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On Equality and Justice Principles in Criminal Law and the Specifics of Modern Criminal Lawmaking in the Light of the Exclusion of Paragraph “o” from Part 1 of Article 63 of the Criminal Code of the Russian Federation

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Abstract

Introduction: the amended list of aggravating circumstances published in 2010 and 2023 in connection with the addition and exclusion of paragraph “o” of Part 1 of Article 63 of the Criminal Code of the Russian Federation (“commission of an intentional crime by an employee of the internal affairs body) are of interest in the light of the principles of equality of citizens before the law (Article 4 of the Criminal Code of the Russian Federation) and justice (Article 6 of the Criminal Code of the Russian Federation), as well as in terms of modern criminal lawmaking. *Purpose:* taking into account the current legislation and doctrine, to determine correlation of these changes with the stated principles, as well as to indicate legislative activity trends. *Methods:* formal-logical and analytical methods, statistical method and interpretation method. *Results:* the analysis of the current constitutional and criminal legislation in terms of provisions enshrining the principles of equality of citizens before the law and justice, as well as their doctrinal and judicial interpretations, shows that the recognition of the fact of committing an intentional crime by an employee of the internal affairs body as an aggravating circumstance contradicts these principles, since it puts this category of citizens in a more vulnerable position relative to other employees of the internal affairs body whose status actually has criminality as well. In addition, the 2010 and 2023 amendments to Part 1 of Article 63 of the Criminal Code of the Russian Federation confirm the relevance of a number of trends inherent in modern criminal lawmaking. *Conclusion:* it seems more logical to correct the violation committed in 2010 by proposing the following wording of paragraph “o” of Part 1 of Article 63 of the Criminal Code of the Russian Federation: “commission of an intentional crime by a law enforcement officer”. Having considered the situation of the introduction of paragraph “o” in Part 1 of Article 63 of the Criminal Code of the Russian Federation in 2010 and its exclusion in 2023, the author has come to a conclusion about the existence of negative trends in criminal lawmaking, such as its opportunism, criminological unreasonableness, priority of specialization and casuistry of the criminal law as a consequence, as well as absence of an ambiguously formulated position of the higher courts in the discussion of draft laws.

Keywords: aggravating circumstances, criminal lawmaking, principle of equality, principle of justice.

5.1.4. Criminal law sciences.

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Introduction

The commission of an intentional crime by an employee of the internal affairs body as an aggravating circumstance was introduced into the Criminal Code of the Russian Federation in February 2010 and excluded – in June 2023. In both cases, the legislator’s decisions provoked an active discussion in the doctrine and among law enforcement officers. It seems to us that the steps taken to change the list of aggravating circumstances in both cases can be assessed from at least two positions: first, in the light of implementation of the principles of equality of citizens before the law (Article 4 of the Criminal Code of the Russian Federation) and justice (Article 6 of the Criminal Code of the Russian Federation), and second, in the context of the specifics of criminal lawmaking of the last decade.

Relevance of paragraph “o” of Part 1 of Article 63 of the CC RF for the practice of imposing a sentence

After the indicated changes in 2010, the law enforcement officer faced the problem of taking into account this circumstance when imposing punishment, in case the act was qualified as official or committed using official position in the light of the prescription of Part 2 of Article 63 of the Criminal Code of the Russian Federation. In 2015, the Supreme Court of the Russian Federation published the clarification about the non-application by courts of paragraph “o” of Part 1 of Article 63 of the Criminal Code of the Russian Federation in case an employee of the internal affairs body commits a crime using his/her official position (for example, a crime provided for in Part 3 of Article 160, Article 286 of the Criminal Code of the Russian Federation) [1]. The above rule guided the courts to apply the circumstances in question when imposing punishment for crimes of a common criminal nature committed by an employee of internal affairs bodies, while a lack of clarification regarding the need to establish a connection between the committed act and the official position of the subject caused an active discussion in science and the heterogeneity of judicial practice in the relevant part. For example, the appellate instance changed the sentence of the first instance court imposed on A.G. Amelyanovich accused of committing accessory acts in murder and intentional damage to someone else’s property (Part 5 of Article 33, Part 1 of Article 105, Part 5 of Article 33, Part 1 of Article 167 of the CC RF) by applying paragraph “o” of Part 2 of Article 63 of the Criminal Code of the Russian Federation, since “A.G. Amelyanovich, being an employee of the internal affairs body, knowing that A.E. Amelyanovich does not have a permit to store and carry weapons, did not prevent its use, and on the contrary, assisted in the commission of intentional criminal acts. By implication of law, the commission of an intentional crime by employees of the internal affairs bodies, who are responsible for protecting the life and health of citizens, countering crime and protecting public order, testifies to their conscious, contrary to their professional duty and the oath taken, opposing themselves to the goals and objectives of the police, which contributes to the formation of a negative attitude towards the internal affairs bodies and state institutions as a whole, deforms moral foundations of the interaction of the individual, society and the state, and undermines respect for the law” [2].

