

National Security as Object of Criminal Law Protection

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ABSTRACT

The Criminal Code of the Russian Federation, Part 1, Article 2 defines the range of benefits that are valuable and in need of criminal law protection. One of the criminally protected benefits is security, which is defined as the state of protection of vital interests of an individual, society and the State from internal and external threats. Thus the security includes such notions as state, public and personal security. Accordingly, the general object of criminal law protection cannot be public safety, since it includes only the safety of society. It is necessary to highlight the concept that would synthesize the security of the State, society and individual, which would make it possible to exclude broad interpretation of public security as an object of criminal law protection and a common object of all crimes. It is proposed to consider national security as an object of criminal law protection and a common object of all crimes. National security, being a social good, can be ensured by the comprehensive use of all the resources, means and instruments available to the state, including the system of means and measures of criminal law. Consequently, it is proposed to consolidate national security as such in the RF Criminal Code.

Keywords: *criminal law protection, object of criminal law protection, object of crime, national security, military security*

1. INTRODUCTION

The Criminal Code of the Russian Federation, Part 1, Article 2 defines the range of benefits that are valuable and in need of criminal law protection. Based on the law, they include the rights and freedoms of man and citizen, property, public order and public safety, natural environment, constitutional system of the Russian Federation. Proceeding from the accepted vertical classification, these phenomena (values, benefits) determine the range of generic and specific objects of criminal law protection.

The existing Criminal Code of the Russian Federation has adopted a four-level classification of the object of crimes, which the legislator consolidated in the structure of the Special Part. However, this approach did not solve the existing problems, and today in the science of criminal law there are many ambiguously resolved issues. As before, the issue of developing a scientifically grounded system for structuring the Special Part of the Criminal Code and its individual sections and chapters is still relevant. The key issue in this regard is the problem of the object of criminal law protection.

Based on the etymology, the object is recognized as 'a phenomenon, an object to which someone's activity is directed' [1, p. 441]. In our case, we are talking about an object to which the protective activity of the State is directed using specific criminal law means and to which harm is caused by a criminal act or the danger of such harm is created.

In this term, it is necessary to distinguish between the concepts of an 'object of criminal law protection' and an 'object of crime' since these concepts are by no means identical, although, they are interrelated. They are different in their semantic load, meaning, volume and time characteristics. First of all, criminal law, in accordance with one of its functions, takes under its protection only the most significant phenomena (benefits). In this case the object of criminal law protection is primary, and the object of the crime is secondary since the act will not be criminal if it encroaches on an object that is not protected by criminal law. Thus the object of criminal law protection exists regardless of a criminal encroachment on it and an object of crime takes place only when the crime is committed. Until the object is placed under the protection of the criminal law, an encroachment on it shall not be considered as crime. The problem of general object of criminal law protection is of greatest importance, complication and controversy, in particular, its definition of its concept and essence, as well as legislative regulation.

Let us proceed from the fact that social relations are always the object of criminal law protection and the object of crime. However, one may deny the possibility of a direct impact on public relations. Social attitudes can only be disturbed by influencing any of its structural elements. Consequently, any crime is ultimately a threat to social relations, one of the elements of which becomes the object of encroachment.

At the same time, public relations, as an object of criminal law protection, include the following structural elements: subject (participant) is a person or certain group of people and institution they create as carriers of a certain social status, possessing rights, freedoms and obligations; content

is the relationship of subjects through the implementation of subjective rights and the performance of subjective duties; object and subject are intangible and material benefits because of which subjects enter into relationships; certain states as conditions for the existence of social relations. If to recognize public relations as a general object of criminal law protection, on the one hand, and a general object of crime, on the other hand, one may come to the conclusion that any crime ultimately encroaches on public relations. Since it is true that all crimes infringe on social relations, it is also true that each crime individually infringes on social relations, entrenching on any of the elements of their structure.

At the same time, the value approach to the problem of the object of criminal law protection and the object of crime from the point of view of their value is absolutely appropriate. Elucidation of the value of the object of criminal law protection is really of great importance, but for this it is necessary to have a clear idea of the phenomenon the value of which needs to be identified.

Being more specific, national security should be considered as a general object of criminal law protection where criminal law plays a special role, since all crimes, ultimately, encroach on the national security of the country.

