THE LAW ENFORCEMENT BY THE BODIES OF PRELIMINARY INVESTIGATION AND INQUIRY

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INCOMPLETE CRIME AS AN OBJECT OF HUMANIZATION OF THE RUSSIAN CRIMINAL LEGISLATION**

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The subject. The article is devoted to the problems of simultaneous harmonization between the policy of humanization of the Russian criminal law and the reduction of the crime rate in society. The institute of incomplete crime is proposed as one of the promising areas of humanization of criminal legislation. The authors analyze the norms of the Russian Criminal Code which determine the essence of an incomplete crime, as well as the specifics of imposing punishment for its commission. The subject of the research also includes the strategic provisions of the Russian legislation, which reflect the main directions of the implementation of contemporary criminal policy, its goal and objectives.

The purpose of the article is to confirm or dispute hypothesis that it is inadmissible to criminalize the actions committed at the stage of preparation for the commission of an intentional crime, as well as it is admissible to mitigate the liability for attempted crime.

Research methodology and techniques are represented by a number of general scientific and specific scientific methods of cognition, used primarily in humanitarian research. The establishment of regularities between the growth of crime rates and the degree of criminalization, determined in the current criminal legislation, is ensured by the use of the dialectical method of cognition. The methods of analysis and synthesis were used to compare statistical data on the state of crime in Russia and the dynamics of the number of convicts serving imprisonment. Various methods of formal logic were applied in the process of evaluating measures aimed at ensuring the humanization of modern Russian criminal legislation. The method of comparative legal research was used to study the content of the norms on responsibility for an incomplete crime.

The result of the study is proof of the necessity to decriminalize actions that are currently defined as "preparation for the commission of a grave or especially grave crime." The necessity of a significant reduction in the degree of punitive criminal-legal impact on persons found guilty of an attempt to commit an intentional crime has been substantiated.

Conclusions. It as expedient to partially decriminalize an incomplete crime and exclude this institution from the General Part of the Russian Criminal Code. This decision fully complies with the fundamental principles of criminal law: legality, guilt, justice, and will also ensure the effectiveness of the implementation of the modern policy of humanizing Russian criminal legislation.

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1. Introduction

One of the main directions of modern Russian legal policy is the humanization of criminal legislation. The idea of mitigating the criminal law impact in order to achieve positive results in the fight against crime is quite popular in many countries of the world community [1, pp. 255-269; 2].

According to many researchers, the Criminal Code of Russia adopted in 1996 (hereinafter referred to as the Criminal Code of the Russian Federation) was supposed to be one of the main means of solving the problem of an extraordinary increase in the crime rate caused by the collapse of the USSR and a significant weakening of state power [3, p. 25]. The criminalization of encroachments previously unknown to Soviet society, the establishment of types of punishments for their commission that significantly differ from each other in the degree of legal restriction, the amorphous content of certain types of criminal punishments unknown to Soviet criminal law, as well as the lack of conditions for the execution of certain introduced criminal punishments – all these were features of the new Russian criminal law [4, p. 95-97].

However, after ten years of operation of the Criminal Code of the Russian Federation, the need to revise many of its provisions became obvious. Among the main reasons for this need was a significant increase in the number of persons serving actual imprisonment for various crimes, including those that do not pose a serious public danger. The reality of this problem was recognized by scientists [5, p. 91-93; 6, p.123], and representatives of the leadership of the highest state authorities. Thus, the First Deputy Chairman of the Supreme Court of the Russian Federation in one of his speeches pointed out that by 2008 the number of persons in places of deprivation of liberty had reached critical values. According to official data, between 1992 and 2007, 15 million people were convicted, of which more than 5 million were sentenced to actual imprisonment, while in the years before the collapse of the Soviet Union, the same figure was no more than 2.5 million people. Based on this, as of 2007 approximately every tenth citizen of Russia was brought to criminal responsibility, and every 28th served a sentence in penitentiary institutions . Statements about the severity of the criminal policy of those years were also voiced by the leadership of the Russian penal system . At the same time, the severity of the penalties applied, as in the entire civilized world [7, pp. 290-304], did not lead to the desired results: the quantitative indicators of crime in Russia did not decrease, while the degree of social criminalization increased due to the introduction of a significant part of society to the criminal subculture in places of detention.

