



The concept of speed in Luhmann's schemata: The case of the Russian criminal justice

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Abstract

Notwithstanding Luhmann's systems theory has a variety of concepts (code, structures, programs, operations, structural couplings, self-irritations, etc.) to analyze the Russian Criminal Justice as a self-referential system, it exhibits some limitations as well. A lack of fully-developed speed concept does not allow the autopoietic approach to adequately describe the Russian Criminal Justice System's emphasis on the efficiency, which is measured by a high rate of convictions produced within the system per unit of time. Drawing primarily upon intuitions of systems theory itself, this paper reconstructs the speed as a schema for the observation of changes and the number of operations produced within the system per unit of time. At the most abstract level, the speed concept is a prerequisite for observing the rate and tempo of oscillation between sides of distinction per se. Exploiting these theoretical adjustments, it is shown that the Russian Criminal Justice System seeks to increase the rate of oscillation within guiding distinction "legally guilty (non-lawful)"/"legally non-guilty (lawful)". In so doing, this system condenses most of meanings on the side "legally guilty" (connectivity value), minimizes the horizon of possibilities related to jury trials and due process rights, and decelerates a speed of reverse crossing to the side "legally non-guilty" (reflexive value).

Key words

Criminal justice; Luhmann; systems theory; speed; Russian studies on courts

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Resumen

A pesar de que la teoría de sistemas de Luhmann dispone de una variedad de conceptos (código, estructuras, programas, operaciones, acoplamientos estructurales, autoirritaciones, etc.) para analizar la justicia penal rusa como un sistema autorreferencial, también presenta algunas limitaciones. La falta de un concepto de velocidad plenamente desarrollado no permite al enfoque autopoiético describir adecuadamente el énfasis del sistema de justicia penal ruso en la eficiencia, que se mide por una alta tasa de condenas producidas dentro del sistema por unidad de tiempo. Basándose principalmente en intuiciones de la propia teoría de sistemas, este documento reconstruye la velocidad como un esquema para la observación de los cambios y el número de operaciones producidas dentro del sistema por unidad de tiempo. En el nivel más abstracto, el concepto de velocidad es un requisito previo para observar la tasa y el tempo de oscilación entre los lados de la distinción per se. Aprovechando estos ajustes teóricos, se demuestra que el Sistema de Justicia Penal ruso trata de aumentar la tasa de oscilación dentro de la distinción orientativa “legalmente culpable (no culpable)”/“legalmente no culpable (culpable)”. Al hacerlo, este sistema condensa la mayoría de los significados en el lado “legalmente culpable” (valor de conectividad), minimiza el horizonte de posibilidades relacionadas con los juicios con jurado y los derechos al debido proceso, y desacelera la velocidad de cruce inverso hacia el lado “legalmente no culpable” (valor reflexivo).

Palabras clave

Justicia penal; Luhmann; teoría de sistemas; velocidad; estudios rusos sobre tribunales

Table of contents

1. Introduction	S302
2. The time and speed: crossing the boundary between before/after	S304
2.1. Luhmannian, implicit theorization on the speed concept	S304
2.2. The speed as an observational schema	S305
3. The concept of the legal time limit as a systemic temporality of the law.....	S308
4. The speed related dimension of the Russian Criminal Justice.....	S310
5. Conclusion.....	S314
References.....	S314

1. Introduction

Notwithstanding an obvious explanatory and descriptive capacity, Luhmann's schema undoubtedly has a potential for further conceptual development and specification. While claiming to be a comprehensive description of modern society, the autopoietic approach needs to retain a certain degree of flexibility to an empirical, observable operation of communication systems. Otherwise, as a component of system of science, it would not be capable of specifying its conceptual landscape due to perturbations produced by environment – other systemic units. The "lifeworld" of systems and its societal episodes may point to particular blind spots that a system-theoretical perspective is not yet able to describe due to, perhaps, a simple fact that, for whatever reason, these are not of interest to theorists or due to limitations of systems theory itself. In the latter case, one may expect the conceptual complementation if the scope of description is expanded by introducing, or, more precisely, manifesting concepts that currently remain in a latent state. I mean, for instance, the phenomenon of the speed of operations and systemic self-reproduction. Paying in particular attention to the formula of speed can contribute to a modern discussion in the sociology of law by elaborating a schema for observation of changes occurring mainly in the temporal (*zeitlich*) dimension of legal meaning (Luhmann 1990a).

Although it is feasible to carry out a comprehensive, systemic conceptualization of the Russian Criminal Justice drawing upon Luhmannian concepts, such as function system, code, programs, structures, normative expectations, differentiation/de-differentiation, etc., one of its facets eludes the observation due to an insufficient explication of the speed concept. The significance of the temporal dimension of communication systems (including the law) is articulated enough in the discussion (Luhmann 1976, 1990a, 1995, 2004, 2013, Antonovsky 2007), however the Russian case's specificity, which emphasizes timelines (Khodzhaeva 2023) and the efficiency measured by the rapidity of the Criminal Justice Assembly Line (Moiseeva 2014), falls outside the scope of systemic analysis. The latter is time-centered and does not efficiently deal with a relevant issue of speed.