Despite the fact that in this case the accomplice’s actions were expressed in driving a personal vehicle during the prosecution of the victims and were not related to his official position, the court considered it possible to take into account the analyzed circumstance as an aggravating punishment. This practice caused critical comments to the doctrine, since “criminal legislation does not provide for either strengthening or mitigation of punishment for crimes not related to the use of official position, even if they are committed by persons holding high and responsible positions” [3, p. 90].

At the same time, such an approach of the law enforcement officer seems quite justified in the sense that a crime committed outside of official activity and in the absence of its connection with the official position of the subject somehow undermines both the authority of state power and the

public's trust in its bearers and the state as a whole. However, this is obviously true not only for employees of internal affairs bodies, but also for any officials of state and municipal authorities, including law enforcement agencies. In this context, the discussion of amendments to the list of aggravating circumstances (Part 1 of Article 63 of the Criminal Code of the Russian Federation), in terms of paragraph "o" supplemented in 2010 and excluded in 2023, raises the question of the observation of criminal law principles of equality of citizens before the law and justice, enshrined in Articles 4 and 6 of the Criminal Code, respectively.

The circumstance fixed in paragraph "o" of Part 1 of Article 63 of the Criminal Code of the Russian Federation in the light of principles of equality and justice

It is worth mentioning that all critical comments made in criminal law science on the 2010 changes are mostly focused on the question of their relationship with the principle of equality of citizens before the law (Article 4 of the Criminal Code of the Russian Federation) [4–6].

The authors, referring to the idea of equality in law in their research, note, first of all, the historical variability of its content, and use Soviet and modern Russian periods as an illustration. The first period is usually characterized by the existence of "... a clear bias towards the introduction of de facto equality to the detriment of formal legal equality" [7, p. 4]. In other words, equality in Soviet law was identified with the actual equality of people, which ultimately took the form of "universal equalization" [7, p. 4]. It is obvious that such an approach is fundamentally wrong, since the situation of actual equality of people is impossible a priori: "... real actual equality is contrary to human nature ... contradicts the very idea of law" [8, p. 82].

As for the modern interpretation of the principle of equality, it is primarily based on provisions of the current legislation. Thus, according to Article 19 of the Constitution of the Russian Federation, the state guarantees equality of human and civil rights and freedoms regardless of gender, race, nationality, language, origin, property and official status, place of residence, attitude to religion, beliefs, membership in public associations, as well as other circumstances; any form of restriction of citizens' rights on the grounds of social, racial, national, linguistic or religious affiliation is prohibited.

Consolidation of the constitutional principles of equality of citizens in the Criminal Code of the Russian Federation has given them the importance of the criminal law principle of equality of citizens before the law, the essence of which is reduced to the requirement to bring to criminal liability the persons who have committed a crime, regardless of any inherent characteristics. In other words, the content of the principle of equality in criminal law is significantly narrower than general constitutional provisions: by establishing the need to bring a subject to criminal liability in connection with a committed crime, it thus extends to a limited number of persons and, in order to bring to justice, does not take into account their other characteristics, except for the fact of the crime committed. We emphasize that these characteristics can be taken into account in order to differentiate or individualize liability, however, they do not affect the presence or absence of grounds for bringing liability. As V.D. Filimonov notes, in addition to establishing "... an equal obligation to bear responsibility for the crime committed" "the basis of the content of the principle of equality of citizens before the law in criminal law is the requirements of equal grounds for the application of criminal liability and equal criteria for determining the content and extent of criminal liability" [3, p. 88].