The current situation of preventing Russian crime has become evidence that criminal legal influence, including that associated with the isolation of the convicted person from society, does not in all cases provide general and private prevention, and sometimes leads to the opposite results [8, p.76]. On this basis, since the beginning of the XXI century, a new criminal policy has been formed in Russia, the goal of which is to reduce the number of convicts held in places of deprivation of liberty, which will ensure a reduction in the number of re-committed crimes. One of the means to achieve this goal was officially recognized as the humanization of the current criminal legislation.

2. Research methodology

In the process of conducting the study, several methods inherent in the humanities were applied in a comprehensive manner. Thus, the dialectical method of scientific cognition was used to establish patterns between the growth of crime rates and the degree of criminalization determined in the current criminal legislation. The methods of analysis and synthesis were used to compare statistical data on the state of crime in Russia and the dynamics of the number of convicts serving prison sentences. Various methods of formal logic were used in the process of evaluating measures aimed at ensuring the humanization of modern Russian criminal legislation. The method of comparative legal research was used to assess the compliance of the provisions of the legislation on liability for preparation for the commission of a crime with the requirements that constitute the essence of the criminal law principles of legality,

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guilt, justice, as well as the provisions on the basis of criminal liability.

3. The content of the policy of humanization of the Russian criminal legislation.

Since 2011, Russia has been implementing comprehensive measures of a criminal and penal enforcement nature aimed at mitigating measures of state coercion for committing a crime. One of the first normative acts that determined the general direction of the humanization of criminal legislation in general is the Concept of the Development of the criminal executive system of the Russian Federation until 2020 (hereinafter referred to as the Concept) [9, p. 15-17]. The political and legal significance of this document cannot be overestimated: at the highest level of state power, the fact of a steadily increasing number of convicts in penitentiary institutions was recognized. One of the reasons for the emergence of such a situation was the preservation of techniques and methods of functioning of the penal system, many of which showed their effectiveness in the conditions of Soviet society, but were not in demand in a democratic state with a market economy [10, p. 131-136].

Taking into account these circumstances, one of the goals of the Concept was to reduce the number of re-committed crimes by persons who had previously served a sentence of imprisonment. In fact, this is the only goal that the penal system could more effectively achieve. There are various ways to reduce the quantitative indicators of crime, including formal ones: refusal to register committed crimes, large-scale decriminalization of acts prohibited by criminal law, frequent application of amnesties for various categories of accused and convicted persons. All this will have a direct impact on the reduction of official crime rates, including the number of persons serving criminal sentences in penitentiary institutions. However, these measures will not improve, but will aggravate the criminogenic situation within society [11, p. 3-4; 12, p. 36], and therefore, after a short period of time, society will face an even greater problem of countering crime, the qualitative characteristics of which will only increase. On the basis of this, the penal enforcement system had to solve a number of tasks listed in Chapter 2 of the Concept to ensure the humanization of the process of executing punishments, both related and not related to isolation from society. Priority in the methods of penal enforcement activity was given to social and psychological work with convicts in order to re-socialize the latter both in the process of execution and after serving a criminal sentence.

At present, the tasks assigned to the penitentiary system are clarified by the draft Concept for the development of the penitentiary system of the Russian Federation for the period up to 2030, where social and psychological work with convicts in order to re-socialize them is not only a priority, but also an innovative direction. Thus, in the field of psychological and educational work with convicts, this concept provides for the development and use of individual comprehensive programs for the resocialization of convicts, the development of standard psychological support programs aimed at providing correctional influence on convicts using new psychotechnologies [13, p. 5-11; 14, p. 73, 75].

