




<https://doi.org/10.22363/2313-2337-2022-26-4-890-920>

Research Article

## Model of the Soviet criminal law codification: methodological, legal and technical features

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**Abstract.** Researched process of theoretical preparation and practical experience in developing the first Soviet criminal code. It reveals the special significance, legal accessibility and partial continuity of certain provisions and constructions of the RSFSR Criminal Code of 1922, whose centenary is being celebrated this year by the Russian historical-legal and criminological community. The authors emphasize the advantages of legal codification projects, scientific doctrine (legalistic and sociological schools) and post-Russian Revolution law-enforcement practice for consistent codification by means of elaboration and adoption of drafts under the scheme: Code of Statutes / Code — Guiding principles — Republican code — basic Union code. The article analyzes the key provisions of the General and Special parts of the Republican Penal Code of 1922. It notes their keen political focus, class character of the penal system and their descending ladder, elaboration of crime from formal to substantive, the concept of potential danger and the analogy of law, paradoxical humanization by consolidating the system of social protection and non-custodial measures, new excluding circumstances, and juvenile system of penalties for minors. The research employs the system-structural, comparative-historical and functional methods, as well as special methods of technical and legal analysis, dogmatic interpretation and description of legal events and processes in specific historical circumstances of Soviet Russia in 1920s.

**Key words:** revolutionary sense of justice, socialistic lawfulness, Soviet legalism, expediency, codification, criminal law, legal technique, draft law, crime, guilt, repression, types of punishment, penalty, measures of social protection, dangerous personality

**Conflicts of interest.** The author declares no conflict of interest.

*Article received 20th September 2022*

*Article accepted 15th October 2022*

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**For citation:**


Trikoz, E.N. (2022) Model of the Soviet criminal law codification: methodological, legal and technical features. Trans. from Russian by E.E. Gulyaeva. *RUDN Journal of Law*. 26 (4), 890—920. <https://doi.org/10.22363/2313-2337-2022-26-4-890-920>

<https://doi.org/10.22363/2313-2337-2022-26-4-890-920>

Научная статья

**Модель советской уголовно-правовой кодификации:  
методологические и юридико-технические особенности**

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**Аннотация.** Исследован процесс теоретической подготовки и практического опыта создания первого советского уголовного кодекса – УК РСФСР 1922 г., столетие которого российское историко-правовое и криминологическое сообщество отмечает в этом году. Выявляется его особая значимость, юридическая доступность и частичная преемственность отдельных положений и конструкций. Автор анализирует также предшествующие проекты уголовно-правовой кодификации, научную доктрину (легистская и социологическая школы) и практику после Русской революции для последовательной систематизации путем принятия проектов по схеме: уложение/свод — руководящие начала — республиканский кодекс — союзные основы. Проведен обзор ключевых положений Общей и Особенной части республиканского УК 1922 г., выявлены их острая политическая направленность, классовый характер «нисходящей лестницы» наказаний, развитие понятия преступления от формального к материальному, концепция «потенциальной опасности» личности и применения аналогии закона, наряду с парадоксальной гуманизацией положений кодекса за счет закрепления в нем системы мер социальной защиты и мер, не связанных с лишением свободы, введения новых исключаяющих обстоятельств, ювенальной системы наказаний для несовершеннолетних, и др. В исследовании применены сравнительно-исторический, системно-структурный и функциональный методы, а также приемы технико-юридического анализа, догматического толкования и описания правовых событий и юридических процессов в конкретно-исторической обстановке советской России периода 1920-х гг.

**Ключевые слова:** революционное правосознание, социалистическая законность, советский легизм, целесообразность, кодификация, уголовное право, юридическая техника, проект закона, преступление, вина, репрессия, наказание, меры социальной защиты, опасная личность

**Конфликт интересов:** Автор заявляет об отсутствии конфликта интересов.

*Дата поступления в редакцию: 20 сентября 2022 г.*

*Дата принятия к печати: 15 октября 2022 г.*

**Для цитирования:**

Трикоз Е.Н. Модель советской уголовно-правовой кодификации: методологические и юридико-технические особенности // RUDN Journal of Law. 2022. Т. 26. № 4. С. 890—920. <https://doi.org/10.22363/2313-2337-2022-26-4-890-920>

**Formalization of the Soviet criminal law codification doctrine**

In the early years of the Soviet state framing of a breakthrough system of revolutionary legislation was envisioned as developing the Code of Laws of the Russian Revolution; it was intended to replace the Code of Laws of the Russian Empire. As pointed out by P. I. Stuchka, “The old laws, in particular the sixteen volumes of the Code of Laws of the Russian Empire, were thrown into the fire of the revolution<sup>1</sup>”. The new code was supposed to be a universal collection of laws existing on a certain date and ending many years of full-scale taxonomy of the law in the country. Part five of the Code was to comprise criminal laws. In fact, among the extant drafts of the Revolutionary Code, the criminal law and judicial system sections are the most complete. When drafting them, the Russian People’s Commissariat of Justice referred to the Judicial Statutes of 1864 and the Criminal Code of 1903 (Yashchuk, 2021:40).

However, the work on creating the Complete Code of Laws of the Soviet Republic failed to satisfy the party leadership. Rather than drafting new Soviet laws and codifying them, all efforts were focused mainly on *repairing* the old ones. Therefore, a new scheme for the large-scale systematization of Soviet law, including criminal law, was proposed. It included the systematic collection of existing legislation, promulgation of branch codes and general codification and regular updating of the Law Card Index to keep Soviet legislation up to date.

In December 1917, the RSFSR Commissariat of Justice headed by I.Z. Steinberg, Socialist Revolutionary, who had studied law at Heidelberg University in Germany, announced drafting the Soviet Criminal Code. That draft was to be created as a document reflecting the policy of continuity, and a kind of a transition act between the criminal legislation of the Russian Empire and the RSFSR (Shchelkagonova, 2016:127—135). Later, in March of 1918, the draft of the Soviet Code<sup>2</sup> was put together; it codified all the articles of the Criminal Code of 1903, “not abolished by the revolution”. Nearly 200 out of 380 articles of the Soviet Code of 1918 were identical but the Soviet Code also included the relevant clauses of the decrees of late 1917 — early 1918. In parallel, separate Guidelines for the Implementation of Criminal Laws by Local and District National Judges were drafted and circulated to the regions (Tokareva, 2019:154—160).

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<sup>1</sup> Stuchka P.I. Anniversary of the first decree. The Pravda newspaper. 07 December 1918.

<sup>2</sup> New Criminal Code. Izvestia VTSIK. 1918, No. 73, 5.

However, the Civil War broke out (May 1918—October 1922) and in the summer of 1918 the leadership of the RSFSR Commissariat of Justice changed to Bolshevik leaders, first headed by P. I. Stuchka and then by D. I. Kursky; thus, a radical rejection of the whole “Czarist criminal law” became apparent. Nevertheless, up to 30 November 1918 the Criminal Code of 1845 regulated the sphere of criminal law. The Criminal Code of 1903 continued to be fully in force only in Latvia, Lithuania and Estonia (Kuznetsova & Tyazhkova, 2002:21).

