# Criminal Law in the National Security System of Russia

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**ABSTRACT**
The article defines that criminal law plays a special role in the system of legal support of national security, since it is the criminal law that is aimed at minimizing (neutralizing) the most dangerous manifestations of deviant behavior. Therefore, it is important to find ways to further increase the effectiveness of criminal law instruments for ensuring national security. After analyzing the processes of criminalization-decriminalization, the practice of sentencing, the positions of domestic researchers assessing the current trends, it was found that: firstly, in Russia there are no conceptual foundations of state policy in the field of combating crime, and the strategy and tactics of counteracting it are formed spontaneously to please momentary desires of power structures; secondly, in our country, the processes of criminalization dominate the processes of decriminalization, while the judicial practice followed the path of de-penalization, trying to mitigate the excessive severity and breadth of criminal repression through the use of the institutions of exemption from criminal liability, exemption from punishment, probation, as well as by imposing a punishment corresponding in size to a milder category of crime; thirdly, laws that amend the criminal law, for the most part, only lead to its destabilization, which does not contribute to the fulfillment of the function of ensuring national security by the criminal law. Most of the articles newly introduced into the Criminal Code have no practical applicability. Based on the study, in order to overcome the current crisis situation, the authors consider it necessary, firstly, to develop and adopt the conceptual foundations of the criminal policy of the Russian Federation, and secondly, to adopt a new version of the Criminal Code, taking into account the changed social relations, the real needs of the population and judicial practice.
***Keywords:*** *national security, criminal policy, criminal law, criminalization, decriminalization, measures of criminal law*

## 1. INTRODUCTION

All the new challenges and threats that Russia has faced in recent years dictate the need for an adequate change in the nature, content and direction of the state's activities to ensure the country's national security. Focusing on the optimal development of social relations, the state seeks to create mechanisms that would allow it to protect itself from unfavorable development scenarios.

Russia, like many other countries, is looking for effective measures necessary for the transition to sustainable development. Among the primary tasks are the following: "preservation of natural ecosystems, stabilization of the population, the maximum possible" mitigation "of the action of destructive factors (including curbing the high level of crime), rationalization of consumption and others" [1, p. 11].

National security as a legal concept is implemented by legal means. In this case, we are not talking about isolated legal means, but about the system of legal support for national security - a set of legal norms, principles, institutions that regulate the implementation of the protection of the individual, society and the state from external and internal threats.

In 2015, Presidential Decree No. 683 approved the National Security Strategy of the Russian Federation. Clause 31 of the Strategy states that "ensuring national interests is carried out through the implementation of a number of strategic national priorities, including state and public security".

In paragraph 44 of the Strategy, the main directions of ensuring state and public security are recognized: "strengthening the role of the state as a guarantor of personal security and property rights, improving the legal regulation of crime prevention (including in the information sphere), corruption, terrorism and extremism, drug trafficking and the fight with such phenomena, the development of interaction of state security and law enforcement agencies with civil society, increasing citizens' confidence in the law enforcement and judicial systems of the Russian Federation, the effectiveness of protecting the rights and legitimate interests of Russian citizens abroad, expanding international cooperation in the field of state and public security" [2].

Based on the above provisions, it can be unequivocally stated that criminal law plays a special role in the system

of legal support for national security, which is due to the fact that it is the criminal law that is aimed at minimizing (neutralizing) the most dangerous manifestations of deviant behavior.

As the researchers note, "the criminal law regulation of social relations that ensure state and public security, as well as personal security, has stimulated theoretical research in this area. Accordingly, the criminal law theory, along with sociology and political science, underlies the theory of national security. Based on this logic of interaction, national security is ensured by legal regulation, including, to a large extent, by criminal law" [3, p. 24].

The objects of criminal law protection, according to Art. 2 of the Criminal Code of the Russian Federation, the interests of the individual, society and the state are advocated. In fact, this article orients the criminal legislation towards ensuring national security, since it lists objects of protection similar to those specified in Art. 1 of the Law "On Security" [4].

Thus, national security, understood as the state of protection of Russian national interests, is an object of legal protection. The reliability and effectiveness of the protection of a given object can be provided only in a comprehensive manner with the entire set of resources available to the state, and not least by a system of means of criminal law. National security is an object, including criminal law protection [5, p. 56]. In this connection one of the most important modern problems requiring scientific understanding is the search for ways to further increase the effectiveness of criminal law instruments for ensuring national security.

