

Socio-Political Conditionality of Criminal Law on the Example of the Differences between the General Part of the Criminal Code of the RSFSR of 1922 and the General Part of the Criminal Code of the Russian Federation

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ABSTRACT

In this article, the author, using the example of the Criminal Code of the RSFSR of 1922 and the current Criminal Code of the Russian Federation, proves the socio-political conditionality of criminal law. The different provisions of both normative legal acts are compared. The author explains what caused such changes. The questions of both criminal codes, the concept of crime, the possibility of using law by analogy, the purpose of punishment, types of punishment are considered.

Keywords: criminal law, the Criminal Code of the RSFSR 1922, the Criminal Code of the Russian Federation, crime, death penalty, purpose of the punishment

Criminal law guards and protects the most significant interests of the individual, society, and the state. However, these interests are not static, they change in accordance with the changing essence of the state and are determined by social and political conditions. In the XX century, the Russian state underwent several global changes. One of the most significant were the socialist revolution of 1917 and the collapse of the USSR with the subsequent formation of sovereign states. In the post-Soviet history, the fundamental event for Russia was the adoption of the Constitution of 1993, which defined the content of other branches of law and became the basis for the current Criminal Code of the Russian Federation.

Criminal law is a tool in the hands of the state for carrying out its policy. It is always called upon by its purely specific means to "serve" the fulfillment of the political and socio-economic tasks of the State.¹ This can be considered on the example of the general part of the Criminal Code of the RSFSR of 1922² and the general part of the current Criminal Code of the Russian Federation³. This comparison seems to be the most revealing, since the Criminal Code of the RSFSR of 1922 is the first Soviet criminal code, the source of which was still the revolutionary legal consciousness, and the Criminal Code of the Russian Federation is the first and only source of criminal law in post-Soviet Russia based on constitutional values.

It should be noted that though the source of the Criminal Code of the RSFSR of 1922 was still based on a revolutionary sense of justice, which was confirmed by Article 9 of this act, it was no longer inherent in the former revolutionary affectation and hypertrophied class intolerance.⁴ The short period of validity of this law is interesting in comparison with the modern period and the prevailing criminal law views.

If we analyze the general part of the Criminal Code of the RSFSR of 1922 and the current Criminal Code of the Russian Federation, we can identify many differences that are caused by changes in the essence of the state and law, ideology and other objective factors.

It is worth paying attention to the tasks of criminal legislation. The Criminal Code of the RSFSR of 1922 was aimed at the legal protection of the state of workers from crimes and from socially dangerous elements and the implementation of this protection by applying punishment or other social protection measures to violators of the revolutionary rule of law. The Criminal Code of the Russian Federation defines as its tasks the protection of human and civil rights and freedoms, property, public order and public safety, the environment, the constitutional system of the Russian Federation from criminal encroachments, ensuring peace and security and crime prevention. We can see that the Criminal Code of the RSFSR of 1922 declares the state of workers the only object of protection, thus not recognizing a person and its rights as a value. So, this difference is due to a change in the essence of the state, and its priorities. This is confirmed by Article 2 of the Constitution

¹ Naumov, A.V. Domestic Experience of Using Criminal Legislation as a Tool for Solving Political and Socio-Economic Problems. "Development of National Legislation in the Context of Globalization: The Experience of Russia and the Countries of the Asia-Pacific Region": Findings of the International Scientific-Practical Conf. Ex. Ed. Prof. A.I. Korobeev. Vladivostok: FEPU, 2011. P.368–371.

² Resolution of the Central Executive Committee of 01.06.1922 "On the introduction of the Criminal Code of the R.S.F.S.R." (together with the "Criminal Code of the R.S.F.S.R.") [Electronic resource]. URL: http://www.libussr.ru/doc_ussr/ussr_1338.htm. (Date of access: 16.11.2021).

³ The Criminal Code of the Russian Federation No.63-FZ of 13.06.1996 (as amended on 01.07.2021). Collection of legislation. 1996. No.25. P.2954.

⁴ Suleimanov A.A. Criminal Code of the RSFSR 1922: conceptual foundations and general characteristics. Abstract of thesis. ... Cand. Law. M.: RUDN, 2007.

of the Russian Federation⁵, in which a person and its rights are recognized as the highest value, which emphasizes the importance of the individual and predetermines the protection of these benefits by criminal legislation. In addition to Article 2 of the Constitution of the Russian Federation, the tasks of the Criminal Code of the Russian Federation are also determined by Articles 8, 13 of the Constitution of the RF⁶. This confirms the argument that criminal law is changing under the influence of socio-political factors.

