DOI 10.52468/2542-1514.2026.10(2).106-116

CERTAINTY OF THE CRIMINAL LAW AND LAW ENFORCEMENT

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Article info
Received –
2025 November 19
Accepted –
2026 March 20
Available online –
2026 June 20

Keywords
Criminal law, certainty, uncertainty, general norms, criminal law policy, criminality, corruption

The article examines how the certainty of criminal law norms affects lawmaking and law enforcement in contemporary Russia. The subject of the research is the legal certainty of Russian criminal law and the ways to minimize inevitable legal uncertainty at both the legislative and law-enforcement stages. The authors start from the premise that uncertainty of criminal norms is objectively unavoidable, but excessive vagueness in wording and practice leads to arbitrary and unjustified application of criminal law with tragic consequences for individuals and for the state.
The core hypothesis is that the goal of criminal policy should be not the elimination, but the rational minimization of legal uncertainty, and that this requires coordinated changes in legislation, interpretative practice, and judicial approaches to corruption and organized crime.
Methodologically, the authors employ doctrinal legal analysis of constitutional and criminal legislation, case law of the Constitutional Court and ordinary courts, comparative study of the legislation of Belarus and Georgia, as well as a criminological assessment of statistical data on convictions under new provisions of the Criminal Code adopted in connection with the Special Military Operation. They also use elements of legal forecasting and criminological expertise to evaluate the predictive quality of criminal-law novelties.
The main results show, first, that many new SVO-related criminal provisions are either not applied at all or are applied sporadically, which reveals low prognostic quality of lawmaking and three typical defects of legislative technique: legal uncertainty, excessive certainty, and fictitious certainty (for example, in norms with administrative pre-judication, norms requiring only direct intent, or multi-part provisions that are de facto unenforced). Second, the analysis of Article 210¹ on occupying a higher position in the criminal hierarchy demonstrates that the absence of legal definitions and special legislation leads to selective enforcement focused on “thieves in law”, while leaders of other criminal communities remain beyond the scope of this norm. Third, the authors highlight a “corruption-friendly” sentencing practice, where courts routinely recognize positive service characteristics, awards, and social status of corrupt officials as mitigating circumstances, thereby undermining public trust and weakening general prevention.
In conclusion, the article argues for: adoption of a Federal Law on normative legal acts based on the Belarusian model; a systematic revision of criminal-law provisions to remove defects that generate uncertainty; adoption of a Federal Law on combating organized crime that would legally define forms of criminal leadership; and a revision of anti-corruption criminal policy to exclude the use of honorary awards and positive performance evaluations as mitigating circumstances for corruption offences. These measures, in the authors’ view, would significantly reduce unjustified legal uncertainty and strengthen the effectiveness and legitimacy of criminal law enforcement in Russia.

1. Introduction.

With regard to the certainty of the criminal law, the Constitutional Court of the Russian Federation (hereinafter referred to as the Constitutional Court) has repeatedly stated that any crime, as well as the punishment for its commission, must be clearly defined in the law, in such a way that, based on the text of the relevant norm, and, if necessary, through the interpretation given to it by the courts, everyone can foresee the criminal legal consequences of their actions (or inaction). Criminal liability can only be considered legally established if it is proportionate to the nature and degree of public danger of the criminalized illegal act. The presence of constituent elements that are present in the committed act, being the basis for criminal liability, allows it to be distinguished from other illegal, and even more so, legal actions. These elements must be clearly and unambiguously defined in the criminal law, which is an important element of the overall legal system. The Constitutional Court of the Russian Federation acts within the framework of specific normative control, checking the norms applied in the applicant's specific case, after exhausting all other domestic means of judicial protection.

2. Significance for law enforcement.

The problem of the certainty of the criminal law is extremely important in the aspect of law enforcement. Referring to the metaphor, it should be noted that the application of the criminal law is a kind of surgical intervention, and it should be used in cases where the protection of public relations is not possible under the rules of another branch of law. It is important to keep in mind that the arbitrary and unjustified application of the criminal law, due to the uncertainty of its norms, can have tragic consequences for both individuals and the state as a whole. The conviction of an innocent person and the unjust application of harsh measures of coercion are virtually impossible to correct. No amount of compensation can restore the time spent illegally in detention or alleviate the moral suffering experienced by the individual. The poor quality of criminal law regulations, their excessive complexity, and flawed enforcement practices that contradict their intended meaning weaken and, in some cases, destroy the state. At the same time, as N.G. Ivanov correctly notes, "In law, the principle of legal certainty is often associated with the evaluative criteria contained in legislative acts. Evaluative criteria of the law are those criteria that have not been adequately interpreted. These criteria are interpreted by the law enforcement officer based on their discretion, which is based on their knowledge of the law, the circumstances surrounding the offender and the victim, and the nature of the case" [1, p. 12]. Considering their relationship, V.M. Baranov points out: "The uncertainty of law is not the opposite of its certainty, nor is it a paired category or a polar concept. The certainty of law and its uncertainty are two streams of different magnitudes that flow parallel to each other, sometimes intersecting and blending. They are of different magnitudes because the stream of legal uncertainty is much narrower and moves at a much slower pace" [2, p. 17]. The Law of the Republic of Belarus dated July 17, 2018, "On Normative Legal Acts," provides the following (legal) definition: "Legal uncertainty is the lack of clarity, precision, and logical consistency in legal norms, including due to gaps in legislation (legal regulation) and conflicts between normative legal acts, which can lead to ambiguous interpretations and inconsistent application of legal norms."