## 2. MATERIALS AND METHODS

The work is based on such a method as system analysis. Along with the above, for a more detailed and complete study of the topic, the authors also relied on formal legal, comparative legal, statistical and specific sociological methods.

## 3. RESULTS

Assessing the modern criminal policy, A.I. Korobeyev, rightly notes that it is characterized, "firstly, by the absence of clearly formulated and adopted at the appropriate level conceptual foundations of state policy in the field of combating crime in general; secondly, by the presence of individual ideas, certain vectors in the development of strategies and tactics for combating crime, spontaneously emerging directives that come from power structures and are very contradictory and inconsistently implemented in reality; thirdly, the destruction and desystematization of the criminal law, which were the result of an endless series of changes and additions introduced by the legislator to the Criminal Code" [6, p. 234].

N.G. Ivanov believes that "the Russian version of the fight against crime is a constant filling of the Criminal Code with new norms that artificially create crime, and do not at all fix the danger of an act corresponding to the danger of criminal encroachment. The state itself creates crimes in order to then passionately but unsuccessfully fight them" [7, p. 8].

V.P. Revin draws attention to the fact that, according to the legislator, the quality of criminal law regulation can be improved by introducing numerous changes to the criminal law. However, this often violates the legal logic and legal technology of the Criminal Code, and issues are resolved through criminalization or decriminalization, reducing or increasing the severity of sanctions. At the same time, the author notes that the processes of criminalization in Russia dominate the processes of decriminalization [8, p. 14].

However, despite the excessive, in our opinion, criminalization of various spheres of activity, from the retail sale of alcohol to minors and ending with the failure to fulfill the obligation to submit a notification that a citizen of the Russian Federation has citizenship (nationality) of a foreign state or a residence permit or other valid document, confirming the right to his permanent residence in a foreign state.

However, criminologists talk about unfavorable trends in Russian crime, emphasizing that they are so unfavorable that they threaten the national security of Russia [6, p. 235]. And the data of official statistics should not be misleading, which has been demonstrating a relatively stable trend towards a reduction in the crime rate for a number of years, since an increasing number of crimes are becoming latent, and not only because of the unwillingness of law enforcement agencies not to spoil the statistics, but also because of due to the lack of sufficient qualifications to identify and investigate new forms of criminal activity (in particular, those committed with the help of information technology).

So, for example, in 2015, 2353.1 thousand crimes were registered on the territory of Russia (8.6% more than in 2014), 2160 thousand in 2016 (10% less than in 2015), 2058.5 thousand in 2017 (4.7% less than in 2016), 1991.5 thousand in 2018 (3.3% less than in 2017). And only in 2019, there is a slight increase in the number of registered crimes up to 2024.3 thousand, which is 1.6% more compared to 2018. At the same time, the damage from the crimes committed is steadily growing. While in 2015 it amounted to 436.49 billion rubles, then in 2019 it reached 627.7 billion rubles, i.e. 43.6% more compared to 2015 [9].

In scientific circles, alarming is the merging of criminal structures with the state apparatus, the growth of the "intellectualization" of the criminal world, the strengthening of its technical armament, the interweaving of economic crime with crimes against property, official, corruption crimes, drug trafficking and other criminal manifestations. The fact of impunity, the prosperity of official immunity, the network of criminal associations of officials, the corruption of the criminal justice system, obviously, do not contribute to ensuring national security [10, p. 23].

In the theory of criminal law, almost all the novels introduced into the criminal law are criticized. Moreover, realizing the inconsistency of further "patching" the current criminal legislation, some researchers have presented a draft of the new code for public discussion, some provisions of which can be found on the pages of periodicals [11]. Although, it is worth emphasizing that the dominant point of view is the need to adopt a new edition law.

Of course, the destabilization of criminal legislation is primarily facilitated by the lack of a unified, well-thought-out scientifically grounded concept of state criminal policy, as a strategy designed for a long period of existence and aimed at finding optimal measures to counter crime, on the basis of which criminal, criminal procedural and penal legislation should be built.

