Analyzing Formal Criteria of Legitimate Restrictions of Human Rights in the Criminal Sphere in Russia and the Republic of Kazakhstan

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Abstract The aim of the study is to consider the best practices of strengthening and interpreting of formal (legality, certainty, reasonable stability, predictability) criteria of in legal limitation of human rights in the criminal sphere in Russia and the Republic of Kazakhstan. We did it on the basis of comparison (comparative method of research) of constitutions and criminal codes of these countries, practices of constitutional control of the Constitutional Court of the Russian Federation and the Constitutional Council of the Republic of Kazakhstan, as well as legal literature. As a result of the study, new forms of violation of the legality criterion in Russia were identified. The doctrine and practice of control over regulatory legal acts used in the interpretation of criminal law norms have been supplemented with the following new criteria-indicators of legal restrictions on human rights in the criminal sphere: (a) criminal law is an extreme measure that can be used only when the protection of public relations by other means cannot be properly ensured; (b) all laws and regulations by which a blanket rule of the criminal code is interpreted must be published and verified accordingly. We proposed that the sustainable development program of Russia should indicate observance of human rights as the main legal basis for sustainable development, while in our opinion, the legal literature on sustainable development and national security should take into account the criteria of legitimate restriction of human rights. This study is interesting for both countries, as it promotes more adequate use of the theory of legitimate restriction of human rights in the legislative and law enforcement activities.

Keywords Human rights restriction · Legality · Certainty · Blanket norms · Criminal law · Norm control · Russia · Republic of Kazakhstan

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1 Introduction

Achieving sustainable development goals at both the national and international levels (Sakharov and Kolmar 2019) and ensuring Russia's national security and the Republic of Kazakhstan is impossible without meeting the criteria of legitimate restrictions on human rights in general and in the criminal sphere in particular. The improvement of social processes (digitization, robotization), countering new national and international threats of the twenty-first century (armed conflicts, natural disasters, the COVID-19 coronavirus pandemic, terrorism, etc.) often occurs with violations of human rights. In particular, it concerns the regime of citizen self-isolation introduced in Russia to prevent the spread of coronavirus infection COVID-19 based on decrees issued in March 2020 by the mayor of Moscow and governors (Russian Federation [RF] 2020a, b). Hasty criminalization of acts in the Code of Administrative Offences of the Russian Federation (hereinafter—the Code of Administrative Offences of the Russian Federation) and the Criminal Code of the Russian Federation (April 2020)) (Russian Federation 2020c, d) require in-depth analysis concerning compliance with the criteria of legality, certainty, legal validity, the proportionality of the act, and responsibility. Thus, the amended sanction of Part 3 of Article 236 of the Criminal Code "Violation of sanitary and epidemiological rules" does not even comply with the provisions of the General Part (Article 531) of the Criminal Code. Scientists have also found violations of citizen rights and freedoms and have noted an increasing bias towards protecting the nation and public interests to the detriment of private rights (Lukasheva 2014, pp. 29–35).

The author's research of constitutionalists on the legal category of human rights restrictions (Prikhodko 2017; Eleupova 2006), which the author has conducted over the past ten years in the criminal sphere, depicts that the majority of criteria-indicators of legal restrictions on human rights in a general, indirect form are enshrined in constitutional norms. They are also formulated in international treaties, interpreted in decisions of the European Court of Human Rights (hereinafter, the "ECtHR") and the Constitutional Court of the Russian Federation (hereinafter, the "Constitutional Court"). However, as the constitutionalists claim over several decades (Lapaeva 2013, p. 14), little attention is paid in the legal literature to the issue of general limits—criteria of lawful restriction of human rights, and even more so to particular limits in the criminal sphere.

The interpretation of many of them is controversial. Some are disputed, and some have not yet been studied (e.g., observance of the principle of legality of human rights restrictions based on a verdict, by-law, decrees of Moscow governors and mayor; resolutions of the Plenum and Presidium of the Supreme Court of the Russian Federation (hereinafter referred to as "PSC RF"); blanket rules, etc.). The ECtHR assumed the primary burden in interpreting, defining, and developing the criteria (their indicators) for legal limitation of human rights, the Constitutional Court of the Russian Federation (Chepenko 2017), and the Constitutional Court of the Republic of Kazakhstan (Amandykova and Dil 2012) in conjunction with the Supreme Courts of Russia and the Republic of Kazakhstan.

The Republic of Kazakhstan was chosen as an object of comparison with Russia because these countries have similar legal frameworks, basic principles of law, and law enforcement—respect for human rights (the human being and his rights and freedoms are the supreme value). However, the mechanism of constitutional rights protection in the Republic of Kazakhstan is partly different from Russia. Moreover, Kazakhstan has recently adopted a new Criminal Code of the Republic of Kazakhstan (No. 226 dated 03.07.2014) (hereinafter–the Criminal Code of the Republic of Kazakhstan [RK] 2014), while in Russia over the past few years, the draft Criminal Code of the Russian Federation and the Code of Administrative Offences of the Russian Federation have been under discussion. In connection with these circumstances, there is a timely demand for mutual enrichment of both countries with correct practices in the development, definition (interpretation) of criteria for legitimate limitation of human rights in the criminal sphere.

