

# Trends of the criminal-legal complex in relation to the legislative consolidation of the misdemeanor category

## Tendencias del complejo jurídico-penal en relación a la consolidación legislativa de la categoría de contraversión

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### Abstract

The study aims to consider scientific opinions on the feasibility and effectiveness of introducing the misdemeanor category into the Russian criminal-legal complex and conduct a comparative legal analysis within the framework of foreign legislation and a historical retrospective. The authors use the comparative-legal, historical-legal, and statistical methods, as well as the method of systemic analysis. The article studies the issues relevant to criminal and criminal procedure law and related to the legislative consolidation of misdemeanors. Over the past few decades, the main vector of developing and improving modern criminal justice policy has been a course towards the liberalization of criminal liability, which includes discussions on the further decriminalization of certain types of crimes and mitigation of criminal sanctions for some unlawful acts. A key task of modern criminal law is the urgent problem associated with the possibility of reintroducing the misdemeanor category into Russian criminal legislation. The division of criminal acts into misdemeanors and crimes fully corresponds to objective conditions and modern needs. There are several approaches to consolidating the misdemeanor category into Russian criminal legislation. The first approach is to adopt a new Code of Misdemeanor Offenses and the second approach is to include the relevant section into the existing Criminal Code of the Russian Federation.

**Keywords:** Illegal actions; criminal law; criminal procedure law; misdemeanor; crime

### Resumen

El estudio tiene como objetivo considerar los estudios científicos sobre la viabilidad de la introducción de la categoría de contraversión en el ordenamiento jurídico penal ruso, así como realizar un análisis jurídico comparativo en el marco de la legislación extranjera y de la retrospectiva histórica. Los autores utilizan los métodos comparativo-jurídico, histórico-jurídico y estadístico, así como el método de análisis sistémico. El artículo estudia las cuestiones pertinentes al derecho penal y procesal penal y las relacionadas con la consolidación legislativa de la contraversión. En las últimas tres décadas, el principal vector del desarrollo y perfeccionamiento de la política moderna de justicia penal ha conducido a la liberalización de la responsabilidad penal, que incluye debates sobre la ulterior despenalización de ciertos tipos de delitos y la mitigación de las sanciones penales por algunos actos ilícitos. Una tarea clave del derecho penal moderno es el problema urgente asociado con la posibilidad de reintroducir la categoría de contraversión en la legislación penal rusa. La división de los actos delictivos en contraversión y delitos responde plenamente a las condiciones objetivas y a las necesidades modernas. Hay varios enfoques sobre la consolidación de la categoría de contraversión en la legislación penal rusa. El primer enfoque se trata de adoptar un nuevo Código de Contraversiones y el segundo enfoque está a favor de incluir la sección pertinente en el Código Penal vigente de la Federación de Rusia.

**Palabras clave:** Actos ilícitos; derecho penal; procesal penal; contraversiones; delito

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## INTRODUCTION

Referring to the issues of criminal liability and punishment in modern Russia, scholars reasonably note that there is still no transitional state from an administrative to a criminal offense. It is necessary to focus on the need to develop a draft law on misdemeanors, i.e., acts that are more dangerous than administrative offenses but pose less of a threat than crimes that result in a criminal record.

The issue of misdemeanors is not new for Russian criminal law and legal science. The formation and development of this concept have a long and complicated history. It evolved from social opinions and assessments of various criminal acts.

As for the criminal legislation of most European and non-CIS (Commonwealth of Independent States), the traditional division of crimes into two or three categories should be noted. At the same time, crimes, which are insignificant in terms of the degree of public danger, are often defined by the legislator as criminal offenses, the category of which is reflected in the criminal legislation of Germany, Great Britain, Switzerland, France, Poland, Austria, and several other countries.

In particular, the criminal legislation of France and Switzerland includes the category of a criminal offense, for the commission of which a correctional punishment is provided in France and imprisonment in Switzerland as the most serious punishment for this type of criminal act. The German criminal law system categorizes criminal acts based on such a criterion as the minimum punishment provided for their commission, regarding misconduct as a criminal act, for the commission of which it provides a punishment lasting from one month and not exceeding one year, etc.

Thus, the study aims to consider scientific opinions on the feasibility and effectiveness of introducing the misdemeanor category into the Russian criminal-legal complex.

## METHODOLOGY

The research object is public relations regulated by the norms of criminal and criminal procedure law, arising in connection with the commission of an act that can be classified as a criminal offense.

While conducting the research, the dialectical method, the comparative-legal method, and the method of systemic analysis method were used.

The *dialectical method* of cognition allowed to establish a specific category of unlawful acts characterized by a lower degree of public danger if compared to crimes and the similarity of their content and criteria for classifying them as criminal offenses, which indicates the need to revise the relevant provisions of criminal and criminal procedure law.

