

УДК 343.231

## On Research and Realities of Decriminalization of Criminal Acts in Russia

**Sergey A. Markuntsov\***

*National Research University Higher School  
of Economics  
20 Myasnitskaya Str., Moscow, 101000, Russia*

Received 16.09.2019, received in revised form 30.10.2019, accepted 06.11.2019

---

*The relevance of the research of decriminalization of criminal acts in Russia is due to both the lack of current adequate coverage of this issue even in some specialized studies of fundamental nature and the need to obtain a comprehensive understanding of decriminalization in Russia in the context of the trend of its modern criminal law policy humanization. The aim of the article is to study the processes of decriminalization of criminal acts in Russia through assessing the state of modern criminal law discourse on the problem specified.*

*The research concludes the secondary, derivative nature of the analyzed decriminalization issues in most modern studies, the actual scale of full decriminalization of criminal acts in Russia, which aims for arithmetic error against the background of current decriminalization processes (for the entire period of the Criminal Code of the Russian Federation only 4 criminal acts were fully decriminalized).*

*Keywords: full decriminalization, de facto decriminalization, criminalization, criminal prohibition, criminal law policy.*

*Research area: criminal law and criminology; penal law.*

---

Citation: Markuntsov, S.A. (2019). On research and realities of decriminalization of criminal acts in Russia. J. Sib. Fed. Univ. Humanit. Soc. Sci., 12(11), 2044–2057. DOI: 10.17516/1997–1370–0511.

---

## **Problem Statement**

In Russian criminal law doctrine, the formation of the theory of criminalization and decriminalization of acts began in the 70s of the 20<sup>th</sup> century in the context of the research of criminal policy and social conditionality of criminal law<sup>1</sup>. According to A. D. Nechaev, in the discourse of the *criminal-political conception* criminalization and decriminalization are viewed as an expression, component, method, direction, one of the foundations, method, means, form of the criminal policy implementation or means of countering crimes. At the same time, the results of the survey conducted by the researchers showed that the majority of the respondents (36 %) regard (de) criminalization as a method of criminal policy (Nechaev, 2018: 19–20).

Initially, some researchers made attempts to study the problem of decriminalization of acts on their own (Krylov, 1985). In recent years, decriminalization issues are increasingly considered in connection with the problem of criminalization of acts. As for the ‘decriminalization’ term, it is used either in brackets after the ‘criminalization’ term (Radoshnova, 2018) or (apparently in order to save the amount of work throughout its text) a kind of hybrid of the terms (‘(de) criminalization’) mentioned (Nechaev, 2017). We claim that this approach shows some secondary (derivative) decriminalization compared to criminalization of acts, whereas everything would seem to be different in the context of modern policy of humanization<sup>2</sup>.

## **On the Research of Decriminalization of Criminal Acts**

Relatively recently, a collective monograph edited by V. P. Kashepov was published. Its title defines decriminalization along with criminalization as forms of transformation of criminal legislation (Kashepov, 2018). The research, the relevance of which, in our opinion, does not require additional justification, aroused certain interest among the scientific community. If a lot is written about the content and scope of the criminal law criminalization, consideration of issues of decriminalization as a form of the criminal law transformation is of particular interest.

Criminalization is obviously the leading trend of modern criminal law policy in Russia (Kashepov, 2018: 14), which is rightly stated in the preface to the monograph.

---

<sup>1</sup> One of the basic (classical) works on this issue is “Osnovaniya ugolovno-pravovogo zapreta (kriminalizatsiya i dekriminalizatsiya)” (“Grounds of criminal law prohibition (criminalization and decriminalization)”), a collective monograph edited by academician V. N. Kudriavtsev. Refer to: (Kudriavtsev, Iakovlev (ed.), 1982).

<sup>2</sup> Back in 2002, in the President of the Russian Federation Vladimir Putin’s message to the Federal Assembly of the country it was noted that “humanization of criminal legislation is extremely important”. Later, the support for the trend of humanization of criminal legislation was, directly or indirectly, repeatedly stated at the highest level. For details, see: (TASS News Agency, 2019).