2 Materials and Methods

The circumstances mentioned above explain the used research methods, including the object, goal, and comparative research levels (Zinovieva 2014; Kalashnikova 2014; Yudina 2014). The paper analyzes and compares decisions of the Constitutional Council of the Republic of Kazakhstan [CC RK] 2008, 2009, 2015, 2019; Constitutional Court of the Russian Federation [CC RK] 2007, 2008a, b, 2010, 2015, 2017, 2018, 2019), constitutions, criminal codes and other normative acts of the Republic of Kazakhstan and Russia (RF 1993, 1994, 1996, 1998, 2016, 2020a, b, c, d, e; Kazakhstan 1995, 2014, 2016), results of theoretical reflection on the criteria for legal limitation of human rights by scientists of these countries (Amandykova and Dil 2012; Eleupova 2006; Kostrova 2017; Lapaeva 2013; Lukasheva 2014; Obrazhiev 2015; Pikurov 2009; Plokhova 2014, 2017, 2018; Prikhodko 2017; Sakharov and Kolmar 2019; Filippova 2017; Chepenko 2017; Shishk 2004; Yusupova 2013; Lange 1956; Lohberger 1968; Plohova 2017; Weidenbach 1965). Generalological methods of cognition are applied (Ruzavin 2015), such as system analysis (which allows the author to reveal the place of criminal law in the system of law and the relationship between constitutional and criminal norms), synthesis, induction, and deduction. The methods mentioned above make it possible to analyze and characterize the general aspects and specifics in the consolidation and interpretation by scientists and practitioners of formal criteria-indicators in the constitutions, criminal legislation, constitutional and criminal law, in the legal positions of higher judicial instances with respect to the norms of criminal law in Russia and Kazakhstan and to identify the best practices available in each country, to formulate new formal criteria-indicators of legitimate limitation of human rights in the criminal sphere.

3 Results

The author obtains the following results in the course of study.

There is a tendency to expand the means of restricting human rights in the practice of constitutional control of the Russian Federation. Initially, the restriction was possible only by federal constitutional law, then merely by federal law, then by a law of a constituent entity of the Russian Federation, by a court decision, by a resolution of the Government of the Russian Federation, by decrees of top officials of constituent entities of the Russian Federation, as long as such powers were granted by federal law.

The primary introductory constitutional provisions that set forth the criteria for legally restricting human rights and which are always referred to by the RF Constitutional Court when it sees unconstitutional restriction of human rights are contained in Part 3, Article 55 of the Constitution of the Russian Federation and Paragraph 1, Article 39 of the Constitution of the Republic of Kazakhstan. They list the main explicit formal criterion of legal limitation of human rights—legality. According to the Constitution of RK, human and citizen rights and freedoms can be restricted only by law. At present, Part 3 of Article 55 of the Constitution of the Russian Federation states that federal law may restrict human rights (in the previous version—federal constitutional law). However, in the legal positions of the CC RF, it is noted that since subjects of the Russian Federation have the right to limit, for example, the right of ownership by establishing regional taxes and dues, the CC RF provided that "…the laws of the constituent entities of the Russian Federation on taxes and dues are fully subject to the provisions of Article 55 (Part 3) of the Constitution of RF. However, limitation of rights on the basis of the law of a constituent entity of the Russian Federation is lawful only if the possibility of limitation of rights by the laws of the constituent entities of the Russian Federation is provided for in the federal law" (Plokhova 2014, p. 85).

Under the same condition, human rights may be restricted by a court decision under the Russian Constitution. Thus, Part 2 of Article 20 of the Constitution of the Russian Federation recognize the death penalty "… until it is abolished by federal law as an exceptional measure of punishment for particularly grave crimes against life, while granting the accused the right to have their case heard by a court with the participation of a jury." However, the restriction of liberty provided for in Article 22, Paragraph 2 of the Constitution of the Russian Federation does not contain both conditions. It is possible only by judicial decision. In this respect, Paragraph 2 of Article 22 of the Constitution of the Russian Federation does not contain both conditions.

Additionally, Paragraph 2 of Article 16 of the Constitution of the RK corresponds more to the legality criterion, which provides the possibility to restrict this right only in cases stipulated by law and by a court decision. "Arrest and detention shall be allowed only in cases stipulated by law and only with the sanction of a court with the granting of the right of appeal to the arrested person. Without a court order, a person may be detained for a period not exceeding 72 h."

The possibility to specify a blanket rule of criminal law by by-laws, including a government decree, is justified in approximately the same way as the possibility of restricting human rights by judicial decision (as long as such powers are granted by federal law).

