

Crime and Human Rights in Russia

A Review of Basic Legislation

NIKOLAI V. KACHEV
ALEXANDER G. PIPIYA

An analysis of Russia's criminal problems is present in the 1994-1995 Russian Federation federal program for law enforcement.¹ The Program raises questions because it is a typical official political appraisal of crime in Russia. The Program's developers are only superficially concerned with the crime problem, and in addition the document does not suggest an appropriate analysis of the reasons behind criminal activities, thereby making the proposed crime-fighting measures inadequate. The reason is that either the creators of the Program do not understand this matter or they do not want to give certain phenomena their proper names. There is another explanation which is purely political. Apparently, when the president was preparing this decree, the Parliament was drafting a similar proposal. The president hurried the development of the Program in order to present his decree before Parliament presented its competing legislation. Because this document—and the subsequent decrees necessary for its implementation—have stirred interest and aroused ambiguous reaction, we will examine its statements which are supposed to explain the government's choice of law-enforcement measures.

According to the Program, one of the current trends within the criminal world is to penetrate the economic and political environment. In reality, however, the situation is more complex. First, criminal groups have become essentially interlaced with economic and political structures and the current crisis is characterized by their symbiosis. Second, the current economic situation and the influence of tax legislation make the emergence and existence of criminal groups in economic structures quite natural. This is why economic structures are quite often originally intended to be some sort of criminal activity. They either begin as an illegal activity or they become one due to the measures which must be taken to ensure economic survival.

Similar analytical flaws are present in the Program's appraisal of the relationship of the government bureaucracy with the criminal world. Attempts to depict the government and the criminal world as separated by a "Great Wall" are at the very least naïve. The overall commercialization of the government apparatus has given rise to the intentional introduction of circumstances that prevent normal economic activities. For example, the government and law-enforcement bodies protect businesses in exchange for bribes or a share in the business. This not only creates the conditions for

¹ Nikolai V. Kachev and Alexander G. Pipiya are candidates of Law and lawyers in Russia.

cooperation with criminal structures but also meets the latter half-way. Thus, the bureaucracy can hardly be considered as a victim in this case. More than 27,000 crimes in the field of privatization were revealed in 1993.² Even if it is assumed that privatization is being performed by the bureaucracy and not the mafias, these data sufficiently prove effective interaction between them.

The Program discusses such factors for the rise in crime as the absence of appropriate market-economy skills, the increasing vulnerability of the population and the insufficient level of legal culture among the citizenry.

“ . . . the [legislation] is basically a program for the further strengthening of law-and-order bodies rather than a program for law enforcement.”

However, these factors are not the basic reasons, and must be explained by understanding the phenomena that generate them. In addition, on their own they are only conditions but not the reasons behind crime. For example, vulnerability only facilitates crime but does not generate it.

In fact, the Program does not raise the question of the major causes of crime—i.e. the actual results of the government's social policy. Thus, reference to imperfections in the government's state security system as a crime growth factor is well-grounded only as long as there exists an understanding that one cannot reduce crime by fighting the symptoms rather than the disease.

The evident absence of interest in an in-depth analysis of the real factors behind crime only produces ineffective law-enforcement measures. Some measures such as improving the law-and-order bodies, increasing the motivation of their staff, and protecting the legal rights of victims were planned long ago but have yet to be implemented. However, it is these problems that the Program does not deal with very specifically. Other measures such as developing a federal program to prevent youth crime, encouraging the public's commitment to law enforcement and involving various government agencies to coordinate, seem to be nothing more than a tribute to words rather than a serious plan of action. Under the current circumstances of impoverishment and social divisions, Soviet-type strategies to combat crime will not succeed.

Many statements of the Program cannot be considered serious because they amount to nothing more than Soviet-type posturing. For instance, the idea of the state as the “highest guarantor of law and order” is neither new nor relevant under the current circumstances. Some statements, however, arouse astonishment and serious objections because they are neither essentially clear nor well-grounded as effective anti-crime measures. For example, the Program delegates additional authority to the police. This includes the use of weapons. The existing regulation allows using weapons in “all necessary situations” and liberalizing this policy could cause fatal misjudgments on the part of the police.

Among all law-enforcement measures put forward in the Program, it is

necessary to pay close scrutiny to actions that will strengthen the Ministry of Internal Affairs. These are well developed and specified in the Program. There will be an increase of 52,000 armed forces servicemen adequately equipped—including with automatic weapons. These servicemen will come from the reduced ranks of the army. Using former troops effectively however, will have very limited impact in the fight against crime, so this measure is mainly intended for suppressing probable rebellions.