3. Directions for minimizing the uncertainty of criminal law.

The uncertainty of legal norms is an objectively existing and fundamentally unavoidable phenomenon [3]. Its dialectical nature, which reflects the uniqueness of any criminal situation and the individuality of a

ISSN 2658-4050 (Online)

particular criminal, dictates the goal of minimizing legal uncertainty rather than eliminating it. There are two ways to achieve this goal: legislative (law-making) and law enforcement. It is important to note that law enforcement issues should be discussed during the legislative process.

3.1. The legislative aspect. In the field of Russian criminal justice, law-making is a federal state and formalized process [4]. The procedure for its initiation and adoption is established by Articles 104, 105, and 107 of the Constitution of the Russian Federation. The legislative procedure is defined by the Regulations of the State Duma of the Russian Federation. However, this regulation of the law-making process does not address the content of draft laws, which should take into account the principles of legality, equality of citizens before the law, guilt, social justice, humanism, scientificity, systemacity, and complexity of legal regulation of social relations [5; 6]. This is a significant gap in the legislative regulation of law-making, which should be addressed by adopting a Federal Law "On Normative Legal Acts," taking into account the legislative experience of the Republic of Belarus. This experience indicates the need and expediency of conducting a criminological examination of Federal laws that amend the Criminal Code of the Russian Federation (hereinafter referred to as the Criminal Code). In Russia, there is an anti-corruption examination of regulatory legal acts (hereinafter referred to as RLA) and draft RLA, but this is only a type of criminological examination. A comprehensive criminological examination should be based on knowledge of the criminal and criminogenic situation, trends, and dynamics of their development.

The certainty of the criminal law and the special military operation. The current criminological situation is largely influenced by the Special Military Operation (hereinafter referred to as the SVO). In this regard, the Criminal Code of the Russian Federation has been supplemented with a number of articles: The goals of criminalizing a number of acts are to ensure national security, increase the effectiveness of the fight against treason and collaboration, suppress the activities of foreign agents, strengthen discipline and responsibility in the Armed Forces and the military-industrial complex (MIC), and define the state's position in the information war waged against Russia. However, some of these articles are not being implemented, resulting in the failure to achieve these goals (Table), indicating the limited predictive potential of legislation in the context of the special military operation. This is a significant drawback, as the cost of the negative consequences of legislative omissions increases dramatically under these conditions.

ISSN 2542-1514 (Print)

Number of convicts under the Criminal Code of the Russian Federation, accepted in connection with the special military operation, for 2022–2025.

Art. of Criminal Code	*2022*	*2023*	*2024*	*Ist half of 2025*
207^{3}	14	59	82	45
275^{1}	–	2	21	17
276^{1}	–	–	0	0
280^{3}	2	46	63	33
280^{4}	–	4	14	11
281^{1}	–	0	3	2
281^{2}	–	0	0	0
281^{3}	–	0	2	0
282^{4}	–	39	127	91
283^{2}	–	70	130	71
284^{2}	0	0	0	0
284^{3}	–	0	0	0
285^{5}	0	0	0	0
285^{6}	0	0	0	0
294^{1}	–	–	–	–
330^{3}	–	0	0	0
352^{1}	–	–	–	–
356^{1}	–	0	0	0