The legislator and decrees of the highest officials of the constituent entities of the Russian Federation on preventing the spread of coronavirus infection COVID-19 are trying to bring under this scheme by introducing on 01.04.2020 (RF 2020e) amendments to Federal Law No. 68-FZ of 21.12.1994 "On Protection of the Population and Territories from Natural and Man-caused Emergency Situations" (RF 1994), broadening the definition of an emergency situation to include "the spread of a disease that poses a danger to others" (Article 1). Besides, the amendment of Article 11 of this law extended the powers of the government authorities of the constituent entities of the Russian Federation and local authorities in the field of protection of the population and territories from emergency situations (Paras. "y," "f") and introduced a conflict of laws rule. It read, "In the event that the Government of the Russian Federation establishes mandatory rules of conduct for citizens and organizations stipulated by Subparagraph "a.2" of Article 10 of this Federal Law, the rules of conduct established by the government authorities of the constituent entity of the Russian Federation in accordance with Article 10 of this Federal Law shall be the following. It follows that beforehand the March decrees of the constituent entities of the Russian Federation can hardly be called legal and they require checking for their compliance at least with the federal law.

The blanket nature of the majority of the norms of the Criminal Code of the Russian Federation and the Criminal Code of the Republic of Kazakhstan, the achievement of the criterion of certainty of the norms of criminal law in Russia with the help of clarifications contained in the decisions of the Plenum of the Supreme Court lead to non-compliance with the criterion of legality." Besides, at the present stage of development of society, legal science, and constitutional control in the Russian Federation, there are new aspects of this problem, the solution of which supplements the theory of justification of blanket dispositions of the norms of criminal law. Depending on which normative act (law or subordinate normative act) details the blanket features of the criminal code norm, one can distinguish, conventionally speaking, "legal" and "sub-legal" blanket, bearing in mind that limitation of human rights is possible only by law. Since attributes of a blanket rule may be interpreted based on regulatory and other, besides criminal, tort legislation, to the extent that it makes sense to conditionally distinguish "legal regulatory" and "legal tort" blanket, as in this aspect too the problems manifest themselves. In the case of the "legal regulatory" blanket, it is necessary to observe one of the legality criterion indicators—consistency of law norms and its main requirement: what is permitted in the regulatory legislation cannot be prohibited in criminal legislation. This rule has long been revealed and proved in the Russian legal literature (Shishko 2004) and in the decisions of the RF Constitutional Court No. 8-P dated May 27, 2008, and No. 15-P dated July 13, 2010 (RF Constitutional Court 2008b, 2010). Thus, in its Resolution No. 8-P of May 27, 2008, the Constitutional Court of the Russian Federation noted that "…there should be no such regulation, as a result of which criminal liability should be imposed for the

commission of certain actions permitted by the law regulating the respective sphere of relations, that is legal in nature" (Constitutional Court of the Russian Federation 2008b). Besides, the author believes that in order to comply with the criterion of consistency of norms, the CCRF should initially indicate the following rule (legal position)—the laws included in the blanket part of the CCRF disposition should not come into force before the changes in the articles of the CCRF. The evaluation algorithm should supplement the mentioned provision. In the future, using the experience of Kazakh colleagues (RK 2016), this rule should be written in regulatory acts. However, the requirement "one term—one definition of it" in criminal law and other branches of law is not always feasible due to different boundaries of regulated and protected social relations (different legal fields).

Besides, the legal positions of the ECtHR and the CC of RF dictate additional rules for the situation, when the same term in its meaning can be interpreted both in a broad and in a narrow sense—the prerogative of the established judicial practice, but with the restriction "not to the detriment of the accused."

What is important for "legal tort" blanketing is the insistent, repeatedly voiced by the RF Constitutional Court (since 2001) legal position on the place of criminal law in the system of law in general and in relation to administrative law in particular (RF Constitutional Court 2008b, 2010, 2015, 2018, 2019). Criminal law "…by its very nature is an extreme (exclusive) means … with the help of which the government reacts to the facts of unlawful conduct in order to protect public relations if it cannot be properly ensured only by means of legal norms of another branch", is stated in p. 5.1 of the 2008 CCRF Resolution (RF Constitutional Court 2008b).

For all considered aspects of the constitutionality of blanket rules of the criminal code, to ensure one of the indicators of legality—accessibility—the law and the by-law must be published accordingly.

An indicator of compliance with the certainty of the means of limiting human rights, its reasonable stability, and predictability of the consequences of conduct is a clear definition of the rules of the law in time. The regulation of the operation of criminal law throughout history is practically the same in the Constitutions and Criminal Codes of Russia and the Republic of Kazakhstan. The only difference is that Article 6 of the Criminal Code of the Republic of Kazakhstan interprets some provisions of the retroactive force of criminal law in more detail, while the Normative Decision of the Supreme Court of the Republic of Kazakhstan No. 15 of 22.12.2016 "On Judicial Practice in Applying Article 6 of the Criminal Code of the Republic of Kazakhstan" (RF Constitutional Court 2016) discloses other nuances of this issue, many of which are interpreted in the RF Constitutional Court decisions. However, the current development of the legal system, including in the criminal sphere, the search for new ones, or the return to the forgotten mechanisms of influence on offenders (in Russia—administrative forensics, in Kazakhstan—a criminal offense), raise new problems for the law enforcement. Mainly, concerning the rules of operation of administrative legislation adjacent to criminal law in two situations: the first arise in Russia in the case of the introduction of criminal liability for the repeated commission of an administrative offense (administrative forensics). The Message of the Constitutional Assembly of the RK (2019), expressed concern that the issues of a retroactive