A new working group was, therefore, to start drafting a Soviet code in the spirit of “socialist legal consciousness” and “revolutionary legality”. Let us remind that the Decree of November 30, 1918 On the RSFSR People’s Court (Regulations) explicitly obliged to be guided by “socialist legal consciousness” in the absence or incompleteness of Soviet laws<sup>3</sup>. At that time the *Izvestia VTSIK* began to critically analyze the realization of “revolutionary legality” during the Civil War, “militarized justice” and “destructive revolutionary amateurism” in the judiciary which lead to the discussion on the essence of “revolutionary legitimacy” and its reflection in codification of the Soviet power acts (Abdurakhmanova, 2008:20—25).

V.I. Ulyanov (Lenin) clearly articulated “the basic principles’ definition and stages of the legislative process as well as requirements imposed on the structure, form and language of normative acts” (Kerimov, 1995). According to I. I. Erkanov, “legal knowledge... allowed V.I. Lenin... to lay the foundations of Soviet legislation” (Erkanov, 1969:172). As early as the spring of 1918, Lenin personally invited senior officers of the Narkomjust to discuss “1) the work done for publication of the Collection of Statutes and Ordinances; and 2) codification...” (Lenin, 1970:59). In his work *The State and the Revolution* he noted that without “its” new system of law the proletarian state could not meet its social purpose properly. The emphasis was placed on the increased legal force of the positivist codes, capable of determining the criminal policy of the young State for a long time, while ensuring, through its legal and technical means, the stability of the political system of the Soviet system (Kozlovsky, 1918:21—28).

The Bolsheviks’ choice of codification as a priority form of taxonomy is explained in general by its association with the revolutionary transformation of law, law innovation and law-making component, which is paramount in this form of taxonomy (Hazard, 1948:32—44). The primary objective, therefore, switched to partial, sectional and then universal codification, followed more appropriately by substantive incorporation (Yashchuk, 2021:15).

Sectoral codes had to conform to the political doctrine of codification, which began to take shape under the watchful eye and direct participation of V.I. Ulyanov. He sought to prevent “depoliticization of criminal law” in its codified form and erosion of the conceptual integrity of the Bolshevik political doctrine underlying the first Soviet codes. That created the unique phenomenon of Soviet *two-level law*,

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<sup>3</sup> Collected Laws of the RSFSR. 1918, No 85, Art. 889.

where the *higher law* of the Bolshevik Party was formed alongside the official legal system (Alekseev, 1999: 499, 509).

The codification of the new branch of Soviet criminal law during the period of fierce class struggle and beginning of the Civil War was accelerated by the development of a “revolutionary legal consciousness” and Marxist-Leninist understanding of law (Stuchka, 1923:38—39). The Soviet criminal law theory in those years was based on the Normativist (Legist) conception of law, which was consolidated in the works of M. Reisner, P. Stuchka, M. Strogovich and others, with an emphasis on *revolutionary legal consciousness* as a transitional type from the bourgeois to the Soviet legal worldview (Reisner, 1925).

The normative basis of the first wave of branch codification was the RSFSR Constitution of July 10, 1918 and the resolution of the Sixth All-Russian Congress of Soviets, which recognized formation of the basic laws of the Russian Federation (Kursky, 1919:23—39). The principles of the *classic school* of criminal law were in force during the first two years until the Guidelines were adopted in 1919. The Soviet Criminal Code of 1918 (Gracheva, Malikov & Chuchaev, 2015) remained, however, a doctrinal project and a criminal law monument which codified the previous achievements of the national criminal law thought. According to English historian E. Kappa, there was a conflict between the principles of continuity and change in Soviet Russia after the revolution: “the longer the time that passes after the revolution, the stronger the principle of continuity” (Carr, 1964:3—5). Codification traditionally aims at ensuring the continuity of the law, its stability, orderliness and consistency (Rakhmanina, 2005:13). For this reason, in its early stages, Soviet criminal legislation was characterized by a combination of continuity and revolutionary nature, class interpretation of criminal law borrowings of certain categories, theories and doctrines of pre-revolutionary Russia (Borisova, 2011:100—115).

### **Criminal law partially codified in the 1919 Guiding Principles**

The second and more successful attempt was the partial codification in the form of the Guidelines on Criminal Law approved by the Resolution of the RSFSR Narkomjust of December 12, 1919<sup>4</sup>. They were developed with participation of such prominent jurists and criminologists as P.I. Stuchka, M.Y. Kozlovsky, D.I. Kursky, P.A. Krasikov, L.A. Sovrasov, N.A. Cherlyunchakevich, and some others (Shishov, 1980:87—88). The comparative analysis of M. Kozlovsky’s works (Kozlovsky, 1918:21—28) and the text of the Guidelines shows that many of the provisions coincide (for example, in the preamble and definition of the purposes of punishment) (Okuneva, 2016:121). Doctrinally, this document was based on the Bolshevik interpretation of the Legalist view of law, sociological school

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<sup>4</sup> Collected Laws of the RSFSR. 1919. No. 66. Art. 590.

of criminal law and, partly, the psychological theory of law (Skorobogatov & Rybushkin, 2018:169—170).

The Guidelines were the first experience of enacting a codified General Part of Soviet criminal law. They were intended as a binding, rather than advisory, act for both citizens and foreigners throughout the Republic; they were applied as a normative basis for criminal law, determining the law-enforcement vector for Soviet judges and laying down the principles and ideological framework of judicial interpretation (at the level of the people's courts, revolutionary and military tribunals).

The Draft of the Special Part was not yet ready at that time and its elaboration was still underway when the local courts started applying the Guidelines (Solomon, 1981:9—43). Concurrently, some elements of specific crimes were criminalized in the existing decrees of the Soviet power (for example, the Decrees of the Council of People's Commissars on Combating Bribery of 08.05.1918 and 16.08.1921 and the Decree of the National Commissariat of Justice, the National Commissariat of Trade and Industry and the All-Russian Central Committee on Labor Desertion of 29.01.1921, 01.01.1921, Decree of the All-Union Central Executive Committee and the Council of People's Commissars on Combating Embezzlement from State Depots and Official Crimes of 01.06.1921, Resolution of the Council of People's Commissars on False Denunciation of 24.11.1921 and on Combating Smuggling of 08.12.1921).

Structurally, the Guidelines consisted of 27 articles (paragraphs), which were divided into a preamble (an ideological introduction setting out the objectives of Soviet criminal policy and the function of "proletarian criminal law") and eight thematic chapters with the institutions of the General Part. The first and second chapters On Criminal Law and On Criminal Justice underlined the repressive function of Soviet criminal law, administered by the courts of the people's and revolutionary tribunals in the RSFSR and abroad according to the principle of extraterritoriality, regardless of the territory where the crime was committed (Article 27). Chapter Three On Crime and Punishment (Articles 5—16) contained a formal definition of crime in the class society as an act violating the order of social relations and encroaching on the foundations of public security; the concept of punishment was introduced as a defensive measure of coercive influence with the aim of social isolation of the criminal, his adjustment to the Soviet order or physical destruction but without signs of torture or torment. For the first time the Guidelines introduce into Soviet criminal law norms-definitions of punishment in an ethical-humanistic way (Uporov, 2016:71).

From a legal and technical point of view, the text is fragmentary, excessively detailed and even casuistic in places. For example, Article 12 of the Guidelines lists several mental states of the perpetrator at once: "deliberate intention, cruelty, malice, guile, cunning..." and Article 19 contains a lexical redundancy in the definition of preparation for crime: "seeking, obtaining or fitting out". By contrast, other parts of the Code contain abstract or overly rubber-stamp provisions (starting

with the definition of *Soviet criminal law* in Article 3), thus, opening the door to wide judicial discretion on the ground (Gertsenzon, 1938:8—12).

