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CRIMINAL LAW MANAGEMENT

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Introduction: *in its essence, criminal law regulation is a kind of social regulation, i. e. influence on society, social groups, individuals aimed at streamlining their activities.* ***Purpose and objectives:*** *to consider criminal law influence (measures, sanctions) and its institutions in the context of patterns and regularities of social management, to reveal contradictions and formulate propositions to resolve them.* ***Methods:*** *the methodological framework of the research is based on methods of formal and dialectical logic, sociological statistic, comparative jurisprudence, system approach, modeling.* ***Results:*** *in order to increase management effectiveness, criminal measures should be considered in the unity of law-making, law enforcement, and law implementation cycles. Thus, it is necessary to clarify the objectives of each cycle and link them into a single "tree of goals". Criminal law management is performed by means of two levers – limitation (via restrictions) and stimulation (via incentives). Its specific features are as follows: first, limiting measures are leading while positive-stimulating ones play a secondary role; second, implementation of both kinds of measures is legally regulated according to the permissive type. The application of criminal measures and change in their intensity is performed based on the formalized grounds for management, those being juridical facts in the form of criminal act or (and) criminal event. Criminal encroachment, crime and criminal offense must be considered the types of criminal acts. As for juridical facts for positive stimulation, in the paper, it is proposed to introduce a category "criminally significant merit" – an action or event being the ground for the release or mitigation of criminal restrictive measures. Dispositions of articles of Special Part of the Criminal Code of the Russian Federation are interpreted as rules of special security, created by the legislator for special protection of constitutional values. The "periodic system" of legal consequences of violating security rules includes sanctions of punishment, security, restoration and incentive ones, which can be combined in parallel or in succession. Conclusions: the use of categories and principles of social management theory makes it possible to find and eliminate system faults in criminal law regulation, and thereby increase its efficiency.*

Keywords: social management; criminal measures; criminal liability; security rules; sanctions of punishment; incentive sanctions; restoration sanctions; security sanctions; criminal act; crime; criminal offense; criminal event; criminally significant merit

Information in Russian

УГОЛОВНОЕ УПРАВЛЕНИЕ

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Введение: *по своей сути уголовно-правовое регулирование является разновидностью социального управления, т. е. воздействия на общество, социальные группы, отдельных индивидов с целью упорядочения их деятельности.* ***Цели и задачи:*** *рассмотреть уголовное воздействие и его институты в контексте закономерностей социального управления, выявить противоречия и сформулировать предложения по их устранению.* ***Методы:*** *формальной и диалектической логики, социолого-статистические, системный подход, моделирование, сравнительно-правовой.* ***Результаты:*** *для повышения управленческой эффективности уголовное воздействие следует рассматривать в единстве правотворческого, правоприменительного и правоисполнительного циклов, для чего необходимо уточнить цели каждого из циклов и увязать их в единое «дерево целей». Уголовное управление осуществляется посредством двух рычагов – ограничения и стимулирования. Его специфика заключается в том, что, во-первых, ведущими являются ограничительные меры, а позитивно-стимулирующие играют вспомогательную роль. Во-вторых, применение тех и других законодательно регламентировано по разрешительному типу. Применение и изменение интенсивности уголовного воздействия осуществляется на основании формализованных управленческих оснований, в качестве которых используются юридические факты в виде уголовного деяния и (или) уголовного события. Видами уголовных деяний должны стать уголовное посягательство, уголовное преступление и уголовный проступок. В качестве юридических фактов для позитивного стимулирования предлагается ввести категорию «уголовно-значимые заслуги» – деяние или событие, служащее основанием для освобождения или смягчения уголовно-ограничительных мер. Диспозиции статей Особенной части УК трактуются как правила особой безопасности, созданные законодателем для особой охраны конституционных ценностей. «Периодическая система» правовых последствий нарушения правил безопасности включает в себя санкции наказания, безопасности, восстановления и поощрения, которые могут параллельно или последовательно соединяться между собой.* ***Выводы:*** *использование категорий и принципов теории социального управления позволяет обнаружить и устранить системные просчеты в уголовно-правовом регулировании и тем самым повысить его эффективность.*

Ключевые слова: социальное управление; уголовное воздействие; уголовная ответственность; правила безопасности; санкции наказания; санкции поощрения; санкции восстановления; санкции безопасности; уголовное деяние; преступление; проступок; уголовное событие; уголовно-значимая заслуга

Introduction

The management approach in jurisprudence is becoming more and more popular not only in administrative law[1], but in criminal sciences as well. The only thesis which has not been the subject of discussion in criminology yet is formulated as follows: “crime counteraction (prevention) is a kind of social management” [12]. This criminological postulate is being introduced in criminal law science, gradually shifting from the “static” to the “dynamic” vision of legal regulation, which is reflected even in terminology. Whereas previously they used to write mainly about “criminal liability”, now the term “criminal law (criminal) impact” tends to be up-to-date.