force of the new law (enforcement of previously imposed administrative penalties) in the transfer of administrative offenses to the category of criminal offenses have not yet been resolved (CC 2019). In several decisions of the last five years, the RF CC proposes and justifies the solution of the issue in the first situation—in the case of mitigation of liability and related issues with regard to crimes with administrative forensics. First of all, in 2015, The RF Constitutional Court was declared unconstitutional by Article 1.7 of the CAO (CC RF 2015). Second, in several decisions, the RF Constitutional Court proposes a new procedure for the administrative law to be applied in time, which is also overdue in the Republic of Kazakhstan. In its 2018 Resolution, the CC of RF clarifies, "…if the responsibility for the act has been mitigated but not eliminated, and the act itself has acquired another branch legal qualification, then its decriminalisation, while at the same time fixing the identical composition of the administrative offence, cannot be regarded as establishing a new unlawful act which is not previously punishable." Such decriminalization is mitigation of public legal liability for the commission of the relevant offense manifested by the introduction of less strict (as compared to criminal) administrative sanctions, less restriction of rights (as compared to the criminal legal institution of criminal record) in the application of administrative liability measures (CC RF 2018). It is further emphasized that if the law abolishes criminal liability for a specific act with its simultaneous transfer under the CAO of the RF, "…the federal legislator continues to regard this act as offending, but assesses the nature of its public danger in a different way." Therefore, proceeding "…from the constitutional principles of justice and equality of requirements of responsibility inevitability for the committed offence, as well as certainty, clarity, unambiguousness of legal norms and their coherence in the general system of legal regulation. It is assumed that persons who commit such acts, although before the specified date, will be brought to administrative responsibility" (Sub-Clause 4–5 Paragraph 4.1) (CC RF 2018). Such a decision is justified by the principle of inevitability of liability, the similarity of administrative and criminal liability (CC RF 2015).

In addition, administrative liability for certain offenses falls under the concept of "criminal sphere" (Clause 4) (CC RF 2017). Federal Law No. 195-F of 23.06.2016 introduced Part 2.1 in Article 1.7 of the Code of Administrative Offences of the Russian Federation, which established a general rule (for the case of mitigation and toughening of public legal liability): "In the event of simultaneous entry into force of the provisions of the law abolishing administrative liability for the act and establishing criminal liability for the same act, a person shall be subject to administrative liability on the basis of the law which was in force at the time of committing the administrative offence" (RF 2016). The author believes that this provision should become one of the indicators of the legality criterion.

The most frequently contested criterion for legally restricting human rights in Russian constitutional control practice is criminal law certainty. Definition of criminal law norms by the RF Constitutional Court is interpreted broadly to include all formal criteria of legal limitation of human rights, such as legality, accessibility, certainty, reasonable stability, and predictability. In the decisions of the Constitutional Court, it is interpreted in approximately the same way. "…The law restricting

constitutional human and civil rights and freedoms must comply with the requirements of legal accuracy and predictability of consequences, i.e., its norms must be formulated with a sufficient degree of clarity and be based on understandable criteria that allow one to differentiate legitimate from illegal behavior with all certainty, excluding the possibility of arbitrary interpretation of provisions of the law" (CC RK 2008). It follows from the constitutional principle of legal equity (Article 14 of the Basic Law) since such equity can only be ensured if a legal norm is uniformly understood, interpreted, and applied (CC RK 2015). The legal certainty of the criminal law norm of the CC of the Russian Federation derives from the systemic nature of the norms of law, including within the criminal law, and, in most cases, from the interpretation of the law in the resolutions of the CC of the Russian Federation (Plohova 2017). In some cases, under the guise of forced ambiguity of criminal law norms, the contested norm of the RF Criminal Code has not been corrected for decades (Plohova 2018). The definitions of criminal law in the Republic of Kazakhstan are slightly broader than in the Russian Federation Criminal Code.