Guided by humanitarian considerations and the principle of personal guilt, the legislator enshrined prohibition of criminal penalties for minors under 14 and the mentally ill, who were instead assigned educational measures (adaptations) or therapeutic measures and precautions. In Chapters Four, On the Stages of the Offence (Articles 17—20), and Five, On Complicity (Articles 21—24), the legislator, although distinguishing between the stages of preparation, attempt and finality, departed from the classical school of criminal law in determining punishment by establishing the same measure of repression regardless of the stage of criminal intent and the degree of participation (perpetrator, instigator, accomplice, except organizer) in acts committed by a group of persons (gang, band, mob). Chapter Six, Types of Punishment (consisting of only one Article 25), along with the multilevel system of seventeen “exemplary punishments” (from indoctrination to execution) included a humane and simultaneously populist note that “the people’s courts do not apply the death penalty”. The VTsIK and SNK Decree of 17.01.1920 abolished the use of capital punishment by shooting “the enemies of Soviet power” in connection with the “defeat of the armed forces of counterrevolution” and resignation of Admiral A.V. Kolchak as “Supreme Ruler of White Russia”. Finally, Chapter Seven, On Probation (Article 26), introduced a new institution of deferred adjudication until “the convicted person commits an act identical or similar to the one committed”.<sup>5</sup>

According to T.F. Yashchuk, the Guidelines of 1919 had “not a theoretical but a purely applied nature as it was an instruction for the subordinate judicial institutions” (Yashchuk, 2021:12). At the same time, the list of punishments in the Guidelines was approximate, which signified lack of the principle of certainty in the system of punishments and gave rise to judicial discretion at the local level (Melyukhanova, 2016:73—88).

### **Drafting the RSFSR Criminal Code in 1920—1922**

In the context of criminal law development, the decisions of the 11th All-Russian Conference of the RCP(b) on December 19—22, 1921 obtained an important ideological significance. The Conference gave the status of a “party directive” for the development of wide codification work (especially the Resolution On the Party’s Immediate Tasks in Respect of Economy Restoration). “The strict liability of the organs and agents of power and citizens for violating the laws created by the Soviet power and the order protected by it must go hand in hand with strengthening the guarantees of the rights and property of citizens. Created during

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<sup>5</sup> Collected Laws of the RSFSR. 1919. No. 66. Art. 590.

the revolution and based on the economic policy carried out by the authorities, the new forms of relations had to be expressed in law and protected by courts”<sup>6</sup>.

The theoretical model of codification was periodically revised and adjusted during the years of legal construction. It was contextualized by the policy of war communism and reconstruction of the postwar economy as a way of uniformly implementing Party directives according to the principle of “a minimum of form, a maximum of class substance” (Rybakov, 2017:59). The 1919 Guidelines, which consolidated the basic provisions, served as an applied normative reference for judicial-tribunal practice and other normative acts (Kozachenko, 2019:3—34).

The vector of criminal law development, to which the Soviet criminal law was equated (legalistic understanding), was determined by considerations of the tactical survival policy of the young state and the interests of state security of the Soviet Republic rather than the strategic criminal policy (Leonov, 2004).

The changed post-war legal order in the NEP conditions, aimed at ensuring the economic efficiency of the new political and legal system, required a U-turn towards a partial reception of traditional legal categories and legal institutions in the process of recodification of the criminal law under the influence of the sociological school of law. Simultaneously, to legalize the Soviet political system, “general political requirements for the normative content of all codes” were introduced into the theoretical framework of the legal order; they were intended to ensure the stability of the Soviet state and “revolutionary legality regime” through their legal characteristics and coercive means (Nikulin, 2021:25).

Such approach was advocated by the first Soviet prosecutor and People’s Commissar of Justice, D.I. Kursky, who urged to consider “revolutionary legality” as a blueprint for a “new system of law” consisting of a series of new laws and revision of old acts under constant party prosecutor-judicial control. It was primarily “a proletarian court, reinforced by state prosecution” and other bodies “called to guard the principles of revolutionary legality based on strict responsibility of the bodies and agents of Soviet power and individual citizens for violating laws adopted by the Soviet authorities (Kursky, 1922:3).

In the light of the new tasks set by the Soviet authorities, a continuous codification of the law was announced with the aim of “materialization of the doctrinal provisions of the concept of *revolutionary legality* that would be embodied in the Codes that had been adopted” (Nikulin, 2021:24). Consequently, the first Soviet Codes were to embody and consolidate the multi-level system and branch structure of the new law, thus ensuring the unity of the “punitive-therapeutic regime” of socialist legality throughout the Soviet state. The Codes were also intended to streamline the innovative legal provisions of the Soviet authorities, often dictated by political expediency and conjectural needs, by making them more

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<sup>6</sup> Resolution of the All-Russian Conference of the Russian Communist Party on Revolutionary Legality. Soviet Justice Weekly. 1922, No. 1, p. 14.



formalized and unified than the first revolutionary acts of the Soviet authorities (Danilchenko, 2017:182—184).

Further codification of the criminal legislation and establishment of clearer grounds for liability and more specific measures to be taken were objectively conditioned by proclamation of a unified criminal-punitive policy without revolutionary affectation and blind class intolerance, which had previously characterized it, and by increasing centralization of the state and the need for uniform judicial practice (Solomon, 1980:196—200).

Drafting of the Criminal Code had always been handled by the RSFSR People's Commissariat of Justice. In the war years, however, its specialized codification department with professional penal lawyers was disbanded for obvious reasons. So, the first codification projects, developed in a hurry, reflected the work of laymen; they were rather *rough*, without taking into account the rules of legality and legislative style because of “the lack of *red Speranskie* — communist lawyers who had certain serious experience of law-making” at that time (Ushakov, 1967:126—131).

Illiterate proletarian and peasant law enforcement and judicial officials were not expected to have any special legal skills; half of them had only a primary education. But they were expected to demonstrate “revolutionary legal consciousness and socialist conscience” and make decisions based on “revolutionary morality” and political expediency, rather than on the codes that the authorities were not able to prepare in time (Cheltsov-Bebutov, 1924:54).

The postwar period, with the transition to the NEP, called for the legislative establishment of law and order based on the already renewed principles of criminal policy, universality of law, binding nature of Soviet laws and state's guarantee of workers' rights and interests, which consolidated the new tendency of the gradual transformation of “revolutionary legality” into socialist legality.

Against this background, work on the sectoral systematization of the criminal law, under the direct supervision of the Sovnarkom of the RSFSR and the Presidium of the All-Russian Central Executive Committee, was accelerated. A general scheme of the draft of the RSFSR Criminal Code with its dualistic structure was generally approved by the People's Commissariat of Justice in the summer of 1920. This “scheme of criminal acts under the draft of the new Criminal Code” was presented by jurist M.Yu. Kozlovsky and consisted of seven sections: I. Crimes against the Soviet Republic. II. Crimes against the Organization of Production and Distribution. III. Violation of the Regulations that Ensure the Proper Functioning of the Authorities. IV. Official Crimes. V. Crimes against Life, Health and Dignity of the Individual. VI. Crimes against the Use of Property. VII. Illegal Imprisonment”. Later the development of the draft of the General part of the CC was carried out by the People's Commissar D.I. Kursky himself.