[1] According to N. V. Makareyko, “the common features of social management are as follows: it exists where there is a joint activity of people and their communities; provides an orderly influence on participants in joint activities; is aimed at achieving a certain management goal; is characterized by the presence of the subject and the object of management; the subject of management is endowed with a certain power resource; the management object is a dependent subject, the consciously volitional behavior of which must change in accordance with the instructions of the subject; is implemented within the framework of a certain mechanism” [8, p. 9].

In order to designate the whole complex of relations connected with "the state's activity in the prevention, suppression of crimes, as well as the restoration of violated rights and lawful interests of victims", O. N. Bibik suggests using not a conventional term "criminal policy", but the phrase "state management in the sphere of combating crime" [2, p. 15].

Without going into the discussion about the correlation of these concepts, I would like to draw my colleagues' attention to the prospect of using the management approach not only in criminology but also in criminal law. What is important here, the complex of combating crime should be considered not so much in the context of public administration as in the social management context, which is understood as "the process of influencing the society, social groups, certain individuals with the aim of streamlining their activities, raising the level of orderliness of the social system" [8, p. 9].

The system of combating crime must proceed, first of all, from the interests of the society, and then of the state. It is under the "management" angle of view that decent answers can be found to the "eternal" questions not only of criminology, but of criminal law as well. However, criminal law studies hardly ever use the formal dogmatic methods and the theory of social management.

On the Purposes of Criminal Law Management

The principle of goal setting, as we know, underlies distinguishing the systems (subsystems) of management. "Matryoshka" – like hierarchy of systems is defined by the "tree of goals". The ultimate goal of any management system is intermediate with respect to the superior system and, conversely, the ultimate goal of the subordinate system should be considered as intermediate to the ultimate goal of the superior system.

The system of crime counteraction is an element of a higher level system, but it, in its turn, consists of elements – subsystems, which under a certain research perspective can be considered as independent systems consisting of a number of subordinate ones. Criminal law impact can and should be considered as a subsystem of combating crime, and in certain contexts also as a relatively independent system of social management. Considering counteraction to crime in the context of management, it is not difficult to notice the typical error: the absence of a hierarchy of goals. The subordinate system is subject to higher-level goals and vice versa. The construction of a "tree of goals" is a necessary condition for effective management: the purposes of criminal punishment are intermediate with respect to criminal law impact, the purposes of which, in turn, are intermediate with respect to the system of combating crime.

It is generally accepted that the general goal of social management is homeostasis – ensuring a dynamic equilibrium in the social system, preserving its qualitative determinacy in spite of external and internal sources of danger.

Security as a new paradigm and the goal of modern criminal policy is being actively discussed not only in Russian but also in the foreign legal science [16]. I consider M. M. Babaev's idea the most attractive, as it says that the core and the overall goal of the criminal policy should be criminological [1, p. 133], that is anti-crime security in our interpretation.

Anti-crime security is a necessary condition for the sustainable development of the social system, under which the level of dangerous infringements of system-forming social constructions is below the threshold, followed by the decay or transformation of one social system into another. At the same time, anti-crime security is the *goal* of the crime counteraction system.

In recent years, there have been a lot of discussions in our country about the search for a "national idea" and the "clenches" "cementing" the Russian society. In my opinion, the main "clenches" have already been found and enshrined in a document called the Constitution of the Russian Federation. And respectful attitude to the provisions enshrined in the Constitution should be the national idea of the Russians. They are the rights and freedoms of citizens, the principles of public and state organization, approved by the majority of the population in a referendum that are the objects of special protection, including means of criminal measures (sanctions)[1].

The purpose of the crime counteraction system is to keep the intensity of dangerous encroachments on objects, enshrined in the Constitution in

[1] A similar approach is inherent in the German criminal law, where the object of criminal law protection is the legal good (Rechtsgueter) – the values of social life that underlie the constitution [26, p. 2].

the capacity of system-forming structures of modern society below the threshold.

The purpose of the subsystem (system) of *criminal measures* is the defense of specially protected objects by means of: a) the formulation of rules for special security (dispositions), sanctions for their violation, rules and procedures for their imposition and execution; b) application (infliction) of criminal sanctions against persons and organizations that violated the rules of special security; c) the execution of the prescribed sanctions.

The system of criminal measures consists of three cycles of management: lawmaking, law enforcement and law implementation. Consequently, the "Matryoshka" approach should be sustained here as well: the ultimate goal of the criminal justice system is achieved through the intermediate goals of these cycles. And all intermediate goals must be "tied" to the ultimate goal, to the final result. Currently, these three management cycles resemble the images of Krylov's characters: a swan, a crawfish and a pike.