It is worth mentioning that the doctrinal interpretation of the above legislative provisions is based on the distinction between formal (legal) equality and actual (social) equality. At the same time, the former acts as a kind of fiction that allows, in order to ensure legal regulation, protection of socially significant goods, values and relationships, to abstract from actual differences of subjects with legal capacity. This means that in a legal sense, virtually unequal subjects with different personal, socio-demographic and other characteristics are recognized as equal. According to D.E. Zaikov, formal equality is a screen that hides the specifics, superiority, shortcomings and other existing differences between citizens and which is actually transparent [9]. Speaking about transparency, the author seems to mean the fact that formal equality does not only cancel, but even vice versa, justifies the legislator's differentiated attitude to certain categories of subjects: legitimate inequality is the driving force of legal equality [9].

Indeed, the consolidation of provisions on equality of citizens before the law at the constitutional and sectoral levels serves as the basis for differentiated legislative regulation and protection of public relations and social benefits, taking into account characteristics of the subjects. In particular, with regard to criminal law, we are talking about institutions of differentiation and individualization of criminal liability and punishment, in some cases involving consideration of individual characteristics of the subject of the crime and/or the victim.

To support the idea, we will consider legal positions of the Constitutional Court of the Russian Federation, which has clarified the issue of equality and differentiation in law: "any differentiation of legal regulation leading to differences in the rights and obligations of subjects of law must be carried out by the legislator in compliance with the requirements of the Constitution of the Russian Federation, including those arising from the principle of equality (parts 1, 2 of Article 19), by virtue of which differences are permissible if they are objectively justified and pursue constitutionally significant goals, while the legal means used to achieve these goals are proportionate to them. Compliance with the constitutional principle of equality, which guarantees protection from all forms of discrimination in the exercise of rights and freedoms, means, among other things, a prohibition to introduce such differences in the rights of persons belonging to the same category that have no objective and reasonable justification (prohibition of different treatment of persons in the same or similar situations)" [10].

In the light of the criteria of objective justification and validity of differentiation of legal regulation outlined by the Constitutional Court of the Russian Federation, the idea of equality turns out to be directly related to the principle of justice. Thus, according to the general theory of law that indicates "the unity of justice and equality as an expression of proportionality and equivalence", justice is "retribution of the equal for the equal" [11, p. 30].Considering that we are talking about formal equality, inevitably associated with the legitimate inequality of the subjects-addressees of legal influence, "retribution of the equal for the equal" becomes possible only due to the appropriate kind of exceptions (privileges, restrictions, etc.). With regard to criminal law, this means that the criminal law measure of equality is the provision enshrined in the law on bringing to justice everyone who has committed a crime, and the possibilities of differentiation and individualization of liability and punishment are nothing more than tools to ensure fair equality for the actually and legally unequal.

It is important that this idea is not new and corresponds to moral imperatives formalized, including at the level of religious texts: "And from everyone to whom much has been given, much will be required; and to whom much has been entrusted, more will be exacted from him" (Gospel of Luke, 12:48). This is of particular importance in the light of the legislator's differentiated approach to the establishment of measures of responsibility for the crime committed, depending on characteristics of the offender and/or the victim, since it allows to correlate it with the principle of equality of citizens before the law (Article 4 of the Criminal Code of the Russian Federation) as not only not contradicting it, but also approved in order to implement this principle. The same can be said about the institution of individualization of punishment in connection with certain characteristics of the perpetrator and/or victim.

Taking into account the above arguments, the legislative establishment of stricter penalties for the crime committed by an official, including a representative of the authorities, does not violate either the requirements of equality of citizens before the law or the requirements of justice as criminal law principles. Indeed, consideration of the official position of a person seems to be aimed at ensuring fair equality in determining penalties for subjects whose status and role position is criminogenic. It is important to emphasize that the occupation of a position by itself and the exercise of official activity does not mean the inevitability or at least some probability of committing a crime, however, by definition it is associated with formalized criminogenic possibilities of power influence, and in some cases – with the use of legal coercion tools. In addition, it is a mistake to deny unformalized criminogenic opportunities that also accompany the occupation of an official position and are realized in interpersonal interaction – first of all, we are talking about authority, personal disposition, trust, etc. They do not only determine the possibility of committing an act

and/or facilitates it, but also affects the change in the public danger of a crime, increasing it, since in any case it undermines the authority of state or other service, as well as public trust in the state and its structures. Indeed, granting authority to a subject, including the possibility of coercive influence, in fact, is an act of trust on the part of the population, who have voluntarily entrusted these tools to individuals representing the state, in return for ensuring their own security. So, regardless of the direction of criminal behavior of such an authorized person, in the public consciousness, he, being guilty, is perceived precisely as invested with power for the purpose of establishing legality, however, he has trampled it. Will the trust of the population not be shaken in this case?