Considering the dispositions of those articles of the Criminal Code of the Russian Federation that are not applied, in terms of the certainty of the criminal law, there are three types of omissions: legal uncertainty, excessive certainty, and fictitious certainty. The first type relates to the offenses with administrative pre-judgment, which are described in Articles 2803, 2824, 2842, 2855, 2856, and 3303 of the Criminal Code of the Russian Federation. The uncertainty in this case lies in the confusion of administrative and criminal liability, which is completely inappropriate when it comes to ensuring the national security and defense capability of the state. In such situations, from our point of view, only criminal liability should be established. Excessive certainty characterizes the dispositions of Articles 2751, 2761, 2812, and 2813 of the Criminal Code of the Russian Federation, in which the criminal's guilt is characterized as direct intent. In our opinion, the interests of national security dictate the establishment of criminal liability for crimes committed with indirect intent. This is especially relevant in relation to acts related to assisting the enemy in activities aimed against the security of the Russian Federation. This was the case with the criminals who committed large-scale embezzlement in the Ministry of Defense of the Russian Federation, embezzling budget funds allocated for the construction of defensive structures in the Kursk region. In passing, it should be noted that this approach is also relevant to Article 275 of the Criminal Code of the Russian Federation, which deals with treason. Fictitious certainty is characteristic of the dispositions of Article 2832, "Violation of the requirements for protecting state secrets," which has four parts, although only the first part is applicable. It specifically mentions violence or the threat of violence (part three) and the commission of an act by an organized group (part four) as particularly aggravating circumstances, although it does not take into account the high official position of the perpetrator (who holds a state position in the Russian Federation or a state position in a constituent entity of the Russian Federation). Meanwhile, several dozen holders of state secrets are currently living abroad: former prime ministers , vice prime ministers, heads of the Presidential Administration, ministers, and governors. Many of them have left the country since the start of the special military operation. The elimination of these shortcomings minimizes the uncertainty of criminal law prohibitions that could have been avoided during the legislative process by using criminal law forecasting procedures [7; 8; 9; 10; 11; 12; 13] and criminological expertise of draft laws [14; 15; 16].

3.2. The law enforcement aspect of minimizing the uncertainty of the criminal law is related to the understanding and interpretation of the content of criminal law norms. A seemingly "correct" norm in law enforcement may take on a different meaning. In this regard, it is important to consider the diversity of life situations and the unique nature of each crime. Consequently, a norm that is applied in one case according to its intended meaning may be applied incorrectly in a more complex situation. It is enough just to read the norm to see if there is a defect in it. For example, in the first part of Article 2981, "Slander against a judge, juror, prosecutor, investigator, person conducting an inquiry, an employee of the enforcement authorities of the Russian Federation," it refers to "another person involved in the administration of justice," which is erroneous from a legal point of view, since justice in the Russian Federation is carried out only by the court.. There are often difficult situations when the defect of the norm has an implicit (as if veiled) character. Such defects prevent an adequate criminal law response, such as the implementation of punishment, testing, and other criminal law measures by the competent authorities against individuals who have committed a socially dangerous act, or the legal refusal to implement such measures [17, p. 10].

4. The uncertainty of criminal law regulation of the most significant areas of social relations.

4.1. Criminal law regulation of market relations. Veiled uncertainty may be predetermined by the complexity of norms, which does not allow to clarify their content, let alone apply them. An example of this is Article 185.3 "Market Manipulation" of the Criminal Code of the Russian Federation. In addition to the fact that the disposition of this article is extremely overloaded, providing for the element of knowledge and assuming the occurrence of socially dangerous consequences, it also has a "double" бланкетный character, referring the law enforcement officer to a number of regulatory legal acts, including technical ones. This state of affairs causes the law enforcement agencies to be reluctant to apply this norm, and as a result, unhindered illegal activity in the field of market relations [18].

4.2. Criminal liability of criminals. Article 2101 of the Criminal Code of the Russian Federation, which deals with the occupation of a higher position in the criminal hierarchy, is also an example of a norm that contains veiled uncertainty. This article has been criticized numerous times and has become a well-known example. She was also criticized for not clarifying the concepts of "occupation of a position," "higher position," and "criminal hierarchy," and for providing for criminal liability for a status without the presence of a socially dangerous act (a kind of dangerous condition) [19]; for not defining how a person can renounce their status [20], which makes it unclear when the crime is completed; and for not answering the question of whether individuals who have purchased the status of a "thief in law" (the so-called "oranges" or "lavrushniks") or individuals who have lost this status (the "pastry") are subject to liability under this article [21]. It is obvious that there are many questions here. However, despite the abundance of scientific publications criticizing the norm, these questions are persistently ignored by the Supreme Court of the Russian Federation, which does not provide any clarifications. Interestingly, the law enforcement practice has chosen the Georgian model of combating organized crime as a reference point, recognizing only representatives of the "underworld" as the subject of the crime under Article 2101 of the Criminal Code of the Russian Federation. However, firstly, organized crime in Georgia has traditionally been identified specifically with the activities of a "thieves' community", and in this regard, Article 223.1 "Membership in a "thieves' community", "thief in law" was introdu ced into the Criminal Code of Georgia. Secondly, these concepts are clarified in the Law "On Organized Crime and Racketeering" (i

