limits of penalties for the same or similar types of crimes (Gavrilov, 2008). Nowhere in the world, the court has the opportunity to impose a penalty of imprisonment for a serious crime for a period of 2 months to 15 years (Part 4 of Article 111, Part 3 of Article 186 of the Criminal Code of the RF).

However, allowing the courts (Clause 6 of Article 15 of the Criminal Code of the Russian Federation) to change the categorization of crimes on their own whims has put them (the courts) on the same level as the legislator himself, because now they are already entitled to partially depersonalize certain categories of crimes. All this has created unprecedented preconditions for corruption in criminal proceedings. Despite the harsh negative reaction

of the scientific and law enforcement community, the legislator has not yet deviated from his highly questionable position on this issue.

However, the Russian legislator in 2011-2019 went much further in this direction. Federal Laws of December 7, 2011; February 29, March 1, July 28, December 3, 2012; June 28, July 2, July 23, October 21, November 1, 2013; May 5, 2014, November 24, 2014, December 31, 2014, July 3 and 6, 2016, March 7, July 29, 2017, April 23, December 27, 2018, April 1, 2019, made significant adjustments to the system and types of criminal penalties, to the terms of exemption from criminal liability and punishment. The explanatory notes to some of them emphasized that these laws are aimed at further humanization of Russian criminal legislation.

In the fields of penalization and depenalization, these laws contain the following innovations:

1. The possibility (with some exceptions) of replacing the fine in case of malicious evasion of payment by imprisonment is excluded. The possibility of applying a fine as the main type of punishment has been expanded. The maximum fine was increased to 5 million rubles. A fine of up to 500 million rubles may be imposed for certain types of crimes. In 2018, the interpretation of the concept of a fine as applied to the subjects of certain new types of crimes was clarified.
2. The maximum penalty in the form of compulsory work has been increased from two hundred and forty to four hundred and eighty hours.
3. It is stipulated that the court may assign correctional labour to the defendants, both without and with a main place of work. The latter will serve this sentence at their main place of work.
4. In order to increase the possibility for the court to impose non-custodial penalties, a new type of punishment has been introduced - forced labour. Forced labor, provided as an alternative to imprisonment for crimes of small and medium gravity and for the first time for certain serious crimes, is performed in specially established correctional centers. In 2018, the grounds taken into account for the replacement of forced labor with imprisonment were expanded.
5. Arrest may not be imposed on persons who have not reached the age of eighteen years by the time the court passes judgment.
6. A provision has been established that, as a general rule, a penalty of deprivation of liberty may be imposed on a defendant who has committed a minor crime for the first time only if aggravating circumstances are present. At the same time, for a number of particularly serious crimes, the maximum prison sentence has been raised to 30 years (for a combination of crimes) and 35 years (for a combination of sentences).
7. The list of crimes for which the maximum term of imprisonment may be up to 25 years, and for which the maximum term of imprisonment may be up to 30 years for a set of crimes in the case of partial or full addition of sentences.
8. The field of the possible use of life imprisonment as a punishment for particularly serious crimes against health

and public morality and sexual integrity of minors under 14 has been expanded.

9. Article 63 of the Criminal Code of the Russian Federation includes new types of circumstances that aggravate the penalty: (o) The commission of an offense against a minor by the parent or other person charged by law with the responsibility for the upbringing of the minor or by a teacher or other employee of an educational organization, medical organization, organization providing social services or other organization responsible for the supervision of the minor; (n) The commission of an offense with the use of weapons, ammunition, explosives, explosive or imitating devices, specially manufactured technical means, narcotic drugs, psychotropic, potent, poisonous or radioactive substances, medicinal or other chemical-pharmacological preparations, or with the use of physical or mental coercion; 11) Commitment of an offense under intoxication caused by the use of alcohol, narcotic drugs, psychotropic substances or their analogs, new potentially dangerous psychoactive substances or other intoxicating substances; (p) The commission of an offense for the purpose of promoting, justifying or supporting terrorism.

10. New rules for the imposition of penalties for cumulative crimes have been introduced with a view to mitigating liability. At the same time, there is a ban on imposing a penalty below the lower limit or a lighter penalty on perpetrators of certain types of particularly serious crimes.

11. The field of suspended sentences is limited by excluding the possibility of their imposition on persons convicted of offenses against the sexual inviolability of minors under 14 years of age and those convicted of offenses under Parts 1 and 2 of Article 2051, and Article 2052, Part 2. of Article 2054, Parts 1-3 of Art. 206, Part 4 of Article 210, Articles 2101 and 360 of the Criminal Code of the Russian Federation.

12. The Criminal Code of the Russian Federation has been supplemented by an article providing for the possibility of exemption from criminal liability of persons who have committed economic crimes for the first time if such persons reimburse the damage in full and transfer to the federal budget a monetary compensation in the amount of twice the amount of the damage caused.

13. A rule has been introduced according to which a person who has committed a crime of small or medium gravity for the first time may be exempted from criminal liability with a court fine if he or she has compensated for the damage or otherwise made up for the damage caused by the crime (Article 762 of the Criminal Code). The court fine is attributed by the legislator to other measures of a criminal nature (Chapter 152 of the Criminal Code).