Hence, the existence of opportunities for differentiation of liability and individualization of punishment in the current criminal law, taking into account the official position of the subject or the official activity carried out by him seems logical. At the same time, since "justice is equality for the equal in its social significance" [9], the legislator's determination of an aggravating circumstance particularly for an employee of the internal affairs bodies raises questions. It is obvious that such selectivity has led to a clear violation of the principles of equality and justice. We back the stance of those scientists who have emphasized this in their works [12–15]. So, justifying this position, A.V. Elinskii refers to the fact that "the conclusion about the similarity of the legal status of employees of internal affairs bodies and employees of other law enforcement agencies, in particular institutions and bodies of the penal system, bodies for the control of the turnover of narcotic drugs and psychotropic substances, was made in the Ruling of the Constitutional Court of the Russian Federation of June 20, 2006 No. 173-O" [16].

The above allows, in the end, to conclude that the principles of equality of citizens before the law and justice in relation to paragraph "o" of Part 1 of Article 63 of the Criminal Code of the Russian Federation are violated precisely in connection with the unjustified selectivity of the legislator, who, ignoring the similarity of the legal status of representatives of various structures related to law enforcement, gave the greatest criminality to the status of an employee of internal affairs bodies.

Hence, it would seem that by excluding this aggravating circumstance from Part 1 of Article 63 of the Criminal Code of the Russian Federation, the legislator corrected a ten-year-old violation of the constitutional principles of equality of citizens before the law and the relevant criminal law principles. It should be noted that the Explanatory Note to Draft Law No. 215274-8 "On invalidation of paragraph "o" of Part 1 of Article 63 of the Criminal Code of the Russian Federation", defining the eliminated feature as "discriminatory", refers to the unfairness of separating these employees from representatives of other structures that ensure law and order in Russia, the minimum share of crimes committed by law enforcement officers from the total number (1%) and the need to "restore the logic of legislative regulation and thereby avoid emphasizing undeserved and unfair distrust to employees of the internal affairs bodies of Russia" [17].

We believe that this situation rather reflects some criminal lawmaking trends characteristic of the past ten years than the desire to eliminate legal violations of fundamental principles and requirements of systematic legislation.

On some trends in modern criminal lawmaking in the light of the exclusion of paragraph "o" from Part 1 of Article 63 of the Criminal Code of the Russian Federation

As mentioned above, along with the issues of compliance with the principles of equality of citizens before the law and justice, the introduction of paragraph «o» in Part 1 of Article 63 of the CC RF and its subsequent exclusion from the list of aggravating circumstances makes us think about features of modern criminal lawmaking. So, the analysis of the situation preceding the 2010 novel helps identify resonant events with the participation of law enforcement officers. We are talking about the crime of the former head of the Department of Internal Affairs in the Tsaritsyno district of Moscow, Police Major D.V. Yevsyukov, who on the night of April 27, 2009 staged a shooting in the supermarket "Island" on Shipilovskaya Street. According to investigators, the policeman killed two people, made an attempt to kill 22 people, seven of whom received gunshot wounds, as well as an attempt on the life of police officers. On February 19, 2010, the Moscow City Court sentenced D.V. Evsyukov to life imprisonment [18].

Apparently, it was this act, coupled with the increase in the number of crimes committed by law enforcement officers in previous years and the ongoing reform of the Ministry of Internal Affairs of Russia, that served as a trigger for the legislator. As a result, the analyzed novel appeared and Article 286.1 of the Criminal Code of the Russian Federation "Non-execution of the order by an employee of the internal affairs body" as a special norm establishing less severe penalties regarding sanctions of Article 286 of the Criminal Code of the Russian Federation.

Although the described chain of events – the public outcry about the committed act and the point activity of the legislator in the form of a corresponding new norm – was not new in 2010, in recent years it has acquired significance as a rule for most acts of criminal lawmaking. In other words, the recent appearance of reactive (opportunistic, situational) norms in the Criminal Code of the Russian Federation follows this logic. Prospects for such norms are uniform in most cases: they remain stillborn. This is evidenced by law enforcement data: 16 people were brought to liability for the entire period of Article 286.1 of the Criminal Code of the Russian Federation in force [19]. It should be noted that already at the time of this article introduction, its non-viability was predicted by the authors [15].

