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# Development Prospects for Criminal Law of the Russian Federation

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*This article is concerned to the main trends of the criminal legislation of the Russian Federation, acting under conditions of social transformation. The article analyzes the positions of the leading scientists of the criminal law of the Russian Federation; also it contains the author's interpretation of criminal law development trends of Russia.*

*Keywords: criminal law crisis; the role of the criminal law; liberalization of criminal repression; international criminal law; criminal prohibitions.*

Nowadays the criminal law in Russia is on the edge of continuous changes. However, it's necessary to define the trends of these changes.

Point. The majority of legal scholars define the modern state of the criminal law as a critical one (Dubovik, 2001; Zhalinsky, 2002; Kudryavtsev, et al., 2004). The core subject covers the following: «the criminal law, considered from the point of view of its virtual consequences (quantity of convicts considered as expenses, public security as a result), is in a crisis situation, whereas the criminal law methodology doesn't facilitate its overcoming» (Zhalinsky, 2009, 28-29).

The attributes of criminal law crisis can be classified as social and legal ones. The former contains criminal law attributes of social nature. In particular, they include: simultaneous growth of guilty verdicts and committed crimes what implies a contradiction between social losses and social benefits, i.e. public authority, performing a law delegated for violence, doesn't guarantee the public safety by performing it. Furthermore, the vigorous growth of direct costs received from the criminal law maintenance, i.e. crime detection, investigation, courts activity, execution of sentence, as well as of indirect costs formed by the growth of transactional costs of social relation subjects. Excessive usage of the criminal law resources is noted to affect the balance of the social relations that leads to narrowing of social control of the criminal law. The latter contain the crisis attributes of legal nature, i.e. criminal legislation inflation, linear motiveless expansion of subject of criminal law impact and reinforcement of responsibility, reduction degree of criminal legislation performance, conjugated with a growth of dormant law provisions, losing the criminal law certainty in relation to the comparatively new types of crimes.

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Example. Prof. A.E. Zhalinskiy defines three main issues of the modern criminal law in Russia that are needed to be discussed in a collective manner (Zhalinskiy and Dubovik, 2006). The first issue is a definition of the criminal law tasks and limits corresponding to social needs and based on Russian Federation Constitution and of its influence to economy that are verifiable and possess a management potential. The second issue covers a provision of the social tolerance of criminal law, including observance of the penalty economy target. And finally, the third one, is a development of interbranch guarantees that would exclude the misuse of criminal law and reduce its undesirable accessory acts.

In order to specify the above stated problems, prof. A.E. Zhalinsky, in relation to the issue of tasks and functions of the criminal law in Russia, considers that the current characteristic of the tasks sometimes referred to as the functions of the criminal law is rather abstract and resolved, on the one hand, to their characterization as protective and preventative ones, but, on the other, to the list of the objects stipulated by Part 1 of Article 2 of the Criminal Code RF. The limit is not specified and the range of objects protection, as well as the ways of crime prevention. The act stipulated namely in Part 2, Article 2 of the Criminal Code RF, which specifies the ways of realization of tasks, since the existing legislation does not define what acts can be criminalized pointing out that they must be dangerous.

Further, according to prof. A.E. Zhalinsky, after having solved these problems, it can be assumed that the criminal law:

- shall not be used for vested or unconstitutional motives;
- shall provide an acceptance of the most correct, rational, reasonable and effective solutions within the possible limits.

To our opinion, the undoubted advantage of this position is a comprehensive approach, in accordance to which the current Russian Criminal Law is considered as a unity of the system of legal provisions, the practice of their implementation and the analysis of criminal law theory. This group of authors examines the nature of criminal law in the modern language, taking into consideration relevant social realities. In return, we fully support this position.

However, according to prof. A. E. Zhalinskiy the main issue that remains unresolved in the criminal law theory and not only in Russia is the basic question of «what the real role of criminal law is and in particular what the actual influence of the criminal law on the behavior of people is» (Zhalinskiy, 2005, 21). Prof. I.E. Zvecharovsky, shares as well this opinion, in particular, he points out two related provisions answering the question of defining the role of the criminal law in regulating social relations.

«First, the criminal law is aimed to ensure the achievement of certain goals, usually external, though not internal to it. When one or another penal prohibition is issued to ensure the «inviolability» of the criminal law, it is provided not for the criminal law itself, but for the public relations that are under its protection. On the one hand, these public relations are regulated not only by the criminal law, but also by the other branches of legislation.

