DOI 10.24147/2542-1514.2019.3(1).108-118

COMBATING CRIME IN THE SPHERE OF JUSTICE: EFFECTIVENESS OF PUNISHMENT

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Article info
Received – 2018 December 22
Accepted – 2019 February 25
Available online – 2019 April 20

Keywords
Crime in the sphere of justice, criminal-legal reaction, reflexive reaction, punitive reaction, protest reaction, insult, insulting a public officer, decriminalization of insult, social danger

The subject. The system of crimes against justice includes four groups of acts, each of which encroaches on a separate group of public relations: crimes that threaten the security of justice, crimes that undermine its justice, crimes that prevent the reasonable adjudication and crimes that execution of judicial decisions.

The purpose of the paper is to confirm or refute the hypothesis that the criminal legal response in Russia to groups of crimes in the sphere of justice is not adequate to the degree of their social danger.

The methodology. The concept of criminal legal response was chosen as a methodological basis for the analysis of the practice of sentencing. This concept highlights the following types of criminal legal response: lack of response; very weak response – the number of convicts does not exceed 10; weak response – the number of convicts is small, calculated in dozens; adequate response – the number of convicts and penalties correspond to the criminological characteristics of the crime; intensive response – the inevitability of punishment is ensured by the enforcement of rules; punitive response – the norm is applied on the basis of the "letter, not the spirit" of the law; reflexive response – the imposition of punishment "their" in conditions of increased public attention, "resonance" of the case; protest response – judicial practice is in conflict with ill-conceived legislative innovations.

The main results and scope of their application. The weakest, very weak criminal-legal response or complete absence of criminal-legal response in the sphere of justice is the most typical in Russia. It is explained by various factors, and the professional lack of competence and the motive of “protection of the honor of the uniform” appear most frequent. The criminal-legal impact is punitive in relation to the insult of public officer (art. 319 of the Russian Criminal Code). Criminal liability for insulting a public officer is anachronism in the context of full or partial decriminalization of insults in general (art. 130 of the Russian Criminal Code) and beatings (art. 116 of the Russian Criminal Code).

Conclusion. The purpose of the study is reached the hypothesis is confirmed partially – in relation to the inadequacy of criminal penalties for insulting a public officer. Decriminalization of art. 319 of the Russian Criminal Code is necessary. Save it in the current Criminal Code leads to a "witch hunt", in addition to receiving a criminal record every year by thousands of people (that stain not only their biography but also biography of their loved ones). There is art. 5.61 "Insult" in Russian Code of administrative offences. It is proposed to supplement art. 5.61 of the Code of administrative offences of the fourth part: "insulting a public officer during the performance of their official duties" simultaneously with the de- criminalization of art. 319 of the Criminal Code.

ISSN 2658-4050 (Online)

1. Introduction.

The justice sector is an object independent of criminological studies. It is formed by crimes against justice (Chapter 31 of the Criminal Code) and the adjacent acts provided by Chapter 32 of the Criminal Code (Art. 317-321) ("core" plus "shell" system). Committing crimes under Art. 317-321 of the Criminal Code undermines the foundations of justice, because it a) creates obstacles for the activities of law enforcement agencies involved in the prevention, detection, investigative the study of the offences, the enforcement of judgments; b) influences the formation of public opinion on the activities of all law enforcement agencies and the judiciary in the context of social trust and justice; c) in such crimes, the victimological aspect is clearly manifested, which is important to take into account in the analysis of crime in the justice sector.

From the criminological point of view it is expedient to distinguish the following groups of crimes in the sphere of justice:

1. Crimes that threaten the security of justice (arts. 295-298.1, 311, 317, 320 of the Criminal Code). Security and justice are interrelated categories. First, security cannot be achieved without justice. Secondly, the safety of professionals in the justice system is an important task in its own right. Thirdly, the security of justice is an independent object of crimes that threaten not only the individual, but also public and state security.