Apparently, the “ideas of criminalization” clearly prevailed in an attempt to give a single explanation of what the authors mean by criminalization (decriminalization). In particular, it was argued that “criminalization (decriminalization) is viewed as a process of establishing (excluding) the public danger of a certain phenomenon in the life of society by the state, *the phenomenon being a threat to the existing social relations and requiring criminal legal protection* (the author’s italics — S.M.)” (Kashepov, 2018: 13). From this definition one gets an impression that the terms ‘decriminalization’ and ‘exceptions’, indicated in brackets, are artificially introduced; they are alien elements to this definition.

It is fair to note that the monograph suggests a self-explanatory definition of the concept of decriminalization. In particular, A. A. Gravina writes that decriminalization means the exclusion of criminal liability for certain acts which were previously recognized as crimes, including the transfer of these acts to the category of lesser offenses (Gravina, 2018: 65–66). It is quite strange that the monographic research on the processes of decriminalization as one of its subjects mentions nothing about either a broad or a narrow approach to understanding the decriminalization of acts. A. D. Nechaev identifies even 4 approaches in this context: the broadest, broad, middle, and narrow (Nechaev, 2018: 20–27). A. A. Gravina’s definition reflects a narrow approach to the understanding of decriminalization. However, a paragraph of the monograph directly states that “determination of the grounds for criminal liability and its limits in the General part of the Criminal Code means the reflection of the criminalization and decriminalization result in the law. This refers to the changes in such key institutions of the General part as age, guilt, complicity, plurality, etc. In addition, the changes in general principles of the criminal law can either expand the range of criminal prohibitions or, conversely, narrow it” (Gravina, 2018: 159–160). This explanation implies that its author adheres to the broadest understanding of the decriminalization of acts. The fact that it is the same researcher who gives the considered definition and explanation is even more surprising.

Further, rightly noting that “criminalization and decriminalization can be full and partial”, A. A. Gravina pointed out that “the liability for false entrepreneurship (Article 173 of the Criminal Code of the Russian Federation) and slander against a judge, juror, prosecutor, persons conducting a preliminary investigation, and bailiff (Article 298 of the Criminal Code of the Russian Federation) was subject to full (absolute) decriminalization” (Gravina, 2018: 67–68). A. A. Gravina’s examples of full (absolute) decriminalization seem at least not quite successful in the context of

articles 173.1 and 298.1 of the Criminal Code of the Russian Federation at present. The researcher's thesis that "full (absolute) decriminalization was subject (the author's italics — S.M.) to responsibility" is not quite clear. In particular, the need to use the verb in the subjunctive mood in this case is far from being obvious. Having cited not quite good examples of full (absolute) decriminalization, the researcher did not consider it necessary to pay attention to the issue of partial decriminalization, whereas, in our opinion, this issue is really important for a comprehensive understanding of the scope of decriminalization of acts in modern Russia. Undoubtedly, it would be necessary to explain the concept of the *de facto* decriminalization in a special collective monograph. I. V. Shishko brilliantly illustrated various types of the *de facto* criminalization and decriminalization through the examples of crimes in the field of economic activity. She notes that external invariability does not mean that the blanket rule of the Criminal Code remains indifferent to innovations in regulatory acts. Practically each change entails the *de facto* criminalization and decriminalization of the acts described in these criminal law norms... Such criminalization and decriminalization which are "intangible" in the Criminal Code itself can be only partial... *Partial* criminalization and decriminalization, unlike "full" ones, can coexist in time (Shishko, 2004: 205, 206). One of the recent most well-known examples of partial decriminalization, widely reported in the media, is partial decriminalization of Article 282 "Incitement of Hatred or Enmity". It occurred in connection with the changes introduced to the Criminal Code of the Russian Federation in accordance with the Federal law No. 519-FZ "On amendments to Article 282 of the Criminal Code of the Russian Federation" of December 27, 2018. I. V. Shishko rightly notes that the *de facto* criminalization and decriminalization may be due to changes of not only the rules in regulatory legislation, but also of the *concepts* borrowed by the criminal law... These are not only innovations in regulatory legislation that involve the *de facto* decriminalization... The acts that are recognized as not conforming to the Constitution (invalid) lose their force (become not applicable), which, *in turn*, determines partial inapplicability of blanket criminal law, and, therefore, the *de facto* decriminalization of the acts provided by it (Shishko, 2004: 209, 210). It should be noted that the concept of the *de facto* criminalization and decriminalization is ambiguously regarded by the scientific community. So, A. D. Nechaev, in particular, writes that it is not possible to admit that (de)criminalization occurs at substantial change of the blanket signs in positive legislation. He argues that these changes lead only to a shift of the borderline between the criminal and the non-criminal (Nechaev,

2018: 31, 33)<sup>1</sup>. One way or another, it seems that all the identified issues related to decriminalization of acts should receive some coverage in a special monograph.