14. Provision is made for deferral of the sentence to a person who has been sentenced for the first time to deprivation of liberty for the commission of an offense under Part 1 of Article 228, Part 1 of Article 231 and Article 233 of the Criminal Code, who has been recognized as a drug addict and has expressed a desire to voluntarily undergo treatment for drug addiction, as well as medical rehabilitation and social rehabilitation

(Korobeev A., Morozov N., 2017). Deferral is given until the end of treatment and medical rehabilitation, social rehabilitation, but not more than 5 years (Article 821 of the Criminal Code of the RF). Depending on the outcome of the treatment, the person may be released from serving the sentence or the rest of it at the discretion of the court.

15. The institution of parole has been tightened in respect of certain categories of convicted persons.

16. The possibility of postponing the serving of sentences is limited in respect of persons sentenced to deprivation of liberty for crimes against the sexual inviolability of minors under 14 years of age.

17. Stricter rules have been introduced for exemption from serving the sentence due to the expiration of the statute of limitations of a court sentence in respect of convicted persons who have been granted a postponement of serving their sentence.

18. The time limits taken into account in deciding on the payment of criminal records in respect of persons sentenced to deprivation of liberty for serious and particularly serious crimes have been increased.

19. The list of crimes for the commission of which a minor cannot be exempted from punishment has been expanded in accordance with the procedure provided for in Part 2 of Article 92 of the Criminal Code.

20. Further expansion (in law rather than in practice) was subject to the confiscation of property.

21. Finally, one cannot help but notice that starting in 2014 the "pendulum" of criminal repression has swayed again to the opposite side of its humanization line. This manifested itself first of all in a noticeable expansion by the legislator of the criminal circle and toughening of already existing criminal law prohibitions. Thus, sanctions were significantly tightened in the articles providing for liability for crimes of a terrorist nature (Articles 2051, 2053, 2054 and 2055 of the Criminal Code) (Shirshov A.A., Korobeev A.I., 2018), mass disturbances (Article 212 of the Criminal Code), careless possession of firearms (Article 224 of the Criminal Code), illegal logging (Article 260 of the Criminal Code), violation of the established rules of guard duty (Article 342 of the Criminal Code) and others.

22. The interpretation of the concept of a person who committed a crime in a state of intoxication has changed (Article 23 of the Criminal Code).

23. The list of crimes for the commission of which the statute of limitations does not apply to their subjects has been expanded (Part 5 of Article 78 of the Criminal Code).

5. DISCUSSION OF RESULTS

It is not difficult to notice that even in the newest historical period the criminal-legal policy in the sphere of penalization and depenalization had a zigzag character.

From the review of changes in the criminal legislation in the last 7 years, it is easy to find out how almost simultaneously and in parallel with the humanization of some types of criminal sanctions, liberalization of the rules of punishment and exemption from them there was a

reverse process - "dotted" (but very tangible) tightening of criminal repression.

Thus, it was in this period, against the background of the expansion of the scale of punishment by including new types of alternative to imprisonment, sharp narrowing of the scope of possible application of imprisonment to a certain category of persons committing crimes of small gravity, introduction of new types of release from criminal liability and/or punishment into the criminal law, changes in the parameters of calculation of the terms of punishment and offsets, postponement of serving of punishment, that the punitive claims became more severe, which manifested itself in strengthening of certain types of punishment.

By enshrining a special ground for exemption from criminal liability, the legislator has established a separate category of violations outside the scope of the principle of equality of citizens before criminal law (Bavsun, 2018; Kuznetcov, 2018).

These are the main quantitative and qualitative indicators of the work of the Russian legislator in the course of his implementation of criminal law policy in the field of penalization (depenalization) over the last quarter of the century. The assessment of these indicators allows us to state that at the time of the adoption of the Criminal Code of the Russian Federation in 1996, the ladder of criminal penalties included in it was a fairly stringent system. However, in the process of criminal law evolution, which was largely impulsive, spontaneous, chaotic in nature, the system was unbalanced.

6. CONCLUSION

For all the objectively observed chaos, spontaneity, different orientation and haphazardness of the amendments made to the Criminal Code, the implementation of the proposals contained in the newly adopted laws, in the opinion of their developers, should lead to a significant reduction in criminal records and the number of people held in detention facilities (by 25-30%). The State, for a variety of economic reasons, is unable to ensure not only that all the penalties set out in the Criminal Code are actually applied, but also that all those sentenced to it actually serve their sentences of imprisonment (Makeeva, 2016).

Hence, a peculiar feature of the current stage of development of the Russian criminal policy is that mitigation of criminal repression and limitation of criminal influence is achieved to a greater extent through the establishment of various grounds for exemption from criminal responsibility and punishment in the law and wide application in practice, and to a lesser extent through decriminalization of socially dangerous acts. This is explained by the fact that the volume of actually applied criminal repression can be reduced without drastically breaking the existing system of the Special Part of the current legislation. The result in this case is achieved by expanding the possibilities for the legislator to refuse to apply criminal law measures or even to impose criminal liability for crimes actually committed by persons (under

certain circumstances). The study of changes in the current legislation leads to the conclusion that depenalization is chosen as a direction of criminal policy, which allows to mix (minimize) the costs of excessively harsh criminal repression. As a result, we can probably state that the legislator, in the sphere of interest to us, adhered more to the "stick" tactics (mainly by toughening repression and expanding its scope) and only at certain stages (mainly under the influence of conjuncture considerations) sweetened the bitter criminalization pill with a depenalization "carrot". Hence the whole criminal policy of Russia of this period looks like a non-stop maneuvering between intimidation and encouragement, between toughening of kinds of punishments and mitigation of other measures of criminal character, i.e. between press and compromise (A.I. Korobeev, 2019).

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