In general, the theory of operationally closed systems finds itself in the situation when empirically observed episodes and events of the legal life stimulate the reconfiguration of distinctions and indications of systems theory itself, rendering the latent the manifested and generating new meanings that refer to the speed identity. In other words, making the designation "speed" a fully-fledged concept temporally, factually, and socially allows for the condensation of greater amount of meaning and description of a greater number of phenomena compared to having only initial intuitions about the speed formula.

It seems that there are two main possibilities on the horizon of systems theory rearrangement. An internalist way means recombining solely distinctions of an autopoietic approach itself. In contrast to that, an externalist strategy epitomizes a creative interpretation of other schemata resources that have a potential for the connectivity with constituents of systems theory. One should admit though that the second path elaborates the first one to some extent, since, to transfer distinctions from one conceptual schema to another, it is expected to argue that borrowed indications are compatible with existing elements of the systemic approach.

Notwithstanding Luhmann's theory, which primarily evolves in the second manner, has often been the object of criticism due to, *inter alia*, a mass of *ad hoc* constructs (Borch 2012), the autopoietic approach is capable of responding to such accusations. The labyrinthine and multi-leveled design of the theory is conditioned by the very idea of the Sociological Enlightenment. It would hardly be achievable to produce a comprehensive, "grand" description of complex, modern society without synthesizing, albeit artificially at certain points, concepts from various fields of knowledge appertaining to highly-differentiated areas of the social. Otherwise, the conceptual schema could not claim to be precisely the theory of society, and sociology could not fulfil the function of explicating equivalents to pressing issues and relevant solutions. As King and Thornhill have aptly noted "Luhmann thus views the multifaceted nature of his theory as essential if the theory is to be capable of relating to all the knowledge that exists concerning all the operations of society" (King and Thornhill 2003, 205).

Given such considerations, one may infer that there is no reliable way to elaborate the idea of the system speed save for resorting to the second strategy as it is consistent with the very project of the Sociological Enlightenment. At the same time, in order not to borrow concepts incongruent with the autopoietic schema, it would be more justifiable to examine Luhmannian intuitions about speed, acceleration/deceleration, etc. in the first place. The analysis of relevant distinctions and indications of systems theory itself would expose the potential for additional connections with other conceptual languages that can further specify the concept of speed and explicate its interdependency with one of systems theory's predicaments – the category of time.

Therefore, this text will primarily focus on the first stage of the strategy mentioned and address the following questions: 1) What distinctions of the Luhmannian conceptualization of communication unit temporality have already internalized the idea of speed and paved the way for additional connections?; 2) How should acceleration/deceleration concepts be re-defined given answers to the previous question?; 3) What semantic form of the legal system temporality has a relevance to the analysis of the Russian Criminal Justice System (hereafter referred to as "the RCJS")?; 4) What implications do the speed as an observation schema entail for the systemic theoretical description of the RCJS undergone the de-differentiation?

This text is divided into five sections (including the introduction). Revealing dependence of the speed concept on the temporality, the second part primarily explores the Luhmannian theorization about the speed. Furthermore, it elaborates an idea on the speed as a schema for the observation of changes and the number of operations produced within the system per unit of time and, at the most abstract level, for the observation of the rate and tempo of oscillation between sides of distinction *per se*. Drawing upon these insights, the third section concentrates on a time limit concept as a specific, constructivist temporality of the legal system. It is precisely shown how the law and criminal justice manipulate the rate, tempo, and rhythm of changes, i.e., their speed, by suspending processes, extending, restoring time limits, and adjourning trials. The penultimate section aims at incorporating concepts of speed and time limit into the de-differentiation – differentiation schema to observe the RCJS. It is claimed that this system deploys a crime control program, whose efficiency is constituted by "a high rate of apprehension and conviction" (Packer 1964) produced at the highest possible speed.

Being obsessed with the speed demands – a high number of convictions produced per unit of time with minimal resources and within predetermined time limits – the RCJS generally seeks to accelerate own workings by reducing various hindrances (e.g., jury trials and due process rights). Additionally, the conclusion highlights ways to further develop the speed concept's project.

2. The time and speed: crossing the boundary between before/after

2.1. Luhmannian, implicit theorization on the speed concept

Addressing the latent concept of operation/autopoiesis speed, one will not discover its advanced thematization in classic works, such as "Social Systems" (Luhmann 1995), "Introduction to systems theory" (Luhmann 2013), or "Law as a Social System" (Luhmann 2004). Although the time's importance for the law and *vice versa* has been acknowledged in Luhmann's sociology of law (e.g., the time-binding function of normative expectations), the issue of speed does not seem to be of a special significance for contemporary, Luhmann's theory-oriented texts as well.

Socio-legal scholars concerned with the application of the highly abstract, Luhmannian apparatus for the needs of empirical studies (Silva 2020, Lange 2021, Paterson and Teubner 2021) do not also observe the speed phenomenon as an important blind spot or an issue at stake. Outlining the organizational sociology of courts oriented towards empirical research, Barros emphasizes that "this situation [of a paradoxical complexity increase by means of the complexity reduction via organisation] can be understood as a movement of adjustments and balances of the temporality of world society as a whole, motivated by accelerations and decelerations as a function of the time of each functional and organisational system" (Barros 2021, 147, translation modified).