ISSN 2542-1514 (Print)

n particular, it reveals the concepts of "thieves' community", the activities of the "thieves' community", a member of the "thieves' community", "thief in law", "thieves' showdown", "thieves' gathering"). Thus, these concepts acquire legal significance and cease to be purely jargon terms. It is evident that Article 2101 of the Criminal Code of the Russian Federation is derived from Article 210 of the Criminal Code of the Russian Federation, which does not mention "thieves in law," "watchers," or "poshlenniki," but this does not prevent law enforcement agencies from considering these individuals to be the highest-ranking members of the criminal hierarchy. It is also interesting that, due to the absence of a special law in Russia (similar to the Georgian law) that would give legal meaning to these "terms" of the criminal subculture, they cannot have legal significance de jure, remaining only a criminal argot. However, the sentences issued under Article 2101 of the Criminal Code of the Russian Federation are filled with "fens," serving as practical guides for studying it. For example, the verdict against Mr. Z. stated that while serving his sentence, he acquired the status of a "vagabond," and a few years later, he was granted the status of a "leader," which allowed him to contribute to the "general fund." In the verdict on B., it was noted that during his sentence, he was presented as a "vagabond" by spreading "letters" and "run-ins," and then a "thief-in-law" named "Dato Kuvalla" appointed B. as a "polozhenets," which B. informed other convicts about at a "gathering." In this regard, it cannot be said that such persons are being held accountable arbitrarily. However, with such law enforcement practices, due to the lack of a special law or clear guidance from the Plenum of the Supreme Court of the Russian Federation, the leaders of other criminal organizations remain unpunished. It is clear that as early as the 1990s, along with the "blat" communities, there were criminal "gangster" communities, whose leaders had no less authority and power in the criminal world than the "thieves in law," despite the fact that they did not have any official status. In this regard, it seems that Article 2101 of the Criminal Code of the Russian Federation should be applied to the leaders of all criminal communities. Currently, such persons should include, first of all, the leaders of "prison jamaats" (criminal communities created in correctional institutions by Wahhabis). Such leaders recruit supporters from among criminals, turning them into ideological terrorists [22; 23; 24]. It should also be noted that Article 2101 of the Criminal Code of the Russian Federation does not apply to all representatives of the "criminal world". The number of convicts under this article is not significant. According to court statistics, 8 people were convicted in 2021, 20 in 2022, 33 in 2023, 23 in 2024, and 24 in the first half of 2025. Considering that the article applies not only to "thieves" but also to "lookouts" and "poshers," it is evident that its application is selective. For example, this rule was not applied to the notorious "thief-in-law" Zakharia Kalashov ("Shakro Molodoy"). Moreover, while serving his sentence for extortion, he was granted parole. According to media reports, Kalashov's release was due to his health condition. However, Article 79 of the Criminal Code of the Russian Federation does not provide for the "health condition" as a basis for parole, as there is a separate Article 81 of the same Code that regulates the release from punishment due to illness. It seems that the defectiveness of Article 2101 of the Criminal Code of the Russian Federation turns it into a kind of "trump card" that can be used when necessary and hidden away when not needed. Of course, this situation is unacceptable.

4.3. Combating Corruption. Speaking of veiled

ISSN 2658-4050 (Online)