2. Crimes that undermine justice (Article 299-305 of the Criminal Code). The social danger of crime in the sphere of justice is determined, first of all, by the harm caused to the judicial system itself. It should be pointed out that this harm cannot be expressed only by the material dimension. The main damage is moral and is determined by the discrediting of justice. At the same time, the effectiveness of the principle of justice as a fundamental basis for the organization of a democratic state governed by the rule of law is questioned and destroyed.

3. Crimes that prevent reasonable adjudication (Articles 294, 306-310, 316, 318-319 of the Criminal Code). Crimes that prevent reasonable judgments express the trend of destruction of justice by way of active opposition to legitimate law enforcement activity. This trend is clearly gaining momentum in recent years, and the crimes in question need to be analysed separately.

4. Crimes preventing the execution of court decisions (Articles 312-315, 321 of the Criminal Code). Crimes that prevent the execution of court decisions also need a separate characteristic, because they are a kind of result of the law enforcement process, a certain criterion of its effectiveness.

2. Research methodology.

As a methodological basis for the analysis of the practice of sentencing from bran concept of criminal law response, developed by I.M. Kleymenov [1]. To perform the tasks of the study, the most important are the comments of the author of the concept on the characteristics of the types of criminal response: lack of response (RR); very weak response (RR) - the number of convicts does not exceed 10; weak response (SR) - the number of convicts is small, calculated in tens; adequate response (AR) - the number of convicts and punishment measures correspond to the criminological characteristics of the crime; intensive response (IR)-the norm is implemented in conditions of the possibility of ensuring the inevitability of punishment; punitive response (KR) - the norm is applied on the basis of the "letter, not the spirit" of the law); reflexive response (PP) - the appointment of punishment "their" in conditions of increased public attention, "resonance" of the case; protest response (PR) - judicial practice is in conflict with ill - conceived legislative novels [1, C. 195]. It should, however, take into account both the nature of the crime and the preventive value of criminal law.

3. Results.

As you know, the fight against crime includes three areas: prevention, combating and minimization (elimination) of consequences. Such a conclusion follows from the legal definitions of counter-terrorism and anti-corruption formulated in the relevant Federal laws. Unfortunately, there is a significant omission in these definitions: they do not indicate that the fight against criminal attacks includes the imposition of punishment for the crimes committed. Meanwhile, it is the use of punishment that is the Central element and the main tool for the implementation of criminal law policy in modern conditions. The report of the Secretary-General of the United Nations at the XIII United Nations Congress on crime prevention and

ISSN 2542-1514 (Print)

criminal justice highlighted the relationship between crime, criminal justice and development, and established the importance of sentencing to achieve legal objectives and strengthen public security. The practice of sentencing serves as a criterion for determining the effectiveness of justice systems and their fairness. In this context, special attention is paid to the ratio of the number of suspects and convicts.

Let us turn to the analysis of materials of judicial statistics on the practice of sentencing received in the Judicial Department of the Supreme Court of the Russian Federation. It should be noted that the data are given for 2011-2017 in the median value. In other words, the required information is the result of the sequence of the following actions: a) construction of tables for each crime for 2011 – 2017; 2) ranking of materials tables on the number of convicts for each crime; 3) selection of the average value (the middle of the ranked series) in each table and its inclusion in the final tables of this dissertation research.

3.1. The practice of imposing penalties for violations of the security of the law.

According to the legislative definition, the highest public danger is inherent in crimes that infringe on the security of justice. It is logical to expect that the highest rates of criminal law response characterize the judicial practice in imposing punishment for such crimes.

Analysis of materials table 18 does not correspond to these expectations. Two pre-crimes: disclosure of data of preliminary investigation (Article 310 of the Criminal Code) and disclosure of information about the security measures applied concerning the judge and participants in criminal proceedings (Article 311 of the Criminal Code) the criminal judicial response is no. This is surprising, given the high latency of these crimes and the reported media facts of "leakage" of information in the interests of criminals from the offices of highly placed law enforcement officers . It is obvious that special services (services of own security of law enforcement agencies, Federal bailiff service) do not pay to this aspect of the professional activity due attention, and their heads do not demand the corresponding reports. At the same time, there is a very acute problem of the responsibility of secret law enforcement officers (informants) [2].