4 Discussion

For decades, the restrictions on human rights by by-laws have been discussed in the legal literature and by constitutional oversight bodies. Explaining the peculiarity and acceptability of the restriction of the right to confidentiality of personal deposits and savings, the 2009 Normative Resolution of the Constitutional Court of the RK notes that it "…is the prerogative of the legislator and the legislator has no right to authorize another governmental body or official to regulate by-laws the limits of restriction of confidentiality of personal deposits and savings". The issue was also raised in the messages of the RK Constitutional Court in 2017 and 2019. "…In the current legislation, there are still by-laws that regulate the most important social relations specified in Paragraph 3 of Article 61 of the Basic Law, including the mechanism for the application of certain measures of government coercion, which is unacceptable …" It also applies to legal acts containing the rights and obligations of citizens, which contribute to the establishment of signs of offenses and affect the definition of liability measures (Traffic Rules and others), which is advisable to thoroughly review of the legislation on the subject. In criminal law science, the mentioned issue is addressed in the framework of the longstanding problem of the constitutionality of blanket criminal law rules, which are in the majority in the criminal codes of both countries. For many decades, the issue has been discussed by both Russian (Shishko 2004) and Western lawyers (Lange 1956; Lohberger 1968, p. 12; Weidenbach 1965, p. 24). N. I. Pikurov's vision of the situation is rather convincing, including an analysis of the decisions of the RF Constitutional Court in 2009. He points out that the crime characteristics are defined by the RF Criminal Code, while the norms of other branches of law detail the blanket rules (Pikurov 2009, pp. 29–46). However, the incomplete resolution and complexity of some of the issues are evident. With regard to the constitutionality of the establishment by the Government of the Russian

Federation of a list and amounts of narcotics (the same practice has developed in Kazakhstan), the Constitutional Court has repeatedly emphasized that "… acting on the basis of and in compliance with federal law (Article 115, Paragraph 1 of the Constitution and Articles 2 and 3 of the Federal Constitutional Act on the Government of the Russian Federation) may not, like other executive authorities, establish grounds for criminal liability that are not provided for by federal law." The list of narcotics, psychotropic substances and their precursors and the amounts subject to control in the Russian Federation for the purposes of the articles of the Criminal Code on illicit trafficking of these items, including the list of items subject to control in the Russian Federation for the purposes of the articles of the Criminal Code of the Russian Federation on illicit trafficking of these items, Article 2 of the Federal Act on narcotics and psychotropic substances (1998) is prescribed.

However, the Constitutional Court of the Russian Federation asserts that "the federal legislator thereby did not grant the Government of the Russian Federation the power to carry out normative regulation on the issue of establishing the grounds for criminal liability…. They do not establish the criminality of an act, the punishment for it and other criminal-legal consequences; they are determined only by the Criminal Code of the Russian Federation, Article 228" (RF Constitutional Court 2007). However, the amounts of narcotics determine the differentiation of responsibility (criminal, administrative) and punishment.

The justification for restricting human rights by by-laws, as proposed in the legal literature, because they represent "…only a concretization of the legislative restriction already established," may be appropriate at the moment but requires further research and resolution. In our opinion, all laws and by-laws interpreting a blanket rule of the criminal code should be checked for compliance with constitutional norms, including compliance with the criteria of a lawful limitation of human rights, and therefore be included in the algorithm we developed to assess (Plokhova 2017) compliance of laws and law enforcement activities with the conditions of a lawful limitation of human rights in the criminal sphere (hereinafter—the algorithm). The mentioned aspect of the issue associates with the questions of legal expertise of criminal legislation, which is not the research subject.

The relationship between the branches of law in the legal literature is studied mainly by representatives of criminal law branches—the relationship between the norms of criminal law and regulatory legislation (Pikurov 2009; Shishko 2004), tax law (Filippova 2017), criminal proceedings (Kostrova 2017), administrative law, etc. Representatives of the regulatory industries, and the legislator, do not particularly consider how changes in non-criminal legislation will manifest themselves in criminal law. This aspect sometimes leads to problems not only in the application of criminal law but also to the violation of the principle of law equity, failure to meet the criteria of proportionality of the act and responsibility, legal certainty (e.g., the unified social tax in the Tax Code of the Russian Federation) In this connection, the author believes that for all branches of law (for a legislator, law enforcer, and researcher) this provision should be assessed as a criterion of legitimate restriction of human rights. The most valuable experience in this regard is that of Kazakh

colleagues, particularly Paragraph 1 of the article on human rights. Article 12, paragraph 2, of the Law of the Republic of Kazakhstan "On Legal Acts" contains the following provision—"…the norms of laws in cases of their inconsistency with the norms of the codes of the Republic of Kazakhstan may be applied only after making the appropriate amendments or additions to the codes" (Kazakhstan 2016).

Due to the fact that the certainty of criminal law norms in the Russian Federation is achieved in most cases by the interpretation of their features in the resolutions of the PSC of the Russian Federation, there is a multi-year discussion on the legal nature (normality) of these resolutions (Obozhiev 2015, pp. 253–281). The legislator of the Republic of Kazakhstan in Article 1 of the Criminal Code of the Republic of Kazakhstan is unequivocal and, according to researchers-constitutionalists (Yusupova 2013), rather well decided this discussion: "… normative decrees of the Constitutional Council and the Supreme Court of the Republic of Kazakhstan are part of the criminal legislation of the Republic of Kazakhstan" (RK 2014, Para. 2, Art. 1). In addition, Article 3 of the Criminal Code of RK contains 42 definitions of some concepts contained in the code.