The essence of the trend manifested in the specified logic of criminal lawmaking is that the legislator ignores the requirement of criminological validity of criminalization, involving "first, the appearance of antisocial features in a significant number of people, second, the manifestation of these features in socially dangerous behavior, third, the influence of the level, structure and dynamics of socially dangerous behavior on the legislator's will" [20]. Simplifying the task, the legislator, apparently, connects the need for criminalization with the emerging significant public outcry on a particular negative occasion, and thus considers the goals of criminal legal impact, first of all, in the light of solving momentary (current) tasks.

The consequence of this approach is another trend of modern criminal lawmaking, which manifests itself in the fact that the emergence of new elements of crimes occurs mainly due to the differentiation of special elements from general ones [21]. The differentiation of criminal liability that takes place in such cases would not cause objections if it were justified. In particular, according to V.N. Kudryavtsev, the existence of a special norm along with the general norm makes practical sense when this special norm somehow solves the issues of criminal liability in comparison with the general norm (for example, on the type and amount of punishment) [22]. However, how this requirement corresponds to Article 286.1 of the Criminal Code of the Russian Federation is a big question (the sanctions of Article 286.1 are privileged and the list of penalty types is not fundamentally different, and because there is no lower limit to the imprisonment term in the sanctions of Part 1 of Article 286 of the Criminal Code of the Russian Federation, the introduction of a special norm seems superfluous).

In our opinion, the introduction of a special norm containing elements of the act already recognized as criminal, and not assuming a fundamentally different solution to the issue of liability, is a consequence of the legislator's desire to focus the attention of the law enforcement officer and population on certain phenomena of reality. It is difficult to call such legislative activity otherwise than an imitation of activities to counteract such phenomena, since often the newly introduced norm is not viable.

By and large, the exclusion of paragraph "o" from Part 1 of Article 63 of the Criminal Code of the Russian Federation in June 2023 also corresponds to the established logic of legislative activity. The instability of the external and internal socio-political situation in the country, when the preservation of socio-political balance is associated, among other things, with the activation of criminal legal influence, involving the active involvement of law enforcement agencies and, in particular, internal affairs bodies, forms, in our opinion, the factual basis for legislative amendments to the list of aggravating circumstances in the analyzed part. We cannot but agree with A.A. Tarasov that in modern Russia, any anti-criminal campaigns, against which no one would have thought of objecting, for some reason are always accompanied by restrictions on procedural guarantees and the expansion of powers of representatives of law enforcement agencies, and sometimes even begin with this [23]. The researcher mentions the campaigns to counteract terrorism in 2008 and combat pedophilia in 2013 as an example.

At the moment, taking into account the geopolitical events involving Russia and the accompanying amendments in the criminal law, we can speak with full confidence about the ongoing campaign to combat crimes that encroach on state power. this is evidenced by the dynamics of legislative activity in terms of novelization of the Special Part of the Criminal Code of the Russian Federation. As N.A. Lopashenko notes, in 2022, the bulk of the changes fell on three sections, one of which is Section X of the Criminal Code of the Russian Federation "Crimes against state power": 9 articles were amended and 11 new articles were included, while the chapter of encroachments on the foundations of the constitutional system and state security underwent significant changes (4 articles were amended, 9 new articles were included)" [24]. The relevance of the current anti-criminal campaign has zeroed out achievements of the other (against crimes committed by law enforcement officers), held in 2010.

In addition to the above, it seems that the question of the role of the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation in modern criminal lawmaking deserves separate consideration, in the situation of exclusion of paragraph "o" from Part 1 of Article 63 of the Criminal Code of the Russian Federation.

Thus, repeatedly addressing the issue of application of the considered aggravating circumstance in the framework of working with citizens' complaints and court appeals, the Constitutional Court of the Russian Federation noted the "exceptional nature" of the responsibility assigned to employees of internal affairs bodies, thereby confirming the validity, expediency and compliance with the Constitution of the Russian Federation of the amendments made to the criminal law. Thus, in the Ruling of the Constitutional Court of the Russian Federation of December 8, 2011 No. 1623-O-O states that "the commission of an intentional crime by employees of the internal affairs bodies, who are entrusted with an exceptional in scope and nature ... responsibility for protecting the life and health of citizens, countering crime and protecting public order, testifies to their conscious ... opposition to the goals and objectives of the police, which contributes to the formation of a negative relations to the internal affairs bodies and institutions of state power in general, deforms the moral foundations of the interaction of the individual, society and the state, undermines respect for the law and the need for its unconditional observance" [25].

