

"AUE" in Prisons: Problems of Qualification

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Abstract: The article considers the problems of bringing persons to criminal responsibility for committing extremist crimes, including the spread of criminal subculture, which promotes the thieves' notions of Russian criminal environment, including - prison notions, requiring compliance with the so-called thieves' code (hereinafter - "AUE") The conclusion is made, that despite the measures taken by the state in the investigated sphere, the introduction of such criminal offences as organization, participation, inducement and involving a person into the extremist community has not solved all the problems, connected with the negative influence of the prison subculture on the convicts as well as on the society. The aim of the research is to identify the most significant theoretical and practical issues related to documenting the activities of extremist organization "AUE" in penal and correctional system (hereinafter referred to as CPS). The goal stipulated setting and solving the following tasks: to establish the characteristics of extremism; to analyze empirical basis necessary for conducting the research; to define the differences between thieves' (prison) ideas and ideas propagated by the international social movement "AUE" The methodological basis of work was based on sociological research methods The research was conducted in penitentiary institutions of Siberian Federal District. On the basis of judicial practice, as well as the interpretation of individual criminal law provisions, it is proposed to document a list of statements and actions by convicted, suspected and accused persons in order to prosecute them for engaging in extremist activities, as defined in this article.

1 INTRODUCTION

In the context of globalization and the ever-changing realities of modern society and the state, issues of countering extremism are of particular importance (Diehl, 2011; Samovich, 2012). This is evidenced, in particular, by the repeated (and, recently, annual) appeals of the President of the Russian Federation to various law enforcement agencies to strengthen measures in this direction (Suchkov, Filonov, 2019). For example, on February 24, 2021, at the board meeting of the FSB, he noted that countering extremism, along with terrorism, is one of the most important directions in increasing the level of security not only for the constitutional order of the state, but also for civil peace and harmony. Moreover, in this case, we are not only talking about the Russian state, but also many others closely interacting with it on various fronts (Mits, Andriyanchenko, 2017; Heimbuch, 2020; Borisov, 2019; Bötticher, 2017; Gunaratna, 2017).

Unfortunately, the analysis of statistical indicators of registered crime of extremist nature for the last five years does not allow us to speak about systematic and consistent actions of our state in this sphere, as there is an inconsistent dynamics in its negative direction (from 2015 to 2017 and from 2019 to 2020) and in a positive direction (from 2017 to 2019) (see Diagram). A similar situation is observed for certain offences (in particular, 282.1 of the Criminal Code).

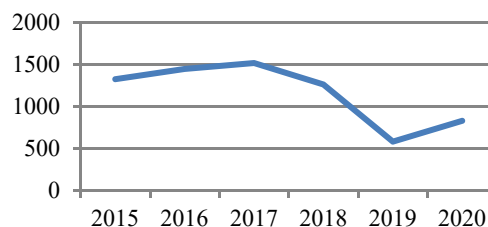


Figure1: Dynamics of registered extremist crimes (2015-2020)

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In general, despite the decrease in the total volume of registered extremist crimes in 2020 compared to 2015 by almost a third (37.3%), the activities aimed at their prevention cannot be considered absolutely effective. This is hindered primarily by deficiencies in the legal and managerial sphere, among which, as D.A. Stepanenko and M.A. Mushinsky rightly point out, we can highlight (1) insufficient strategic planning, (2) various flaws in the anti-extremist legislation (gaps, conflicts, unclear legal concepts, etc.), uncertainty of the very concept of extremism (Stepanenko, Mushinsky, 2019). The latter appears to play one of the key roles in solving the problems of bringing individuals not only to criminal but also to administrative responsibility.