It is also necessary to consider the concepts of crime developed during the period of validity of the normative legal acts in question. As is known, the social conditionality of criminal law finds expression in the definition of criminal⁷. According to the Criminal Code of the RSFSR of 1922, any socially dangerous action or inaction that threatens the foundations of the Soviet system and the rule of law established by the workers' and peasants' authorities for the transitional period to the communist system is recognized as a crime. According to the Criminal Code of the Russian Federation, a crime is a culpably committed socially dangerous act prohibited by this Code under threat of punishment. First, it is noteworthy that in the definition of 1922 there is no indication of such an attribute of a crime as guilt. Secondly, the peculiarity of criminal liability at the present time is that it occurs only if there is a *corpus delicti* in the actions of a person. The list of crimes is exhaustive and is established exclusively by the Criminal Code of the Russian Federation. According to the Criminal Code of the RSFSR of 1922 it is noteworthy that any socially dangerous act is recognized as a crime. That is, in this way, the legislator transfers to the law enforcement officer the authority to include any act in the list of crimes. This was due to the tight deadlines for the preparation of the Criminal Code of the RSFSR of 1922; the post-revolutionary state of the country, where the list of criminal acts included actions or inactions that are normal for a state in a stable situation.

The peculiarity of the concept of crime formulated in the Criminal Code of the RSFSR in 1922 explains the possibility of applying the analogy of law, which is directly prohibited in the Criminal Code of the Russian Federation. It seems that the Criminal Code of the RSFSR of 1922 establishes only a criterion for attributing an act to a crime (a threat to the foundations of the Soviet system and the rule of law established by the workers' and peasants' authorities for a transitional period to the communist system), while the Criminal Code of the Russian Federation assumes criminal liability of a person only if the act in question is recognized by it as a crime.

We think that such a difference is explained by the recognition by the Constitution of 1993 of a person as the highest value, a change in the essence of law. A person cannot be criminally liable for an act that was not recognized as a crime at the time it was committed. This is predetermined by such principles of legal responsibility as the principle of lawfulness, the principle of validity, the principle of justice.

Let's consider the purposes of punishment under the Criminal Code of the RSFSR of 1922 and the Criminal Code of the Russian Federation. The common goal for both normative legal acts is to prevent the commission of new crimes.

Both the Criminal Code of the RSFSR of 1922 and the Criminal Code of the Russian Federation set as their aim the correction of the criminal. It is necessary to pay attention to the wording of the goal in question in the Criminal Code of the RSFSR of 1922: "... adaptation of the offender to the community regulations through correctional labor." That is, this goal is carried out exclusively in the interests of the state and society. The legislator intends to change only the external behavior of the criminal for more convenient management of citizens. In the Criminal Code of the Russian Federation, this aim is formulated as "correction of the convict". Thus, the legislator recognizes the need to change the identity of the criminal, and in the interests of the criminal himself, which also corresponds to Article 2 of the Constitution of the Russian Federation. Undoubtedly, the correction of a person that has committed a crime is carried out in the interests of society and the state, but this provision is secondary, since a person is considered as the highest value. The State recognizes that it is necessary to correct the convict in order to continue his normal functioning in society, not for more convenient management of him.

We shall note that the Criminal Code of the RSFSR established as the purpose of punishment the deprivation of the criminal of the possibility to commit further crimes. This provision could be interpreted as private prevention, but it had already been established by another paragraph of the article under consideration. Thus, the purpose of the punishment was the punishment itself. There is no such provision in the Criminal Code of the Russian Federation.

The Criminal Code of the Russian Federation establishes the restoration of social justice as one of the goals of punishment. It is noteworthy that this goal is mentioned the first in the article of the normative legal act. It seems that this is not accidental. Thus, the legislator emphasizes that the purpose of punishment is not the very deprivation of personal, proprietary or of an organizational nature, but the restoration of the interests of the individual, society, and the state violated by the crime. If the subjective law and the norms of objective law have been violated, then the person must be punished accordingly. Thus, this provision declares both the need for compensation for the violated right, and the proportionality of the punishment to the act.

⁵ The Constitution of the Russian Federation (adopted by popular vote on 12.12.1993 with amendments approved during the all-Russian vote on 01.07.2020) [Electronic resource]. Access from the LRS "ConsultantPlus". URL: http://www.consultant.ru/document/cons_doc_LAW_28399/ (date of access: 16.11.2021).