Despite the fact that the scholar pays close attention to acceleration/deceleration phenomenon (and this can only be welcomed), there is no elaboration of this theorization further, viz. until the moment when it engenders the speed concept *per se*. By inferring about "the acceleration of the new operational limits in each system: the transformation of politics into law, the legal delimitation of politics and others" (Barros 2021, 148), he stops at one side (acceleration) of the binarity mentioned without utilizing a meta-position to observe a unity of the acceleration/deceleration distinction. It appears that such an observation could be carried out based on the "speed" indication. Moreover, notwithstanding the latency of the speed concept, Luhmann himself indicates that this construct has the potential to be fully-developed.

The sociologist introduces some typology of system speed. Unique dynamics of operations are attributed to a corresponding type of system (living, psychic, and social). This dynamic variety is accounted for by a specificity of substance that serves as a substratum of each system emergence. It, therefore, comes as no surprise that the speed of systems constituted by thoughts as operations should differ from that of communication units.¹

¹ The significance of the substratum concept for making out systems theory constructs is additionally showed by Teubner's enterprise to discriminate interpenetration from interference. The latter allows for a "real communicative contact between the system and the life-world" (Teubner 1993), while systemic units

Drawing upon this, one may also infer that the difference in the tempo of recursion and connectivity within various systems (living, psychic, and social) can be further specified in subtypes of these systems. To see the validity of this statement, it is worth taking notice of the interaction peculiarity as the simplest and the most rapidly appearing/disappearing entity and distinguish it by the speed from organizations/function systems. Luhmann's elaborations on extreme slowness of the law compared to the political system lead to the same conclusion, since "in the modern political system politics are under considerable time pressure— and this applies to an almost unlimited range of objective topics (but limited by politics itself). In contrast, the legal system is very slow, as far as its jurisdiction is concerned, being held back by the need to demonstrate accuracy and substantiation" (Luhmann 2004, 371).

By and large, the situation with the speed type mirrors some features of the systemic time. If systems construct their own temporality, despite the simultaneity of everything that happens, then the specificity of the *modus operandi* of a concrete system also shapes the speed of its operations. In Luhmannian schemata one discovers that the speed is conceptually dependent upon the predicament of time. In such a hierarchy, as Luhmann notes, "the system must constitute a proper time that adjusts the operational tempo and time perspectives of the system's internal possibilities" (Luhmann 1997, 83). Then if, with regard to the time category, it is justifiable to think not only of intrasystem time *per se*, but of the world time (Luhmann 1995) as well, similar properties should be attributed to the speed. Hence, it can be divided into taxa, such as the intrasystem speed *per se* and world speed². In addition to that, making a comparison between the time and speed reveals other attributes of the latter.

2.2. The speed as an observational schema

Luhmann's radical or "operative" epistemology presupposes that the world and its phenomena appear as observer's constructions. That is, the reality is not denied, but de-ontologized, allowing for the assertion that "the external world is as it is" (Luhmann 1990b, 67). The modern theory of knowledge faces then the re-orientation from the observation focused on the primacy of subject/object dichotomy to questions about how the observation itself is carried out (Luhmann 1990b). The analysis centers around the observer being in the observation and distinctions that are manifested and made use of by the observer – and around those that are latent, but capable of re-actualization.

All distinctions and indications possess a discriminatory value, regardless of the generalization degree or their role in constituting a modern, functionally-differentiated society. Whether we reflect on mere conceptual (e.g., "operation") or categorical indications ("system"), on concepts that condense meanings with some physical correlates ("cellphone") or not ("epistemology"), all these are equally conceived as

constituted by different substrates, such as communication and thoughts, are restricted to "reciprocal observation" (Teubner 1993).

² The binarity "intrasystem speed"/"world speed" allows some new questions to be posed. One may inquire what mechanism of speed synchronization between multifarious systems could be. Could the world speed be considered a universal synchronizer or the speed-related alignment of systems is solely procured by means of structural couplings? The two pivotal points mentioned are only some possibilities on the horizon of knowledge. Although these cannot be addressed in this text, their formulation demonstrates a productive reflection, which is a consequence of the analysis of speed as a systemic phenomenon dependent on time.

something producing difference. These are just distinctions and indications – means of drawing boundaries and forming two-sided forms. Every element of the Luhmannian sociology can be described then in such a way, including the time.

For Luhmann, the temporality functions as an observation schema and a coherent set of indications that allows an observer or a self-observing unit to make sense of “reality” by utilizing a past/future distinction (Baraldi *et al.* 2021). Such an “operational approach” to the time is opposed to the ontological. “The latter approach would have to claim that time is something that exists and that theories of time represent their object either correctly or incorrectly” (Luhmann 2013, 146). Amidst several historical forms of temporal distinctions for the reality observation, such as “moving”/“unmoved”, “variable”/“constant”, and “past”/“future”, the difference “before”/“after” is a primordial and indispensable to the observation of states, changes, and “causal connections” (Luhmann 2013). As Baraldi *et al.* have put it, “the projection of temporal horizons means that the system can observe changes through constants in terminology without having to change itself” (Baraldi *et al.* 2021, 244).