5 Conclusions

The research has shown that in both countries, research on the limits of legal restrictions on human rights in the criminal sphere is currently more topical than before. The interpretations of formal criteria for legal restrictions on human rights in the criminal sphere developed in the theory and practice of constitutional control in Russia and the Republic of Kazakhstan are mutually interesting. They are complemented by the following new aspects of the legal doctrine and algorithm. In order to comply with the legality criterion (in the broad meaning of this criterion), it is necessary: (1) to publish and check for compliance with the Constitution, including compliance with the criteria of legal limitation of human rights of all laws and by-laws by which the blanket part of the criminal code norm is interpreted; (2) to enshrine the following rule in the legal positions of the Constitutional Court of the Russian Federation—laws included in the blanket part of the disposition of the Criminal Code of the Russian Federation should not come into force until amendments are made to the articles of the Criminal Code of the Russian Federation; (3) to recognize criminal law as extreme (exceptional); and (4) to supplement the conditions for the same definition of concepts in the criminal and other branches of law to a situation where the same term in its meaning can be interpreted in both broad and narrow senses, with a provision on the prerogative of established jurisprudence, but not to the detriment of the accused.

References

Amandykova SK, Dil AV (2012) The role of the Constitutional Council in the formation of the concept of human and citizen's rights and freedoms in the Republic of Kazakhstan. Bull Karagand Univ 1(65):9–13

Blokhova VI (2019) Detailed criteria for legally restricting human rights in the criminal sphere. Vestnik Tomsk State Univ 448:239–243

Chepenko YK (2017) Legal problems in the mechanism of constitutional provision of human and citizen's rights and freedoms (in the light of the practice of the Constitutional Court of the Russian Federation). Thesis of candidate of laws. St. Petersburg State University St. Petersburg, Russia

Constitutional Council of the Republic of Kazakhstan (2008) Normative decision of the Constitutional Council of the Republic of Kazakhstan. On verification of constitutionality of parts 1 and 4 of article 361 of the Criminal Code of the Republic of Kazakhstan on the appeal of Kapshagai city court of Almaty region (February 27, 2008 No 2). http://ksrk.gov.kz/index.php/solutions/np-ks-rk-ot-27022008-g-no2-o-proverke-konstitucionnosti-chastey-pervoy-i-chetvertoy-stati

Constitutional Council of the Republic of Kazakhstan (2009) Normative resolution of the Constitutional Council of the Republic of Kazakhstan. About official interpretation of item 2 of article 18 of the Constitution of the Republic of Kazakhstan and check on conformity to the Constitution of the Republic of Kazakhstan of the Law of the Republic of Kazakhstan. About combating legalization (laundering) of illegally-gained income and terrorism financing and the Law of the Republic of Kazakhstan. About modification and additions to some legislative acts of the Republic of Kazakhstan on combating legalization (laundering) of illegally-gained income (September 20, 2009 No. 5). http://adilet.zan.kz/rus/docs/S090000005

Constitutional Council of the Republic of Kazakhstan (2015) Normative decision of the Constitutional Council of the Republic of Kazakhstan. About the official interpretation of item 1 of article 27 of the Constitution of the Republic of Kazakhstan and about check on conformity to the Constitution of the Republic of Kazakhstan of the Law of the Republic of Kazakhstan. About protection of children from the information, causing harm to their health and development and the Law of the Republic of Kazakhstan. About modification and additions to some legislative acts of the Republic of Kazakhstan concerning protection of children from the information, causing harm to their health and development (May 18, 2015 No. 3). https://tengrinews.kz/zakon/konstitutsionnyiy_sovet_respubliki_kazahstan/konstitutsionnyiy_stroy_i_osnovyi_gosudarstvennogo_upravleniya/id-S1500000003/

Constitutional Council of the Republic of Kazakhstan (2016) Normative Resolution of the Supreme Court of the Republic of Kazakhstan. On Judicial Practice on Application of Article 6 of the Criminal Code of the Republic of Kazakhstan (December 22, 2016 No. 15). https://online.zakon.kz/document/?doc_id=33231406

Constitutional Council of the Republic of Kazakhstan (2019) Message from the Constitutional Council of the Republic of Kazakhstan. On the state of constitutional legality in the Republic of Kazakhstan (announced at the joint session of the Chambers of the Parliament of the Republic of Kazakhstan 20.06.2019). http://adilet.zan.kz/rus/docs/S1900000117

Constitutional Court of the Russian Federation (2007) Decision of the Constitutional Court of the Russian Federation on the refusal to accept for consideration a complaint from a citizen of Chugurov, Pavel Nikolaevich, on the violation of his constitutional rights under list I of the List of narcotic drugs, psychotropic substances and their precursors under control in the Russian Federation (February 8, 2007 No. 292-O-P). https://legalacts.ru/doc/opredelenie-konstitutsionnogo-suda-rf-ot-08022007-n-292-o-p-ob/

Constitutional Court of the Russian Federation (2008a) Definition of the Constitutional Court of the Russian Federation. On refusal to accept for consideration the complaints of citizens of Konstantin Aleksandrovich Amosov, Firth Arnold Mikhelevich, Dmitry Vasilyevich Yadrihinsky and Yana Viktorovna Yakovleva on violation of their constitutional rights by article 234 of the Criminal Code of the Russian Federation (February 7, 2008a No. 79-O-O). https://www.garant.ru/products/ipo/prime/doc/1686201/