uncertainty, it should be noted that the courts have unlimited power to apply mitigating circumstances to defendants. In this case, we are discussing the application of such circumstances to corrupt officials, who, unlike common criminals, are always well-characterized and often receive commendations, certificates, and even government awards. When sentencing, it becomes clear that these individuals have impeccable reputations, which is often taken into account by the courts when determining punishment. As for aggravating circumstances, as a rule, the court states that there are none in these cases. At one time, the apotheosis of such a practice was the imposition of punishment on E. Vasilyeva, who was engaged in corruption activities in the Ministry of Defense of the Russian Federation. By the verdict of the court dated May 8, 2015, Vasilyeva was found guilty of committing a number of crimes under Part 4 of Article 159 of the Criminal Code of the Russian Federation, as well as crimes under Part 3 of Article 174.1 and Part 1 of Article 201 of the Criminal Code of the Russian Federation. When imposing the sentence, the court took into account the information about her personality, in particular that she had no previous criminal record, was being prosecuted for the first time, and had a positive character. She had previously served as an advisor to the Minister of Defense of the Russian Federation, as the Head of the Department of Property Relations of the Ministry of Defense of the Russian Federation, and as the Head of the Office of the Minister of Defense of the Russian Federation. During her time as the Head of the Office of the Minister of Defense of the Russian Federation, she was awarded the Order of Honor by President Dmitry Medvedev for her achievements, long-term conscientious work, and active public service.In accordance with Article 61 of the Criminal Code of the Russian Federation, the court recognized these circumstances as mitigating Vasilyeva's punishment. Interestingly, during the investigation, Vasilyeva actively engaged in painting and maintained a Twitter account under the username EVAHOMEALONE. As a result, Vasilyeva spent 109 days in prison (!) and was released on parole in the same year, 2015. Unfortunately, the situation has not significantly changed over the past years. Of course, such mitigating circumstances are not always applied to particularly odious corrupt defendants, but in general, the practice remains the same. For example, the Criminal Division of the Ulyanovsk Regional Court, when considering the appeal of a citizen K who was convicted of four episodes of receiving large-scale bribes, agreed with the first-instance court regarding the established mitigating circumstances: he was characterized positively, had not been prosecuted for administrative offenses, was not registered with a narcologist or psychiatrist, was married, and had received a letter of appreciation and a certificate of honor. There are verdicts in which the court, when imposing punishment on corrupt officials, recognizes not only the relevant "positive characteristics" at the place of service, but also the positive characteristics provided by the defendant's wife, as mitigating circumstances. In these cases, it is evident that the court seeks to recognize as mitigating circumstances anything that appears somewhat strange. For example, a person cannot be considered a civil servant if they are registered with a narcologist. Why then should this be recognized as a mitigating circumstance? However, the court has the authority to recognize anything as a mitigating circumstance. At the same time, we would like to reiterate that the biggest problem is the recognition of the fact that a person who has committed a crime against the service has been awarded for their service. This is similar to recognizing the presence of young children as a mitigating factor for a pedophile who has abused them. By committing a corruption crime, a person nullifies all of their achievements for the state, even if they have been awarded (it is not certain that the same awards and commendations were not received due to the corrupt person's personal relationship with their supervisor). It is interesting that lawyers explicitly advise in cases of bribery to “focus on the personal and official characteristics” of the accused corrupt official, and to point out to the court the diplomas, commendations, and other achievements of the former official. It is unfortunate that this problem is not new. Back in the 1920s, A. Solts, while reviewing the verdicts as part of the activities of the Central Control Commission, which he headed, wrote: “It happens that the verdict states: ‘the punishment should be mitigated in view of his participation in the Extraordinary Bodies.’” After all, people read and wonder: how is it that a person abuses, squanders money, commits a criminal offense, and yet the people's judge, without hesitation, writes about his participation in the extraordinary bodies and gives him relief. Why? After all, he should be punished twice as much. It is not clear why participation in emergency bodies can be a reason for leniency... every peasant should know that if a communist is acting arbitrarily, there will be no leniency" [25, pp. 31-32]. In this case, A. Solts is absolutely right - such a practice is not only unfair and incomprehensible, but also undermines the public's trust in the justice system and the state as a whole.

V.D. Zor'kin draws attention to this state of affairs: "When officials are involved in improper performance of their duties, which has the hallmarks of corruption, not only do they lose credibility, but so does the relevant public authority. This undermines the trust in the state as a whole." Corruption poses a threat to the country's defense capabilities and national security [26]. Indeed, corruption currently appears to be the most socially dangerous phenomenon, since it is corrupt officials who criminalize public relations, patronize illegal migration, which is the source of the existence and development of terrorism, condone illegal actions in correctiona l institutions, and undermine the state's defense capability by plundering funds allocated to its needs. In this r egard, there is no reason to mitigate their punishment through corrupt accounting of their mythical merits.

5. Conclusion.

The results of the analysis indicate the need for: 1) adoption of the Federal Law "On Regulatory Legal Acts" based on the legislative experience of the Republic of Belarus; 2) carrying out extensive work to revise the criminal law provisions of the Criminal Code of the Russian Federation in order to identify and eliminate their defects in order to optimize the certainty of the criminal law; 3) adoption of the Federal Law "On Countering Organized Crime," which should reflect all possible forms of criminal leadership; 4) correction of the anti-corruption criminal law policy in terms of using positive characteristics, commendations, and awards as mitigating circumstances for corrupt officials.

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BIBLIOGRAPHIC DESCRIPTION

Kleymenov M.P., Kleymenov I.M. Certainty of the criminal law and law enforcement. *Pravoprimenenie = Law Enforcement Review*, 2026, vol. 10, no. 2, pp. 106–116. DOI: 10.52468/2542-1514.2026.10(2).106-116. (In Russ.).