As A.A. Gertsenson pointed out, the drafters aimed at preparing a kind of model criminal law act, which would become the basis for developing criminal codes of the other union republics and “the first step towards a common codified

criminal law for all the republics” (Gertsenzon, 1948:245—246). Narkomjust’s draft was submitted to the Third All-Russian Congress of Soviet Justice, which took the final decision to continue discussion of the code text in the provincial justice departments. Another parallel project of the Criminal Code, a doctrinal scientific-theoretical text prepared by the scientists of the Judicial Law and Criminalistics Section of the Soviet Law Institute in the end of 1921, was presented to the public. Moreover, the experts-criminologists of the Institute also discussed the People’s Commissar’s project. In fact, at the beginning of 1922 the section discussed the report of M.M. Isaev Characteristics of the Draft Criminal Code developed by a special commission at the General Consulting Department of the NKJ.

Discussion of the Criminal Code draft lasted all through 1921 and only in January of 1922 it was submitted for consideration of the IV All-Russian Congress of Soviet Justice workers. The Code was the subject of heated debates among 5,500 delegates from the 11 Soviet Republics, which showed that it needed to be seriously amended. The outcome was that a five-member working committee under the Small Sovnarkom summarized and systematized all the comments received on the current version and submitted a new Criminal Code draft in March 1922.

Writing about the draft, which reflected the “crystallized legal consciousness of the workers” in charge of “justice in the Soviet Republic”, D.I. Kursky metaphorically described it as “a truly Egyptian work, which, as in the field of criminal law, had to be done independently (without precedents and active participation of specialists) in the last two or three months, when the commission members, overwhelmed by paper work, had to work on legislation literally at night” (Shvekov, 1970:15). In his correspondence with the Commissar, Vladimir Lenin insisted on death penalty as the sanction for all counter-revolutionary crimes and crimes against the manner of governance and proposed his own formulation of the Criminal Code article; he defined “counter-revolutionary crime” as propaganda, agitation, participation in or assistance to an organization by intervention or blockade, espionage or financing of the press, or by other means (Lenin, 1970b: 189—190).

The draft criminal code was discussed article by article at the third session of the All-Russian Central Executive Committee of the ninth convocation (12—20 May 1922) after more than a hundred amendments and additions. As a result, a sharp theoretical debate was renewed splitting its ardent supporters and those who were against codification in principle and in favor of granting judges the right to be guided by their “revolutionary legal conscience” (Isaev, 1925a:95—96). Moreover, the draft itself proposed a switch to a system of “indefinite sentences”, removal of the fixed sanction ladder and introduction of the so-called *generic* or indicative offences, which, in effect, legitimized the analogical practice of law (Gertsenzon et al., 1948: 259—260). It has also been suggested that the death penalty should be removed from the general list of punishments. The Presidium of the All-Russian Central Executive Committee held out that all the crimes included in the code should be divided into two large groups for a more coherent revision of

the code: 1) crimes against the social and economic relations established by the Soviet power, and 2) crimes against the remnants of the pre-revolutionary system, whose preservation was essential for the transitional period (Isaev, 1922:17—28; Isaev, 1924:25—36). Administrative offences were excluded from the draft as they were not subject to penalization. Among them were exceeding driving speed limits, appearing in a public place in a state of intoxication, smoking tobacco in unauthorized places, unauthorized use of another's property without the intent to steal.

Finally, the RSFSR Criminal Code, approved in its final version by the VTsIK plenary session on 24 May 1922, was published and came into force on 1 June 1922<sup>7</sup>.

### **Explanatory Political and Legal Assessment of Institutes in the General Part of the 1922 Criminal Code**

The Criminal Code was built on the pandect system and consisted of the General Part and the Special Part, bringing together 227 articles. As N.F. Kuznetsova rightly put it, it was one of the shortest criminal codes in world history (Kuznetsova & Tyazhkova, 2002:32). Three years on, an authoritative scientific and practical commentary by prominent authors — Soviet criminologists (M.N. Gernet, M.M. Grodzinsky, A.A. Zhizhilenko, B.N. Zmieva, M.M. Isaev, P.I. Lyublinsky, S.P. Ordynsky, N.V. Rabinovich, N.A. Tarnovsky, A.N. Trynin (Gernet, 1914; Isaev, 1925; Isaev, 1927; Lyublinsky, 1915; Nabokov, 1910; Nemirovsky, 1916; Ordynsky, 1912; Polyansky, 1922) was published. The authors of that publication included the text of the Fundamentals of Criminal Legislation of the USSR and Union Republics and the commentary on the Regulations on Military Crimes, as well as an article-by-article index of legal literature and chronological index of all amendments and additions<sup>8</sup>.

The authorial team of the commentary to the Criminal Code's included prominent criminologists who had received their legal education in pre-revolutionary Russia and were later called upon to create the doctrinal and practical foundations of the young Soviet law. Most of them were adherents of the popular since the beginning of the 20th century sociological school of criminal law. Adolphe Prinz, at a meeting of the Central Bureau of the International Union of Criminalists in the spring of 1904, introduced a key concept of that school — “the dangerous criminal state”, which called for special coercive measures (Safronova & Loba, 2014:12). The Italian Baron R. Garofalo, another theorist of this school and the criminal-anthropological school, suggested that “dangerous condition” should be understood as a permanent and immanent (intrinsic) propensity of a

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<sup>7</sup> Resolution of VTsIK On Enactment of the Criminal Code of the RSFSR (together with the Criminal Code of the RSFSR) dated 01.06.1922. Collection of Laws of the RSFSR. 1922, No.15, Art. 153.

<sup>8</sup> Criminal Code: Practical Commentary. Edited by M.N. Gernet and A.N. Traynin. With amendments and additions as of June 1, 1925. Moscow, 1925.

person to commit crimes (Garofalo, 1880). Advancing the positions of the sociological school, the domestic criminologist A.A. Zhizhilenko classified the “dangerous state” into four categories: 1) persons who repeatedly committed certain crimes, especially serious ones; 2) insane and not quite sane persons who committed serious crimes; 3) persons who committed crimes due to their idleness, debauchery or intoxication (Zhizhilenko, 1912:35—44).

In 1920—1922, the drafting of the RSFSR Criminal Code was based on the doctrinal ideas of the sociological school of criminal law (Berman, 1919; Trainin, 1914) and the doctrine of the *socially dangerous person* (Stankevich, 1914), which had gained popularity among the Bolsheviks. The institutions known to Soviet doctrine and criminal law, such as recidivism of crimes, person’s criminal record, compulsory measures of medical nature, educational measures, etc., were subsequently constructed from the theory of *socially dangerous state* (Safronova & Loba, 2014: 15).

Almost the whole General part of the RSFSR Criminal Code of 1922 (Chapters I—V; Articles 1—56) reflected in a concentrated way the results of the five years’ judicial and investigative practice and basics of the Soviet criminal policy with all the specificity of its objectives, methods and means of implementation, as well as the new system of protected values.