However, if the time as a categorical schema allows us to observe the transition from before to after, then the speed, being also a way of observing reconfigurations, specifies a rate, tempo, and rhythm of that transition and indicates time intervals with which changes occur and states alter. By resorting solely to the time category, it is troublesome in the course of observation to infer about the rapidity of or delays in crossing the boundary between before/after and detect moments of system acceleration/deceleration. Hence, one can likewise conceptualize the speed, drawing upon the operational rather than the ontological perspective.

Employing the operational approach implies that the speed does not just serve as a scalar quantity of system’s operations (e.g., the number of convictions made by the criminal justice system per unit of time), but characterizes the oscillation between two sides of distinction. In fact, it has relevance to any distinction, since possibilities of crossing the boundary can be actualized regardless of distinction type – let it be acquittal/conviction, before/after, or even possible/actual itself. Accentuating an epistemological meaning of the speed as a schema, Virilio fairly writes that, “that which serves to see, to understand, to measure and therefore to conceive reality, is not so much light as its velocity. From now on, speed is less useful in terms of getting around easily than in terms of seeing and conceiving more or less clearly” (Virilio 1994, 71).

Thus, just as the time and temporality are an essential dimension of meaning (Andersen and Born 2000), and, therefore, the dimension of any operations of *Sinnsysteme*, the speed concerns each system’s operations due to two reasons. First, one can always raise a question on the number of operations (regardless of their type) produced by the system per unit of time. Second, the oscillation and crossing the boundary of distinction from one side to the another and back are characteristics of any form. It follows then, that the speed as a schema is not restricted to the observation of rate and tempo of before/after distinction solely. In turn, the acceleration/deceleration phenomenon can correspondingly be conceived as a change not only in the number of operations per unit of time, but also in the rate and tempo of crossing any distinction’s boundary – a change in the speed of oscillation. Once the oscillation/operation acquires regularity, the system is enabled to establish a rhythm of oscillation or rhythm of operation.

Given a variety of possible operations, the concept of system's speed does not imply that a specific unit should function as a totality at a single rate, since "more complex social systems experience both temporal pressure and unfilled time at once, temporal pressure on some operations and waiting in others. All this leads to system-specific temporal problems, which correspond to nothing in the system's environment" (Luhmann 1995, 186). It means that the assumption abovementioned on the difference in the tempo of the social system subtype could be refined further. Subtypes of operations within the same function system also differ according to the degree of the speed, i.e., the number of operations, which can be produced per unit of time.

It should suffice to recall the structure/self-description dichotomy to see the problem of the speed discrepancy. Self-referential systems always experience the inadequacy of produced self-descriptions compared to the level of the complexity achieved by the structures (Luhmann 1988). It is precisely the de-synchronization between the speed of structural recombination and that of changes in the semantics, which forms and preserves traditional descriptions. From the system-theoretical perspective, tradition is incapable of outpacing structural re-arrangements based on action (Luhmann 1988), since the latter "is always faster than observation. Therefore, evolution in social systems is also faster than functional analysis" (Luhmann 1995, 343).³

At the same time, one should not assume that the issue of structural changes' tempo unequivocally pertains to the case of the system transition to a new operational state. In fact, it rather concerns phenomena of system's self-stabilization and self-preservation as "structural change presupposes self-maintenance; this much has always been clear" (Luhmann 1995, 347).

Since structural transformations imply the self-preservation, it is more appropriate to conceive the rate and tempo of such transformations as that of changes of "the conditions for the \rightarrow autopoiesis" (Baraldi *et al.* 2021, 227). Then we are enabled to think of the speed of self-reproduction or autopoiesis itself, i.e., the speed of replacing own elements with others from the network of own elements (Luhmann 1997). As the autopoiesis phenomenon means ateleological nature of systemic operations and their independence from an external source⁴ (Philippopoulos-Mihalopoulos 2009), the concept of the self-

³ If the discrepancy in speed between the observation and structure has been already addressed by the theory, then what can be inferred about the case of external observation – when systems construct each other's image and mutually generate descriptions? Some conclusions are possible, if we re-orient analysis towards a particular type of interplay between systems. In the case of mutual observation (Teubner 1993), when systems are merely able to construct images of each other, the speed de-synchronization is more than likely, since, one way or another, observers reciprocally remain "black boxes". Without a direct access to each other, it is impossible for systems to achieve a level of descriptions that could represent absolutely an inner life of observation object. For instance, a learning situation exposes this difficulty. Teachers expect a certain tempo of mastering a subject, however all they can do is just to observe the one who observes them and is aware of being observed, i.e., student. In these situations of the mutual observation and description, no one has an immediate access to the self-referential thought process of the another and, therefore, the success of education seems, in principle, an "extremely non-self-evident project" (Qvortrup 2005, 10). In comparison with the mutual observation, structural and operational couplings have a greater potential to synchronize systems in terms of the speed, since these provide units with self-irritations necessary for co-evolution.