The *method of systemic analysis* was used to determine gaps in the existing classification of socially dangerous acts. Considering the characteristics of certain acts, this method classifies them into crimes and misdemeanors, which allows making a more accurate social and legal assessment of illegal acts, considering the degree of their social danger, differentiating and personalizing responsibility, and better organizing preventive work.

The *comparative-legal method* helped to analyze criminal and criminal procedure law and other legal acts of foreign countries regulating the misdemeanor category to determine the most effective legal models and improve the Russian criminal-legal complex.

The *historical-comparative method* enabled to study typical features of the pre-revolutionary and modern classification of socially dangerous acts and develop propositions for improving the corresponding legislation.

## RESULTS

The classification of criminal offenses into crimes and misdemeanors in Russian criminal legislation meets modern social needs and socio-political realities. This classification was typical of the criminal law of the Russian Empire, starting from Peter the Great's era. The Criminal Code of 1903 divided all crimes into three groups, including misdemeanors. Soviet legislators did not highlight the misdemeanor category but the criminal legislation of that time provided for criminal liability for crimes that did not pose great public danger (Anisimov, 1903).

In 1982, the Criminal Code of the Russian Soviet Federative Socialist Republic [УК РСФСР] supplemented the existing provisions regarding such acts that could not be attributed to crimes because of their insignificance. The misdemeanor category was not consolidated in the Criminal Code of the Russian Federation in 1996 but Clause 2 of Article 14 indicates acts that are not crimes due to their insignificance [УК РФ, 1996]. Crimes of low-to-medium severity, including financial crimes, can lay the basis for the misdemeanor category.

Before the adoption of the Criminal Code of the Russian Federation of 1996, several prominent Russian scholars (Kudryavtsev & Kelina, 1987; Krieger, 1979; Kuznetsova, 1969; Shargorodsky, 1961) emphasized the need to introduce a special group of socially dangerous acts (misdemeanors) into the existing criminal law. Thus, the working group headed by Kurlyandsky developed a draft code reintroducing the misdemeanor category into Russian criminal legislation in 1974 (КоАП РСФСР, 1984).

The possibility of restoring the misdemeanor category is actively discussed in modern scientific publications (Khutov, 2021; Shcherbakov, 2021; Martynenko & Martynenko, 2021; Lopashenko, 2019; Pobedkin, 2018; Kruglikov & Lapshin, 2017; Paliy, 2017; Gavrilov & Rogova, 2016b; Gavrilov, 2018), whose objective and content correlate with the policy that has been implemented by the Russian government since 2003. It aims to liberalize the system of criminal punishments and attract the special attention of Russian criminologists. In particular, many representatives of the scientific community emphasize the urgent need to differentiate criminal liability for committing unlawful acts that do not pose a significant public danger.

## DISCUSSION

As a result of heated discussions related to the return of the category of misdemeanor offenses to Russian criminal legislation, the following aspects of this process acquire particular importance:

- The need to reduce the level of criminal repression;
- Due attention to propositions of the scientific community ([Vosko-bitova, 2017](#); [Gavrilov & Rogova, 2016b](#)); and practicing lawyers ([Galperin, 1980](#)) on the need to remove unlawful acts close to administrative offenses in the degree of their public danger from the Code of Administrative Offenses, for example, Article 7.27 of the Code of Administrative Offenses of the Russian Federation ([КоАП РФ, 1984](#)) and Clause 1 of Article 158 of the Criminal Code of the Russian Federation ([УК РФ, 1996](#)), according to which the difference in the damage caused is less than 1 ruble (0.014 USD) with the amount of stolen 2 500 rubles (34.81 USD);
- The importance of excluding the category of an insignificant act that does not represent a public danger from Clause 2 of Article 14 of the Criminal Code of the Russian Federation ([УК РФ, 1996](#)) since it causes about 6-7 million annual denials to initiate a criminal case based on applications and reports from citizens and organizations about crimes, thereby violating their right to access to justice and get compensation for the damage caused;
- The prevention of data distortion on the state of crime, which contributes to the growth of latent crimes.

Thus, [Gavrilov and Rogova \(2016a\)](#) considered crimes punishable with three years of imprisonment and provided a basis for drawing certain conclusions about the state of non-grave crimes. Between 2005 and 2009, Russia registered 1 million minor offenses each year, which amounted to 35%-36% of all the registered crimes. Starting from 2012, their share reached 46.2%. Although the number of non-grave crimes decreased due to the decriminalization of their certain types in 2016-2019, they still prevailed in the structure of general crimes. The proportion of those convicted for minor crimes increased, exceeding 50% of the total number of convicts.