It is fair to note that in the process of the research of the concept and forms of decriminalization A. A. Gravina considered the problem of two types of grounds for decriminalization and came to the conclusion that “remains fundamental in the theory of criminalization and decriminalization”: “...the exclusion of acts from the list of criminal offences should be the legislator’s prerogative... There is no need of introducing the institution of “judicial and investigative decriminalization” (Gravina, 2018: 69–70).

The fact that the issue of criminalization and decriminalization of norms of the General part of the Criminal law of Russia has been analyzed in the context of the entire period of the Criminal Code of the Russian Federation and a number of conclusions on this issue have been drawn is quite interesting. In particular, one of the conclusions is that “certain guidelines have been created for decriminalization of acts and, mainly, for depenalization in imposing penalty as specified in the Special part of the Criminal Code of the Russian Federation (Gravina, 2018: 179). However, when considering the impact of criminalization and decriminalization on modernization of the Special part of the Criminal law of Russia, the criminal legislation analysis was limited only to the last three years (2015–2017). Regarding decriminalization, it was noted that *over the past three years the crimes had been hardly decriminalized* (the author’s italics — S.M.). This indicates only the strengthening of repressive criminal legal measures for some socially dangerous acts (Koshaeva, 2018: 180–181). The monograph admittedly considers a lot of very interesting issues related to criminalization and decriminalization, and, in particular, to psychological conditionality of criminalization and decriminalization, negative consequences of relevant processes and their minimization, trends of modernization of the criminal legislation of the former Soviet Union states etc. However, the paradox is that such a fundamental specialized research has not resulted in obtaining even the general picture of decriminalization of criminal acts in Russia.

---

<sup>1</sup> According to A. D. Nechaev, “(de)criminalization of acts should be understood as the process and result of the criminal-legal ban establishment (elimination)” (Nechaev, 2018: 45). The proposed definition of (de)criminalization of acts only through the establishment (elimination) of the criminal law prohibition seems to be quite limited. We argue that the result of (de)criminalization of acts is not limited to the establishment or elimination of the criminal law prohibition only, but also manifests itself in the expansion or narrowing the boundaries of current criminal law prohibition.

Trying to partially compensate for this gap of the authors of the monograph and to analyze the scope of at least full decriminalization of criminal acts in Russia in more detail, we emphasize once again that the article will focus mainly on full decriminalization, which is only the “tip of the iceberg” in relation to the general process of decriminalization (a broad approach to the definition of this concept). However, it is rather difficult to assess the scope of partial criminalization for the entire period of the Criminal Code of the Russian Federation. It is due to both the limited scope of this publication and the objective complexity of the research of the realities of decriminalization caused by the presence of the de facto (hidden) decriminalization in its structure, the presence of simultaneous partial criminalization of the act etc. in some cases, and possible ambiguous assessment of these aspects.

### **On the Realities of Full Decriminalization of Criminal Acts in Russia**

The criminal law doctrine has repeatedly pointed to the need to decriminalize a number of criminal acts<sup>1</sup>. In practice, the situation is somewhat different.

For the entire period of the Criminal Code validity only 11 (or about 4.3 %) articles<sup>2</sup> were excluded from its Special part (assuming that the Special part of the original version of the Criminal Code of the Russian Federation included 256 articles). For comparison: in the course of the equal time the Special part of the Criminal Code of the Russian Federation was supplemented by 120 (about 47 %) new articles<sup>3</sup>. Regarding these articles in more detail, it is worth while noting that almost half of all the articles of the Special part of the Criminal Code of the Russian Federation, which became invalid (5 of 11), were contained in section VIII of the Criminal Code of the Russian Federation (articles 159.4, 173, 182, 188, 200 of the Criminal Code of the Russian Federation); three articles (articles 129, 130, 152 of the Criminal Code

---

<sup>1</sup> In particular, the authors of the conception of modernization of criminal law in the economic sphere (2010) proposed to exclude 12 articles (these are namely articles 171, 171.1, 172, 174.1, 176, 177, 178, 184, 185.1, 190, 192, 193 of the Criminal Code of the Russian Federation) only from Chapter 22 of the Criminal Code of the Russian Federation, the chapter being mentioned as an example (Radchenko, Novikova, Fedotov (ed.), 2010: 53–54).

