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**TRENDS IN RUSSIAN CRIMINAL POLICY IN THE CONTEXT OF
THE PANDEMIC CRISIS**

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Abstract

The article is intended to assess the legislative innovations that appeared in the Criminal Code of the Russian Federation during the spread of the Corona virus pandemic (COVID-19) from the point of view of their feasibility and necessity. Within the framework of the study of trends in Russian criminal policy, based on the analysis of changes in the text of the criminal law and administrative legislation for the 1 year period (April 2020–April 2021), five basic trends were identified, taking into account the monitoring of scientific publications. A scientifically-based assessment of the identified trends has made it possible to answer important questions in the areas of effective use of criminal legislation, namely the efficiency of the state's response to the needs of society during the crisis associated with the pandemic; the usability of novelties; the criminological validity of the bans introduced. The study applied a systematic and structural approach; a formal, legal, sociological, formal and logical method of expert assessment. The study also highlights a clear tendency on the part of the legislator to broaden the scope of criminal liability in order to reflect the process of digitalization in framing criminal legislation. As a conclusion, it is noted that current trends in criminal policy do not meet the criteria of a systematic and integrated approach. Priority measures to remedy the situation are proposed.

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1. Introduction

The social and political processes taking place in society always influence the amendments to the criminal law. However, any legislative innovation should be aimed at meeting societal needs, ascertained or recognized, and be consistent with the objectives of the criminal law. Over the past year, legislative innovations have received mixed reviews from both the academic community and practitioners (Gradoń, 2020; Sidorenko et al., 2021). The feasibility and sufficiency of criminal law regulations, as well as the quality of legislative technique and the prospects of their large-scale use, are questionable.

2. Problem Statement

Modern criminal policy aimed at protecting the interests of the individual, society and the state, has to be responsive to emerging challenges and threats.

In 2020, the entire world community was faced with a pandemic (COVID-19), which required states to take action, including criminal measures, to contain its spread. This period was characterized by the criminalization of socially dangerous acts caused by the pandemic, on the one hand, and by contradictory and inconsistent amendments made to the criminal law, on the other hand. Excessive criminalization implies declaration as crimes of acts that do not cause significant harm to the legitimate interests of the individual, society and the state, as well as the emergence of duplicative provisions already existing in the criminal law. Criminal-law prohibitions related to the use of information and communication technologies (including the Internet) are tending to increase.

It is presumed that there is a need to monitor the main trends in the criminal law changes during the period of the pandemic crisis measures (April 2020–April 2021) in order to identify the areas of criminal policy and to assess how successful its implementation has been over the past year.

3. Research Questions

A scientifically-based assessment of the main trends in Russian criminal policy during the pandemic period will allow resolving important questions in the field of the effective enforcement of criminal legislation: the efficiency of the state's response to the needs of society during the crisis caused by the pandemic; the usability of innovations; the criminological validity of the prohibitions introduced.

4. Purpose of the Study

Scientific-based monitoring of changes made to the text of the Russian criminal law in order to identify trends in criminal policy during the period of pandemic crisis measures (April 2020-April 2021) and to assess the effectiveness of this policy.

5. Research Methods

The study used systematic and structural approaches; formal-legal, sociological, formal-logical, the method of expert assessments.

The research data basis was made up of scientific publications and recommendations, the current provisions of the Criminal Code of the Russian Federation, the results of the authors' own expertise of specialist opinions of 36 lawyers on current trends in modern criminal policy of the Russia Federation.

6. Findings

As a part of the research on the trends in Russian criminal policy during the pandemic and their prerequisites (Sidorenko et al., 2021), based on the analysis of amendments to the text of the criminal law and administrative legislation for the period of 1 year (April 2020 – April 2021), with consideration of the relevant research publications, 5 basic trends have been identified which partly reflect traditional, long-standing trends in the transformation of criminal law, and partly those resulted from the aggravation of existing social problems (digitalization, the use of information and telecommunications networks to commit crimes, the manipulation of fake information) into the pandemic.

6.1. Trend 1. Responding the “pandemic situation”

This group of changes was motivated solely by the need to control the spread of the dangerous virus, which led to an increase in the number of restraining regulations: for example, the toughening of criminal liability under Article 236 of the Criminal Code of the Russian Federation “Violation of sanitary and epidemiological rules” and the criminalization of actions to create and replicate fake news in Articles 207.1 and 207.2 of the Criminal Code of the Russian Federation. Since the introduction of these norms into the criminal law, 82 criminal cases have already been initiated (In Russia, more than 80 criminal ..., 2021).

On the one hand, the introduced restrictions and prohibitions have a common function – the maintenance of safety rules; on the other hand, as result of the innovations, individuals are subject to stricter criminal liability, while legal entities, for almost identical acts, are subject to administrative liability. We consider this an unfair criterion for differentiating public responsibility.

According to the results of the survey, the introduction of new types of crimes under Article 207.1 and Article 207.2 of the Criminal Code of the Russian Federation is supported by 6 experts only. The remaining 22 experts consider the idea of criminalization a wrong solution of the legislator. Of these, 18 argue for administrative responsibility; 7 are in favor of creating a general corpus delicti providing responsibility for public “dissemination of knowingly false information” of various types.

Despite the fact that the amendments to the Criminal Code of the Russian Federation are timely, this trend requires additional attention and reassessment by the legislator to improve the effectiveness of the public branches of law in the field of information security.

6.2. Trend 2. Corpus delicti based on “creating a threat” instead of “causing harm”

The type of corpus delicti indicated in the title describes the prohibited act by highlighting the “threat of harmful consequences” as a result of the crime. The ambiguity of the limits of such a prohibition and the impossibility of distinguishing such types of crimes from those punishable by administrative law make it difficult to implement the law. The trend of a large-scale use of corpus delicti

“creating a threat” in the text of the Criminal Code of the Russian Federation is strongly opposed to by 29 of the interviewed experts. Of these, 19 emphasize that such constructions make it much more difficult to determine the specific danger and the moment of the crime completion.