To harmonize the three cycles of management activity, it is necessary to debug the existing and seek for new forms of cooperation between all subjects of management cycles: from joint discussion of the problems to joint drafting and simultaneous adoption of five codes: criminal lawmaking, criminal, criminal procedural, criminal-executive and procedural-criminal-executive ones.

On the Resources of Criminal Law Management

In social management it is common practice to distinguish such subsystems as *a subject, an object, governing impact, feedback and resources.* Within the present paper we have no opportunity to characterize each of the subsystems in detail [13], but a slight emphasis on the last one is nevertheless necessary.

Not only the quantity and quality of the Criminal Code articles, but the number, and most importantly, the quality of the available *resources* determine the feasibility of criminal sanction. When improving criminal legislation, we can "make a stab" only at those tasks which we are "matured" enough to implement in terms of financial, economic, organizational, analytical, scientific-methodological, personnel, regulatory and propaganda support. As they say, "cut one's coat according to one's cloth". This folk wisdom is well illustrated by an example with such a measure of criminal punishment as arrest. Budget money has been never found for the arrest houses.

"The implementation of the federal bill "On Amendments to the Criminal Code of the Russian Federation"... will not require additional expenditures from the federal budget" – criminal lawmakers usually write in the explanatory notes. But it appears that they do not take into account the additional amount of work that falls on the law enforcer and law executor not only in cases of criminalization or penalization, but in cases of decriminalization or mitigation of liability as well, at least for the implementation of the rule on the retroactive effect of criminal law.

And when introducing new formal components of a crime, the law enforcement system really has to radically reallocate its already limited resources, often distracting from ensuring the security of constitutional objects to the objects of protection invented by the deputies. Organizing criminal and legal protection of such objects as "feelings of believers" or "history", which are not mentioned in the Constitution of the Russian Federation, the legislator has to "unload" the law enforcement system, decriminalizing beatings, and thereby weakening the protection of such constitutional value as "personal inviolability" (Article 22 of the RF Constitution).

Today the provision on libel is abolished, tomorrow libel is criminalized again. Today confiscation is cancelled, tomorrow it is introduced in another hardly recognizable guise. Today multiple penalties are introduced as an allegedly effective remedy against corruption crimes, and tomorrow they are criticized as ineffective. And the most interesting thing is that none of the authors of the failed bills does suffer even reputational damages for obvious blunders and expenditures.

Much of misuse in the law enforcement sphere is actually a consequence of the inability to process the actual number of committed acts prohibited by criminal law. "Cut one's coat according to one's cloth", "the spirit is willing but the flesh is weak", "little wit in the head makes much work for the feet" – the rules "captured"" in proverbs are extremely relevant to the modern stage of the criminal law development.

Underestimation of the resource component is a drawback not only of the law-making process, but of the law enforcement cycle as well. The judge, as a rule, has a vague idea about the volume of "man-hours" necessary to execute his sentence. If adjudgement is the end of the management cycle

for him, then work on its execution just begins. The most adequate punishment will not be properly executed if there are no adequate resources for it.

I have written about the problem of resource provision before. In this article, it seems appropriate to draw the colleagues' attention to two components once again. One of the most vulnerable spots in the criminal law management system is *information and analytical* support. Subjects of criminal measures routinely continue to govern, ignoring the feedback mechanism. In cybernetics such a system is called "open-circuited" and considered to be ineffective.

Despite the requirements of the Presidential Decree No. 657 "On Monitoring of Law Enforcement in the Russian Federation" of May 20, 2011, independent monitoring of criminal law enforcement is hardly ever conducted. Even one of the advantages that Russia has – a complete statistical observation, is not fully used because of departmental privacy and manipulative distortions.

Activities to counteract crime are no less a science-intensive area than, for example, nuclear physics. However, the *research* potential, which is currently used to study criminality, is incommensurable with the scale of this most complex social phenomenon. To put it mildly, scientific support of the system of criminal sanctions leaves much to be desired. Criminal law science continues to increase, mainly due to the efforts of university lecturers, "overloaded" with the increasing volume of bureaucracy and the teaching load. And there are no optimistic prospects in this direction. Unfortunately, there are no plans to construct building for criminal law research institutes in science cities, as well as there are no intentions to build "criminological colliders". The consequences of criminal lawmaking are not predicted even with the help of expert assessments. Criminological expertise of criminal laws and their bills is not accomplished. The academic community's numerous appeals to the authorities are ignored.