In this regard, [Gavrilov \(2008\)](#) noted that the study of this category of crimes demonstrates their wide scale and susceptibility to latency, indicating that a significant number of such acts do not receive an appropriate criminal legal assessment, create conditions for impunity, and cause new crimes. This is confirmed by sociologi-

cal surveys of citizens. Their data indicated that almost every second victim does not apply to law enforcement agencies (Goryainov, Ovchinsky & Kondratyuk, 2001; 2011).

Not all representatives of the scientific community support the innovative ideas of reforming the current criminal legislation. The debate on this issue became more heated given the fact that the draft Federal Law “On amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation in connection with the introduction of the concept of a misdemeanor” (Resolution of the Plenary of the Supreme Court of the RF, 2017) was sent to the State Duma of the Federal Assembly of the Russian Federation. This is evidenced by some scientific works (Golovko, 2017; 2018) substantiating the idea that Russia has no necessary grounds in law to make a positive decision on the introduction of misdemeanors into its criminal legislation.

Legal literature also notes that the introduction of misdemeanors in the Criminal Code of the Russian Federation and the relevant proceedings cannot have a crucial impact on criminal policy and law enforcement (Krivochenko, 1975).

If the misdemeanor category is considered apart from the future conceptual formatting of the entire criminal legislation of Russia, then we can agree with the above-mentioned statement. The reintroduction of misdemeanors into the Russian legal system is understood as the initial rather than the final stage in solving the most pressing issues in criminal law.

Representatives of the scientific community express other opinions on introducing misdemeanors. To assess and evaluate the proposed innovations, it is necessary to analyze all possible ideas on the introduction of this category of crime and specify the reasons why they can be accepted or rejected. After all, the importance of this issue should be recognized since it defines state policy in criminal law for a certain period (Doroshkov, 2016).

The misdemeanor category plays a special role in the differentiation of criminal liability. In the 1960s, Kuznetsova defined a misdemeanor as intentional or reckless wrongdoing of little signifi-

cance and posing no serious social threats for which, according to law, the maximum imprisonment of up to one year or another light penalty is provided, otherwise the sanction offers an alternative form of responsibility: a criminal sentence or community corrections (Kuznetsova, 1969). After several decades, the scientific and legislative understanding of misdemeanors is conditioned by the legal nature of socially dangerous acts that should be included in the category under consideration.

In the course of this study, we revealed two positions regarding the misdemeanor category. Under the first approach, a misdemeanor is a type of crime (Shargorodsky, 1961). We also share this position since the legal essence of a misdemeanor lies in the fact that it is a certain type of crime and is subject to legislative consolidation in the Criminal Code of the Russian Federation (Maksimov, 2011; Federal Law No. 162-FZ, 2003).

The idea of consolidating the misdemeanor category in the current Criminal Code of the Russian Federation was expressed by Maksimov (2009). The scholar emphasized that the new version of the Criminal Code of the Russian Federation should be supplemented with the Code of Misdemeanor Offenses which would be later added to the structure of unified codes.

According to Tsepelev (2005), it is necessary to amend the current Russian criminal legislation to decriminalize crimes with the maximum imprisonment of up to one year and convert them into administrative offenses, which would have a positive effect on the differentiation of criminal liability.

On the contrary, criminal acts with the maximum term of imprisonment of up to two years should be left in the Criminal Code of the Russian Federation as crimes of low severity, while being classified as criminal offenses with an indication to the provisions of Article 15 of the Criminal Code of the Russian Federation (Tsepelev, 2005).

Another position is to regard misdemeanors as non-criminal offenses, whose commission should entail the application of administrative enforcement measures or community corrections but not penal sanctions (КоАП РФ, 1984).

However, some renowned Russian scholars are against the legislative consolidation of misdemeanors. For instance, [Galperin \(1980\)](#) pointed out that the recognition of the misdemeanor category would lead to terminological changes.

We believe that the reintroduction of this category into Russian criminal law aims not only to amend conceptual terms but also criminal and legal consequences for persons who committed these illegal acts, which is crucial from the standpoint of the principle of justice.

This category is already consolidated in the legal systems of many foreign countries. The [French Penal Code \(1992\)](#) lays foundations for such classification that should be understood as the severity of a committed act. Consequently, it is necessary to be guided by the type and amount of penalty provided by criminal law. [French Penal Code \(1992, art. 111-1\)](#) contains a provision that criminal offenses are categorized according to their seriousness as felonies, misdemeanors, or petty offenses.

There is a similar category in the Swiss criminal system. The Swiss criminal law distinguishes between crimes and misdemeanors. They differ in the type and amount of penalty.

According to the [Swiss Criminal Code \(1937\)](#), a crime is a criminal offense punished with more than three years of imprisonment ([Swiss Criminal Code, 1937, art. 101, Cl. 2](#)). A misdemeanor is an act punishable with imprisonment for a period not exceeding three years or a money penalty ([Swiss Criminal Code, 1937, art. 101, Cl. 2](#)), classified into actual crimes, misdemeanors, and violations.