Second, the definition of public and legal purpose of the criminal law as a whole or of individual elements constituting it, must not substitute the definition of roles in the first case – place of the criminal law in the legislative system and, second, some of its provisions in the criminal law itself» (Zvecharovsky, 2005, 34).

Furthermore, prof. I.E. Zvecharovsky points out four elements to solve the problem of the criminal regulation of social phenomenon that is external for the criminal law:

- what role of this branch is in order to regulate the public relations in general and

to resolve one or another social conflict in particular;

- to what range of legal subjects the criminal law will be addressed;
- what legal measures, taken by their character and rage of content, shall be used in respect of the character of the regulated relations;
- what indicators shall be used in order to judge the degree of implementation of the criminal law for proper conduct (Zvecharovsky, 2004).

Let us not agree with some of the views of prof. I.E. Zvecharovsky. He uses the category of «public relations» as an object of criminal protection. However, to our point of view, this category is less successful and unsuitable in the frame of the criminal law. Thus, it would be an absurd to say that the environment (Chapter 26 of the Criminal Code RF) is a set of social relations. In this case, the object of the criminal law protection should be considered as a category of legal benefits which are tangible and ultimate entities and possibilities that obtained a legal assessment as the values required of individuals, society and state. These legal benefits can be considered as social, economic, political and of other institutions. On this basis, it is possible to distinguish a subjective identity of legal benefits, its objective expression and value. Also, we would like to clarify the range of the subjects of the criminal law is aimed to. We believe that the criminal law effect applies to the whole society, to all social groups and all members of this society, but not only to those who are inclined to commit crimes. N.S. Tagantsev pointed that: «Criminal law refers only to the one whom it imposes a duty of obedience; criminal law, creating a special attitude of the state to violate norms, has many-kind attitude: first, to persons who are obliged to refrain from violations of possible culprits and, second, to authorities setting the crime and penalty and, finally, third, to the State itself, in the name of and for the sake of which the penalty is imposed» (Tagantsev, 1902, 74-75).

A slightly different approach to notion of state and prospects of the Russian criminal law can be traced in the views of prof. A.I. Rarog, prof. V.S. Komissarov, prof. L.V. Inogamova-Hegai, prof. T.A. Lesnievski-Kostareva and prof. T.D. Ustinova. The point of view of these scholars is based on the principle of systematic complexity and stability in the Russian criminal law development (Lesnievski-Kostareva, 1998). In particular, the criminal law complexity, as its attributive property, means the following:

First, the system of the national criminal law is a part of the international criminal law, so a legal provision of the Russian criminal code should be consistent with international legal provisions. Thus, a legislator in the new edition of Part 1 of Article 12 of the Criminal Code RF removed the contradiction between the Criminal Code and Article 14 of Council of Europe Convention on the Prevention of Terrorism.

Second, as a distinct legal element, the criminal law is a system of the national law and therefore inseparably linked to the law of any other branch sector and must conform it. As a positive reaction of a legislator to this requirement, there is an example with the new revision of Article 178 of the Criminal Code RF, the modern criminal law is fully consistent with the statute «On Protection of Competition». The version of Article 178 of the Criminal Code RF limits the scope of the most dangerous violations of the antimonopoly law, which resulted in prevention, restriction or elimination of competition and causes damage equal to over one million rubles or resulted in the deriving of income in excess of five million rubles.

Third, forming an autonomous subsystem of the national law, the criminal law itself must possess the properties of internal unity, integrity

and consistency, as «systematical complexity is a necessary feature of a codified statutory act».

The criminal law stability is an efficient condition for crime fighting. The stability is not considered as something fixed, isolated from the real life, but as a phenomenon intimately associated with the objective reality, reflecting all the features of the modern life in law. Stability of the criminal law means the presence in these legal provisions that are axiomatic for the criminal law, traditional and unchanged, existing along with the reformed rules, as well as amendments of the Criminal Code RF (Inogamova-Hegai, 2005).