On Legal Facts as the Grounds for Criminal Management Measures

All means of criminal law management can be applied only on the basis of the corresponding legal facts, which, according to the general theory of law, are actions and events. In turn, the actions are divided into legitimate and illegitimate. The entire spectrum of the abovementioned legal facts is used to provide the necessary governing impact.

All legal facts being the grounds for corrective impact can be divided into two types: criminally significant acts and criminally significant events.

The doctrine of Russian criminal law continues to be based on the obsolete provisions of the classical school, according to which the main legal fact in criminal law is such an unlawful act (omission to act) as a crime. However, the systemic interpretation of Article 14 of the Criminal Code of the Russian Federation makes it possible to state unambiguously that, in addition to the crime – that is, a "socially dangerous act committed with guilt", there is a "socially dangerous act committed without guilt", both of which are types of a higher level category – a "socially dangerous act". The Criminal Code of the Russian Federation also deals with the phrases "socially dangerous encroachment" (Article 37), "causing harm to the interests protected by the criminal law" (Articles 39, 40, 41, 42). Criminal law does not directly define most of these categories, and therefore it is not clear how they relate to each other and, accordingly, to the concept "crime".

It is not the crime as it is now but ***a criminal act*** of such type as *criminal encroachment; a criminal offence and a crime* that should become the first order negative legal act [13]. By the way, the introduction of the category of a "criminal offense" in the criminal legislation will reduce the burden on the criminal justice system, without resorting to large-scale decriminalization, as the Chairman of the Supreme Court of the Russian Federation V. M. Lebedev proposes.

In addition to criminally significant acts, a criminal event characterizing criminally significant circumstances related to a natural or anthropogenic environment (a confluence of difficult life circumstances, a state of emergency, a combat situation) or to the identity of the perpetrator and the victim (illness, age) should be articulated as negative governing signals both in theory and in legislation. Criminal events can be used as grounds for restrictive and incentive sanctions.

There is a need to introduce into criminal law such a category as *a criminally significant merit*, that is a socially approved act or event with which the criminal law links such management actions as excluding the application of a criminal measure, releasing from it or mitigating it.

On Restrictive and Incentive Levers of Criminal Law Management

According to the accurate generalization of A. V. Malko, "all kinds of social management can be represented:

1) in the form of *co-action* towards the satisfaction of socially valuable interests, i. e. stimulation;

2) in the form of *counter-action* towards the satisfaction of antisocial interests, that is limitation" [9, p. 37].

The essence of social management can be visually conveyed through comparison with the caterpillar machinery operation, carried out with the help of gas and brakes. Even in order to make a turn, one of the caterpillars is blocked. Modern Russia can be compared to a tank that is standing still or moving in circles, just because the driver can use, mainly, the locking levers.

It appears that positive stimulation is a lever that is underused by all the branches of the Russian government. "To hold it tight and not to let it go" is our main method of management, which passes from century to century. Restraints and prohibitions have entangled Russians so much that creativity in any sphere is already being considered even if not an offense then a deviation [4].

The criminal justice management is perceived by the population and even by specialists mainly as the use of restrictive levers. However, in reality it is a combination of constraint and positive stimulation. Dispositions of the articles of the Special Part, on the one hand, outline the range of prohibited types of behavior, but, on the other hand, they designate the limits of free activity in non-prohibited spheres. And the fewer criminal restrictions there are, the broader is the scope for active economic and other types of creativity.

Even if there has been a violation of the criminal law prohibition, all the cycles of criminal management contain signals encouraging socially useful behavior: giving oneself up, active repentance, compensation for harm...

Criminal measures are a complex and multistage mechanism consisting in the correct combination of limiting and stimulating signals and commands. To move forward and adjust the personal and collective vectors of the movement of society, we must not "brake", but "snub".

As noted above, the main purpose of criminal sanctions is achieved through intermediate goals, and, accordingly, through intermediate activities. With the criminal law management algorithm disconnected, we can identify at least 12 operations: 1) the designation of objects entitled to special protection; 2) the formulation of rules for special security (hypotheses and dispositions); 3) a description of "criminal acts", that is types of behavior that are dangerous for objects protected by criminal law; 4) a description of the signs indicating an increased danger o from perpetrators of criminal acts; 5) imposing restrictive sanctions for the commission of criminal acts; 6) the wording of "criminally significant merits", that is a description of signs of socially useful behavior and personality traits that reduce the danger of one's deeds and decrease the likelihood of repetition of criminal acts; 7) the establishment of incentive sanctions for "criminally significant" merits; 8) the wording of the rules for imposing criminal sanctions; 9) the application (imposition) of criminal sanctions to persons violated the rules of special security; 10) enforcement of restrictive sanctions; 11) the application of incentive sanctions; 12) the implementation of incentive sanctions.