Table 1 shows that a very weak and weak response follows the Commission of crimes that threaten the life and health of professional participants in justice (Articles 295, 296, 317 of the Criminal Code). Thus, the judicial community draws attention to the unsatisfactory state of security of the judiciary, causing extreme concern of the judicial community. "In the period 2009 - 2012 values-but 14 murders of judges, of which disclosed 9 murders; convicted of threatening murder and reasons of the implementation of harm to the health of judges 26. However, more than 250 crimes committed against judges (attempted murder of judges, robberies, robberies, death threats, etc.) have not been solved, the perpetrators have not been identified."

Only criminal legal response actions, expressed in the insult of trial participants and persons involved in the administration of justice (Article 297 of the Criminal Code) can be accepted adequately. This is evident from the ratio of the number of persons committing such crimes (it is not difficult to identify them because of the evidence of the criminal act) and the convicts. The difference between them is small, but it is there and indicates that the emotional side of the crime is taken into account in the process of criminal law response. Here we have the opportunity to observe the phenomenon of "understanding justice", when the spirit of the law prevails over its letter. Termination on various grounds of every tenth criminal case in the process of its consideration objectively testifies to this.

3.2. The practice of punishing crimes that undermine justice.

Let us turn to the analysis of the practice of sentencing for crimes that undermine the justice (table. 2).

Table 1

The practice of sentencing for violations of the security of justice (median values for 2011-2017)

Kinds of crimes (Art. of the RF Criminal Code)	*Persons identified*	*Covicted*	*Imprisoned*	*Probation*	*Restraint*	*Correctio-nal labour*	*Communi-ty service*	*Fine*	*Other measures*	*Cases closed*
295	9	1	1	–	–	–	–	–	–	–
296	65	36	22	7	–	–	1	5	1	–
297	247	184	–	–	–	53	77	34	–	20
298.1	12	2	–	–	–	–	–	2	–	–
310	2	0	–	–	–	–	–	–	–	–

311	0	0	0	0	0	0	0	0	0	1
317	483	30	30	–	–	–	–	–	–	–
320	0	0	0	0	0	0	0	0	0	0

Table 2

The practice of sentencing for crimes that undermine justice (median values for 2011-2017)

Kinds of crimes (Art. of the RF Criminal Code)	*Persons identified*	*Covicted*	*Imprisoned*	*Probation*	*Restraint*	*Correctio-nal labour*	*Communi-ty service*	*Fine*	*Other measures*	*Cases closed*
299	5	1	1	–	–	–	–	–	–	–
300	7	4	–	4	–	–	–	–	–	–
301	0	0	–	–	–	–	–	–	–	–
302	2	–	–	1	–	–	–	–	–	1
303	295	76	1	15	–	13	15	19	2	21
305	4	2	–	–	–	–	–	2	–	–

As can be seen from the table, there is no criminal-legal response for such crimes (Article 301 of the Criminal Code), or it is very weak (Article 299,300, 303, 305 of the Criminal Code) or weak (Article 295). The reasons for this are rooted in the reluctance to discredit the system by professionals who are called upon to serve justice. No one is interested in bringing to criminal responsibility persons who undermine the justice of justice: neither the management of such persons nor their colleagues.

In this regard, particularly disturbing is the weak response to such crimes as coercion to testify (Article 302 of the Criminal Code). It should be noted that the latency of such crimes is extremely high. Panel measurements of the Levada center 2004 - 2014 show that more than 60% of the surveyed citizens fear arbitrariness from the side of law enforcement officers . According to our survey on the question "is there a possibility for participants in criminal proceedings to be subjected to torture, violence, other cruel or degrading treatment or punishment?"56.1% of respondents replied in the affirmative, 21,7% - negatively, and the remaining 22.2 per cent declined to answer. To the question: "in which bodies engaged in criminal proceedings, this probability is the highest?" the responses were as follows:

(a) Investigative Committee of Russia – 11.6%;

b) Federal Security Service of Russia – 19,8%;

C) police – 41.9%;

d) penal system – 26.7%.