<sup>2</sup> Hereinafter calculations take into account the changes and amendments made by the Federal law No. 308-FZ “On amendments to Article 138.1 of the Criminal Code of the Russian Federation” of August 2, 2019.

<sup>3</sup> Refer to articles 110.1, 110.2, 116.1, 124.1, 127.1, 127.2, 128.1, 138.1, 141.1, 142.1, 142.2, 144.1, 145.1, 151.1, 151.2, 158.1, 159.1–159.6, 170.1, 170.2, 171.1–171.4, 172.1–172.3, 173.1, 173.2, 174.1, 185.1–185.6, 191.1, 193.1, 199.1–199.4, 200.1–200.6, 201.1, 204.1, 204.2, 205.1–205.6, 210.1, 212.1, 215.1–215.4, 217.1, 217.2, 222.1, 223.1, 226.1, 228.1–228.4, 229.1, 230.1, 230.2, 234.1, 235.1, 238.1, 240.1, 242.1, 242.2, 243.1–243.3, 258.1, 263.1, 264.1, 267.1, 271.1, 274.1, 280.1, 282.1–282.3, 283.1, 284.1, 285.1–285.4, 286.1, 291.1, 291.2, 292.1, 298.1, 314.1, 322.1–322.3, 325.1, 327.1, 327.2, 330.1, 330.2, 354.1, 361 of the Criminal Code of the Russian Federation.

of the Russian Federation) were excluded from section VII of the Criminal Code of the Russian Federation; two articles — from section IX (articles 265 and 269 of the Criminal Code of the Russian Federation) and one article (Article 298 of the Criminal Code of the Russian Federation) — from section X of the Criminal Code of the Russian Federation. Of these 11 articles excluded from the Special part of the Criminal Code of the Russian Federation two ones were actually returned to it with a slightly modified content (two “new” articles – Article 128.1 “Slander” and Article 298.1 “Slander against a judge, juror, prosecutor, investigator, person making an inquiry, and bailiff” of the Criminal Code of the Russian Federation were introduced by the Federal law No. 141-FZ “On amendments to the Criminal Code of the Russian Federation and certain legislative acts of the Russian Federation” of July 28, 2012 instead of Article 129 “Slander” and Article 298 “Slander against a judge, juror, prosecutor, investigator, person making an inquiry, and bailiff”, which became invalid as per the Federal law No. 420-FZ “On amendments to the Criminal Code of the Russian Federation and certain legislative acts of the Russian Federation” of December 7, 2011. The criminal law prohibition contained in Article 188 “Smuggling”<sup>1</sup> is currently reflected in a number of certain articles (in particular, in articles 200.1, 200.2, 226.1, 229.1 of the Criminal Code of the Russian Federation). The researchers were not unanimous on the issue of decriminalization of smuggling. Iu. V. Golik claimed: “Smuggling was also decriminalized (Article 188). Unlike some of my colleagues, I have no regrets about this (the author further provides with detailed arguments to prove his position — S.M.)... However, what was smuggling replaced with? Two new articles appeared in the Criminal Code: 226.1 (smuggling of poisons and weapons — in fact, the title is different but it is monstrously long) and 229.1 (smuggling of drugs, if to formulate it briefly). From the aspect of relevance, including the international legal component, everything is correct” (Golik, 2012: 34). Indeed, articles 226.1 and 229.1 of the Criminal Code of the Russian Federation were introduced in accordance with the same Federal law that excluded Article 188 of the Criminal Code of the Russian Federation. Some time later, in 2013 and 2014, the articles introduced were Article 200.1 “Smuggling of cash and (or) monetary instruments” and Article 200.2 “Smuggling of alcoholic beverages and (or) tobacco products” of the Criminal Code of the Russian Federation, respectively. At the same time, proposals on expanding the list of these offences continue to be