Constitutional Court of the Russian Federation (2008b) The Decision of the Constitutional Court of the Russian Federation. On Case of Verification of the Constitutionality of the Position Ch. 1 Art. 188 of the Criminal Code of the Russian Federation in Connection with the Complaint of Citizen M. A. Aslamazyan (May 27, 2008b No. 8-P). http://www.ksrf.ru/ru/Decision/Pages/default.aspx

Constitutional Court of the Russian Federation (2010) The Decision of the Constitutional Court of the Russian Federation. On Case about Verification of Constitutionality of Position Ch. 1 Art. 188 of the Criminal Code of the Russian Federation, Ch. 4 article 4.5, part 1 article 16.2 and part 2 article 27.11 of the Code of the Russian Federation about administrative offences in connection with complaints of citizens V. V. Batalova, L. N. Valueva, Z. Ya. Ganievoj, O. A. Krasnoj and I. V. Epova (from July 13, 2010 No. 15-P). http://www.ksrf.ru/ru/Decision/Pages/default.aspx

Constitutional Court of the Russian Federation (2015) Resolution of the Constitutional Court of the Russian Federation. On the Case of Checking Constitutionality of Part 2 of Article 1.7 and Paragraph 2 of Article 31.7 of the Code of the Russian Federation on Administrative Offences in Connection with the Request of the Magistrate of the Court Plot No. 1 of the Vyksa Judicial District of Nizhny Novgorod Region (July 14, 2015 No. 20-P). http://www.ksrf.ru/ru/Decision/Pages/default.aspx

Constitutional Court of the Russian Federation (2017) Ruling of the Constitutional Court of the Russian Federation. On a case about check of constitutionality of provisions of article 2121 of the Criminal code of the Russian Federation in connection with the complaint of the citizen I. I. Dadin (from 10.02.2017 No. 2-P). Retrieved from http://www.ksrf.ru/ru/Decision/Pages/default.aspx.

Constitutional Court of the Russian Federation (2018) Ruling of the Constitutional Court of the Russian Federation. On the Case on Verification of the Constitutionality of Part 1 of Article 1.7 and Part 4 of Article 4.5 of the Code of the Russian Federation on Administrative Offences, Paragraph 4 of Article 1 of the Federal Law. On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedural Code of the Russian Federation on Issues of Improvement of the Grounds and Procedure of Exemption from Criminal Liability and Paragraph 4 of Article 1 of the Federal Law. On Amendments to Certain Legislative Acts of the Russian Federation. http://www.ksrf.ru/ru/Decision/Pages/default.aspx.

Constitutional Court of the Russian Federation (2019) Ruling of the Constitutional Court of the Russian Federation. On the Case of Verification of the Constitutionality of Items 1 and 6 of Article 5 of the Law of the Republic of Komi. On Certain Issues of Holding Public Events in the Republic of Komi. In Connection with the Complaints of Citizens M. S. Sedova, V. Sedova., P. Tereshonkova (from 01.11.2019 No. 33-P). http://www.ksrf.ru/ru/Decision/Pages/default.aspx

Eleupova AA (2006) Implementation of the constitutional control by the Constitutional Council of the Republic of Kazakhstan. Dissertation of the candidate of legal sciences. Chelyabinsk State University, Chelyabinsk, Russia

Filippova CI (2017) Criminal liability for tax crimes: inter-sectoral communications. Thesis of thesis of Ph. Lomonosov Moscow State Law University. O. E. Kutafin Moscow State Law University, Moscow, Russia

Kalashnikova EM (2014) Methodological significance of comparative approach in social cognition. Vestnik Perm State Humanit Pedagog Univ Ser 3 Humanit Soc Sci 2:11–12

Kostrova MB (2017) Relationship between criminal law and criminal procedure law, 2nd ed., interpretation and additional. Prospekt, Moscow, Russia

Lange R (1956) Strafgezetzgeber der Schuldlcher. Juristische Zeitung, 73

Lapaeva VV (2013) Criteria for Limiting human and civil rights in the constitution of the Russian Federation. State Law 2:14–24

Lohberger LK (1968) Blanhettstrafrtht und Grundgesetz. Munhen, DDR

Lukasheva EA (2014) The 21st Century: The decline in human rights values. In: Soshnikov TA (ed) Human rights in the modern world: New challenges and difficult solutions. Moscow Publishing House, Moscow, Russia, pp 29–35