⁶ Naumov, A.V. Domestic Experience of Using Criminal Legislation as a Tool for Solving Political and Socio-Economic Problems. "Development of National Legislation in the Context of Globalization: The Experience of Russia and the Countries of the Asia-Pacific Region": Findings of the International Scientific-Practical Conf. Ex. Ed. Prof. A.I. Korobeev. Vladivostok: FEFU, 2011. P.368–371.

⁷ Gamidov, R.T. Social Conditionality of Criminal Punishment. Problems of Economics and Legal Practice. 2014. No.6. P.46–50.

It is necessary to pay attention to the system of punishments. In the Criminal Code of the RSFSR, the death penalty is not included in the general system of punishments, but nevertheless execution is established as a punishment for counterrevolutionary outrage, banditry, embezzlement on an especially large scale, robbery. In the penal system of the Criminal Code of the Russian Federation, there is also such a punishment as the death penalty. Referring to the Special part of this Code, we find out that the death penalty is imposed for murder, assault on the life of a state or public figure, assault on the life of a person exercising justice or preliminary investigation, encroachment on the life of a law enforcement officer, genocide.

Thus, in the Criminal Code of the RSFSR of 1922, the death penalty was imposed mainly for state crimes. In the Criminal Code of the Russian Federation, one can also observe that the death penalty is imposed for crimes against the order of government, against justice. It should be noted that the Russian Federation is a democratic state, therefore the crimes in question are crimes that infringe primarily on the interests of the entire people as a whole.

Let's consider some types of punishments applied to criminals under the Criminal Code of the RSFSR of 1922 and the Criminal Code of the Russian Federation. Many of them are similar, it seems necessary to consider those that are inherent only in individual codes.

One of the punishments under the Criminal Code of the RSFSR of 1922 is expulsion from the borders of the RSFSR for a period of time or indefinitely, which was actively applied to Soviet citizens. There is no such provision in the Criminal Code of the Russian Federation, since according to Article 4 of the Federal Law "On Citizenship of the Russian Federation"⁸ a citizen of the Russian Federation cannot be expelled from the Russian Federation or extradited to a foreign state. The Federal Law "On Citizenship of the Russian Federation" refers to the branch of constitutional law. As you know, constitutional law is a fundamental branch that establishes the starting points of legal regulation in all other branches of law. This explains the absence in the Criminal Code of the Russian Federation of such a type of punishment as expulsion from the borders of the state.

Another aspect to the need for the existence of exile from the borders of the RSFSR in the system of criminal penalties is also worth attention. There were many foreign citizens on the territory of the state whose property was nationalized.⁹ Thus, the stability of the system established as a result of the revolution and the further development of the Soviet state were ensured. This confirms the idea that punishments were determined on the base of the current social conditions.¹⁰

The Criminal Code of the RSFSR of 1922 establishes full or partial confiscation of property as one of the types of punishment. The Criminal Code of the Russian Federation, in turn, allows the confiscation of property only if it has been obtained as a result of committing crimes; is intended for financing terrorism, extremist activities, organized groups, illegal armed formations, criminal community; is a means of committing a crime belonging to the accused. This difference can be changed by reshaping the essence of the state. The Criminal Code of the RSFSR of 1922 was Soviet in nature, there was no private property, and personal property had no high value for the state. The Criminal Code of the Russian Federation is a code in force in a state with a mixed economy. The Constitution of the Russian Federation in Article 8 declares that private, state, municipal and other types of property are recognized and protected equally in the Russian Federation. The legislator respects the private property of individuals. Criminal liability directly affects the identity of the offender, which is explained by the purposes of criminal liability established by the Criminal Code of Russian Federation.¹¹

Thus, the general parts of the Criminal Code of the RSFSR of 1922 and the Criminal Code of the Russian Federation differ from each other. Undoubtedly, there are institutions and corpuses delicti developed by the legislator during the preparation of the Criminal Code of the RSFSR in 1922, which are reflected in the current Criminal Code of the Russian Federation. However, the State has undergone a transformation accompanied by a change in core values. Different criminal laws are applicable at different stages of social development. This proves that the criminal law is an instrument in the hands of the State. It always protects the most significant interests of society, which are determined by objective factors and by the will of the legislator, but these interests may be different. Thus, on the example of the Criminal Code of the RSFSR of 1922 and the Criminal Code of the Russian Federation, the socio-political conditionality of criminal law is proved.

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⁸ On Citizenship of the Russian Federation: Federal Law No.209-FZ of 31.05.2002 (as amended on 13.07.2020) [Electronic resource]. Access from the LRS "ConsultantPlus". URL: http://www.consultant.ru/document/cons_doc_LAW_36927/ (date of access: 16.11.2021).

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