---

<sup>1</sup> Article 188 of the Criminal Code of the Russian Federation became invalid as per the above-mentioned Federal law No. 420-FZ “On amendments to the Criminal Code of the Russian Federation and certain legislative acts of the Russian Federation” of December 7, 2011.

made. In particular, Z. F. Zainullina writes that “the characteristic features of ways of committing smuggling of cash and monetary instruments as well as alcoholic production and (or) tobacco products are essential for their qualification; therefore, it is necessary to supplement the dispositions of the criminal law norms (articles 200.1 and 200.2 of the Criminal Code of the Russian Federation), establishing the responsibility for these types of smuggling...” (Zainullina, 2018: 11). Periodically there appear the proposals to return the criminal liability for smuggling of goods (Ponomarev, 2012: 116–120). In 2017, the Ministry of Finance of the Russian Federation put forward a legislative initiative to introduce a draft law “On amendments to the Criminal Code of the Russian Federation”. The draft proposed to supplement the Criminal Code with new Article 226.2, providing for the criminal liability for violation of the ban on the circulation of certain categories of goods for entrepreneurs and legal entities (Legal information system “Garant”, 2017).

The criminal law prohibition of pseudo-entrepreneurship contained in Article 173 of the Criminal Code of the Russian Federation, which became invalid as per the Federal law No. 60-FZ “On amendments to certain legislative acts of the Russian Federation” of April 7, 2010, is essentially “blocked” by the criminal law prohibition contained in Article 173.1 “Illegal formation (creation, reorganization) of a legal entity” of the Criminal Code of the Russian Federation, introduced in accordance with the Federal law No. 419-FZ “On amendments to the Criminal Code of the Russian Federation” of December 7, 2011 and Article 151 of the Criminal Procedure Code of the Russian Federation”.

Criminal law prohibition of fraud in the sphere of entrepreneurial activities specified in Article 159.4 of the Criminal Code of the Russian Federation became invalid in accordance with the Federal law No. 325-FZ “On amendments to the Criminal Code of the Russian Federation and the Criminal Procedural Code of the Russian Federation” of July 3, 2016. Parts 5–7 of Article 159 “Fraud” of the Criminal Code of the Russian Federation contain it in a slightly modified form. These parts of Article 159 of the Criminal Code of the Russian Federation were introduced by the Federal law No. 323-FZ of July 3, 2016. This case is dwelt upon by T. O. Koshaeva who writes that “essentially, decriminalization and criminalization of fraud in the sphere of entrepreneurial activity were carried out simultaneously” (Koshaeva, 2018: 180–181). In fact, this is true. However, regarding the numbers of the federal laws, which excluded Article 159.4 of the Criminal Code of the Russian Federation and introduced parts 5–7 of Article 159 of the Criminal Code of the Russian Federation, it is worth



while noting an interesting fact — amendments to Article 159 of the Criminal Code of the Russian Federation were made by an earlier law.

Criminal law prohibitions in Article 152 “Trafficking juveniles”<sup>1</sup> and Article 269 “Violation of safety rules at construction, operation or repair of main pipelines” of the Criminal Code of the Russian Federation actually became part of broader criminal law prohibitions — human trafficking (Article 127.1 of the Criminal Code of the Russian Federation) and violation of the requirements of the industrial safety of hazardous production facilities (Article 217 of the Criminal Code of the Russian Federation)<sup>2</sup>. To clarify this, the following data are systematized in the table below.

It turns out that only the following criminal acts were actually decriminalized in full for the entire period of the Criminal Code of the Russian Federation:

- insult (article 130 of the Criminal Code of the Russian Federation)<sup>3</sup>; at that we recall that insulting the participants in the trial, a judge, a juror or another person involved in the administration of justice under Article 297 of the Criminal Code of the Russian Federation as well as insulting a representative of power (Article 319 of the Criminal Code of the Russian Federation) are still regarded as the criminal offenses;
- deliberately false advertising (Article 182 of the Criminal Code of the Russian Federation); at that a number of researchers advocate the return of the mentioned article to the Criminal Code of the Russian Federation<sup>4</sup>;
- consumer fraud (Article 200 of the Criminal Code of the Russian Federation);
- leaving the scene of a road traffic accident (Article 265 of the Criminal code of the Russian Federation).