However, the above stated principles of systematical complexity and stability of the criminal law of constant reform are being frequently violated in this period. Thus, the discrepancy between the criminal legislation of Russia to the international law provisions is manifested, for example, in the redrawn Article 127² of the Criminal Code of the Russian Federation that prohibits use of slave labor only under penalty, but not any servitude, as the International Law does. In accordance with Article 4 of the Universal Declaration of Human Rights of 10 December 1948 and article 8 of the International Covenant on Civil and Political Rights of 16 December 1966 prohibited not only the slavery and the slave trade in all their forms, but the appeal rights in any servitude (debt kobala, serfdom, any institutions or practices similar to slavery). Unfortunately, these phenomena have remained outside the station 127² CC RF.

Also, the Part 2, Article 11 of the Criminal Code RF «crimes committed within the territorial waters or airspace of the Russian Federation, are recognized as committed in the territory of the Russian Federation» does not conform to the International Law. Indeed, in accordance with clause 1, Article 27 of UN Convention on the Law of the Sea of December 10th 1982, criminal jurisdiction of a coastal State within its territorial waters is limited and does not extend with few exceptions, the crimes committed aboard a foreign ship passing through the territorial sea. It means that provisions of criminal law – that a person commits a crime in the territorial waters of Russia is subjected to liability under the Criminal Code – do not correspond to the norms of International criminal law. And if the crime was committed on board a foreign ship passing through the territorial sea of Russia, a conflict between the provisions of the Criminal Code and the provisions of the UN Convention on the Law of the Sea should be resolved in favor of the latter.

As a proof of contradictions between the legal provisions in the Russian criminal law and law of any other branch sector, we can take Article 171 of the Criminal Code of the Russian Federation, since one of the possible variants of criminal behavior is called as an entrepreneurial activity with the breach of registration rules. However, in the Russian Federal Statute «On registration of legal entities and individual entrepreneurs» there are no articles where it would be used the word «rules».

Prof. A.I. Rarog gives many examples of violations of the unity, integrity and consistency of the Criminal Law. We will name just a few of them (Rarog, 2007, 2008). Thus, the Criminal Code of the Russian Federation as amended by the Act of December 8th, 2003 declined the incautious infliction of injury of average severity, though it remained in three cases. Later, it was excluded from Articles 349, 350 of the Criminal Code, but remained in Part 1 of Article 124 of the Criminal Code. Hereby there can be seen a «whitespace» of sanctions stipulated by Articles 174 and 174 ¹ of the Criminal Code, that significantly obstructs the ability of their actual use. The inconsistency between the dispositions of Article 228 and 228¹ also constitute a violation of the complexity principle. Violation of complexity principle

occurs even within the same article, in Article 115 and 116 of the Criminal Code, a legislator has established the qualified types of crimes punishable by compulsory works in the same or even smaller than for the same amount of offense without aggravating circumstances.

According to the group of scientists, mentioned above violations of the principles systematic complexity and stability of the Criminal Law make actual the raising of an issue of the new edition of the Criminal Code on the basis of well-thought-out plan of action for a mandatory scientific and criminological exspertize (Rarog, 2006).

Summarizing this, Prof. V.S. Komissarov determines the perspective of the criminal law in the fight against crime. These are:

- the balance between the processes of criminalization on the one hand, and the decriminalization and depenalization, on the other hand;
- the further differentiation of criminal responsibility, depending on the classification of crimes and categories of offenders;
- reviewing the system of punishments;
- an optimization of the system of sanctions;
- to strengthen the fight against organized crime by revising the rules on recidivism;
- expanding the scope of the promotional items to articles of the Special Part of the Criminal Code (See Part 2, Art. 198, 199 of the Criminal Code RF);
- development and implementation of the concept of other legal measures and some other measures (Golik et al., 2006, Komissarov, 2008).

Observing this point of view, first of all, we would like to say that we share all the ideas that were expressed during the Second All-Russian Congress of the Criminal Law. In general, we believe that the adoption of the Criminal Code in the new edition is acceptable, but in this case the main idea of the forthcoming reform should be a criminal repression saving, restriction of the Criminal Law to the realities of social reality. It's essential to remember that an ever changing law will hardly cause some positive emotions and respect for it.

For the sake of the development of mentioned directions of the Russian Criminal Law development, there is a point of view of prof. N.I. Shedrin that is worth to mention. This point of view is based on the assumption of the «four-targeted» Russian criminal law. It must be said that the German criminal law is a «twin-targeted» (das zweispurige System), i.e. it includes two types of legal implication of criminal act: punishment and measures, but in recent years the representatives of the German criminal law doctrine point out the emergence of the third «target» – a rehabilitation (Roxin, 1997; Shedrin and Tereshchenko, 2000).