Criminal law management is connected with a significant restriction of the constitutional rights and freedoms of citizens therefore it is carried out not only within the strict framework of substantive law rules, but within law-making, law-enforcement and law-execution criminal processes as well. To date, there is only the code of Criminal procedure; the norms of the criminal execution procedure have not been singled out in a separate code yet; the issue on the creation of the Criminal lawmaking code is raised in this article for the first time.

On an Unnecessary Link in Criminal Law Management

The specific nature of the criminal management sanctions is reflected in the fact that the restrictive measures are leading in it, while the positively-stimulating ones play an auxiliary role. Stimulation in criminal law is used to remove or mitigate restrictive encumbrances provided for by the criminal law on the basis of criminally significant merit. The application of criminal law measures is carried out according to the permissive type and must fall within strict limits of restrictive and incentive norms: a hypothesis, a disposition, a sanction. According to the language of management, "channels of the governing impact" are tightly regulated by criminal, criminal procedural and penal enforcement legislation.

It is generally accepted that management in the criminal law sphere is carried out with the help of a

"joystick" called "criminal responsibility". But I will remind you that this category was introduced into the Russian legal and scientific circulation relatively recently – in the 60s of the last century. There are at least 8 definitions of criminal responsibility in the theory of criminal law, and there is none of it in the criminal legislation. At the same time, a significant part of the sanctions provided by the Criminal Code is not covered by the concept of "criminal responsibility", and the overwhelming number of foreign criminal legal systems does perfectly well without using this category.

What is the need for the category "criminal responsibility", and what are the tasks this "legal fiction" was invented to solve? Verification with the help of a methodological technique known as "the Occam Razor" shows that the category "criminal responsibility" is not only a needless link, but hinders understanding and perception of the management mechanism of criminal sanction either. Try, for example, to explain the difference between the exemption from *criminal responsibility* with the use of compulsory educational measures (Article 90 of the Criminal Code) and the exemption from *punishment*, with the use of the same compulsory educational measures (Part 1, Article 92 of the Criminal Code). What else, besides punishment and conviction, is a minor offender released in the first case from? If it is from conviction – condemnation, as the adherents of criminal responsibility consider, then it is possible to come to an amazing conclusion: when released on non-rehabilitating grounds in the pre-trial stage, the act committed seems to be recognized as a crime, but the offender is not condemned by the society for committing it.

On Objects of Special Protection and Rules of Special Security

Objects subject to special protection are outlined in the Constitution of the Russian Federation [3]. They were reproduced as generic objects or objects of separate offenses of the 1996 Criminal Code. But within 20 years a reassessment of the importance of protected objects has occurred in all the management cycles without being really noticed. The rights and freedoms of man and citizen proclaimed by the Constitution as a priority (Article 2) are pushed into the background ostensibly before the interests of society and the state, but in fact – before the interests of the ruling elite. In an unjustifiably intense and seemingly chaotic change in the criminal legislation of recent years, this trend is traced very clearly. Allegedly, public interests are being strengthened by means of increasing restriction of such constitutional rights and freedoms as freedom of speech and the media (Article 29), holding meetings, rallies, demonstrations, processions and picketing (Article 31). Judging by criminal statistics Article 144 of the Criminal Code "Obstruction of the lawful professional activity of journalists" and Article 149 of the Criminal Code "Obstruction of holding a rally, demonstration, procession or picketing" are not applied.

The proclamation of the priority of human rights and freedoms in the RF Constitution, in my personal opinion, is strategically incorrect. Only a balance of universal, national and individual interests can provide sustainable development. But as a law-abiding citizen, respecting this constitutional provision, I cannot understand how, without changing the Constitution, public branches of legislation and law-enforcement practice were reoriented to the priority of the interests of the state, and, to put it bluntly, to protect the interests of persons in power.

The undeclared revision also touched upon other provisions of the Constitution. Encroachments on the principles of democracy (Article 3), ideological diversity (Article 13), the supremacy of universally recognized principles and norms of international law (Article 9) remain without a legal and criminal law assessment.

According to the Constitution, our country is a democratic state (Article 1), but the principle of "separation of powers" horizontally (Article 10) and vertically (Article 12), as the most important for a democratic organization, is not observed, which creates a real danger of Russia's transformation from a democratic state to an authoritarian one. Strange as it may seem, this system-forming principle is not the object of criminal law protection at all. "The country has created an "executive vertical" or "controllable democracy". This is the state where the real power is only within the executive branch" [10, p. 52], a criminologist V. A. Nomokonov states.

Social management is carried out with the help of information interaction through transmitting command-signals by the management entity and receiving feedback. Signals carry the governing impact that forces the system to rebuild. With reference to criminal measures, governing signals are

contained both in the text of the criminal law and in the practice of its application and execution.