Attempts to develop such a concept have been made several times over the years. For example, in 2012, the draft Concept of the Criminal Law Policy of the Russian Federation [12] was actively discussed, the development of which was initiated by the Public Chamber of the Russian Federation. In 2017, at the parliamentary hearings of the Federation Council Committee on Constitutional Legislation and State Construction, the report by G.A. Esakova was listened: "Criminal Policy: Road Map (2017–2025)" [13].

However, both of these projects raised a number of questions from specialists in the field of criminal law, since in reality they did not solve a vast array of problems discussed in theory, causing difficulties for the law enforcement officer and leading to conflicting judicial practice. Therefore, there is no doubt that before continuing to reform the current legislation or to adopt new, a concept of criminal policy should be developed, based on the trends in the development of public relations in the new digital information society and the corresponding criminal manifestations.

As for the criminal legislation itself, two large blocks of problems can be distinguished that are most clearly traced today and arise from the fundamental institutions of criminal law—crime and punishment.

The first block of problems is associated with solving the issues of criminalization-decriminalization of acts. As indicated above, today, the process of criminalization dominates the process of decriminalization. A.I. Korobeyev, for example, notes that as of January 1, 2019, 333 acts were adopted aimed at full or partial criminalization [6, p. 226].

It should be noted that in 2019 and the beginning of 2020 (as of June), 19 more documents amending the Criminal Code were published. Most of them are related to the criminalization process. So, in April 2019, 2 amending laws were adopted, which expanded the list of acts falling under the elements of a crime under Art. 210 of the Criminal Code of the Russian Federation, and also introduced independent responsibility for occupying a higher position in the criminal hierarchy (Article 210.1 of the Criminal Code of the Russian Federation); Art. 264 of the Criminal Code was supplemented with a new, especially qualifying feature—"associated with leaving the place of its commission."

In June 2019, the legislator amended Art. 15 of the Criminal Code, referring to the number of serious crimes and careless, punishable by up to 15 years in prison, and also expanded the effect of Art. 263 of the Criminal Code of the Russian Federation, establishing responsibility for violation of the rules of traffic safety and operation of air, sea and inland water transport by a person operating a light (ultralight) aircraft or small ship, if these acts, through negligence, entailed causing serious harm to human health or causing major damage.

In July 2019, Art. 115 and Art. 119 of the Criminal Code of the Russian Federation were supplemented with the qualifying sign: "in relation to a person or their relatives in connection with the performance of this person's official activities or the performance of a public duty"; a new corpus delicti was also constructed: obstruction of the provision of medical care (Article 124.1 of the Criminal Code of the Russian Federation).

At the same time, the scope of Art. 327 of the Criminal Code of the Russian Federation was expanded (increased responsibility for forging a citizen's passport, not only counterfeiting and manufacturing, but also the circulation of counterfeit documents, state awards, stamps, seals or letterheads).

In August 2019, the scope of Art. 228.2 of the Criminal Code of the Russian Federation was expanded (the disposition of the article is supplemented with the following sentence: "for the production of narcotic drugs and psychotropic substances used for medical purposes and (or) in veterinary medicine").

In October 2019, Art. 258.1 of the Criminal Code of the Russian Federation was supplemented with a special qualifying feature: "committed by a group of persons by prior agreement". In December 2019, by amending art. 191 and art. 255 of the Criminal Code of the Russian Federation, the illegal circulation of amber, jade or other semi-precious stones and the unauthorized extraction of these items began to be recognized as criminal.

In April 2020, the scope of Articles 141, 142, 142.2 of the Criminal Code of the Russian Federation was expanded due to the criminal law protection of the procedure for holding an all-Russian vote, as well as Art. 238.1. In addition, in the same month, the Criminal Code of the Russian Federation was supplemented with three new articles: 207.1 "Public dissemination of knowingly false information about circumstances posing a threat to the life and safety of citizens"; 207.2 "Public dissemination of deliberately false socially significant information, which entailed grave consequences"; 243.4 "Destruction or damage of military graves, as well as monuments, steles, obelisks, other memorial structures or objects that perpetuate the memory of those killed in the defense of the Fatherland or its interests, or dedicated to the days of Russia's military glory." Article 238.1 of the Criminal Code of the Russian Federation was supplemented by a new part 1.1, which established responsibility for the acts provided for in part one of this article, committed using the

mass media or information and telecommunication networks, including the Internet.