The General Part outlined the spatial and temporal limits of the criminal law where the rule on the retroactive effect of the criminal law (Article 23) seemed rather controversial. The substantive and class definition of the crime was defined for the first time in the history of the Soviet criminal law; it was described as a socially dangerous deed committed with guilt and liable to punishment (Article 6) (Piontkovsky, 1923). An attribute of wrongfulness (prohibited by criminal law) was absent from the construction of the concept of crime, but that Code officially enshrined the analogy of the criminal law for the first time (Article 10). Despite all the legal risks and practical nuances, the analogy was admitted under the conditions of the Civil War and uncertainty of emergence of new types of crime in a socialist state that had never existed before (Lysenkov, 2016:29—36). Thus, sanctioning application of analogy was aimed at the possibility of “class interpretation” of the Criminal Code by judges based on socialist (proletarian) legal consciousness as a motivational basis for the imposed punishment; it quite freely interpreted the code from the standpoint of lenient or harsh penalty, depending on class affiliation.

Two basic forms of guilt — intent and negligence — were formulated in the RSFSR Criminal Code; stages of crime and some exclusionary circumstances were singled out, long periods of criminal prosecution, rules for determining a particular punishment among different kinds and types of social security measures and procedure for serving the sentence were outlined. That chapter, being clearly of a penal nature, was later transferred to the 1924 Correctional Labor Code of the RSFSR.

More clearly and elaborately were outlined the objectives of Soviet criminal law (Nemirovsky, 1904:1—46; 73—136). In 1922, the most important task of the

Criminal Code, where the influence of the sociological school of criminal law was especially noticeable, was the “legal protection of the workers’ state from crimes and socially dangerous elements” carried out by means of penalties or other “measures of social protection” against “violators of the revolutionary legal order” (Art. 5) (Piontkovsky, 1923:12—52). Further, according to the positions of the sociological school, it stipulated that the danger of a person “is detected by the committed acts harmful to society or by activities indicating a serious threat to public order” (Article 7).

The social-criminal concept enshrined in the Code was inspired by the reality of growing social tension. In comparison to the Italian Criminal Code of 1921, which was considered an “icon of the sociological school” at that time and did not mention punishment at all, using instead the term “sanctions”, the Soviet legislator took a more moderate stance: criminal punishment was kept separate as a special type of social protection measures. In this respect, both the Soviet Code of 1922 and the Italian Code of 1921 (drawn up by the most eminent criminologists E. Ferri, R. Garofalo, Florman, Grispigny and others), incidentally, did not have separate articles on sanity and individual guilt as grounds for responsibility, but considered criminal punishment with reference to the “dangerous offender state”.

A pre-revolutionary lawyer and Soviet criminalist Emmanuel Nemirovsky believed that the terminological features in those two comparable codes, in the absence of the term “sanity” and the concept of individual guilt, were compensated by a detailed description of this mental state, although without using its definition (in Article 17 of the 1922 RSFSR Criminal Code and in Chapter V On Habitual Criminals of the 1921 Italian Criminal Code) (Nemirovsky, 1924:3—13). Textually, the concept of *insanity* in the Soviet Criminal Code was expressed in the formulation “almost identical to the biological formula”, describing the mental state of such persons; however, the term itself was specified not in the substantive but in the procedural law — the Criminal Procedural Code of the RSFSR (Articles 200, 204, 325 and others).

Unlike the Guidelines of 1919, there were separate provisions (Article 11) on culpability in the RSFSR Criminal Code. Negligence as a form of guilt presupposed the actions when offender not only could but should have foreseen the consequences of his actions hoping to prevent them. The legislator may have relied in part on the wording of Article 48 of the 1903 Criminal Code, distinguishing between direct and involuntary intent in determining the intentional form of guilt.

The Moscow provincial prosecutor A.Y. Estrin compared the provisions on attempted crimes and forms of complicity in the Criminal Code of 1903 in his review article. He argued that Article 13 of the Russian Soviet Federative Socialist Republic’s Criminal Code (1919) contained a certain improvement in the construction of the attempted crime, compared with the corresponding Article 18 of the Guidelines, which did not cover the “well-known group of unmistakable attempts when the crime was started but was stopped halfway through either by circumstances beyond his control or at the impulse of the attempted person”.

The wording of Article 13 of the Code was wider and more precise; it categorized as an attempt both cases where the offender “failed to do all that was necessary to bring his intention to execution” and “where, despite doing all that he thought necessary to bring his intention to execution” and “where, despite doing all that he thought necessary, the criminal result did not come about for reasons not depending on him”. Under the Criminal Code of 1903 an attempt which was not realized of one’s own free will was not punishable, and the Code of 1922 established in Article 14 that “an attempt which was not brought to completion because of the voluntary will of the attempted person is punished as if it was actually committed by him” (Estrin, 1922:2—3).

Further, in the construction of the institution of complicity in crime there is a noticeable reduction in the definition of “aiding and abetting” in Part 3 of Article 16 of the RSSR Criminal Code as compared to Article 24 of the Guidelines. The “accessory” as a special accomplice is not mentioned in the General part of the Criminal Code, but in respect to the most important counterrevolutionary crimes this gap was filled by Article 89 of the Criminal Code, which read: “The failure to report the known forthcoming crimes under Articles 58—66 of the Criminal Code is punished by imprisonment for a term of up to one year”. In other cases, the nature of connivance could be recognized in cases of inaction on the part of an official, which was equated to inaction of authorities provided for in Article 107 of the Criminal Code.

Article 19 of the RSFSR Criminal Code formulated the institute of “necessary self-defense” more broadly than Article 15 of the Guidelines, as it allowed self-defense against “illegal infringement on the personality or rights” for not only the defender, but also other persons. Under Article 20 of the Code, the notion of *extreme necessity* was a novelty, compared with the absence of such circumstance in the Guidelines.

Under the Soviet Criminal Code, which followed the established typology in criminal doctrine and the Italian Criminal Code of 1921, two types of “dangerous state” were distinguished — pathological and non-pathological in nature. The Italian code, for example, designated them as “congenital disorder” and “acquired propensity to commit a crime”. The Italians (1921 draft), as well as some countries of the British Empire, practiced the category of “indeterminate sentences” for the most serious crimes in case of a “habitual criminal behavior”. By contrast, the 1922 Soviet Criminal Code abandoned indeterminate sentences and set maximum punishments depending on the danger of the person and the act itself. For example, a maximum of 10 years’ imprisonment was fixed for unqualified premeditated murder or a 2-year sentence for leaving a person in a life-threatening situation unaided in situations requiring duty of care.

Compared to other “social protection measures”, the institution of punishment was different in its specific nature; it combined measures which were already known in criminal legal doctrine and foreign legislation at the time and ranged from suggestions and public censure to incarceration with strict isolation and death

penalty (by firing squad). A novelty, probably borrowed from the Italian Criminal Code of 1921, was a form of punishment such as “forced labor without confinement”. Constructed in the Criminal Code of 1922, hierarchical system of punishments also included expulsion from the RSFSR, prohibition to hold a position, fine and such an unusual type of punishment as “compulsory study of a political literacy course”; it took into account the degree of severity, nature of the crime, and the offender’s degree of “social danger” (Estrin, 1927).

Obviously, the developers of the Soviet Criminal Code followed the pre-revolutionary system of punishments in the Criminal Code of 1903, which contained a “descending ladder” from more severe to less severe punishments. The Soviet legislation, in contrast to the 1919 Guidelines, opted for an ascending approach to the penal system so that courts could be guided by a codified system, first considering the least severe sanction, and then moving on to more severe penalties when that was not possible. The system of punishments established in the Soviet legislation, according to A. A. Zhizhilenko, was distinguished by the following features: economy of punitive means, individualization of punishment and involvement of society in the fight against crime (Zhizhilenko, 1923:63—71).

