

Criminal Liability for Performance or Provision for Services Not Meeting the Safety Requirements

Sundurova O.F.
University of Management “TISBI”
Russian State University of Justice
Kazan, Russia
oksanasundurova@mail.ru

Sergeyev M.S.
University of Management “TISBI”
Kazan, Russia
sergeev.s.maksim@gmail.com

Badamshin S.K.
University of Management “TISBI”
Kazan, Russia
sk-badamshin@mail.ru

Fatkhullin R.R.
Russian State University of Justice
Kazan, Russia
fathullin_fsln@mail.ru

Abstract—The article explores the problems of criminal liability for performance of work or provision of services that do not meet the safety requirements. The protection of public health, as part of public safety, is one of the priority tasks of the criminal legislation of Russia. Each consumer must be sure that the services provided and work performed are safe for his life and health. The relevance of the topic due to the current ambiguous legal practice and due to the lack of a unified approach of the law enforcer in the matter of qualifying acts in the field of work or the provision of services that do not meet the requirements. Currently, there is the problem of delimiting various types of responsibility in the field under consideration, determining the subject of the crime, the victim, and also the subjective side of the crime. In order to eliminate the revealed contradictions in the law enforcement practice, the authors analyzed the judicial practice, the norms of material and procedural legislation in order to determine the signs of goods (works, services) that do not meet the safety requirements of life and health of consumers within the framework of the analyzed norm, signs of crime. Raised by the author topic is relevant in light of the decisions of the Resolution of the Plenum of the Supreme Court of the Russian Federation of November 18, 2004 N 23 “On judicial practice in cases of illegal business and legalization (laundering) of money or other property acquired by criminal means”.

Keywords—security; a responsibility; consumer; execution of works; provision of services.

I. INTRODUCTION

In an emerging market economy special role played by security control of goods, works and services. The desire to obtain high profits by reducing the cost of production

through the use of cheap raw materials, saving on compliance with safety requirements leads to the appearance on the consumer market of works and services that threaten the health of the population.

For violation of consumer rights may come responsibility for the civil, administrative and criminal law.

The issues of the features of criminal liability for the provision of services that do not meet safety requirements, by persons depending on their professional and official position, have been considered by a number of authors in scientific articles in a general aspect [2-5] and in dissertation research [6,7].

Art. 238 of the Criminal Code of the Russian Federation establishes criminal liability for the performance of work or the provision of services that do not meet the safety requirements for life and health of consumers. The criminalization of these crimes acts as a criminal guarantee of compliance with safety requirements, stipulated by the Law of the Russian Federation No. 2300-1 of 02.07.1992 «On the Protection of Consumer Rights».

II. RESEARCH METHODOLOGY

In the scientific work was used a combination of philosophical, general scientific and particular scientific methods of scientific cognition, among which the dialectical method of cognition in combination with comparative legal and system-structural methods. Materials research based on the Criminal Law of the Russian Federation, decisions of the Plenum of the Supreme Court and scientific literature.

III. RESULTS

Based on the analysis of Art. 238 of the Criminal Code warranted the conclusion that a single execution of works or services that do not meet safety requirements, non-continuous maintenance of consumers, does not constitute

the crime. The performance of work or the provision of services may take place regardless of the form of ownership.

In cases where illegal business activity was associated with the production, storage or transportation for the sale or sale of goods and products, the performance of work or the provision of services that do not meet the requirements for the safety of life or health of consumers, the offense constitutes cumulative crimes stipulated by the relevant parts of Art. 171 and Art. 238 of the Criminal Code [3].

IV. DISCUSSION

The provision of services refers to activities aimed at meeting any needs (passenger transportation, water supply, rental, entertainment, medical, hotel, cosmetic and other services). The service is recognized as rendered (realized), and, consequently, a crime under Art. 238 of the Criminal Code, committed in the form of a service that does not meet the safety requirements, will be completed from the moment of its provision. Considering the fact that a material result is the main feature that delimits a service from work, the latter can be recognized as completed only at the moment of the result in the final form, i.e. when it can be implemented to meet needs.