Let us analyze the principle of "equality of citizens before the law", enshrined in the Constitution (Article 19) and duplicated in the Criminal Code (Article 4). Article 136 of the Criminal Code provides criminal punishment for violation of the equality of rights and freedoms of man and citizen. What does it look like in practice?

Specialists and ordinary people just "held their breath" before the sentence on the case of "Oboronservis" was passed. And now, despite the fact that the prosecutor asked a conditional sentence for Yevgeniya Vasilyeva who was an accomplice of half-billion embezzlement, justice was exercised – 4 years of real imprisonment. But, whether for the fact that Vasilyeva correctly does, or, conversely, for the fact that she quickly undoes the bed, she is released on parole after three and a half months. And this last governing signal, actually, annuls all previous ones.

Fearing the "surrender of power" to political rivals, those already "seized power" strengthen their monopoly position and narrow the possibilities for political competition. In pursuing it any means are used: from the constant change in the electoral legislation favorable for the ruling party, to a selective use of all other branches, including criminal ones. Protest sentiments are "driven inside".

It is quite recently that the State Duma has criminalized a single picketing, and by the Basmanny Court's decision, the civil activist Ildar Dadin was taken into custody for three cases of peaceful picketing during the investigation and sentenced to three years in prison. Comparison of the public danger committed by Vasilieva and Dadin, and the measures of restraint and punishment chosen raise questions, to put it mildly.

At the same time, "misappropriation of power" through underhand dealing in the electoral process is "forced out" beyond the limits of criminal law protection. Modern election campaigns often represent not so much a civilized, democratic process of renewal of power as an unequal war of political opponents. The examples of "color revolutions" clearly show that various forms of abuse in the electoral process can become a serious threat to national security [7].

Despite the fact that there are as many as four articles in the Criminal Code (141, 141.1, 142, 142.2), protecting the people's power from encroachments, they actually "do not work". The specialist in Electoral Crime O. V. Zaitseva writes that "the latency of such acts is about 600 %" [6, p. 323]. Is it because the encroachments on the electoral rights of citizens are carried out mainly by "branches" derived from the "fundamental" constituent power?

The criminal law response is becoming increasingly selective, and Russia is confidently moving to the fact that soon all public branches of law can be renamed into one "electoral law".

In our interpretation, the dispositions of the provisions of the Special Part of the Criminal Code are the rules of special security established for the protection of values declared by the Constitution, intentional or careless violation of which entails the application and enforcement of criminal sanctions. A typical mistake (if not abuse) of the creators of modern lawmaking and law enforcement policies is that the rules for special security are established on objects protection of which is necessary to ensure the security of the authorities, but, ultimately, leads to a weakening of the protection of national and universal values.

On Four Types of Criminal Sanctions

Modern science of criminal law focused primarily on the study of restrictive sanctions, and in the most restrictive component preference is given to penal sanctions. Meanwhile, according to criminal law statistics for 2013, out of 1,012,563 (100 %) persons identified for the commission of a crime, the punishment was imposed only in respect of 529,406 (52 %) persons. As regards 216,118 (21 %) persons, the criminal case was dismissed or the cases were terminated on non-rehabilitating grounds with the application of non-punitive measures and sentences that came into force. 206,199 (20.3 %) more convicts were released from punishment, with other measures being used, mainly in the form of suspended sentence – 201,555 (19.9 %) [11, pp. 150–158]. If we add to this 65,237 convicts who were released on parole in 2013, it is quite clear that more than half of those liable for acts prohibited by criminal law are subject to alternative measures of punishment. A retrospective analysis of criminal law statistics clearly shows a tendency – "from the criminal law of punishment to the criminal law of impact".

Contrary to the common myth, Russian criminal law, like any foreign criminal law [17, p. 2063; 22], has never been purely "punitive". It has always used a fairly wide range of types of sanctions, including incentives. Even the institution of compensation for harm caused by the crime did not always apply to civil law [5]. Attempts to reduce all legal consequences of an act prohibited by criminal law to criminal punishment are unpromising. The world literature diagnosed "the crisis of punishment" long ago [14].

In fact, at the present time, all modern criminal law systems are at least "double-track Systems" (Germ. – *zweispurige Systeme*), that is apart from punishment they include some other consequences of the act prohibited by criminal law. The official doctrine of German criminal law proceeds from the fact that the criminal law of Germany is "double-track" and provides for two groups of sanctions: penalties and security measures [15, p. 346; 18, p. 672; 19, pp. 1–3; 20; 21]. In recent decades, a third "track" has also been added to the two named consequences: measures of restoration [24, p. 7].