Despite the fact that the penal enforcement system is one of the key subjects of combating crime, its capabilities are objectively limited by the assigned functions, which do not involve legislative solutions to the issues of criminalization and penalization of acts that harm the established relations in society. That is why the adoption of the Concept could not fully satisfy the public's need for a policy document regulating the process of changing criminal legislation. It is noteworthy that such a normative act of strategic significance has not yet been adopted, although changes and additions to the Criminal Code of the Russian Federation are made quite often and non-systematically.

In 2013, the Public Chamber of Russia made relevant proposals, posting on its official website a draft Concept of the Criminal law Policy of the Russian Federation. The proposed concept was defined as a policy document, according to which the improvement of criminal legislation should be carried out, as well as the effectiveness of its application should be evaluated. As one of the goals of the application of this concept, it is stated to reduce social tension by resolving on a fair basis the social conflict that has arisen as a result of the crime committed.

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Special attention was paid to the requirements for the modernization of criminal legislation (paragraph 11). In particular, the grounds and limits of liability for unfinished criminal activity should be reviewed in terms of eliminating the general rule of punishability of activities preparatory to the commission of a crime as not having sufficient public danger for the application of criminal law enforcement measures.

Agreeing with this opinion of the developers of the Concept, we also note that the provisions of the criminal legislation regulating the institution of an unfinished crime have not undergone a single change since the adoption of the Criminal Code of the Russian Federation in 1996.However, this does not mean that the norms on an unfinished crime represent an impeccable criminal law institution.

Thus, an unfinished crime is replaced by the content of the stages of criminal activity, which directly follows from Part 2 of Article 29 of the Criminal Code of the Russian Federation: "an unfinished crime is recognized as preparation for a crime and an attempt to commit a crime." Such an indication identifies the category of "crime", even if incomplete, with the stages of criminal activity-preparation and attempt, which, in our opinion, is at least not logical.

At the same time, any act that is a preparation for a crime is not capable of harming public relations protected by law (unless, of course, it does not contain the elements of an already completed crime). So, for example, having sharpened an axe for the subsequent murder or having made a master key for opening the lock of the apartment for the purpose of the subsequent theft, the person does not cause harm to the protected objects yet. Moreover, the person may subsequently refuse to commit these crimes at all. And, nevertheless, the law recognizes such behavior as a criminal offense.

Attention is also drawn to the lack of proper differentiation of criminal liability in terms of the formulation of rules on the imposition of punishment for an unfinished crime. Thus, according to Parts 2 and 3 of Article 66 of the Criminal Code of the Russian Federation, when imposing punishment for an unfinished crime, only the most severe type of punishment provided for in the relevant article is subject to mandatory restriction. Thus, if for the theft with entry into the home and an attempt on a similar crime for some reason is not imposed imprisonment (as the most severe under the sanction), then formally for these acts can be assigned equal penalties, or even for the completed crime can be assigned a milder penalty than for a similar unfinished.

However, the Concept of Criminal Law Reform developed by the Public Chamber of the Russian Federation has not acquired legal force, and other alternative acts of strategic importance have not been developed. In this regard, it is currently not possible to assume which areas of criminal law regulation will become the object of legislative decisions aimed at ensuring the humanization of criminal law.

Unfortunately, Russian criminal law is unstable. The Criminal Law is regularly reviewed and supplemented with new provisions, including those related to the adjustment of the conditions for criminalizing socially dangerous acts, the establishment of new types of criminal penalties, the definition of grounds for exemption from criminal liability, etc. However, due to the lack of a systematic state policy of humanization, the current legislation is changing mainly fragmentally and inconsistently. This feature has long been noticed in the scientific literature: there is complete unanimity among researchers regarding the unsatisfactory Russian criminal policy conducted since the beginning of the XXI century [15, p. 15; 16, p. 3; 17, p. 24-35; 18, p.36].

4. Critical analysis of the directions of implementation of the policy of humanization of criminal legislation.

The analysis of the results of the current criminal policy in Russia allows us to identify several main ways to ensure the declared humanization of criminal legislation. First of all, the legislator carries out full or partial decriminalization of acts, the responsibility for the commission of which was established by the Criminal Code of the Russian Federation at the time of its entry into force. Thus, to date, such acts as insult (Article 130 of the Criminal Code of the Russian Federation), smuggling

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(Article 188 of the Criminal Code of the Russian Federation), consumer fraud (Article 200 of the Criminal Code of the Russian Federation), etc. have been completely decriminalized. The corresponding types of encroachments are recognized as offenses, the responsibility for the commission of which is established mainly by administrative legislation.