In accordance with the Resolution of the Plenum of the Supreme Court on June 25, 2019 N '18 Moscow "On judicial practice in cases of offenses under article 238 of the Russian Criminal Code," the terms of criminal responsibility are: 1) Reality. Criminal liability under paragraph 1 or items "a" - "b" p. 2 art. 238 of the Criminal Code comes under the condition that the danger of goods, products, works or services to human life or health is real; 2) Any person can be recognized as a victim, regardless of the existence of a contractual relationship; 3) The subject of a crime may be the head of an organization engaged in illegal activities, an individual entrepreneur, their employee, as well as a person who actually carries out production and circulation of products and goods, performs work, and renders services without corresponding state registration; 4) The subjective side of the crime is guilt in the form of intent (acts committed that intentionally caused serious harm to health or death, are deliberately equated to committed ones) [9].

Disposition of Art. 238 of the Criminal Code is blanket, that is, it refers to other regulations. To determine whether the manufacturer (seller, performer) has violated the requirements for the safety of goods and products (works, services), it is necessary to refer to a number of legislative and other regulatory legal acts. The content of the disposition of Art. 238 of the Criminal Code of the Russian Federation can disclose only regulatory acts of the federal level.

For example, in the sentence Butyrsky District Court of Moscow against O., that found guilty of committing an offense under i. "b" p. 2 art.238 of Criminal Code of the Russian Federation, found that O., being the owner of the mobile tower "MODEL", in violation of requirement, in which the operation is prohibited, willfully and not legal, is not registered as an individual entrepreneur, not trained to work on the training program for auto-tower crane operators (operators) are registered in MTU "Rostekhnadzor", did not

pass a periodic technical examination, which resulted in damage to the truck mounted boom. Because of this damage, during the operation of the aerial platform due to damage to the mechanism, one of the passengers on the aerial platform fell and died, the second was injured in moderate health [10].

In another case, the Perm Regional Court on March 22, 2018 examined in open court the appeal of convicted Petrushkin against the verdict of the Chusovsky City Court of the Perm Region of January 26, 2018, in accordance with which he was convicted under Part 1 of Art. 238 of the Criminal Code to a fine of 200,000 rubles, with the deprivation of the right to engage in activities related to the management of apartment buildings for a period of 2 years. The court found him guilty of the fact that, as the general director of the LLC, he provided services that did not meet the requirements of the safety of life and the health of consumers. Petrushkin in the hearing admitted guilt in part, explaining that the home inspection was made twice a year, the overhaul of the roof is not the responsibility of the management company, the roof of the house for the winter 2016-2017 year had never been cleaned.

In accordance with the act of preliminary investigation of the causes of the accident, it was established that on March 10, 2017, the roof of the house collapsed in the village of Skalny, Chusovsky district, Perm Territory. According to the conclusion of the construction technical expertise, the cause of the collapse of the roof of the residential building was a complex of emergency impacts on the supporting structures of the building's building system. Petrushkin was obliged to ensure timely and high-quality fulfillment of all contracts and obligations, for the non-fulfillment of which he is liable under the current legislation and the Charter of the Company. The court correctly established the factual circumstances of the case and made a reasoned decision on the proof of the guilt of Petrushkin in committing a crime under Part 1 of Art. 238 of the Criminal Code, as the performance of work and the provision of services that do not meet the requirements of safety of life and health of consumers [11,12].

V. CONCLUSIONS

1) difficulties in judicial practice is the establishment of signs of the objective side of the crime. In our opinion, it is desirable to disclose the concept of safety of work and services performed in a resolution of the Plenum of the Supreme Court of the Russian Federation. It is known that the definition of security is given in Art. 7 of the Federal Law "On Protection of Consumer Rights", however, it covers civil, administrative offenses and, at the same time, crimes. Therefore, there is no clear distinction between this crime and administrative offense; 2) for the correct qualification of actions for the performance of work or the provision of services that do not meet the safety requirements, the determination of the subject of the crime and the signs of the objective side is of primary importance; 3) when delimiting work from a service, in our opinion, such a distinction should be made in the presence of materially expressed results that are important for establishing the moment the crime ends.

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