At this moment the Russian Criminal Law system can be considered as a minimum targeted one – «two-targeted». The division of the legal implication of a criminal act into two groups: punishment and other measures of criminal nature – is now universally recognized and enshrined in Article 2 and Chapter 15-1 of the Criminal Code. However, according to this scholar, in the modern criminal law there are four elements that make up the implications of an act prohibited by the criminal law: penalties, incentives, rehabilitation measures and security measures.

Accordingly, the penalties are stipulated by Article 43 of the Criminal Code of the Russian Federation. The incentives are reflected in all kinds of exemption from criminal liability and punishment and in replacement of a severe punishment for a less grave one and conditional sentence. The rehabilitation measures are

stipulated by Articles 75, 76 of the Criminal Code, where this rehabilitation is effected by means of indirect stimulation provided for in Article 90 of the Criminal Code, they are expressed in a direct obligation to recover the harm made. The security measures are expressed in compulsory measures of educational influence, compulsory measures of medical nature, specific confiscation, special restrictions when recidivism takes place (Zhizhilenko, 1914; Shedrin, 2000). Professor N.V. Shedrin believes that the concept of the «four-targeted» Criminal Law can be fully implemented only in the new version of the Criminal Code. However, according to the author's opinion, it can be partially implemented in the existing Criminal Code by introducing a general part of the new edition of the Criminal Code, Section VI «Other measures of Penal Treatment», which contains the separate chapters as follows: on the incentives, rehabilitation measures and security measures, as well as the «Safety criminal law against organizations».

Our position towards the current condition as well as towards the prospects for the Russian criminal law development, reveals as a synthesis of the ideas mentioned above, also we offer our own assessment of contemporary directions in the improvement of criminal legislation of the Russian Federation.

It was adopted a variety of federal statutes on introducing amendments and supplements to the Criminal Code RF during its enforcement. This process proceeds until now. However, these laws are only a part of the huge number of bills to amend the Criminal Code, which are constantly being made by the subjects with the right of legislative initiative. There can be pointed out two stages of the Criminal Code reinforcement in the Russian criminal law – 5-years and 10-years periods. The attitude of Russian lawyers varies: from the most negative to most positive assessments of the current Criminal Code. According to our view, each position reflects one side of the reality, because it's rather difficult to assess the criminal law during the period of social transformation of all relations in society.

Based on the analysis of the basic approaches of the Russian criminal law doctrine and the development trends of the Criminal Code, it's possible to outline the main prospects for the development of the criminal law in Russia.

Resume. 1. The tendency of liberalization of criminal repression will be intensified. So now, in the modern Criminal Code there takes place a transition from punitive to rehabilitative and restitution principles. The foregoing can be shown by the Federal Statute, issued of December 8th 2003, which significantly expanded the scope of the institutions and rules designed to differentiate the criminal liability and punishment and relief from them. Thus, punishment is differentiated, taking into account a number of qualifying attributes for crimes provided for in Article 146, 158, 183, 189, 194, 199, 205 and others to severe sanctions for crimes provided for in 160, Part 2, Article 161, Part 2, Article 162, Part 3, Article 163, etc. There provided a possibility of probation in the case of sentences of imprisonment for up to eight years for crimes of any category and there are substantially liberalized the reasons and procedures of parole institution from serving a sentence, criminal liability of juveniles.

However, the evaluation of the mentioned above changes may not be unique. The intention of a legislator, taking into account global trends, to soften the edge of criminal repression should comply with the realities of social real life. Thus, it remains unclear why Part 2, Article 162 of the Criminal Code on armed robbery is transferred from the category of especially grave crimes to grave crimes category. The lawmakers made an application of parole from sentences of adult offenders that is a duty of the court and of juvenile that is a court right only. Among the

crimes for which the offender can be assigned to the confiscation of property, there are missing an adversity of mercenary and violent, lucrative crimes stipulated by Articles 158, 159, 160, 161, 162, 163 of the Criminal Code. With respect to confiscation, there remains one fundamental question that is not resolved whether the imposition of this measure is a right or a duty of a court in respect of crimes listed in paragraph «A» of Part 1 of Article 104[1] of the Criminal Code.