The most widespread is partial decriminalization, the essence of which is to supplement the elements of crimes with criminally significant legally significant features or to clarify the content of already existing features. In general, this activity significantly reduces the possibility of a criminal response to the commission of the relevant acts. So, some of them can now be considered as criminal offences only if there is an administrative prejudice, which was initially rejected by the developers of the Russian criminal law. The regular increase in the absolute values used to describe the criminalizing features of certain types of crimes, defined as "large size", "large damage", etc., is also an example of partial decriminalization of socially dangerous acts [19, p. 110-111].

Another option of decriminalization is proposed by the Supreme Court of the Russian Federation, which is reduced to the introduction of the category "criminal offense" into modern criminal legislation, under which it is proposed to consider those types of acts prohibited by criminal law that do not pose a significant public danger characteristic of the crime. The result of this innovation should be a reduction in the possibility of using imprisonment for minor crimes, as well as the rejection of the use of certain other restrictive measures of criminal law and criminal procedure impact [20, p. 27-31; 21, p. 74].

According to some experts, the decriminalization of socially dangerous acts cannot achieve the goals that are pursued by the state policy of humanizing criminal legislation. In most cases, the issue of excluding from the criminal law acts that do not have a proper public danger is resolved negatively. On the contrary, since 2003, the Criminal Code of the Russian Federation has included a significant number of norms on liability for crimes of small or medium gravity, although the socio-legal justification of these decisions often causes fair criticism in the scientific literature [22, p. 155-178]. On this basis, the decriminalization of certain socially dangerous acts is extremely slow and inconsistent, as is the humanization of criminal legislation in general.

An independent direction of the policy of criminal-legal humanization was the reduction of the upper and lower limits of criminal penalties established in the sanctions articles of the Special Part of the Criminal Code of the Russian Federation. The most significant innovations in this part were provided for by the Federal Law" On Amendments to the Criminal Code of the Russian Federation" of March 7, 2011, No. 26-FZ, which, according to experts, were recognized as the most unsuccessful. The attempt of the legislator to soften the sanctions of many norms of the Special Part of the Criminal Code of the Russian Federation actually led to a violation of the rules of differentiation of criminal liability, carried out on the basis of different public danger of crimes. Thus, after the entry into force of this Federal Law, for example, for all types of intentional infliction of serious harm to health, including those that caused the death of the victim by negligence, it became possible to impose a minimum of two months ' imprisonment (Part 1-4 of Article 111 of the Criminal Code of the Russian Federation). This allows us to point out that there is a clear discrepancy between the public danger of the act and the punishment (term of imprisonment), the appointment of which is possible when a guilty verdict is passed. Similar legislative miscalculations occur in almost every chapter of the Special Part of the Criminal Code of the Russian Federation, so the humanization of criminal legislation implemented in this way contradicts the content of the principle of justice (art. 6 of the Criminal Code of the Russian Federation) and cannot have a positive impact on crime prevention: impunity for criminal activity, as well as excessive leniency of criminal punishment, only contribute to the commission of new crimes [23, p. 79; 24, pp. 101-103].

Finally, another direction of the policy of humanizing criminal legislation is to increase the number of punishments that do not imply isolation of the convicted person from society. Some researchers consider these punishments as an

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alternative to imprisonment [25, p. 134], which is not quite true from a formal legal point of view. Each type of criminal punishment applied as the main one for the committed crime cannot be recognized as an alternative type to another main punishment. Otherwise, such interchangeability casts doubt on the existence of a sign of systematic punishments listed in Article 44 of the Criminal Code of the Russian Federation. Only forced labor can be considered an exception, since this type of punishment is declared by the legislator as an alternative to imprisonment (Article 53.1 of the Criminal Code of the Russian Federation).