Here, of course, it is not the accuracy of assessments that is important, but the General attitude to the problem of production in law enforcement agencies, which in General remains predominantly negative. The materials of the ECHR record the leadership of Russia on violations of the right not to be subjected to inhuman or degrading treatment in the field of justice [3].

There is a widespread practice of falsification of evidence in civil cases: in "ConsultantPlus" only the decisions of higher courts fix the presence of this fact in the materials under consideration by the number 3532. Meanwhile, the number of persons convicted of such a crime is small (according to part 1 of Article 303, the median value for 2011-2017 was 60 people). This indicates a distorted perception of the public danger of falsification of evidence by the courts themselves in the direction of its understatement.

3.3. The practice of imposing penalties for crimes that prevent the issuance of court decisions.

Let us turn to the analysis of the practice of sentencing for crimes related to counteraction to justice (table. 3).

Table 3

The practice of sentencing for crimes that prevent reasonable adjudication (median values for 2011-2017)

Kinds of crimes (Art. of the RF Criminal Code)	*Persons identified*	*Covicted*	*Imprisoned*	*Probation*	*Restraint*	*Correctio-nal labour*	*Communi-ty service*	*Fine*	*Other measures*	*Cases closed*
294	12	9	2	–	–	–	–	5	–	2
304	3	2	–	2	–	–	–	–	–	–
306	3873	2905	124	410	4	185	387	1386	11	398

ISSN 2542-1514 (Print)

307	1090	783	5	12	–	–	116	494	37	119
308	51	40	–	–	–	8	8	22	2	1
309	178	62	6	18	–	–	–	20	14	4
316	379	254	3	45	–	1	38	132	3	32

When considering the data presented in the table, attention is drawn to a very weak criminal-legal response to crimes under Article 294 "Obstruction of justice and the production of preliminary investigation" and Article 304 "Provocation of a bribe or commercial bribery". In this respect, it is particularly characterized by a low detection rate of such crimes, pointing to the fact that they struggle is not conducted, we can say, fundamentally. In other words, the acts in question are supposed to just set and revealed - do not give proper asuu qualifications. Otherwise not to explain, "the PR campaign of the anti-corruption" by the traffic police, which after persistent hints are given bribe of 100 rubles., and other similar situations repeatedly described in the media and the literature [5; 6; 7; 8]. Since the opposition to the implementation of justice and the production of pre-trial investigation, as a rule, is carried out by representatives of the authorities, and the provocation of bribes or commercial bribery involved law enforcement officers, the position of "legitimate non-resistance to evil" becomes understandable.

Criminal-legal response is weak in relation to bribery or coercion to testify or evasion of testimony or to incorrect translation (Article 309 of the Criminal Code). It should be clarified that of the convicts under this Article of the Criminal Codelisted in the table, 15 were convicted under part 1, 18 – under part 2, 22 – under part 3 and 7 – under part 4. This crime according to empirical data has a 10-fold latency [9, c. 561-562]. The study of published materials of judicial practice shows that bribery, blackmail and threats of murder, injury, destruction or damage to property often come from criminals - persons professionally engaged in criminal activities [10; 11]. The persons giving evidence or engaged in the transfer, there is a reasonable apprehension to believe that unidentified accomplices of the perpetrator can bring the threat into execution. In addition, such crimes are committed in a non-obvious: exposing criminals requires the use of operational investigative measures. The fight against such crimes needs to be intensified.