⁴ Eventually, everything that occurs, slowly or not, occurs in the system, and the environment is primarily a construct of the former. Then, from this vantage point, a horizon of additional theorizing is opened up. It is worth asking about conditions and types of stimuli that affect the speed of the autopoietic reproduction,

reproduction speed does not refer to the rapidity of fulfilling this or that goal. As a schema it just allows for the observation of changes and the number of operations produced within the system per unit of time and, at the most abstract level, for the observation of the rate and tempo of oscillation between sides of distinction *per se*.

3. The concept of the legal time limit as a systemic temporality of the law

The list of speed properties outlined in the foregoing section is not definite whatsoever. In the book *Law as an Autopoietic System*, Teubner regularly reiterates that self-maintaining systems reproduce the juxtaposition of “the elements, structures, processes, boundaries, identity, and unity...” (1993). As his work appertaining to the sociology of law puts a special emphasis on processes, one can discern a possibility to apply the speed concept to issues of the law and its subsystems.

Being internally differentiated, the legal system can be conceptualized as a ramified labyrinth of processes whose attributes vary depending on a branch of the law. In addition to the temporal dimension, criminal, civil, administrative, and other proceedings, as has become clear, should be described through the optics of speed as a schema for observing the number of operations produced and dynamics of changes. One may take notice then that a central component of the law’s semantics that allows for the observation of own processes and transitions from before to after is a concept of the legal time limit.

Whether one hones in on operations of the civil, criminal or administrative branch, it is expected to discover a separate region of meaning generated by the time limit construct and legal norms regulating such limits. The legal system, in essence, forms its own time (Grabham and Beynon-Jones 2019) and selects tools to manage it. Due to the internal differentiation, each subsystem of the law likewise produces its own temporality. If, for instance, the time limit within the RCJS “is calculated in hours, days, and months” (the Criminal Procedure Code of the Russian Federation (hereafter referred to as “CrPC RF”) Part 1 of Article 128), that of the civil proceedings is measured in years, months, and days, and “shall begin on the next day after the date or occurrence of the event that determined its beginning” (the Code of Civil Procedure of the Russian Federation, hereafter referred to as “CPC RF”, Part 3 of Article 107).

Resembling a mysterious place with its own chronometry, the RCJS functions in a dimension where “the time limit, calculated in days, shall expire midnight of the last day. The time limit, counted in months, shall expire on the corresponding day of the last month, and if this month does not have the corresponding day, the time limit shall be seen to end on the last day of this month. If the end of the time limit falls on a non-working day, seen as the last day of the time limit shall be the first working day next to it...” (CrPC RF Part 2 of Article 128). Therefore, the legal system, apart from designating the moments of the time limit beginning, also establishes its expiration date contingent on circumstances that are relevant to the system itself. One may find more examples from other law branches and see that in administrative proceedings “if a procedural action has to be performed immediately, the course of the procedural time limit will

selections, and connections of new communication to the existing one, as well as dynamics of imposing limitations on operations irrelevant to a code of concrete, function system.

begin immediately from the onset of the date or event that will determine its beginning” (the Code of Administrative Judicial Procedure of the Russian Federation Part 5 of Article 92).

Having seen the variability of semantic forms of the time limit concept, it is worth analyzing the multilevel semantics organized around this concept. Within the framework of legal processes, the law manipulates the rate, tempo, and rhythm of changes, i.e., speed, exploiting formulas, such as “suspension”, “extension”, and “adjourning”. Being forms of organizational communication with a performative character, these are the temporal clauses and crucial components of the operation, which refer to the legal decision. Both the civil and criminal justice subsystems are capable of suspending proceedings (CrPC RF Article 238, CPC RF Chapter 17) according to grounds determined by the legal system itself.

Since, in addition to adjudication proceedings, the RCJS has developed stages of preliminary investigation and criminal case initiation, suspensions, as well as extensions of time limit, are similarly utilized within these processes. The time limit (2 months) before which the investigation has to be completed can be extended for 12 months or more, while the time limit (3 days) in order to initiate/refuse to initiate a criminal case can be extended for up to 30 days (CrPC RF Article 144, 162).

Another aspect that illuminates the constructivist nature of the temporality and its malleability for manipulating by function systems, pertains to restoration of the time limit (CrPC RF Part 1 of Article 130, CPC RF Part 1 of Article 112) in order to take corresponding legal actions. Compared to the extension, the restoration is a far more radical operation, since an expired time limit starts its turn anew. Akin to some deity in a myth, the legal system appears to be able to return lost time and annul the impossibility of performing an action for which *kairos* has passed. This capacity for virtually endless replenishment of the legal system’s time budget drastically distinguishes the law from the individual as a conglomerate of systems, who experiences, one way or another, own finitude. All in all, it is becoming more and more evident that statements on the persuasiveness of the linear perspective of time are overestimated (Luhmann 2013, Grabham and Beynon-Jones 2019) in a discussion.