2. RESULTS AND DISCUSSION

Part 1 of Article 14 of the Criminal Code of the Russian Federation describes 'danger to the public' as one of the key mandatory characteristic of a crime. It follows that all crimes infringe on public safety in its various manifestations and areas. However, in Part 1 of Article 2 of the Criminal Code of the Russian Federation public safety is described as a generic object, which is confirmed by Section IX of the Special Part of the Criminal Code, and in Chapter 24 public safety acts as a specific object. This position of the legislator raises some criticism. One and the same phenomenon acts in three meanings, i.e. as a general, generic and specific object in connection with which the legislator generated and normatively described the uncertainty of the general object of criminal law protection, which, in turn, gives rise to other problems of a doctrinal nature. In particular, the problem of the structure and development of the Special Part of the Criminal Code.

In our opinion, the position of the legislator on this issue seeks some changes. It seems that the delineation of these concepts is of great importance for the unity of the correct application of the norms of criminal law and thereby guaranteeing the unity of legality in the country. In this case, one should remember the rule stated by N.S. Tagantsev 'If the legislator has given a special meaning to any expression, then in all other articles where this word is used it must have the same meaning until the opposite is proved' [2, p. 91].

Due to the fact that public safety is used in criminal law science both as a common object of all crimes and as a generic (Section IX of the Criminal Code of the Russian Federation) and a specific object (Chapter 26 of the Criminal Code of the Russian Federation) of criminal encroachments, some criminologists raise the question of

the possibility and admissibility of defining the concept of public safety to highlight its broad and narrow meaning. So, in the legal dictionaries of the Soviet period, public safety is defined as 'a system of measures aimed at protecting the State and public order, the rules of socialist society to ensure normal conditions for work and recreation of citizens' [3, p. 175].

A broad definition of the concept of public safety is given, in particular, by P.I. Grishaev. In one of his works, he points out that public safety is a system of 'measures aimed at protecting the State and public order, at ensuring normal conditions for work and recreation of citizens' [4, p. 57], and in another publication he also defines it as 'safe conditions of everyday life and activities of members of a socialist society' [5, p. 4].

P.S. Matyshevsky believes that 'public safety presupposes the introduction of a certain system of measures and the development of necessary conditions to ensure orderly and unhindered functioning of the State and public enterprises, institutions and organizations, as well as the peace of mind of citizens' [6, p. 8]. V.A. Vladimirov described the concept of public safety as 'public relations based on a certain system of measures and conditions that ensure smooth and balanced operation of the State or public institutions, enterprises or organizations, as well as the peace of mind of citizens' [7, p. 5].

In this regard, one should agree with the opinion of V.P. Tikhyy that such definitions of the concept under consideration are extremely broad for understanding public safety, namely, as the security of society, and testify in favor of the fact that public safety is considered as a common object of all crimes [8, p. 24].

The general concept of 'security' means a situation in which someone or something is not in danger according to the etymology of this word [9, p. 74]. In Article 1 of the previously effective Law of the Russian Federation of March 5, 1992 No. 2446-1 'On Security' the security was defined as 'a state of protection of the vital interests of individual, society and the State from both internal and external threats'. The disadvantage of the current Federal Law of December 28, 2010 No. 390-FZ 'On Security' is the lack of a clear definition of security. However, in Article 1 of this law it is noted that security includes such varieties as state security, public security, personal security and others. Thus, the objects of security are as follows: the state - its constitutional order, sovereignty and territorial integrity, society - its material, spiritual and other benefits, personality - its rights and freedoms. Accordingly, the concept of security is not limited only to public security and, naturally, the concept of public security cannot encompass all the characteristics of security in general. Public security, for example, in our opinion, cannot include the security of the activities of state institutions. Public security should be understood as the security of society, which exists along with the State security and security of an individual. These phenomena are interconnected and the provision of one is impossible without the provision of the other.

Earlier in our works, it was pointed out the need to highlight a concept that would synthesize the state security of the State, society and an individual, which would eliminate a

broad interpretation of public security as a common object of all crimes [10; 11, p. 22-23]. As such, the concept of national security was proposed, which had already been used for some time in the special literature [12, p. 93], and in bylaws (in particular, in the National Security Strategy of the Russian Federation approved by the Decree of the President of the Russian Federation of December 31, 2015 No. 683).

National security, being a social good, can only be ensured by the comprehensive use of all the resources, means and instruments available to the State, including the system of means and measures of criminal law. That is why national security should be considered as a general object of criminal law protection [13, p. 56]. Accordingly, criminal law plays a special role in the system of legal support for national security, since criminal law is aimed at minimizing (neutralizing) crimes as the most dangerous manifestations of deviant behavior, which, ultimately, encroach on national security. As researchers point out, the criminal-legal regulation of social relations that ensure the State and public security, as well as personal security, thus, in general, ensures national security [14, p. 24].