The Criminal Code of 1922 more accurately reflected the principle of formal legal certainty in the description of the system of punishments, whereas previously the Guidelines contained only an approximate (in fact, open to the discretion of judges) list. The Code, as explained by M.N. Gernet, adhered to the system of relatively definite punishments, specifying the exact type of punishment and establishing “the maximum that judges should not exceed or the minimum that they should not lower” (Gernet, 1922:69).

Groundbreaking for all previous acts of Soviet power was Article 49 of the RSFSR Criminal Code, which allowed for the punishment of “socially dangerous elements”, even if they had not committed any criminal acts at the time but had a criminal record in the past or maintained links with criminals or criminal associations.

If we compare the 1922 Russian Criminal Code with the Fundamental Principles of the Criminal Legislation of the USSR and Republics as amended in 1924, then the union code basically abandoned the term *punishment* and replaced it with “social protection measures” (measures of a judicial-correctional, medical and medical-pedagogical nature), of which only judicial and correctional measures were “punishment” in the proper sense of criminal law (Zhizhilenko, 1911).

At that stage, the term *punishment* was apparently considered unacceptable for the socialist legal consciousness, as it was dogmatically and ideologically linked to the notion of *retribution* rather than *repression* or *criminal punishment* understandable in the criminal-legal ideology of the Soviet period (Noy, 1973:12). According to Soviet lawyer A. Estrin, such rejection can be interpreted as the final break in Soviet criminal law doctrine and practice from the previous,

pre-revolutionary, fetishistic legal categories and constructions with the criteria for criminal repression (Estrin, 1927:83).

The ideological and normative influence of the 1924 Union Fundamentals contributed to partially recodification and updating the RSFSR Criminal Code. In its revised version of 1926, there was a clearer distinction between *punishment* and other *social protection measures* (of a medical, and medical-pedagogical nature). In the updated Article 7 of the Criminal Code, for example, the grounds for their application included not only the commission of a crime as a socially dangerous act, but also the state of “danger of the person” associated with the criminal environment or his past activities. Back in 1924, the Criminal Code was supplemented with two new social protection measures: 1) deprivation of parental rights, and 2) bail of a minor to parents, relatives or other persons on condition that the court bears full knowledge of the life and personality of the bail bondsman (Article 46) (Bagriy-Shakhmatov, 1969:18).

As for the update of the list of penalties in the RSFSR Criminal Code (10 of them in Article 32), we note that three sanctions practiced in the judicial and punitive policy of the Civil War period, were excluded, namely: announcing an enemy of the revolution or the people, announcing outside the law and announcing boycott. At the same time, new penalties, such as banishment from the country and pecuniary penalty, were added to the Criminal Code. The death penalty was not included in the list but was included in a separate article of the Code as a temporal measure, which would soon be lifted. The death penalty was provided as a sanction for crimes in almost twenty articles of the 1922 Criminal Code, more than half of which were counter-revolutionary in nature. M.N. Gernet called this established system “the eleven rungs of the ladder of punishment” (Gernet, 1922:65).

A conceptual weakness of the General Part of the RSFSR Criminal Code of 1922 can be considered the political and ideological influence of the principles of class struggle and expediency of repression, as well as the contradictory combination of ideas from normative, sociological and anthropological schools of criminal law. The legislator has not been able to logically and consistently unite in the Code the opposing approaches to the grounds for criminal liability, punishment and social protection measures. After several years of application of the RSFSR Criminal Code and the Union Fundamentals, it became clear that the rigorous rejection of the term *punishment* was erroneous (Shargorodsky, 1958:19). Moreover, the introduction of the vague wording “social protection measures” together with the concept “dangerous state” with its vague criteria and in combination with the analogy principle of the law, led in practice to rather gross violations of socialist legality, judicial arbitrariness, and neglect of the formal and legal grounds for responsibility. The ideas of the sociological criminal law school and the concept of *dangerous state* finally left Soviet discourse in the 1930s (Okuneva, 2016: 120).



### **Characteristics of the Special Part of the 1922 Criminal Code**

Eight chapters in the Special Part of the RSFSR Criminal Code of 1922 (Articles 57—227) were classified according to the subject of the crime and public danger. Initially, the Special Part of the Draft of the People's Commissariat of Justice (1921) was based on the “method of generic crimes” and general formulas of criminal acts. Such approach essentially stemmed from the reactionary view of the sociological school of criminal law that the Special Part was “an outdated and unscientific part of the law that, at the very least, needs a decisive reduction and generalization of the corpus delicti” (Gertsenzon et al., 1948:259). All those ideas ran counter to the principle of socialist legality and formal definition of specific elements of crime, so the Criminal Code was developed on the principles of socialist legality and formal definition of specific crimes.

The Special Part of the Criminal Code was organized on precise and sufficiently systematic provisions and involved a creative revision of all the criminal legislation and judicial and investigative experience in the fight against crime accumulated during the five years of Soviet power. The Code specifically reflected “socialist legality” and the “spirit of Soviet law” in a politically engaged approach to the systematics of the Special Part, as well as in the construction of political constituent elements. The idea of “revolutionary expediency” manifested itself in the establishment of sanctions directly against political opponents to Soviet power, which was enshrined in Article 27 of the Criminal Code. It distinguished two categories of crimes: “(a) those directed against the foundations of the new legal order established by the workers’ and peasants’ government or recognized by it as the most dangerous, for which the lower limit of punishment determined by the Code shall not be subject to reduction by the court; and (b) all other crimes, for which the higher limit of punishment determined by the court shall be fixed.”

However, in the General Part of the Criminal Code, such binominal division of offences was not then directly reflected in the structure of the Special Part of the Criminal Code. In practice, such a division of crimes by sanction “not below a certain size” often led to the situation where a qualified category of a crime was allocated to one category and a simple form of a crime (basic elements) to another, where the sanction was established according to the formula “up to a certain limit”.

The sanction indicating “the lower limit of imprisonment” was contained in the norms which criminalized repeated or persistent non-payment of taxes or evasion of duties (Article 79), resistance to authority without aggravating circumstances (Part 2 of Article 86), insulting representatives of authority (Article 88), unauthorized appropriation of power of an official (Article 91), theft of documents (Article 92), release and escape of an arrested person (Articles 94 and 95). Given that challenge, the RSFSR Supreme Court, in its 1925 Directive Letter No. 1, decided to clarify through comparison with Article 27 of the Criminal Code, the binominal classification of crimes, avoiding the vague wording in the text of the criminal law concerning encroachments on the “new legal order” and

instructing all local courts to distinguish between the two main groups of acts as follows: the crimes that threaten the very foundations of the Soviet system (primarily counter-revolutionary crimes, espionage, organized crime, corporate and official crimes with grave consequences for the state) and all other crimes (Gertsenzon et al., 1948:253—254).