2. Criminal law will continue to exist at all visible stages of human development. In this case this is a question of criminal law legitimation, i.e. justification or denial of social and legal necessity as the very existence, thus, the application of legal provisions and to assess the state's right to violence, implemented by the use of punishment and measures of social security, possible even in the absence of guilt in committing a crime. (Zhalinskiy, 2004) In any modern society there is a need for criminal law, but it requires constant adjustments of right to violence. Ideally, criminal law should be the last argument (ultima ratio) of the State to which it is drawn, when all other possibilities have been exhausted (Jeschek, 1988).

The degree of public confidence in criminal law as a condition and an integral part of its legitimacy is determined, first of all, the content of criminal law (objects and tasks of criminal law protection), that reflects people's perceptions about the value of the goods protected and fairness of criminal law measures of this (Pudovochkin, 2007).

3. Criminal law will be influenced by various processes of globalization, Europeanization, unification, but will remain national and may be developed locally, i.e. at the level of individual legal families. The main negative consequence of globalization is transnational crime. Hence the direction of criminal law is international criminal law. The Russian Federation has a number of problems hindering the effective implementation of international criminal law in national criminal law. Weak and under-developed regulatory framework of implementation of international instruments has not yet adopted the Federal Statute «On the preparation and adoption of federal constitutional and federal laws», not Federal Statute designed «on the procedure for implementation of international legal instruments» are not eliminated the contradictions between the provisions of the Constitution and the Criminal Code of the Russian Federation in relation to the international norms and standards of the national criminal law.

4. There will increase a number of criminal prohibitions. In the future there will increase a degree of criminalization of acts in the field of ecology. It's necessary to solve the problem of environmental crime in the Chapters of the Criminal Code RF. Along with Chapter 26 of the Criminal Code RF, there are numerous other criminal offenses (stipulated by Articles 215, 215.2, 216, 217, 219, 220, 234, 236, 237, 238, 243, 358 of the Criminal Code) relating to the environmental issues. Nowadays there is a conflict between the principles of criminal law in the sphere of ecology: criminal policy in this area not always demonstrates a justified humanizing of the perpetrators of such crimes, which largely contributes to impunity. While improvement of the Russian criminal law on environmental crimes, particularly those relating to irregularities in waste, it's worth to think over a possibility of introducing an objective description of the signs of action for the import and export of hazardous waste, stipulated by Article 247 of the Criminal Code signs of transportation such wastes (and substances). This is an especially urgent problem in connection with the conflicts related to import of dangerous – radioactive – waste to Russia and to their processing, storage and dispatch to the original owner.

5. Responding to a criminal offense behavior will significantly change, i.e. other kinds of basic sentence will be a serious alternative to imprisonment. On January 10th, 2010 there come to effect the Federal Statute № 377 «On amendments to some legislative acts in connection with the introduction of the provisions of the Penal Code and the Correctional Code on the punishment for restriction of freedom.» Now the restriction of freedom, as a basic form of punishment, is provided by sanctions in 66 articles of the Criminal Code. The new law imposes a restriction of freedom as a basic form of punishment even in 21 articles of the Criminal Code and as an additional form of punishment in 22 articles of the Criminal Code. In particular, the restriction of freedom may be imposed for defamation, insults, theft, fraud, embezzlement and robbery. The restriction of freedom may be imposed as an additional punishment when committing a serious crime. However, the decreasing of the population of the colonies would be gradual: it will take time for judges to start to apply in full measure the restriction of freedom in the form of punishment.

We believe that the above mentioned trends of the Russian criminal law can't be regarded as a strategically balanced implementation of the criminal policy. In order to ensure a systematically ordered and scientific approach, it is necessary to develop a new concept of further development of the State criminal law.

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# Направления совершенствования уголовного законодательства РФ

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*В данной статье рассматриваются основные направления совершенствования уголовного законодательства РФ, действующего в условиях социальной трансформации. Статья содержит анализ позиций ведущих теоретиков уголовного права РФ, также приводится авторское осмысление направлений развития уголовного законодательства РФ.*

*Ключевые слова: кризис уголовного права, роль уголовного закона, международное уголовное право, либерализация уголовной репрессии, уголовно-правовые запреты.*