Obrazhiev KV (2015) The system of formal (legal) sources of the Russian criminal law. Yurlitinform, Moscow, Russia
Pikurov NI (2009) Qualification of crimes with blanket features. Russian Academy of Justice, Moscow, Russia
Plohova VI (2017) The Use of the Decisions of the European Court of Human Rights, the Constitutional Court of the Russian Federation when Investigating the Problems of the Criminal Law of the Russian Federation (Article One). J Sib Fed Univ. Humanit Soc Sci 10(7):1090–1100
Plokhova VI (2017) Algorithm for assessing the conformity of laws and law enforcement activities with conditions for legally restricting human rights in the criminal sphere. In: Gracheva YV et al (ed) Proceedings of the 14th international scientific and practical conference (26–27 January 2017): Criminal Law: strategy of development in the XXI century, pp 137–138. Prospekt, Moscow, Russia
Plokhova VI (2018) Forced uncertainty of criminal law norms and (or) incorrect fixation, interpretation of their features (by the example of article 138.1 of the Criminal Code of the Russian Federation). Vestnik Tomsk State Univ 433:207–215
Plokhova VI (2014) Conditions for legally restricting human rights and freedoms in the criminal sphere. Criminol J Baikal State Univ Econ Law 4:83–92
Prikhodko TV (2017) The Modern Model for Restricting Human and Civil Rights and Freedoms in the Russian Federation and the Federal Republic of Germany: Constitutional and Legal Research, PhD thesis. F. M. Dostoevsky Omsk State University, Omsk, Russia
Republic of Kazakhstan (adopted by national referendum on 30 August 1995, as amended and supplemented on 23 March 2019) (2014) Criminal Code of the Republic of Kazakhstan (No. 226-V dated 03.06.2014, with amendments and additions as of 04.05.2020). https://online.zakon.kz/document/?doc_id=31575252.
Republic of Kazakhstan (2016) Law of the Republic of Kazakhstan "On Legal Acts" (from 06.04.2016 No. 480-V, with amendments and additions as of 01.01.2020). https://online.zakon.kz/document/?doc_id=37312788
Russian Federation (1994) Federal Law. On the protection of the population and territories from natural and technogenic emergency situations (December 21, 1994, No. 68-FZ (last edition)). Moscow, Russia
Russian Federation (1996) Criminal code of the Russian Federation (from 13.06.1996 № 63-FZ, ed. from 27.12.2018). Collection of Legislation of the Russian Federation. 17.06.1996. № 25. Art 2954
Russian Federation (1998) Federal Law. On narcotic drugs and psychotropic substances (January 8, 1998 No. 3-FZ (last version)). Moscow, Russia
Russian Federation (2016) Federal Law. On amendments to the code of administrative offences of the Russian Federation (23 June 2016, No. 195-FZ (last version)). Moscow, Russia
Russian Federation (2020a) Decree of the mayor of Moscow. On introduction of the high readiness regime (March 5, 2020a No. 12-UM). Moscow, Russia
Russian Federation (2020b) Decree of the Governor of the Altai Territory. On individual measures to prevent the introduction and spread of new coronavirus infection COVID-19 (March 26, 2020b No. 42). Moscow, Russia
Russian Federation (2020c) Federal Law on amendments to the code of administrative offences of the Russian Federation. (April 1, 2020c No. 99-FZ). Moscow, Russia
Russian Federation (2020d) Federal Act on amendments to the Criminal Code of the Russian Federation and articles 31 and 151 of the Code of Criminal Procedure of the Russian Federation (April 1, 2020d No. 100-FZ). Moscow, Russia
Russian Federation (2020e) Federal Law on amendments to certain legislative acts of the Russian Federation on issues related to the prevention and liquidation of emergency situations (April 1, 2020e No. 98-FZ). Moscow, Russia
Russian Federation (as of 06.04.2011 No. 480-V, with amendments and additions as of 01.01.2020) (1993) Constitution of the Russian Federation (adopted by popular vote on 12.12.1993, with amendments introduced by the Laws of the Russian Federation of 30.12.2008 No. 6-FKZ, of

30.12.2008 No. 7-FKZ, of 05.02.2014 No. 2-FKZ, of 21.07.2014 No. 11-FKZ). Collection of Legislation of RF, 04.08.2014 No. 31, Art. 4398
Ruzavin GI (2015) Methodology of scientific cognition: textbook. Unity-Dana, Moscow, Russia. http://biblioclub.ru/index.php?page=book_red&id=115020&sr=1
Sakharov AG, Colmar OI (2019) Prospects for implementing UN sustainable development goals in Russia. Bull Int Organ 14(1):189–204
Shishko IV (2004) Economic offences: questions of legal assessment and responsibility. Legal Center Press, Saint-Petersburg, Russia
Weidenbach P (1965) Die verfassungsrechtliche Problematik der Blankettstrafgesetze. Tubingen, BRD
Yudina AV (2014) Objects, objectives and levels of comparative legal research. PFUR Newsl Ser Leg Sci 1:129–134
Yusupova GH (2013) On normative judicial practice of the Supreme Court of the Republic of Kazakhstan. Bull Inst Legis Repub Kaz 1–2(29–30):274–277
Zinovieva LE (2014) Comparatist approach: some methodological features, analytical practices and their educational potential. Vestnik Perm State Human Pedagog Uni Ser 3: Humanit Soc Sci 2:18–23