The criminal-legal response to the refusal of a witness or a victim to testify (Article 308 of the Criminal Code) and concealment of crimes (Article 316 of the Criminal Code) should, in our opinion, be considered adequate. This conclusion follows from the comparison of the practice of sentencing (table. 20) with typical situations of refusal to testify or concealment. The preferential application of the penalty for these crimes indicates that the public danger of such crimes in the eyes of the court does not look high. In addition, the Articles under consideration of the Criminal Code contain the possibility of implementing the trend of "strengthening the legality of justice" at the expense of the victim of a crime, and not the perpetrator. The legislator for some reason believes that it is impossible to agree with the citizens of Russia in a good way, they have absolutely no sense of civic duty and they must be threatened. Here close to the resuscitation of "Stalinist justice" with its exaggerated "punitive function".

Criminal-legal reaction in relation to knowingly false denunciation (Article 306 of the Criminal Code) and knowingly false testimony, expert conclusions, specialist or incorrect translation (Article 307 of the Criminal Code) is intense, i.e. it is carried out not only actively enough, but also in conditions that ensure the inevitability of punishment. At the same time, it should be noted that such crimes often have a kind of legal support (in the form of legal advice), and the lack of response to them often means an official offense, including corruption [13].

3.4. The practice of imposing punishment for crimes that prevent the justified issuance of judicial decisions. The crimes against justice presented in table 2 are closely related to the acts provided for in Article 318 of the Criminal Code "use of violence against a representative of the authorities and Article 319 of the Criminal Code "Insult of a representative of the authorities" (table 4).

Table 4

The practice of sentencing for crimes indirectly impeding the reasoned issuance of court decisions (median values for 2011-2017)

ISSN 2658-4050 (Online)

Kinds of crimes (Art. of the RF Criminal Code)	*Persons identified*	*Covicted*	*Imprisoned*	*Probation*	*Restraint*	*Correctio-nal labour*	*Communi-ty service*	*Fine*	*Other measures*	*Cases closed*
318	8087	6809	1446	3090	3	1	9	1721	9	530
319	10 737	7872	1	–	1570	374	1312	3705	32	878

As established in Chapter one of this dissertation, such crimes are generally committed against members of the police force in charge of public order. The study of the materials of 92 criminal cases on crimes under Article 318 of the Criminal Code, considered by the district courts of Moscow, Voronezh, Yekaterinburg, Lipetsk, Kaliningrad, Krasnodar, Krasnoyarsk, Nizhny Novgorod, Omsk, Magadan, Ufa, shows that the situation of committing such crimes is ambiguous and can be presented in several versions:

1) violence is spontaneous, unreasoning, hate-to-staff nicknames of the police – 3 sentence (4,8%);

2) violence is carried out in the process of a conflict between a police officer exercising his duties in the field of public security and a person violating public order – 42 sentences (67.7%);

3) the use of violence is the result of unprofessional actions of police officers, inciting the conflict - 17 sentences (27.5%). It is easy to get a criminal record, entering into a conflict with a police officer who grabs you by the hands. Also the position of the court which is carrying out justice "on a law letter" surprises that is visible from abundance of bulky compound sentences in a sentence.

Of course, not all courts, as in the above example, diligently make a big deal. This can be seen in the last column of table 21: 530 (7.8 per cent), where cases are dismissed on various grounds before conviction. Nevertheless, the criminal-legal impact in relation to the implementation of Article 318 of the Criminal Code, in our opinion, should be attributed to the category of punitive.

Punitive is the criminal-legal impact in relation to the insult of a representative of the authorities (Article 319 of the Criminal Code). Moreover, such an impact can even be called unreasonably punitive. Against the background of full or partial decriminalization of insults (Article 130 of the Criminal Code), beatings (Article 116 of the Criminal Code), criminal liability for insulting a representative of the authorities looks anachronistic. This is understood by many judges: therefore, cases under Art. 3129 of the Criminal Code are often terminated, and a number of penalties is dominated by a fine (table. 21). A small public danger of insulting the representative of the power is evidenced by the procedural fact: in accordance with Article 150 of the Code of Criminal Procedure, a preliminary investigation under Article 319 is carried out in the form of an inquiry.