Logically, such an intense criminalization process should lead to an increase in registered crime. After all, if the acts have reached such a high level of public danger that they require criminal law regulation, then they are quite common. However, as shown by the above figures, such growth is not observed. Moreover, a detailed analysis of statistical data demonstrates the practical inapplicability of most of the newly introduced articles. Therefore, the problem of criteria and mechanisms of criminalization is especially acute today.

Another problem is connected with the crisis of punishment, which has been repeatedly written about, including by the authors of this article [14, 15]. At first glance, it may seem that this problem affects only aspects related to the definition of the goals of punishment, the fullness of the list of punishments, the content of individual punishments, and the construction of sanctions of articles of the Special Part of the Criminal Code of the Russian Federation. In fact, it is much deeper. In the theory of criminal law, calls are increasingly heard about the need to shift the emphasis from the institution of punishment to measures of criminal law. And here it should be emphasized that judicial practice has been following the path of de-penalization for many years.

So, after conducting a fairly in-depth analysis of the activities of the courts, A.I. Korobeyev came to the conclusion that the legal enforcer chose and uses mainly conditional sentence from the entire arsenal of depenalization measures delegated to him. In second place is parole from punishment and in third place, which is gaining more and more popularity in practice, a court fine [6, p. 309-310].

Having conducted our own research, we also noticed that in recent years, the number of those sentenced to imprisonment with real service has decreased due to the increase in the appointment of punishments alternative to imprisonment, such as fines, compulsory and correctional labor. However, the listed punishments (with the exception of a fine) can be imposed only for crimes of small and medium gravity, as for grave and especially grave crimes, here the choice of punishment for the court is significantly narrowed, and therefore a significant proportion is taken by the conditional sentences. It was also found that the amount of imprisonment imposed does not correspond to the category of crime that is determined by the legislator. Only about 30% of sentences with a sentence of imprisonment corresponded in severity to the established category of crime, i.e. in most cases, punishment is imposed within the limits corresponding to a milder category of crimes.

A paradoxical situation arises, on the one hand, the legislator is moving more and more towards expanding the scope of criminal law regulation, and on the other hand, it includes sufficient reserves in the criminal law that allow the law enforcement officer to mitigate the excessive severity and breadth of criminal repression.

Moreover, as can be seen from the analysis of judicial practice, the law enforcement officer took the path of curbing criminal-legal repression.

All of the above allows us to agree with V.V. Khilyutoy: "The model of punishment, used for so long in the Soviet era and transferred to the post-Soviet criminal law, has now become ineffective—a kind of scourge of our time. It does not reflect the social needs that the new information society generates and is not capable of becoming an obstacle in preventing the commission of crimes. Thus, there is no effectiveness of measures to influence crime in general. Exceptionally repressive measures are not able to influence the persons who committed crimes, and isolationism makes it impossible to use other methods of influence and coercion of those who have committed illegal behavior" [16, p. 138]. I.Ya. Kozachenko [17, p. 116-117] and other authors adhere to a similar point of view.

Of course, punishment is a necessary and important measure, but it is forced and extreme, in many cases very costly and not capable of effectively solving the tasks it faces. It becomes a requirement of the time to solve criminal law problems with minimal losses, and, if possible, with the benefit of the perpetrator, their relatives and society as a whole.

Therefore, today it seems relevant to change the approach to the state's response to a committed crime, for the implementation of which a comprehensive development of a system of measures of criminal law is required, which, of course, will include the subsystem of punishments, but it will not be of primary importance.

Such a system can consist of two subsystems. The first one will include various options for exemption from criminal liability and punishment, as well as the punishment itself. The second one is a system of security measures, which may include compulsory medical measures and other security measures that have a non-punitive nature.

## 4. CONCLUSION

Summing up, we note that the questions posed in the article are just some of the few that affect the provision of Russia's national security as a whole. However, the identified problems are key in criminal law. It has been shown that the existing system of combating crime by criminal legal means does not meet the needs of modern society, which casts doubt on the effectiveness of criminal law in ensuring national security and cannot be ignored by the legislator.

Currently, there is an urgent need in our state to change the current situation. We believe that the first step in this direction should be the development and adoption of the conceptual foundations of criminal policy, and the second one should be the adoption of a new version of the Criminal Code, taking into account the changed social relations, the real needs of the population and judicial practice.

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