This trend needs reconsideration and a solid theoretical and practical framework for the proper interpretation of the elements of such crimes.

6.3. Trend 3. Digitalization of society

The next direction of criminal policy has been predetermined by the global trend of a saliently increased application of information and telecommunication networks for a wide range of needs (Glotko et al., 2020; Lipinsky et al., 2020). Universal digitalization creates the opportunity to commit a crime in the virtual space, or to become a victim of a digital encroachment (Győry, 2020). The concern of the international community has been substantiated by the resolution of the United Nations General Assembly on “Counteracting the use of information and communication technologies for criminal purposes” of 27.12.2019. In the national criminal law, this concern was manifested (so far, only verbally) in the trend of expanding the scope of responsibility for committing crimes: Articles 110.1, 110.2, 128.1, 137, 205.2, 230, 238.1, 242, 242.1, 242.2, 280, 280.1, 354.1 of the Criminal Code of the Russian Federation.

Universal digitalization is our near future. Therefore, the way and means of committing a crime (for example, a theft), whether in the real (material) world or in the virtual (digital) space, will only be a matter of choice of the perpetrator.

An additional argument for excluding this circumstance from the range of grounds for differentiating criminal liability is the fact that all the above articles of the Criminal Code purport that the crime is committed in public. The Internet is the most accessible way of ensuring the publicity of the disseminated information (both false and true).

According to the results of the survey, the negative effect of the universal digitalization manifested in the form of committing crimes – “by use of information and telecommunications networks” – can be incorporated in the sign of “publicity”, according to the majority of experts (20). A different way, supported by 7 scholars, might be the inclusion of this circumstance by introducing a “conditional” factor, by analogy with a state of intoxication which aggravates the punishment, in Part 1.2 of Article 63 of the Criminal Code of the Russian Federation.

The ongoing process of digitalization makes changes in existing legislation inevitable, yet, the amendments should be prognostic.

6.4. Trend 4. Ensuring internal political security

This group of changes has been predetermined by internal political factors, and continues the previous direction of criminal policy developed in connection with the “protest moods” in the country and aimed to strengthen control over the information flow. The increased number of persons brought to criminal responsibility under Articles 128.1, 330.1, 354.1 of the Criminal Code of the Russian Federation is due to the use of complex structures significantly blurring the boundaries between criminal and administrative law.

A return of traditional violent hooliganism to the criminal law could be considered legitimate. Any kind of violence in an act (Lopashenko et al., 2020) automatically puts one in the spotlight of the criminal law concern. Almost half of the experts surveyed (20) believe that criminal hooliganism should include only physical violence, so as not to be confused with petty hooliganism (disorderly conduct).

Thus, the randomness in the adoption of corrective provisions to the text of the criminal law necessitates compensatory measures at the stage of law enforcement.

6.5. Trend 5. Anti-corruption activities of the government

The attempt to specify the signs of an office holder capable of committing offences prohibited under chapter 30 of the Criminal Code of the Russian Federation received mixed comments. The reason for the expansion of the characteristics of an office holder laid down in Article 285 of the Criminal Code of the Russian Federation, according to the creators of the project, is mainly procedural by character – the victims of office holders' abuse are often not interested in public disclosure and do not apply to law enforcement agencies.

According to the opinion of 17 experts interviewed, the changes introduced in art. 285 of the Criminal Code of the Russian Federation overload the regulatory framework and make it excessively casuistic. The other 15 experts also consider it unacceptable to use criminal law to solve the problems of criminal procedure law. A simpler way could be to adjust the provisions of the Criminal Procedure Code of the Russian Federation to newly emerging requirements.

The criminalization of the bribery of an arbitrator, in a separate article 200.7 of the Criminal Code of the Russian Federation, has been found to be controversial. Thirty experts indicated that it was possible to use resources already available in the Criminal Code rather than to introduce a specific corpus delicti. In particular, it might be more practical either to apply the Article 201 of the Criminal Code of the Russian Federation, establishing liability for abuse of commercial employees, or expanding the list of actors laid down in Article 204 or Article 202 of the Criminal Code.

This trend negates the value of criminal law. The endless addition of criminal law provisions and the expansion of criminal repression make the most repressive branch of legislation a tool for correcting the dispositive part of the normative material.

7. Conclusion

Summarizing the findings, we come to the following conclusions:

1. The efficiency of the Russian State's response to the needs of society during the pandemic in the field of criminal rulemaking is worth praising. At the same time, we recognize that the technical side of the transformations made in the text of the law is debatable.

2. The changes that the text of the criminal law has undergone over the past 14 months are not directly related to the pandemic. The latter has revealed the problematic aspects of human interaction in the digital environment and has become a catalyst in making essential legislative decisions which are objectively needed under the current circumstances.

3. The vast majority of the changes made to the text of the Criminal Code of the Russian Federation, within the identified period, are related to verbal crimes, i.e., to those involving the circulation and exchange of information. Based on the reaction of experts, it is assumed that these types of encroachments have not been adequately assessed by the legislator. This trend can be identified as a priority for modern Russian criminal policy, requiring a conceptual approach and predictive thinking.

4. Modern criminal policy is marked by impulsive legislative decisions, is haphazard by character and does not meet objective social needs. An excessive criminalization of a large number of acts that do not manifest a sufficient level of public danger, as well as the tightening of criminal liability for acts committed through the use of information and telecommunications networks (including the Internet) are tending.

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