With regard to the criminal law response to crimes that impede the execution of judicial decisions, in General it can be described as adequate (table. 5).

Table 5

The practice of sentencing for crimes impeding the execution of court decisions (median values for 2011-2015)

Kinds of crimes (Art. of the RF Criminal Code)	*Persons identified*	*Covicted*	*Imprisoned*	*Probation*	*Restraint*	*Correctional labour*	*Communi-ty service*	*Fine*	*Other measures*	*Cases closed*
312	1095	811	15	61	–	7	299	349	3	77
313	240	189	179	6	–	–	–	–	2	2
314	363	300	191	97	1	4	7	–	–	–
314.1	2239	1554	808	549	–	92	93	1	–	11
315	462	258	1	10	–	–	–	160	7	80
321	229	207	201	6	–	–	–	–	–	–

This conclusion is supported by both the small differences between the number of persons identified and the number of convicted persons observed in the second and third rows of the table and the practice of imposing specific penalties, taking into account the nature of the crimes committed. It should be noted the rapid growth (every year – almost twice as compared to the previous one) of the number of those convicted of evasion of administrative supervision or repeated non-compliance with the restrictions or restrictions established by the court in accordance with the Federal law. Since the tasks of administrative supervision

ISSN 2542-1514 (Print)

are the prevention of crimes and other offenses, this trend indicates the updating of the preventive content of combating crime, which is important for the justice sector.

4. Conclusions.

1. Counteraction to crime includes four directions: prevention, fight and minimization (elimination) of consequences and purpose of punishment for the committed crime. The practice of sentencing serves as a criterion for determining the effectiveness of justice systems and their fairness.
2. The response to certain crimes against justice is either absent (Articles 301, 310, 311 of the Criminal Code) or very weak (art. 294, 295, 296, 299,300, 303, 304, 305 317 Criminal Code)
3. It is possible to recognize adequate criminal and legal reaction to the actions developing in insult of participants of judicial proceedings and the persons participating in administration of justice (Art. 297 of the Criminal Code of the Russian Federation), refusal of the witness or the victim of giving indications (Art. 308 of the Criminal Code), concealment of crimes (Art. 316 of the Criminal Code), and also the crimes provided by Art. 312-315 and 321 of the Criminal Code of the Russian Federation.
3. Criminal-legal reaction in relation to knowingly false denunciation (Article 306 of the Criminal Code) and knowingly false testimony, expert opinions, specialist or non-repudiation (Article 307 of the Criminal Code) is intense, i.e. it is carried out not only actively enough, but also in conditions that ensure the inevitability of punishment.
4. The crimes against justice presented in table 19 are closely related to the acts provided for in Article 318 of the Criminal Code "Use of violence against a representative of the authorities and Article 319 of the Criminal Code "Insult of a representative of the authorities". The criminal law response to such crimes is punitive. Against the background of full or partial decriminalization of insults (Article 130 of the Criminal Code), beatings (Article 116 of the Criminal Code), criminal liability for insulting a representative of the authorities looks anachronistic. This is understood by many judges: therefore, cases under Art. 3129 of the Criminal Code are often terminated, and a number of penalties is dominated by a fine. The procedural fact also testifies to a small public danger of insult of the representative of the power.
5. In Administrative Code there is Article 5.61 "Insult". With the decriminalization of Article 319 of the Criminal Code proposed to Supplement Article 5.61 of the administrative code of the fourth part in the next edition of "insulting a representative of authority in the performance of their duties – entails the imposition of an administrative fine on citizens in the amount of up to thirty thousand rubles.".

ISSN 2658-4050 (Online)

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Kleymenov M.P., Ivanov E.S. Combating crime in the sphere of justice: effectiveness of punishment. *Pravoprimenenie = Law Enforcement Review*, 2019, vol. 3, no. 1, pp. 108–118. DOI: 10.24147/2542-1514.2019.3(1).108-118. (In Russ.).