The systemic capacity to observe and reconstruct its own operations is similarly specified in the formula of “adjourning trials”, which allows the criminal justice and other forms of resolving cases on the merits (civil, administrative, etc.), to decelerate legal processes according to the system’s preferences. Exploiting another side of the distinction, whose unity is the speed concept, the legal system allows for the acceleration as well. For instance, if a defendant or defence counsel obviously plays for time over studying a criminal case, then, as a countermeasure, the system may specifically establish, by using certain procedures, a time limit for the familiarization with *dossier* (CrPC RF Part 3 of Article 217).

In toto, semantic forms that have emerged due to the internalization of the time limit concept are complex and differentiated. Regulating a total duration of the preliminary investigation and trials, the RCJS additionally constructs the temporality of separate procedural actions. For instance, an interrogation procedure has its time subdimension and uses a pure legal formula of “nighttime” developed by the RCJS, according to which

the interval “from 10 p.m. to 6 a.m. local time” is designated as such time (CrPC RF Article 5).

It is crucial that in the case mentioned the system not only has determined the duration of its processes and devised rules of temporal measurement, but in fact established the rhythm of day-night as well. This allows the RCJS to regulate the systemic activity and intensity of communication, since “performing an investigative action in nighttime shall be inadmissible, with the exception of urgent cases” (CrPC RF Part 3 of Article 164).⁵

One may notice that until that moment the narrative revolved around the time limit concept as one of multifarious semantic forms of before/after distinction. However, it is worth adding that structuring of the legal system’s internal complexity based on this binarity has a more implicit nature.

Being a property of both criminal justice and the legal system in totality, the very procedurality has itself incorporated the before/after schematism. The alternation of legal episodes, sequences of events, and emergence of staging (the initiation of a criminal case, preliminary investigation, trial, appellate proceeding, etc.) synchronized by binary codes of various law branches are feasible only if the primordial character of the before/after distinction is admitted. Furthermore, such an acceptance is a prerequisite to have sequences of procedural actions occurred in a strict order, which establishes what needs to be marked as “before” and, consequently, “after”.⁶

4. The speed related dimension of the Russian Criminal Justice

It seems that the analysis of system’s “lifeworld”, which exploits schemata of the temporality (the time limit) and speed, should be elaborated further by the description of episodes of its operation. Moreover, as has been enunciated in the introduction, it is the hypothesis that a more congruent conceptualization of the RCJS can be achieved by means of autopoietic approach, which has spurred the speed concept project.

To discern a conceptual role of the speed in the description of the RCJS’s functioning, one should consider the latter a subsystem of the law. The RCJS is subsumed under a managerial type and operates based on a specific, inversion subcode “legally guilty (non-lawful)”/“legally non-guilty (lawful)”.⁷ As in the case of the medical system (sickness/health) (Baraldi *et al.* 2021) or system of psychiatry (pathological/normal), only the positive side “legally guilty (non-lawful)” has a potential for the connectivity. The

⁵ Similar statements can be found in Durkheim’s sociology, wherein the time and calendar are conceptualized as essential tools for organizing collective activity and managing its dynamics (Durkheim 1995). However, if Durkheim’s time hinges on the sacred/profane distinction and corresponding ceremonies/profane activity shift, the time of the legal system is indispensable to its self-preservation and ensuring the transition within binarity “lawful”/“non-lawful”.

⁶ In this network of successive stages, connections observed through the before/after optics are not causal *per se*, since the beginning of event after the end of the previous one draws upon a mere idea of alteration (albeit the regulated one). It tells us nothing about that the event “a” causally led to “b”. Not causality, but a mandatory sequence of actions and events constructed by the legal system, is precisely the case when “this distinction between “before” and “after” can be handled, even if one abstracts to a large degree from notions of movement. It is possible to pin down earlier states even if one does not know what kind of movement, process, or causality brought about the “after” (Luhmann 2013, 151).

⁷ Since both the legal system and the moral utilize the “guilt” concept, the “legally” indication is introduced to draw a boundary between the legal guilt and the moral one.

selection of meanings in accordance with the “legally non-guilty (lawful)” structure breaks the communication cycle (in the event of criminal proceedings termination, acquittal, etc.) and underscores the irrelevance of particular episodes to the criminal justice. Hence, resources of this system can be allocated to process other social episodes and events referring to the “legally guilty (non-lawful)” indication. In turn, the connectivity value “legally guilty” does not contribute to the reflection, since the criminal justice system is not oriented towards the recursivity located to the “legally non-guilty” negative value. One should emphasize that such statements do not favor the so-called “accusatorial bias” (Solomon 2015) or other forms of the internal de-differentiation. These just highlight the communication specificity of the criminal justice, which is primarily concerned with episodes relevant to the meaning “legally guilty” and bars itself from selecting and condensing the “legally non-guilty” meaning in order to save resources and allocate them to other urgencies.