It is obvious that the exclusivity of responsibility emphasized by the Constitutional Court of the Russian Federation for employees of internal affairs bodies has not disappeared anywhere after the exclusion of the relevant aggravating circumstance in the current period – it also took place at the time of discussion of the relevant draft law. However, no one remembered about it and did not attach importance to it, while, the Constitutional Court of the Russian Federation refused to satisfy a number of complaints and appeals appealing to this exclusivity [26; 27].

In this regard, it seems important to consider doctrinal reflections on the relationship between judicial and legislative authorities in the context of the criminal policy being implemented. Thus, Yu. E. Pudovochkin and M.M. Babaev define the role of the Constitutional Court of the Russian Federation as the role of a legal assistant, which obviously excludes minimal confrontation between the Constitutional Court of the Russian Federation and the Parliament, which also obviously excludes the existence of contradictions between them [28]. N.A. Vlasenko, stating a period of weak activity of the Constitutional Court of the Russian Federation, remarks that dissenting opinions, rotation, not to mention decisions contrary to the management system, have gone into oblivion [29].

Undoubtedly, it is possible to talk about attributing a particular phenomenon to a number of trends only on the basis of a thorough and in-depth study, which is not considered as a task in our research. However, we believe that the positions chosen by the highest judicial instances in the case under consideration fully correspond to the conclusions that have already been made in science, and once again confirm them.

As for the role of the Supreme Court of the Russian Federation, it is necessary to specify the following. Consideration of reviews to the 2010 draft law, proposing to supplement Part 1 of Article 63 of the Criminal Code with paragraph "o", and to the 2022 draft law, proposing to exclude this paragraph, shows some self-distancing of the Supreme Court of the Russian Federation from participating in the discussion. In particular, in the first case, the review contained only

an indication of the Court's support of the initiative [30], whereas in the second case, the Court, pointing to the attribution of the issue under consideration to the jurisdiction of the federal legislator, summarizes the review by the absence of "comments and proposals on the draft law within the jurisdiction" of the Court [31].

In our opinion, in this case, the Supreme Court of the Russian Federation demonstrates insufficient involvement in the legislative process, which, however, is evaluated differently in science: some authors believe that such a position corresponds to the idea of separation of powers, while others emphasize the necessity of interaction "court-lawmaking" [32]. We believe that the idea of judiciary independence and the mechanism of checks and balances within the separation of powers are not mutually exclusive, but rather complement each other. Our approach contradicts to that of the Supreme Court of the Russian Federation, at least in terms of self-limitation to "limits of jurisdiction". Though the concept "area of jurisdiction" of the Supreme Court of the Russian Federation is poorly elaborated, [32], the powers of the Plenum to interpret legislation and the direct application of the latter by the courts are the basis for a broad understanding of this concept. Hence, the conscious self-distancing of the Court from legislative activity, which, in our opinion, is observed in the above reviews of draft laws, seems unacceptable and clearly does not contribute to the formation of reasonable legislative dynamics.

Conclusion

As practice shows, unfortunately, the fundamental importance of the provisions recognized as constitutional or sectoral principles is not always taken into account within the framework of legislative activity. The introduction of the paragraph "o" "commission of an intentional crime by an employee of the internal affairs body" to the list of aggravating circumstances of Part 1 of Article 63 of the Criminal Code of the Russian Federation in 2010 is an example of such a situation. In our opinion, in this case, requirements of the principles of equality of citizens before the law and justice are violated because of the reactive selectivity of the legislator, who emphasized the criminogenic significance of the status of these employees out of a number of law enforcement officials. Meanwhile, due to the possession of similar essential characteristics, the statuses of employees of other law enforcement agencies are no less criminogenic, and therefore the correction of the violation committed in 2010 required bringing the norm of paragraph "o" of Part 1 of Article 63 of the CC RF to the following wording: "commission of an intentional crime by a law enforcement officer".

The analysis of the situation of the introduction of paragraph "o" in Part 1 of Article 63 of the CC RF in 2010 and its exclusion in 2023, in our opinion, confirms the relevance of some trends in modern criminal lawmaking, which can be described as negative. So, we are talking about the opportunistic nature of lawmaking, its criminological unreasonableness, priority of specialization, which entails the casuistry of the criminal law, as well as the lack of an unambiguous formulated position on the part of the higher courts when discussing novels.

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