Devoted to liability for state crimes, Chapter I of the Special Part of the Criminal Code is divided into two subsections on counter-revolutionary crimes (Articles 57—73) and crimes against the manner of governance (Articles 74—104). It should be noted that the central norm of this subgroup in Article 57 of the Criminal Code contained a norm-definition of *counter-revolutionary crime*, acting as an auxiliary tool in courts' application of legal analogy in cases of acts not directly covered by the Code, as well as in interpreting the term *counter-revolutionary* in judicial practice. The definition in Article 57 almost verbatim reproduced Lenin's wording of this composition, borrowed from his correspondence with the People's Commissar of Justice D.V. Kursky (letter from V.I. Lenin dated May 17, 1922) (Lenin, 1970b:190—191). In accordance with the definition, the actual onset of the indicated consequences (the so-called *truncated corpus delicti*) was not required, but only the deliberate focus of such actions on results in the form of "overthrow of the power of the workers and peasants councils won by the proletarian revolution and workers' and peasants' government formed under the RSFSR Constitution", or rendering "assistance to that part of the international bourgeoisie that does not recognize the equality of the communist property system that is replacing capitalism and seeks to overthrow it through intervention or blockade, espionage, financing of the press and other means"). Novella in Part 2 of Article 57 fixed the corpus delicti of an attempt on "the main political or economic gains of the proletarian revolution", where indirect intention and/or implied malice, i.e., deliberate awareness by a person of the counter-revolutionary nature of his act, even if initially he had a purely personal or another goal was considered sufficient.

In subsequent articles of the Criminal Code, three categories of state crimes were distinguished in the form of political, economic and traitorous counter-revolution (Zhizhilenko, 1925:61—72). Thus, Articles 58 and 59 of the Criminal Code criminalized rebellion (or revolt) and treason, while Articles 60—62 punished participation in counter-revolutionary communities as active criminal organizations. Article 64 envisaged a sanction for preparatory actions for counter-revolutionary purposes, as well as participation in terrorist acts directed against representatives of the Soviet government or leaders of revolutionary organizations (communist parties, trade unions, etc.). A broader definition of a counter-revolutionary crime, describing 14 different elements, was given in the Regulations on State (Counter-Revolutionary) and Especially Dangerous Crimes against the Manner of Governance, adopted by a decree of the USSR Central Executive Committee in February 1927. Of all those who supplemented the main corpus delicti in Article 58 of the Criminal Code with the index of counter-revolutionary

acts, only one of them (Articles 58—12) did not entail “the highest measure of social protection.” Several provisions of the updated Article 58 of the Criminal Code were aimed at suppressing any form of “anti-Sovietism”, for example, Article 58—10 on propaganda and agitation for overthrow, undermining or weakening the Soviet power. Failure to report reliably known upcoming and committed counter-revolutionary crimes entailed punishment under a separate article (Article 89 of the Criminal Code) as a crime against the manner of governance (Trainin, 1927:36—46).

The subgroup of ordinary “crimes against the manner of governance” included riots (pogroms, fires, destruction of means of communication, release of those arrested) by a large group of people with weapons, public insult of a representative of authority, theft, damage and/or destruction of documents from state institutions in order to interfere with their functioning, unauthorized appropriation of power, forgery of money, mandates, certificates, encroachment on the income and property interests of the treasury, smuggling, arbitrariness, etc. (Ordynsky, 1924).

Chapter II of the Criminal Code on white-color crimes (Articles 105—118) described the third most important and dangerous category of acts with a special subject — *civil servant* (Article 109) — being the permanent or temporary employees of the Soviet apparatus by appointment or election (Estrin, 1928: 32—33). They could be prosecuted both for bribery, embezzlement of state money or forgery, as well as discrediting the authorities, abuse of power, inaction of the authorities or negligent attitude towards the authorities. In fact, imprisonment for a term of at least three years was provided for qualified types of bribery and in especially aggravating circumstances execution with confiscation of property (Articles 114 and 114-a of the Criminal Code) was imposed. The category of malfeasance included two special rules on law enforcement officers’ responsibility in the event of illegal detention, compulsory attendance, forced testimony, as well as unjust sentence given by judges and people’s assessors out of mercenary or other personal motives. The last-mentioned offence with entailed and especially grave consequences could be punishable by death (Krakovsky, 2020:158—159).

A separate Chapter of the Criminal Code (Chapter III) systematized all criminal law norms concerning violating the rules on church and state separation (Articles 119—125), teaching religious beliefs to minors in educational institutions and schools, performing religious rites, forced collection of fees in favor of church and religious organizations, etc. Moreover, in Ukraine, additional offenses under Articles 125-3 and 125-4 of the Criminal Code on failure to provide information or reports on property intended for religious worship or religious purposes, or concealment of church property handed over to believers under an agreement were introduced.

Various elements of economic crimes, codified in the norms of Chapter IV of the Criminal Code (Articles 126—141) differed depending on the degree of damage to the state economy by improper or mercenary-minded conduct of business (for example, mismanagement as a special offense, conclusion of unprofitable

contracts), or in connection with violation of the civil duties (for example, labor desertion), the rules of foreign and domestic trade, state monopolies, excise duties, labor protection standards, etc. Particular emphasis was placed on the corpus delicti of foreign currency speculation and artificial price increases for goods (Articles 137 and 138 of the Criminal Code). Conspiracy to raise prices, malicious non-release of goods on the market, buying up or selling prohibited goods formed the qualifying feature of “speculation” corpus delicti. From the main corpus delicti of speculation, such new elements as smuggling, violation of trade monopolies, falsification of goods, and usury were derived.

The new version of the RSFSR Criminal Code of 1926 was adopted in connection with the introduction into force of the Fundamentals of the Criminal Legislation of the USSR and the Union Republics in 1924 and in order to correct the gaps in criminal law of the 1922 version and constructive shortcomings identified in practice. The chapters on state and military crimes, as well as on crimes against the manner of governance were undergoing the largest changes. If those “administrative crimes” in the 1922 Criminal Code formed only 30 articles, in the 1926 Criminal Code their number increased to 60 articles (Articles 59—108), of which 14 were transferred from the chapter on economic crimes (Cherdakov, 2002:201).

An important place in the Special Part was occupied by Chapter V of the Criminal Code Crimes Against Life, Health, Freedom and Dignity of the Individual (Articles 142—179). All those offenses were divided into ten types, which did not include several offenses previously proposed for criminalization in the draft Criminal Code of the People’s Commissariat of Justice of 1921 (assisted suicide, false imprisonment, false denunciation, threats and perjury, crimes against public morality in the field of sexual relations) (Gertsenzon et al., 1948:293—294).

Analyzing the corpus delicti in Section 4 Crimes in the Field of Sexual Relations of Chapter V, it can be noted that “violation of sexual integrity” was not a mandatory feature for all criminal torts. Thus, for example, coercion to prostitution was recognized completed, even though the coerced person had not yet committed a single act of prostitution. Further, pimping or recruiting women for prostitution need not have led to the intended result (Gertsenzon et al., 1948:273).

Chapter V was subsequently supplemented with previously unpunished acts, for example, manufacture, possession and sale of intoxicating substances, coercion to sexual intercourse of a woman who is in material or other dependence, non-payment of alimony and abandonment of children without support. Since parental duties were considered the most important for a Soviet citizen, their malicious nonfulfillment was recognized not only as an immoral and civil offense, but also as a socially dangerous act. Therefore, the malicious non-payment of alimony was recognized as a crime not only for parents, but also for all persons who were obliged to support them and take care of child upbringing and preparation for useful activity in accordance with the 1918 Civil Status Code (Articles 107, 141, 143, 161, 163, 172, 173).

In 1924—1925, the Criminal Code of the RSFSR was supplemented by a new chapter (Chapter IX Domestic crimes) with specific rules punishing dangerous acts in the form of remnants of tribal life (kidnapping of women, bride price, forced marriage, marriage with a minor child, etc.) (Durmanov, 1938).