It is interesting that the last three articles — articles 182, 200 and 265 of the Criminal Code of the Russian Federation — became invalid in accordance with the above mentioned Federal law No. 162-FZ of December 8, 2003. Consequently, almost all the de facto full decriminalization in Russia took place in 2003.

---

<sup>1</sup> Article 152 of the Criminal Code of the Russian Federation became invalid, whereas Article 127.1 of the Criminal Code of the Russian Federation was introduced in accordance with the Federal law No. 162-FZ “On amendment and additions to the Criminal Code of the Russian Federation” of December 8, 2003.

<sup>2</sup> Article 269 of the Criminal Code of the Russian Federation became invalid and a new version of Article 217 of the Criminal Code of the Russian Federation was introduced in accordance with the Federal law No. 114-FZ “On amendments to the Criminal Code of the Russian Federation and to articles 31 and 151 of the Criminal Procedure Code of the Russian Federation” of April 23, 2018.

<sup>3</sup> Article 130 of the Criminal code of the Russian Federation became invalid in accordance with the above-mentioned Federal law No. 420-FZ “On amendments to the Criminal code of the Russian Federation and certain legislative acts of the Russian Federation” dated December 7, 2011.

<sup>4</sup> In particular, M. V. Baranova insists on “returning of the updated special and bigger in volume article about the differentiated responsibility for crimes in the sphere of advertising (instead of Article 182 “Deliberately false advertising” of the Criminal code of the Russian Federation which became invalid on December 8, 2003)” to the criminal law (Baranova, 2010: 18).

Table

No	The article excluded from the Criminal Code of the Russian Federation	The federal law that excluded this article	Article(s) or parts thereof, introduced to the Criminal Code of the Russian Federation, that essentially returned the earlier decriminalized ban	The federal law that supplemented the Criminal code of the Russian Federation with this (these) article(s)
1.	Article 152 "Trafficking juveniles"	Federal law No. 162-FZ of 08.12.2003	Article 127.1 "Human trafficking"	Federal law No. 162-FZ of 08.12.2003
2.	Article 182 "Deliberately false advertising"	Federal law No. 162-FZ of 08.12.2003	-	-
3.	Article 200 "Consumer fraud"	Federal law No. 162-FZ of 08.12.2003	-	-
4.	Article 265 "Leaving a scene of road traffic accidents"	Federal law No. 162-FZ of 08.12.2003	-	-
5.	Article 173 "Pseudo-entrepreneurship"	Federal law No. 60-FZ of 07.04.2010	Article 173.1 "Illegal formation (creation, reorganization) of a legal entity"	Federal law No. 419-FZ of 07.12.2011
6.	Article 129 "Slander"	Federal law No. 420-FZ of 07.12.2011	Article 128.1 "Slander"	Federal law No. 141-FZ of 28.07.2012
7.	Article 130 "Insult"	Federal law No. 420-FZ of 07.12.2011	-	-
8.	Article 298 "Slander against a judge, juror, prosecutor, investigator, person conducting an inquiry, and bailiff"	Federal law No. 420-FZ of 07.12.2011	Article 298.1 "Slander against a judge, juror, prosecutor, investigator, person, conducting an inquiry, and bailiff"	Federal law No. 141-FZ of 28.07.2012
9.	Article 188 "Smuggling"	Federal law No. 420-FZ of 07.12.2011	Articles 200.1, 200.2, 226.1, 229.1 of the Criminal Code of the Russian Federation	Federal law No. 420-FZ of 07.12.2011 etc.
10.	Article 159.4 "Fraud in the sphere of entrepreneurial activity"	Federal law No. 325-FZ of 03.07.2016	Parts 5-7 of Article 159 "Fraud"	Federal law No. 323-FZ of 03.07.2016
11.	Article 269 "Violation of safety rules during construction, operation or repair of main pipelines"	Federal law No. 114-FZ of 23.04.2018	Article 217 "Violation of industrial safety requirements of hazardous production facilities"	Federal law No. 114-FZ of 23.04.2018

## Conclusion

Thus, the formation of the theory of criminalization and decriminalization of acts began about half a century ago. However, at present the researchers have failed to come to a relatively common denominator on many aspects of this problem. There exists a variety of opinions, even those that regard the definition, essence and legal nature of the processes identified. Analysis of some recent studies on this issue shows that not all of them contribute to the positive development of this theory. It is necessary to state that current researches concerning the issues of decriminalization of criminal acts demonstrate certain secondary (derivative) nature in comparison with the issues of criminalization of acts.