The science of Russian criminal law, has hardly considered this matter from such a point of view. But it is clear that the authors of the Criminal Code of 1996 took the road of "multi-tracking". Otherwise, how can we explain the division of legal consequences into "punishment" and "other measures of criminal law nature" (articles 2, 7 of the Criminal Code of the Russian Federation) and the existence in the Code, for example, of compulsory measures of a medical nature, compulsory sanctions of educational measures? The introduction of Section VI "Other measures of a criminal law nature" has further revealed the tendency according to which "single-track punitive" Russian criminal legislation is becoming more and more a "multi-track" one.

This step of the legislator revived the scientific interest in other measures of criminal law nature. But the discussions are mainly about a list of measures that do not apply to punishment. Researchers, with rare exception, do not try to delve into the discussion of the legal nature of other criminal law measures. What "first elements" do they consist of?

In our interpretation, the current model of Russian criminal law is "four-track", that is, it includes four types of legal consequences of a criminal act – ***measures of criminal sanctions***: three restrictive sanctions: *punishment, security, restoration*; and one positive-incentive sanction: *stimulation*.

In the current criminal law, only *sanction of punishment* (Article 43 of the Criminal Code of the Russian Federation) out of four named sanctions has a legal definition. But, as it seems to us, the definition of punishment and its purpose should be adjusted. The new Criminal Code might introduce the characteristics of punishment in the following way:

"Criminal sanction of punishment is a measure of state compulsion prescribed by this Code, imposed by the court.

Penal sanctions may apply to an individual who has committed a crime or a criminal offense and means deprivations of legitimate benefits or restriction of the rights and freedoms of that person.

Penal sanctions are used to formulate the inadmissibility and unprofitableness of the commission of criminal acts, both for the person who committed the criminal offense or misconduct, and for those around him" [13, p. 57].

Despite the fact that *security sanctions* have long been "lodged" in Russian criminal legislation as security restrictions in coercive medical measures, coercive sanctions of educational measures, in conditions of correction facilities, suspended sentences and parole, they have not been given a legal definition and full recognition in theory yet. We believe that in the Criminal Code of the next generation, their definition could look like this: "A criminal security sanction applies to an individual or to an organization having committed a criminal act and consists in the disclosure of information, seizure of property, the imposition of special bans and duties.

Criminal security sanctions are applied to individuals with a view to limiting the possibility of committing new criminal acts and creating conditions for effective educational and medical measures, to organizations – in order to limit the possibility of committing new criminal acts" [13, pp. 58–59].

The restoration sanctions of the Russian legal system are "written down", mainly in the civil-legal area. But in recent years, we have seen the beginning of their return to criminal law (Article 90 of the Criminal Code). I am sure that the restoration measures in a short perspective should change the

status of "illegal migrants" and gain "equality" with other criminal sanctions. An example of this is the criminal legislation of the Federal Republic of Germany, where scientists note the appearance of the third "track" – the restoration measures in the criminal law *(die Wiedergutmachung)*, and in recent decades the model "criminal – victim-compensation" *(Täter-Opfer-Ausgleich – TOA)* has been successfully implemented [25]. Restorative technologies, including those in criminal law, are becoming increasingly popular in most European countries [23].

The new Criminal Code of the Russian Federation is possible to define them as follows: "The criminal restoration sanction shall apply to an individual or to an organization committed a criminal act and is the duty of that person or organization to recover damage or otherwise to redress the harm caused by this criminal act.

Criminal restoration sanctions are applied for the purposes of reimbursement and correction of moral and material harm caused by a criminal act" [13, p. 59].

The phrase *"incentive sanctions"* in relation to criminal law makes a lot of criminalists plunge into almost a shock state and feel a sharp rejection. Meanwhile, the existence of incentive norms (both dispositions and sanctions), including criminal legislation, has long been proven in the works of V. M. Baranov, Yu. V. Golik, I. E. Zvecharovsky, A. V. Malko, R. M. Meltonian, V. N. Kudryavtsev, R. A. Sabitov, I. A. Tarkhanov and other researchers. Incentive sanctions are indicated as a generally recognized category of law even in a teaching aid recommended by the Ministry of Education for students of secondary professional education institutions.

The new Criminal Code of the Russian Federation is possible to define this group of sanctions as follows: "Criminal incentive sanction is a measure of state positive stimulation provided by this Code, imposed by the court.

Criminal incentive sanctions apply to an individual or to an organization that, although having committed a criminal act, have a criminal merit to exclude the imposition of a criminal measure, to be released from or mitigated.

Criminal incentive sanctions are used to stimulate socially approved behavior of an individual or the activities of an organization" [13, pp. 59–60].