At the same time, there is a whole range of problems related to both the doctrinal substantiation and legislative consolidation and practical implementation of both the very concept of national security and the system of legal measures to ensure it. This fully applies to the criminal law field, since experts reasonably insist to consider the directions of criminal policy in a comprehensive manner in three key aspects i.e. legislative, law enforcement and scientific [15, p. 147].

First of all, the problem of definition and normative consolidation of the concept of 'national security' deserves attention, since without this it is impossible to properly ensure and protect national security as a good (value).

For some period of time, both in legislation and in science, an approach had prevailed according to which national security was similar to military security. So, in accordance with the Paragraph A, Clause 8 of the Military Doctrine of the Russian Federation, approved by the President of the Russian Federation, December 25, 2014 No. Pr-2976, military security was defined as a state of protection of the vital interests of the individual, society and the State from external and internal military threats associated with the use of military force, and characterized by the absence of military threats or the presence of ability to stand against them.

According to most experts it has become obvious that the national security should not be limited only to defense issues and be equated with military security, since such an unreasonably narrow understanding of national security leads to underestimation and ignoring of other threats, which are no less dangerous. In this regard, the boundaries of the concept of national security should be expanded both in terms of the subject composition (state, society, personality) and the coverage of social spheres of influence (history, culture, religion, economics, politics, ecology, defense, etc.) [16, p. 60].

In this regard military security should be viewed only as a kind of national security, as one of its constituent elements.

Thus, military and national security are related as a part and a whole [17]. Accordingly, national security should be considered as a general object of criminal law protection, and military security - as its variety and generic object of crimes [18, p. 33-41; 19, p. 316-317].

At the same time, the key subject of military security is the military organization (the Armed Forces, other troops, military formations and bodies), which must possess such qualities as combat readiness and defense capability in order to counter military threats and ensure military security. In this regard, it is impossible to agree with the opinion of a number of scientists that in cases where a section of the Special Part of the Criminal Code is not divided into chapters, but consists of one chapter, the same section, then the generic object coincides with the specific object (Section XI and Chapter 33 of the Criminal Code of the Russian Federation) [20, p. 684].

We believe that in this case there is a problem artificially created by the legislator, which, in our opinion, was the result of a nincomplete work, and some scientists tried to give it a theoretical justification (justification). In our opinion, the absence of chapters in Section XI of the Criminal Code of the Russian Federation does not mean that the crimes included into them do not have specific objects.

As for national security a relatively clear and fairly broad legal definition of this good is given in Clause 6 of the National Security Strategy of the Russian Federation in 2015, where it is defined as 'the state of protection of the individual, society and the State from the internal and external threats which ensures the implementation of the constitutional rights and freedoms of citizens of the Russian Federation, a decent quality and standard of their life, sovereignty, independence, state and territorial integrity, sustainable social and economic development of the Russian Federation'. Thus, this definition is a kind of synthesis of approaches that the legislator demonstrated in the earlier acting law on security in 1992 and in the current law on security in 2010, in Article 1 where the concept of 'national security' is enshrined as a synonym for the concept of 'security'.

Another area of concern is related to the criminal law tools for ensuring national security and their effectiveness. At the same time, the effectiveness of criminal law tools is inevitably associated with such qualities as stability and dynamism of criminal legislation, which, in turn, are directly related to the quality of criminal law legislation. In this regard, it is necessary that the amendments and additions introduced to the Criminal Code of the Russian Federation were due to the actual needs of ensuring the criminal law protection of national security, and not dictated by narrow-group political, opportunistic or selfish interests and lobbying [21].

This issue will be the subject of our next publications based on the results of our research in this area.

3. CONCLUSION

Thus, national security is the combination of the security of individual, society and the State and other types of security,

in other words, the security of the country and its national interests. Accordingly, it is national security that is the general object of criminal law protection and, ultimately, the common object of any criminal encroachment, and its elements (varieties) are protected as possible generic objects of criminal encroachments.