In the course of allocating values “legally guilty (non-lawful)”/“legally non-guilty (lawful)”, by making corresponding decisions (e.g., the criminal proceedings termination and acquittal/conviction), the RCJS fulfils various programs within established time limits. These consist of programs conventional for the legal system in totality, viz. conditional programs “if-then” (Luhmann 2004) – e.g., if there is a sufficient reason, a criminal case shall be initiated – and of programs specific for the RCJS solely. The latter are the past-oriented, cognitive programs (e.g., the reconstruction of allegedly criminal event over the investigation and trial) and the future-oriented, predictive ones (e.g., the imposition of restraint measures, such as bail, house arrest, or pre-trial detention).

Overall, due to de-differentiation tendencies, which impede a sustainable re-production of difference (i.e., the sustainability of the autopoiesis), the *modus operandi* of the RCJS takes a form of the Crime Control Model (Packer 1964, Petrukhin 2009, Paneyakh *et al.* 2018). The latter’s constituents are efficiency (a goal achievement), speed, informality (a minimum number of ceremonious rituals), uniformity, and the presumption of guilt. This discriminative focus on separate components is essential, since there is no interchangeability here. Having mere the presumption of guilt and informality without efficiency does not suffice to constitute the system of the crime control type.

The system’s efficiency is assessed during the self-observation carried out by multifarious reflexive units (the Supreme Court of the Russian Federation, the General Prosecutor’s Office of the Russian Federation, the Ministry of Internal Affairs of the Russian Federation, the Investigative Committee of the Russian Federation, etc.). Restricted by a circular paradox of the efficiency – criteria employed to observe the first-order observation over the second-order one refer back to the guiding distinction “legally guilty (non-lawful)”/“legally non-guilty (lawful)” of the first-order observation – these scrupulously monitor the acquittal-conviction ratio. Specific, systemic structures, which embody corresponding, communicative expectations, presuppose that a higher number of convictions compared to that of acquittals is, the more efficiently the RCJS operates. Acquittals are generally viewed as “defective goods” (Solomon 1987).

Thus, in addition to the conditional program mentioned, the RCJS’s emphasis on the efficiency and fulfilling a particular result in the form of conviction implies that the system operates based on the intentional program (Luhmann 1997) of the crime control

as well. The preponderance of this program transforms the Russian Criminal Justice into, metaphorically speaking, an “assembly line” whose efficiency is contingent on “a high rate of apprehension and conviction” (Packer 1964) produced at the highest possible speed (Packer 1968).

As a result, implementing the crime control program requires the development of efficiency assessment subsystem. The latter functions within the RCJS as a system of performance incentives labelled “palochnaya sistema” (stick system) (Paneyakh 2014, McCarthy 2015, Khodzhaeva 2023). Under that subsystem, criteria for the assessment of law enforcement agents’ activity embrace two main indices – an amount of time spent on the case investigation (the compliance with strict time limits) and conviction prospect. According to the Judicial Department at the Supreme Court of the Russian Federation, the conviction rate was 99.8% in 2020 (2021) and remained the same in the first half of 2022 (2023).

If the conceptual juxtaposition “efficiency – intentional program of the crime control – subsystem of performance incentives” had merely referred to the desired output in the form of conviction, the speed concept would not have been a central in this text. However, for the crime control program, the efficiency consists not only of the prevalence of the conviction rate over the acquittal one, but, *inter alia*, of maintaining a high speed (McCarthy 2015), i.e., a high number of convictions produced per unit of time with minimal resources and within existing time limits. Combination of elements, such as convictions, speed, and resources, precisely makes out the efficiency.

In this regard, a guilty verdict delivered with minimal temporal costs is conceptualized as a structural coupling between legal and political systems. It demonstrates to the latter that the criminal justice is efficient and limited resources should be allocated to the legal system (Nobles and Schiff 2013a, 2013b). In turn, performance incentives serve to accelerate the internal life and operations of the RCJS.

By observing changes and crossing the boundary between values “legally guilty”/“legally non-guilty” through the schema of speed, the RCJS seeks to increase the rate of this oscillation. In so doing, it condenses most of meanings on the side “legally guilty” (connectivity value), minimizes the horizon of possibilities, and decelerates a speed of reverse crossing to the side “legally non-guilty” (reflexive value). Since the process of fulfilling programs can be adjusted (Luhmann 1997), the system incessantly variates, selects, and retains various strategies to manage its speed. It also avoids downtime and decreases the likelihood of undesirable future (acquittals) that leads to systemic disappointments.⁸

Take for example the Russian Jury Reform 2018, which expanded trials by jury to the level of District Courts. Previous empirical study of mine (Skoblik 2022), as well as research of other scholars, showed that each jury trial severely irritated the RCJS in terms of higher acquittal prospect and deceleration compared to non-jury trials. Khodzhaeva

⁸ One can refer to statements about the speed dependence on subtypes of operations made in the previous section. Manifold operations within the RCJS do not exhibit the same or equal speed. The distinction “routine crimes/political crimes” introduces such a speed difference into the systemic unit. While routine crimes form the bulk of caseload and, therefore, should be processed quickly, the political are handled with scrutiny, which indisputably decelerates the system.

has aptly noted that “the high resource and time demands associated with jury trials have exacerbated the struggles of already overworked district courts” (2023, 3). It is, therefore, natural that, exploiting its capacity for resonance, the system deploys different strategies to accelerate own functioning, i.e., increase the number of operations related to the value “legally guilty” produced per unit of time.