On Multifunctional and Complex Criminal Measures

At present, four main "elements" have been "discovered" in the "periodic system" of criminal law sanctions. For the most part, the criminal measures provided by the Criminal Code of the Russian Federation are "alloys", in which several sanctions are combined in parallel or in succession. All criminal measures and sanctions provided by the Criminal Code of the Russian Federation most often represent a combination of these elements in different proportions. They are rarely found in criminal law without "impurities", just like "pure" metals in nature.

The same measures may be *multifunctional,* that is they can serve as punitive sanctions and (or) security sanctions and (or) restoration sanctions depending on the intended purpose. For example, "deprivation of the right to occupy certain positions and engage in certain activities" is both a punishment and a security measure. It is curious that in the criminal law of Russia this measure appears in the list of penalties, and in the criminal law of Germany – in the list of security measures. Restriction on freedom of movement can be both a measure of punishment (deprivation of liberty) and a security measure (compulsory treatment in a mental asylum). In the very punishment in the form of deprivation of liberty, upon closer examination, one can discover the elements of punishment and security measures (regimes of correctional institutions)[1], that create conditions for the organization of intensive educational measures on the convict. The regime of a mental asylum, in addition to ensuring the safety of the patient and society, creates restrictive "banks" for favorable medical treatment.

In criminal law science a discussion about the legal nature of confiscation continues. In the interpretation we propose, confiscation should be enshrined in the Criminal Code of the Russian Federation as a sanction of punishment (general confiscation), as a security sanction (special confiscation) and as a restoration sanction (restorative confiscation).

[1] It is significant that the Criminal Code of Ukraine provides institutions for the execution of punishment in the form of imprisonment divided into reformatories of minimum, medium and maximum levels of security. Art. 89 of the Penal Code of the Republic of Kazakhstan provides institutions of minimum, medium, maximum, emergency, full and mixed security depending on the regime.

We believe that a part of measures used in criminal law should be considered *comprehensive,* as they combine different types of criminal sanctions. These include: suspended sentence, parole, release from punishment with the use of compulsory educational measures. Within the aforementioned complexes, the following are combined: a) sanctions imposed by the court for a crime committed; b) incentive sanctions (exemption from punishment in response to criminally significant merit); c) security sanctions in the form of special prohibitions and duties; and d) restoration sanctions in the form of the obligation to compensate (ameliorate) the damage caused by the crime. This approach makes it possible to solve several significant problems of law enforcement, and, in particular, the issue of grounds that are differentiated with respect to each of the sanctions.

The "four-track" model of criminal law provides relatively painless solution to the problem of criminal sanctions on criminal organizations. Instead of criminal liability (read – punishment) inflicted to legal entities, the introduction of which presupposes the existence of an artificial construction of "guilt", we propose to impose security sanctions and restorative sanctions on criminal organizations. Recognition of the "multi-trackedness" of the criminal law makes it possible to take the discussion about the "age of criminal responsibility" to another level. Having renounced the concept of criminal responsibility, age can and should be established and differentiated with reference to each of the types of criminal sanctions: punishment (the basic age is 16 years, for certain crimes – 14 years); security (11 years), restoration sanctions (the obligation to "apologize" and "go through the mediation course" – 11 years, compensation for minor harm or partial compensation of harm – 14 years, full compensation for harm – 16 years). As for the incentive sanction, the minimum age should not be established, since exemption from criminal law encumbrances can be applied and is actually applied from any age.

Recognition of the "four-trackedness" of criminal law opens the possibility for a new interpretation of the non bis in idem principle (no one can be convicted twice and punished for the same crime). Since this principle concerns only the sanction of punishment, the perpetrator, along with punishment and afterwards, can be subject to security and restoration sanctions.

One of the arguments against the "four-track" model is that it is allegedly difficult to introduce into the criminal legislation. But, as already noted above, this model has practically been embodied. It can be "strengthened" by introducing corresponding amendments to the current Criminal Code. However, the best option is to make this model one of the conceptual ideas of the new Criminal Code of the Russian Federation [13].

Conclusion

The builders of the cathedral in the French city of Chartres were asked what they were doing. One of them answered that he was carrying bricks. Another said that he was making money for bread. And only the third one said with pride: "I am building a cathedral!"

Unfortunately, fewer and fewer of our compatriots feel involved in the construction of the "cathedral". The overwhelming majority of the population has no idea about the construction they are involved in.

The criminal law sphere is not an exception. Ebullient activities for "dragging bricks" overshadow the ultimate goals, for the sake of which criminal law management is carried out, switching activity to departmental, career and other "non-state" interests. Formally-dogmatic approaches prevailing in criminal law contribute to this.

The management approach is not universal, but its use makes it possible to go beyond the "normative-deviating" professional thinking of lawyers; to look at their work "from the outside"; to correlate the goals, means and result of the activity, which, in one way or another, concerns each of the Russians.

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