Since the adoption of the Criminal Code of the Russian Federation and to the present time, the system of criminal penalties includes mainly those types that do not imply isolation of the convicted person from society. Federal Law No. 420-FZ of December 7, 2011 of the Criminal Code of the Russian Federation is also supplemented with forced labor-a punishment that does not imply isolation from society and is used as an alternative to imprisonment. All this indicates the desire of the state to reduce the use of deprivation of liberty, creating conditions for the execution of other types of criminal penalties that do not involve the isolation of the convicted person [26, p.130-131].

However, the asymmetry of the ratio of punishments related to and not related to isolation from society in favor of the latter is of secondary importance for achieving the results of the policy of humanization. Changing the system of criminal penalties will not fundamentally affect the results of the ongoing policy of humanization without reducing the number of acts for which criminal liability is established. The revision of the criteria for determining the public danger of certain acts prohibited by criminal law is the primary task of implementing the humanization of criminal legislation. Unfortunately, the analysis of changes and additions to the Criminal Code of the Russian Federation indicates the presence of opposite trends. Since 2011 Six types of socially dangerous acts were decriminalized, at the same time, 83 norms on responsibility for crimes previously unknown to the criminal law were included, of which: minor – 52, medium – 18, serious – 9, especially serious – 4, that is, when conducting the policy of humanization of criminal legislation, in 84% of cases, norms on responsibility for crimes belonging to the categories of minor or medium gravity were introduced (when counting, only acts containing signs of the main corpus delicti were taken into account). It follows that the decriminalization of certain types of socially dangerous attacks is clearly inferior in quantitative terms to the criminalization of acts that in the vast majority of cases cannot be characterized by significant public danger. In this regard, it is impossible to expect tangible results in the form of a decrease in the number of persons sentenced to imprisonment for committing crimes of small or medium gravity.

It follows from this that the legislator does not really seek a significant revision of the content of the Special Part of the Criminal Code of the Russian Federation and the exclusion of a significant number of norms establishing responsibility for crimes of small or medium gravity. It seems that there are reasons for this, related to the fight against crime in modern Russian society. However, the problem of increasing the number of citizens brought to criminal responsibility, including for crimes that do not have a significant public danger, still needs to be solved, and therefore the scientific search for new directions for the humanization of criminal legislation does not lose its importance and significance. The objectivity of the conclusion about the unresolved problem of combating crime is also confirmed by official statistics: the number of persons held in penitentiary institutions of the penitentiary system, as of May 1, 2020, amounted to 511030 people, which does not exceed 66.8% of the same indicator in 2011. Despite such a significant decrease in the number of prisoners, the overall indicators of the state of crime in Russia decreased by only 16%. Therefore, the most promising direction for the humanization of criminal legislation is to identify groups of crimes that do not pose a significant public danger, the decriminalization of which will not lead to a gap in the Russian criminal legislation.

5. Review of the grounds for differentiation of criminal liability for an unfinished crime as a

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promising direction of humanization of criminal legislation.

A certain reserve for solving this issue may be the institution of an unfinished crime. The legality and expediency of establishing responsibility for the commission of an act that does not contain all the signs of a crime and is not brought to a legal conclusion due to circumstances beyond the control of the person, has been the subject of numerous scientific studies conducted by Russian and foreign scientists since the second half of the XIX century [27, pp. 623-634]. Currently, the unfinished crime is one of the few institutions of modern criminal law that has not undergone any changes since the adoption of the current criminal law. At the same time, some provisions of Chapter 6 of the Criminal Code of the Russian Federation not without reason cause critical comments expressed and justified in the criminal law literature [28, p. 24-29].

First of all, you should pay attention to the duality of the content of an unfinished crime – it is recognized as an act that can be interrupted due to circumstances beyond the control of the person at the stage of preparation or attempt. And if at the stage of the attempt, the person already begins to perform the objective side of the act prohibited by criminal law, then at the stage of preparation, the person does not commit those actions or omissions that are provided for by the relevant norm of the Special Part of the Criminal Code of the Russian Federation. This fact indicates a number of legally significant signs of an unfinished crime, interrupted at the stage of preparation, which do not correspond to the basic principles of the content of the crime and the basis of criminal liability.