Summarizing all the above-mentioned measures proposed in the Program, one may draw the following conclusions based on the implications of the measures. First, the Program is basically a program for the further strengthening of law-and-order

bodies rather than a program for law enforcement. The real struggle against the criminal environment requires a broader scope of activities—including dealing with the real sources of crime. Second, the list of proposed measures does not actually go beyond the "police" actions since the government tends to delegate

The Russian Criminal Code "inevitably embodies the ideology entrenched during the social and political reality of the Soviet period."

all problems of law enforcement to law-and-order agencies. Third, according to the Program's appraisal of the criminal situation and the correspondence of anti-crime measures to it, one may believe that the Program's expected results—the introduction of prerequisites for stabilizing crime and a subsequent decrease in the crime rate—are not realistic. Fourth, the Program's contents and style show that the previous demagogic solution to criminal problems still persists. By "demagogic" we mean a shallow interest in analyzing the actual sources of crime and a heavy emphasis on enforcement of "quick-fix" methods—including methods which restrict human rights. Unfortunately, the president's decrees on the subject are based on this ideology of law enforcement.

Although various branches of the Russian judicial system and the Constitution itself have undergone quite dramatic changes, criminal and trial legislation has remained essentially the same. This gives the impression that the government agencies, the members of Parliament, the mass media and others have selected as their strategy step-by-step changes and additions to the Criminal Code as the necessity arises. However, the criminal is first of all a system tool, and he or she requires only system treatment. That is why the criminal law procedures are currently very much weakened by many minor—but controversial—amendments introduced by people with different levels of understanding regarding approaches to criminal legislation in Russia.

On the one hand, the current Criminal Code attempts to reflect contemporary changes in Russian society. On the other hand it inevitably embodies the ideology entrenched during the social and political reality of the Soviet period. The State Duma, whose members have criticized the President's team for its reluctance in developing new legislation on law

enforcement, appear ready to discuss the problem with the president and adopt new criminal and trial codes for the Russian Federation this year.³ But so far it is quite hard to say what these documents will be because several teams and circles have been developing a number of projects that are structurally and contextually different. However, the most probable tendencies can be analyzed on the basis of the acts already adopted. Because the initiative belongs to the president at the moment, one should analyze some of the president's recent decrees.

Presidential decree No. 1226, "On the Urgent Measures for the Protection of the Citizens of Russia from Gangsterism and Other Types of Organized Crime" of 14 June 1994 is a clear example of the current administration's approach to law enforcement. The following elements of the decree reflect the most essential and serious potential violations of human rights:

—Individuals suspected of connection with organized crime or other crimes can be detained for up to 30 days. Yet, the Criminal and Trial Code (which has the status of a federal law) allows detention of a suspect for only three days.⁴

—The accused immediately becomes a suspect because he or she can be detained for up to 30 days without a public prosecutor's warrant. The Criminal and Trial Code requires a warrant for arresting the accused.⁵ One must note here that the Criminal and Trial Code contains the possibility of appealing to court to change the method of incarceration. The decree allows detention of the accused for 30 days without any chance for him or his legal representatives to appeal against the very fact of detention.

—Although the Criminal and Trial Code guarantees the right to bail by a private person or a social organization,⁶ the decree denies this right.

—The possibility of any kind of examination of documents before the opening of a criminal case is denied in the case of an individual suspected of association with a gang or any other criminal group. An examination as a trial element aiming at the obtainment of *corpus delicti* presumes not only the presence of a certain procedure that guarantees the validity of the examination's results, but also prescribes participation of the accused and his/her legal representatives.

—Commercial and banking privacy can be canceled for individuals associated with gangsterism and other heavy crimes committed by organized criminal groups. In this case the term "associated"—used instead of "committed" or "in complicity"—implies an unrestricted number of people against whom law-and-order agencies can gather confidential information.

—The decree gives the right to law-enforcement agencies to inspect premises, vehicles, drivers and passengers. The shy usage of the word "inspection" cannot hide the fact that it essentially implies a search. But according to the Criminal and Trial Code, in order to make a search, a criminal case must be opened. The decision to undertake this inquisition must be made and the public prosecutor's warrant must be obtained.

Such a simplistic treatment of criminal and trial legislation in the president's decree, as discussed above, clearly warns the Russian democratic public that the direction towards which Russia is evolving may be a dangerous one.

Notes

¹ Presidential decree No. 1016, 24 May 1994, "On the Urgent Measures for the Implementation of the Federal Program of the Russian Federation on the Reinforcement of the Struggle With Crime in 1994-1995," *Rossiiskaya Gazeta*, 1 June 1994.

² "The Root of Economic Crime," *Ekonomika i Zhizn*, No. 22 (May 1994).

³ "Plan for the Development of Bills to be Submitted by the President of the Russian Federation to the State Duma of the Federal Assembly in June 1993"; *Rossiiskaya Gazeta*, 21 June 1994.

⁴ Criminal and Trial Code of the Russian Federation; Article 122.

⁵ *Ibid.*, Article 96.

⁶ *Ibid.*, Article 89-101.