All in all, after several years of the reformation and reconfiguration, there is an intention to reduce the number of jury trials despite an initial plan to expand them. From the system’s perspective, it would help to preserve existing structures and expectations by simultaneously addressing issues of the acquittal increment and compliance with time limits. One of the last laws concerned the crime “Leadership in a criminal hierarchy” (the Criminal Code of the Russian Federation Article 210.1). Parliamentarians excluded this offence from ones eligible for trial by jury (The State Duma of the Russian Federation 2023).

By and large, one may strive to incorporate the concept of the speed dependent on that of the time limit into the categorical schema “de-differentiation – differentiation”. It is well-known that the less obstacles are, a greater chance of achieving a high speed is (Latour 2005). Due to the colonization by a faster synchronizer (the political system), which exactly requires the fulfilment of the crime control program, the RCJS undergoes the trivialization and accelerates own operations by removing various hindrances. Apart from trials by jury, even human rights are considered such barriers. The Crime Control Model (program) precisely presupposes the truncation of due process rights as unnecessary rituals in order to increase the efficiency of the assembly line (Packer 1964, 1968).⁹ By limiting them, the RCJS affects its outputs, however at the cost of differentiation,¹⁰ since a semantic role of formulas of rights and constitution is exactly to protect various regions of the social from the colonization and totalization by other communication systems – in a particular by the politics (Thornhill 2012).

The observation schema “de-differentiation – differentiation” elaborated by means of concepts of speed and time limit shows that, by increasing the speed of operations within the law, the crime control program sacrifices the latter’s accuracy and substantiation, since, as Luhmann writes, “the legal system is very slow, as far as its jurisdiction is concerned, being held back by the need to demonstrate accuracy and substantiation” (Luhmann 2004, 371). Due to such temporal, factual and social de-differentiation

⁹ This interplay between the crime control program and the rights-based semantics leads to the hypothesis that in the end Russia’s withdrawal from the European Convention on Human Rights will reinforce the crime control program of the RCJS (Skoblik 2023).

¹⁰ It is worth noting that the increase in the speed of the criminal case resolution is not necessarily accompanied by de-differentiation tendencies, since the modernity is, in principle, characterized by the time compression and intensification of social interactions. As scholars who study the time management in American courts note, “the importance of timeliness is enshrined in the U.S. Constitution’s Sixth Amendment guaranteeing the “right to a fair and speedy trial” (Ostrom *et al.* 2007, 92). Locating the RCJS within the “de-differentiation – differentiation” schema, one should not limit the observation by the distinction “acceleration/deceleration”, but discern how the emphasis on the speed and timeliness prevents the sustainable re-production of difference within the functionally organized world. If the operation acceleration does not block the autopoiesis, and communication system retains attributes of non-trivial machine, there are no grounds to infer about the emergence of de-differentiation trends.

accuracy and substantiation are eroded as structures.¹¹ Expectations of the RCJS are inclined to favor of the efficiency and, consequently, the speed of returning the conviction. The temporal differentiation between systems (Luhmann 1997) is also reversed, since the initially slow legal system (Francot 2020) eventually sacrifices accuracy for the speed and merges its temporally with the politics, which is usually under time pressure. This engenders a shortage of own, systemic time of the RCJS and common temporality with the political system.

5. Conclusion

The systems theory is yet to unfold the potential for the observation and description of changes and oscillation, as well as their quality and quantity. Notwithstanding that one can see other ways to develop the speed concept, even its limited usage in this text has already allowed for some insights into the workings of the legal system. Eventually, drawing upon concepts of the speed and time limit incorporated into the observation schema “de-differentiation – differentiation”, it would be more correct in the case of the RCJS to discuss not the speed of the autopoiesis and difference re-production, but that of achieving the goal in the form of conviction.

Since ideas elaborated here are not rooted into the legal system’s elements, structures, and processes there is a possibility that the speed as a schema for the observation of the number of operations produced within the system per unit of time and the rate and tempo of oscillation between sides of distinction per se can be actualized within other communication units (the political system, science, economy, etc.). This analytical tool allows for posing questions on the self-reproduction tempo of systems, as well as its elements, and on types of acceleration/deceleration strategies employed due to de-differentiation tendencies. However, to refine the speed as a schema further, it is worth synthesizing the theorization of the systems theory with that of different sociological optics. Creative interpretation of other conceptual inventions should be then the next stage of the speed concept project.

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¹¹ Some scholars suppose that Luhmann’s theory advocates the neocolonial way of thinking (Gonçalves 2017) and categorizing social entities, since it intimately implies the superiority of the Western world. However, one of underpinnings of this paper is that the erosion of the rights-based semantics may emerge across any region (including the Western countries) (Nuotio 2010). The differentiation state is not an immutable achievement and not grounded in societal conditions of particular countries.

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