First, public danger as a sign of a crime, provided for in Part 1 of Article 14 of the Criminal Code of the Russian Federation, is not present in the preparatory actions. A person at this stage of his activity does not commit legally prohibited criminal acts, although he has the intention to commit a crime in the future. Such a characteristic is clearly not enough to establish the public danger of preparatory actions.

Secondly, the basis of criminal liability in accordance with Article 8 of the Criminal Code of the Russian Federation is the presence in the act of all the signs of a crime. The analysis of the actions committed at the stage of preparation indicates that of all the signs (elements) of the composition of the crime being prepared at this stage, only its subjective side is established. As a result, it is possible to state, at least, the extreme controversy of the decision taken on the existence in this case of grounds for bringing a person to criminal responsibility.

Third, the actual absence of all the elements of a crime in the preparatory act leads to the need to carry out a qualification based on the assumption of the investigator and the judge that the accused, in the absence of objective obstacles, would necessarily have committed the planned crime. Such an algorithm of actions is the application of criminal law by analogy, which contradicts the requirements of the principle of legality, justice, and the presumption of innocence [29].

Fourth, bringing to criminal responsibility for preparatory actions deprives the accused of the right to exercise voluntary renunciation of the crime (Article 31 of the Criminal Code of the Russian Federation), the presence of which would exclude the possibility of bringing to criminal responsibility. A person cannot use it, because he is already accused of a crime that he did not have time to commit due to circumstances beyond his control. However, no one can claim that a person would not have refused to carry out criminal activities until the moment of committing a criminal act.

All these arguments indicate not only the possibility, but also the need to implement the humanization of the criminal legislation of Russia by determining the inadmissibility of bringing a person to criminal responsibility for acts committed at the stage of preparation for an intentional crime.

6. Research results

1. In order to counteract crime in Russia, it is necessary to take measures to reduce the number of convicts, including those serving sentences in the form of imprisonment. For this purpose, approximately, since 2011, the state policy has been implemented in the direction of the humanization of criminal legislation.

2. The main means of humanizing the

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Russian criminal legislation is the introduction of norms on criminal penalties that are alternative to imprisonment, as well as a general reduction in the terms or amounts of penalties provided for by the sanctions of articles of the Special Part of the Criminal Code of the Russian Federation. At the same time, the Criminal Code of the Russian Federation is supplemented by a significant number of norms establishing responsibility for the commission of crimes belonging to the category of small or medium gravity. These facts demonstrate the inconsistency of the Russian criminal policy and the ineffectiveness of legislative activities to combat crime: the number of convicts serving prison sentences by May 1, 2020 decreased by more than a third compared to the same indicator in 2011, while the total number of registered crimes decreased by only 16%.

3. The analysis of the content of the norms on the unfinished crime shows that the acts committed at the stage of preparation do not have the public danger characteristic of the criminally punishable act. Also, when qualifying preparatory actions, the content of the criminal law norm on the basis of criminal liability is substituted and the criminal law is applied by analogy, which is a violation of the principle of legality. This indicates the need to implement the humanization of the criminal legislation of Russia by establishing the inadmissibility of criminal liability for acts committed at the stage of preparation for a crime.

7. Conclusions

The Russian policy of humanizing criminal legislation can be successfully implemented, including by revising certain provisions of the institution of unfinished crime. First, it concerns the determination of the basis of responsibility for an act interrupted at the stage of preparation for the commission of a crime. Secondly, there is a real need for a more consistent differentiation of responsibility for an unfinished crime interrupted at the stage of an attempt, taking into account its actual public danger. As a final result of legislative activity, it is possible to indicate the rejection of the possibility of bringing to criminal responsibility for the commission of preparatory actions, if they do not form an independent part of the crime, as well as a significant reduction in the size and terms of penalties for an unfinished crime interrupted at the stage of an attempt.

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