Based on the understanding that the result of decriminalization of criminal acts is not limited only to elimination of the criminal law prohibition, but also manifests itself in narrowing of the current criminal law prohibition, it is necessary to state that full decriminalization is only part of the entire process of decriminalization. Full decriminalization is only the “tip of the iceberg” in relation to the entire process of decriminalization of criminal acts. However, it is difficult to assess the scope of partial decriminalization, which is also due to the presence of actual (hidden) decriminalization in its structure. In the context of the trend of the criminal law policy humanization, the real scope of full decriminalization looks quite surprising. As a result of the analysis, it was found that only such criminal acts as insult, deliberately false advertising, consumer fraud and leaving the scene of a road transport accident were actually (in full) decriminalized for the entire period of the Criminal Code of the Russian Federation. Regarding the real scope of the process of full decriminalization of criminal acts in Russia, we can confidently say that they tend to the values of arithmetic error against the background of current processes of criminalization, even if we proceed from the quantitative indicators of the new introduced and excluded criminal law prohibitions and limit criminalization to the context of “establishing a criminal law ban” only.

## References

Baranova, M.V. (2010). *Pravo i reklama: obshcheteoreticheskii aspekt: avtoreferat dissertatsii* [Law and advertising: a theoretical aspect: author's abstract of a thesis]. Nizhnii Novgorod, 60 p.

Golik, Iu.V. (2012). Ocherednaia modernizatsiia Ugolovnogo kodeksa [A new modernization of the Criminal code]. In *Ugolovnoe pravo* [Criminal law], 2, 29–34.

Gravina, A.A. (2018a). § 1. Poniatie kriminalizatsii i dekriminalizatsii i ikh form glavy 2. Teoreticheskie osnovy kriminalizatsii i dekriminalizatsii [§ 1. The

concept of criminalization and decriminalization and their forms of Chapter 2 Theoretical foundations of criminalization and decriminalization]. In *Kashepov, V.P. (ed.) Kriminalizatsiia i dekriminalizatsiia kak formy preobrazovaniia ugovnogo zakonodatel'stva* [Criminalization and decriminalization as forms of transformation of criminal legislation]. Moscow, Iuridicheskaiia firma KONTRAKT, 65–86.

Gravina, A.A. (2018b). § 1. Kriminalizatsiia i dekriminalizatsiia norm Obsheei chasti ugovnogo prava Rossii glavy 4 Sovremennye tendentsii kriminalizatsii i dekriminalizatsii [§ 1. Criminalization and decriminalization of the norms of the General part of the Criminal law of Russia of Chapter 4 Modern trends of criminalization and decriminalization]. In *Kashepov, V.P. (ed.) Kriminalizatsiia i dekriminalizatsiia kak formy preobrazovaniia ugovnogo zakonodatel'stva* [Criminalization and decriminalization as forms of transformation of criminal legislation]. Moscow, Iuridicheskaiia firma KONTRAKT, 159–179.

Kashepov, V.P. (ed.) (2018). *Kriminalizatsiia i dekriminalizatsiia kak formy preobrazovaniia ugovnogo zakonodatel'stva* [Criminalization and decriminalization as forms of transformation of criminal legislation]. Moscow, Iuridicheskaiia firma KONTRAKT, 276 p.

Koshaveva, T.O. (2018). § 2. Vliianie kriminalizatsii i dekriminalizatsii na modernizatsiiu Osobennoi chasti ugovnogo prava Rossii glavy 4. Sovremennye tendentsii kriminalizatsii i dekriminalizatsii [§ 2. The impact of criminalization and decriminalization on modernization of the Special part of the criminal law of Russia of Chapter 4 Modern trends of criminalization and decriminalization], In *Kashepov, V.P. (ed.) Kriminalizatsiia i dekriminalizatsiia kak formy preobrazovaniia ugovnogo zakonodatel'stva* [Criminalization and decriminalization as forms of transformation of criminal legislation]. Moscow, Iuridicheskaiia firma KONTRAKT, 180–198.