Chapter VII (Military Crimes, Articles 200—214) united acts directed “against the procedure established by law for military service and fulfillment of its purpose by the armed forces of the republic.” Development of Soviet military criminal legislation, introduction of the category of *official* into the military hierarchy and allocation of norms of international humanitarian law formed the basis of those new *corpora delicti* (Zhizhilenko, 1924:2—3). In 1918, the Soviet government partly acceded, and then from 1925 joined the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick of 1906, the Hague Convention Respecting the Laws and Customs of War on Land of 1907, the international conventions on the Red Cross, and a number of other international documents. In fact, under the Hague Convention of 1907 and the Geneva Convention Relative to the Treatment of Prisoners of War of 1929, all prisoners of war were subject to Soviet criminal jurisdiction. The elements of non-execution or resistance to execution of a lawful military order were criminalized (Articles 202 and 203), including in a combat situation. They involved escape, evasion and unauthorized absence of a serviceman (Articles 204—206), military espionage (Article 213) and looting (Article 214).

Looting was described as “unlawful taking away from the civilian population of the property in a combat situation under the threat of military weapons and under the pretext of the need for military purposes, as well as the removal with a mercenary purpose from the dead and wounded of their belongings”; it was punishable by capital punishment and confiscation. That crime could develop from a military crime into a war crime prohibited by international treaties with special features (Article 47 of the Regulations on the Laws and Customs of Land Warfare 1907). However, in 1927, after amendments were made following the all-Union Regulations on Military Crimes, the concept of *looting* was narrowed down by transferring such actions as robbery, and unlawful destruction of property from its main structure to a separate article on responsibility for violence against the population in the area of military operations (Article 28 or Article 193 of the 1926 Criminal Code of the RSFSR) (Shkaev & Sporsheva, 2012:77).

Since 1925, the chapter of the Republican Criminal Code in question was essentially replaced by the Regulations on Military Crimes of 31 October 1924, which established the norms of military criminal legislation throughout the USSR, which, with some changes, reproduced the entire list of military crimes and supplemented it with new offenders (e.g., loss of military property). Thus, the system of crimes with an international legal element was extended with illegal violence against the civilian population committed by military personnel in wartime or in a combat situation (Article 18 of the 1924 Regulations). During the first five years of the application of the Criminal Code chapter on military crimes, “the Soviet

military criminal legislation came to reproduce almost completely the articles of the Military Regulations on Punishments of 1869, which established responsibility for violation of international legal norms” (Ermolovich, 2020:37).

### Conclusion

The comprehensive comparative-historical and juridical-theoretical analysis of the reasons, process, results and significance of the RSFSR Criminal Code of 1922 shows that it developed a new stage of law codification in the 1920s—1930s by setting the legal and technical parameters of legislative work, reflecting a certain level of continuity and political doctrine of codification. The RSFSR People’s Commissariat of Justice acted as the organizational center for promoting the adjusted draft code, testing the scheme of the code, its scientific concept and individual provisions within the professional community, at congresses of Soviet justice workers and among workers of the prosecutor’s office and courts.

Given the extreme thoroughness and “genuine democracy” of codification activities, discussion of alternative drafts of the Code and several dozen amendments at various stages of its discussion, a unique experience was gained in the development and adoption of the Republican Criminal Code, which “unfortunately, never repeated again” (Kuznetsova, 1991:25).

The 1922 Criminal Code reflected the results of difficult and painstaking work by scientists and practitioners who were able to combine the legal traditions of several schools of criminal law and the rule-making innovations of the socialist legal order. It was influenced by sociological and anthropological theories and political expediency of repression against class enemies (Suleimanov, 2007: 23—25). Codification in the 1920s partially absorbed the traditional *prohibitionist type of law* of Russian civilization, replacing the former facade of *bourgeois* criminal law with a socialist normative and idiomatic law, capable of ensuring by its coercive force the transition to a communist society (Skorobogatov & Rybushkin, 2018:166). At the same time, the Code introduces certain humanized provisions; among them are the expanded list of circumstances excluding liability, prohibition of replacing the imposed fine with imprisonment, reducing penalties for minors, etc.

Basically, the Criminal Code of the RSFSR was distinguished by a good quality of legal technique and a high level of key concepts formulation, including its norms on the forms of guilt, stages of crime, goals and system of punishments, definitions for certain elements of crimes, some of which would be assimilated in subsequent criminal laws. But at the same time, the code was a political instrument created in certain historical time and space; it absorbed the main priorities of protection, goals, expectations and contradictions in criminal policy (Yashchuk, 2021:232—233).

The general systematics of the 1922 Criminal Code and classification of crimes in its Special Part were not strictly and clearly developed from the very beginning; therefore, the headings of some sections in the sub-sectoral chapters of the code are

not formulated so categorically. They only cover related offenses (for example, “crimes in the field of sexual relations”) as if pushing for applying the analogy of the law and discretionary interpretation. Another technical shortcoming was the interdisciplinary nature of some of the provisions, which included provisions of civil law and administrative jurisdiction (for example, the presence in the Criminal Code of a rule on administrative expulsion, a chapter describing acts with administrative penalties, and/or coercive measures out of court).

According to the fair remark of P.V. Krasheninnikov, the RSFSR Criminal Code was written “in a heavy language, obscure to the general public; it sacrificed the accuracy of the legal wording to considerations of Code accessibility” (Krasheninnikov, 2018:82). Those shortcomings and its legal and technical imperfection, as well as adoption of the all-union Fundamentals of Criminal Legislation of 1924, caused the need for a conceptual and instantaneous revision of the 1922 Criminal Code, which eventually turned out to be the only Soviet code that was reissued in a new edition of 1926.

In the 1930s—1960s, the next stage in the evolution of the Soviet doctrine of codification and its legal and technical direction began in the form of code legistics development (the so-called *criminal law codistics*) (Trikoz, 2010:109—126). Due to improper headings in the republican and unity codification (code of justice, guiding principles, fundamentals of legislation, etc.) the issue of proper unification of terminology for consolidated acts was put at the forefront; it was also proposed to develop a system of general rules for selecting the forms and names of codification acts of the union and republican legislation (charter, regulation, rules) (Kerimov, 1957:9—10).

The RSFSR Criminal Code of 1922 became a kind of a benchmark for other USSR republics, outlining the future trends in the development of the country’s criminal legislation. It clearly laid down the fundamental criminal policy principles which still apply today: humanism, formal certainty, economy of repression, certainty of punishment, combination of repression economy and application of the most severe penalties for the most serious crimes. Were formulated the most viable criminal law institutions which have remained largely unchanged to this day: operation of criminal law in space, stages of crime, forms of guilt, insanity, necessary defense and extreme necessity, liability of accomplices, criminal record, sentencing of offenders, etc. Some of the measures of social protection in the RSFSR Criminal Code of 1922 can be classified as a prototype of the modern norms of the current Criminal Code of the Russian Federation of 1996 (Chapter 15 Compulsory Measures of a Medical Nature). In 2019, the Russian Criminal Code was supplemented by a norm establishing responsibility for occupying the highest position in the criminal hierarchy (Article 210-1), which revived the discussion concerning the formal certainty of the criminal law prohibition and the concept of a *dangerous state of a person*, different from the category of recidivist (Brilliantov & Shcherbakov, 2020:90—99).

*Translation from Russian by E.E. Gulyaeva*

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