The current [Criminal Code of Germany \(StGB, 1871\)](#) distinguishes between two types of criminal acts based on a formal feature, i.e., the minimum amount of penalty. A crime is a criminal act, the minimum punishment for which is imprisonment of one year or more ([StGB, 1871, §38-39](#)), while misconduct is regarded as a criminal act punished with imprisonment from one month and less than one year ([StGB, 1871, §38](#)) or a fine ([StGB, 2003, §40-43](#)).

The Austrian Criminal Law also considers the amount of penalty as a criterion for classifying criminal acts. According to Austrian legislators, crimes are intentional acts punished with life imprison-



ment or imprisonment for a term of three years or more. Any other illegal acts mentioned in the [Austrian Criminal Code \(1974, §17\)](#) are classified as misdemeanors. The legal consequences caused by misdemeanors are the seizure of benefits or objects and other preventive measures equal to punishment. Possible penalties include imprisonment for a specified period or a monetary fine ([Kibalnik & Solomonenko, 2007](#)).

Having no conceptual framework that defines the concept of crime, the Italian legal system identifies crimes and misdemeanors as independent elements. As in the previously analyzed legal systems, Italian legislators select certain types of penalties as a criterion for such categorization. According to the [Italian Criminal Code \(1930, art. 39\)](#), crimes are punishable with imprisonment or a large fine.

The commission of misdemeanors might result in a sentence ([Italian Criminal Code, 1930, art. 25](#)), which means short-term imprisonment and fines that are much smaller than fines imposed for committing crimes ([Italian Criminal Code, 1930, art. 26](#)) ([Kulikov, 2015](#)).

The same two-term categorization of criminal offenses into crimes and misdemeanors is contained in the Dutch ([Criminal Code of the Netherlands, 1881](#)), Hungarian ([Criminal Code of the Republic of Hungary, 1963](#)), and Czech ([Criminal Code of the Czech Republic, 2009](#)) criminal legislations.

The Anglo-Saxon legal system comprises two-level categorization of crimes. The legislation of most US states divides criminal acts into dangerous crimes (felonies) and less dangerous crimes (misdemeanors). These crimes differ from each other by their nature and degree of punishment.

Thus, the commission of a felony entails imprisonment for more than one year. A misdemeanor leads to a penalty but the term of imprisonment is limited to one year. Criminal behavior (*mala prohibita*) also constitutes a separate group, i.e., criminal offenses punished with no more than five days of imprisonment or a fine not exceeding \$5 000 ([Kovalev, 2019](#)).

The misdemeanor category is common to laws adopted in countries of the Anglo-American (or the Anglo-Saxon) legal family. All criminal acts in the UK and the US are traditionally divided into crimes and misdemeanors. The British classification of crimes also includes treason (the gravest type of crime). In the US, several state codes contain a special category, namely murder under qualifying circumstances (the first or second degree).

Regarding the issue under consideration, the criminal laws of these countries are characterized by several types of criminal offenses. Criminal offenses are divided into categories that are comparable to crimes of low-to-medium severity in the Russian legislation. Under the [Penal Code of Pennsylvania \(2010\)](#), a first-degree crime is the most dangerous and entails imprisonment for up to five years, which corresponds to the Russian classification of medium-gravity crimes. Second-degree and third-degree crimes provide for the maximum punishment of up to two years and up to one year, respectively ([Penal Code of Pennsylvania, 2010](#)).

The [Washington Criminal Code \(2009\)](#) includes only two types of criminal offenses punished with up to one year of imprisonment or a fine up to \$5 000 and up to 90 days of imprisonment or \$1 000, respectively. These examples represent the following advantage: the calculation of imprisonment in days ([Washington Criminal Code, 2009](#)). This classification of criminal offenses might not be of practical use since the Russian legal system already has four types of crimes and misdemeanors might be the fifth ([Poroyko, 2017](#)).

## CONCLUSIONS

The study of international experience in the legislative allocation of the category of “criminal offense” makes it possible to formulate a conclusion about the current tendency towards introducing this category into the criminal legislation of foreign countries. This conditioned the frequent use in the international practice of rules attributing a criminal act to the above-mentioned category and proved the practical effectiveness of such an approach.

Research prospects and limitations are associated with a wide range of areas that require a comprehensive study and appropriate propositions aimed to solve the following problems: the need to make certain legislative decisions, reduce the crime rate, and ensure the effective protection of civil rights and society as a whole from criminal encroachments; to develop the most detailed regulation and classification of criminal acts; to further improve the efficiency of lawmaking and law enforcement.

The solution of such issues contributes to the introduction of the misdemeanor category into the current criminal legislation, which will most likely result in the international practice of liberalization and humanization of criminal policy, as well as the achievement of positive effects in combating crime.

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