Krylov, G.V. (1985). *Problemy dekriminalizatsii deianii v sovetskom ugovnom prave: dissertatsiia* [Problems of decriminalization of acts in Soviet criminal law: a thesis]. Moscow, 170 p.

Kudriavtsev, V.N., Iakovlev, A.M. (ed.) (1982). *Osnovaniia ugovno-pravovogo zapreta. Kriminalizatsiia i dekriminalizatsiia* [Grounds of criminal law prohibition. Criminalization and decriminalization]. Moscow, Nauka, 303 p.

Legal information system “Garant” (2017). Available at: <http://www.garant.ru/news/1148879/#sdfootnotelsym> (accessed 15 August 2019).

Nechaev, A.D. (2017). *Kontseptual'nye osnovy i teoreticheskoe modelirovanie kriminalizatsii i dekriminalizatsii deianii: dissertatsiia* [Conceptual foundations and theoretical modeling of criminalization and decriminalization: a thesis]. Saratov, 331 p.

Nechaev, A.D. (2018). *Kontseptual'nye osnovy kriminalizatsii i dekriminalizatsii deianii* [Conceptual foundations of criminalization and decriminalization of acts]. Moscow, Urlitinform, 320 p.

Ponomarev, A.I. (2012). К вопросу об основаниих криминализации товарной контрабанды [On the issue of the basis of criminalization of commodity smuggling]. In *Sovremennoe pravo* [Modern law], 6, 116–120.

Radchenko, V.I., Novikova, E.V., Fedotov, A.G. (2010). *Kontseptsiia modernizatsii ugolovnogo zakonodatel'stva v ekonomicheskoi sfere* [The concept of modernization of criminal legislation in the economic sphere]. Moscow, Fond "Liberal'naiia missiia", 196 p.

Radoshnova, N.V. (2018). *Kriminalizatsiia (dekriminalizatsiia) v ugolovnom prave Rossii: dissertatsiia* [Criminalization (decriminalization) in Russian criminal law: a thesis]. Saratov, 276 p.

Shishko, I.V. (2004). *Ekonomicheskie pravonarusheniia: Voprosy iuridicheskoi otsenki i otvetstvennosti* [Economic offences: Issues of legal assessment and liability]. Saint-Petersburg, 307 p.

TASS News Agency (2019). Available at: <https://tass.ru/info/6234971> (accessed 15 August 2019).

Zainullina, Z.F. (2018). *Ugolovno-pravovoe protivodeistvie kontrabande nalichnykh denezhnykh sredstv, denezhnykh instrumentov, alkohol'noi produktsii i tabachnykh izdelii: dissertatsiia* [Criminal-legal counteraction to cash smuggling, monetary instruments, alcohol and tobacco products: a thesis]. Moscow, 165 p.

## **К вопросу об исследовании и реалиях декриминализации преступных деяний в России**

**С. А. Маркунцов**

*Национальный исследовательский университет  
«Высшая школа экономики»  
Россия, 101000, Москва, ул. Мясницкая, 20*

---

*Актуальность изучения декриминализации преступных деяний в России обусловлена отсутствием на современном этапе адекватного освещения данной проблемы даже в некоторых специализированных исследованиях фундаментального характера и необходимостью получения комплексного представления о декриминализации в нашей стране в контексте тенденции гуманизации ее современной уголовно-правовой политики.*

*Целью статьи является исследование процессов декриминализации преступных деяний в России в контексте оценки состояния современного уголовно-правового дискурса по обозначенной проблематике.*

*Анализ позволяет сделать вывод о вторичном, производном характере рассмотрения вопросов декриминализации в большинстве современных исследований, о реальных масштабах полной декриминализации преступных деяний в России, которые на фоне существующих процессов декриминализации стремятся к показателям арифметической погрешности — за весь период действия УК РФ полностью декриминализованы были только четыре преступных деяния.*

*Ключевые слова: полная декриминализация, фактическая декриминализация, криминализация, уголовно-правовой запрет, уголовно-правовая политика.*

*Научная специальность: 12.00.08 — уголовное право и криминология; уголовно-исполнительное право.*

---