Therefore, one shall consider it necessary to bring the Criminal Code of the Russian Federation in line with the current legislation. In particular, to consolidate national security as a common object of criminal law protection and as a common object of all crimes. In this regard, first of all, it can be proposed that Part 1 of Article 2 of the Criminal Code of the Russian Federation shall be stated as follows: 1. The purpose of this Code is to ensure national security. To achieve this goal, the tasks are set to protect human and civil rights and freedoms, property, public order and public security, the environment, the constitutional order and military security of the Russian Federation from criminal encroachments, ensuring the peace and security of mankind, as well as preventing crime; and Part 1 of Article 14 of the Criminal Code of the Russian Federation shall be presented in the following edition: 1. A crime is a guilty committed nationally dangerous act prohibited by this Code under the threat of punishment.

At the same time, it is necessary to consolidate military security as a generic object of criminal encroachments. Accordingly, the title of the Section XI of the Criminal Code of the Russian Federation must be stated as follows: Section XI. Crimes Against Military Security.

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REFERENCES

1. S.I. Ozhegov, N.Yu. Shvedova, Explanatory dictionary of the Russian language: 80,000 words and phraseological expressions, 4th ed., RAS, Institute of the Russian language named after V.V. Vinogradov, Azbukovnik, Moscow, 1999.
2. N.S. Tagantsev, Russian criminal law: Lectures. Common part. In 2 volumes, vol. 1, N.I. Zagorodnikov (Ed.), Nauka, Moscow, 1994.
3. Legal Dictionary, Gosyurizdat, Moscow, 1956.
4. P.I. Grishaev, Crimes against the order of government, public security and public order, ARLCI, Moscow, 1957.
5. Soviet criminal law, Part Special. Issue 10. Crimes against public safety and order, ARLCI, Moscow, 1959.
6. P.S. Matyshevsky, Responsibility for crimes against public security, public order and public health, Jur. lit., Moscow, 1964.
7. P.F. Grishanin, V.A. Vladimirov, Crimes against public security, public order and public health, HSh MOOP RSFSR, Moscow, 1962.
8. V.P. Tikhii, Criminal law protection of public security; Visha Shkola, Kharkov State University, Kharkov, 1981.
9. A.P. Evgenieva (Ed.), Dictionary of the Russian language: in 4 volumes, vol. 1, A – I, 2nd ed., Academy of Sciences of the USSR, Institute of the Russian language, Russian language, Moscow, 1981.
10. R.V. Zakomoldin, Discussion questions of the doctrine of the object of criminal law protection and public security, Bulletin of Volzhsky University named after V.N. Tatishchev. Jurisprudence 14 (2001) 118-127.
11. R.V. Zakomoldin, Criminal violations of special rules and safety requirements, RSSU, Togliatti, 2013.
12. V.M. Borisenko, National security: improving military criminal legislation, Jurisprudence 4 (2004) 93-106.
13. V.I. Akimochkin, I.I. Korolenko, D.N. Kravtsov, Concerning the definition of the national security of Russia as an object of criminal law protection, Russian investigator 3 (2018) 53-58.
14. S.M. Inshakov, V.A. Kazakova, Prerequisites for ensuring national security in the system of criminal law protection, Russian investigator 8 (2017) 23-27.
15. M.A. Efremova et al., Trends of Modern Russian Criminal Policy in the Russian Federation, Journal of Advanced Research in Law and Economics 10(39) (2019) 144-154.
16. D.A. Lipinsky, A.A. Musatkina, Social and humanistic orientation in the national security strategies of Russia and Germany: comparative political and legal analysis, Comparative politics 10(3) (2019) 58-73.
17. R.V. Zakomoldin, On the relationship between national and military security in the light of criminal law protection, in: On some questions and problems of modern jurisprudence: collection of scientific articles

following the results of the VII Int. Scientific-Practical Conf., ICDES, Chelyabinsk - Nizhniy Novgorod, 2020, vol. 7, pp. 19-20.

18. O.K. Zatepin, *Criminal Law Support of the Military Security of the Russian Federation (Questions of Theory, Legislation and Practice): Monograph. Series 'Law in the Armed Forces - Consultant'*, vol. 135, For the rights of military personnel, Moscow, 2013.
19. *Encyclopedia of Criminal Law. Vol. 30. Crimes against military service*, Edition of Professor Malinin - LSU named after A.S. Pushkin, St. Petersburg, 2020.
20. E.F. Pobegailo (Ed.), *Russian criminal law. In 2 volumes. Vol. 2. Special part: textbook*, Ileksa, Moscow, 2008.
21. V. Duyunov, R. Zakomoldin, T. Butenko, A. Galoyan, *Dynamic Stability in the Changeable World and Its Legal Provision*, *Gênero & Direito* 9(04) (2020) 557-579.