Despite the fact that there is no unified position in the legal literature regarding the content of extremist activity, Federal Law No. 114-FZ "On Counteracting Extremist Activity" does define it, moreover, by listing an exhaustive list of actions which, according to the legislator, constitute a public danger to a person, society and the state. These include not only the violent change of the foundations of the constitutional system, incitement of various kinds of discord, but also terrorism, which is, in fact, an independent legal category (the concept of which is enshrined in a separate federal law) (Protasevich, 2019). The presence of such deficiencies in the legislative technique, as well as the use of evaluative terms (e.g., knowingly, confusingly similar, etc.) in the formation of the concept of "extremism" in the formation of the concept of "extremism", according to some scholars, may lead to a paradoxical situation where in law enforcement it will be possible to prosecute a person for carrying out extremist actions expressed in the demonstration of films, poems and songs of the past, the commission of computer crimes and even the destruction of animals (Donovan, 2013). This has also been repeatedly pointed out by international organizations (Opinion No. 660 / 2011 CDL-AD(2012)016 of the European Commission for Democracy through Law) (pinion of the Venice Commission on the Federal Law "On Counteracting Extremist Activities", 2012), who consider the current Russian legislation on countering extremism to be vague, allowing an expansive interpretation of its individual norms and therefore contrary to the requirements of relevant international legal acts.

However, currently the problem is not so much in criminal prosecution for extremist crimes by subjective opinion of law enforcement authorities and the court, but in the absence of a unified algorithm (methodology) for recognizing such actions as criminal. This is related to the activity of the

International Public Movement "Arrestee Criminal Unity" (hereinafter referred to as AUE), recently recognized as extremist by the Supreme Court of the Russian Federation (hereinafter referred to as SC RF) (case # ACPI20-514S from 21.07.2020), which promotes prison concepts not only among teenagers, as highlighted in mass media, but also among prisoners themselves in correctional institutions, as confirmed by our survey results. Thus, 73% of operatives from correctional institutions in the Siberian and Far Eastern Federal Districts (the Kemerovo, Tomsk, Novosibirsk, Omsk Oblast, the Republic of Khakassia, Krasnoyarsk, Transbaikal, Primorsky, Amur and Khabarovsk Krai) noted that a majority of inmates, in one way or another, adhere to the criminal subculture. Moreover, in a number of correctional colonies (the so-called "black" ones) such subculture is actively promoted, leveling the content of correctional and preventive influence on inmates.

The purpose of the research is to identify the most significant theoretical and practical issues related to the documentation of extremist organization "AUE" activities in penitentiary facilities. The aim led to the setting and solving the following tasks: to establish the signs of extremism; to analyze the empirical basis necessary for the research; to determine the differences between thieves' (prison) ideas and the ideas promoted by the international social movement "AUE"; to formulate conclusions and proposals.

2 MATERIALS AND METHODS

A range of methods was used in the research process. First of all, analysis and synthesis, induction and deduction, and comparison. In addition to these general scientific methods, specific scientific methods were also used. In particular, the method of empirical knowledge that allows us to see from the outside the impact of extremism (including AUE) on convicts and other persons. Descriptive method, based on the recording of information obtained through interview and observation; survey, during which information was obtained from operational staff of correctional institutions in the Siberian and Far Eastern Federal Districts (Kemerovo, Tomsk, Novosibirsk, Omsk Region, Republic of Khakassia, Krasnoyarsk, Primorsky, Amur and Khabarovsk Territories) about the influence of prison subculture on young people. The method of theoretical cognition includes the structural-functional method, which consists in dividing the object under study (in

particular, attributes of extremist activity, prison subculture) into constituent parts.

3 MATERIALS AND METHODS

Unfortunately, despite the measures taken by the state in the area under study, the introduction of such crimes as organization, participation, inducement and involving a person into the activities of an extremist community in the Russian Criminal Code has not solved all the problems related to the negative impact of the prison subculture (AUE) on the convicts themselves and the society. Moreover, the problem of inmates adhering to and promoting AUE is caused not only by the shortcomings of legal technique but also by the lack of a unified methodology (algorithm) of proving the subject of extremism-related crimes by the operational units of correctional institutions.

As of today, the only source, which reveals signs of the international public movement «Prison Criminal Unity», is the decision of the Supreme Court of the Russian Federation (case № ACPI20-514S from 21.07.2020).

On the basis of note 2 to article 282.1 of the Criminal Code of the Russian Federation, crimes of an extremist nature include those motivated by political, ideological, racial, ethnic or religious hatred or enmity, or by hatred or enmity towards any social group, as set out in the corresponding articles of the Special Part of the Criminal Code (for example, articles 280, 280.1, 282, 282.1, 282.2 and 282.3, article 105, paragraph 2 (k), article 111, paragraph 2 (f), article 213, paragraph 1 (b), of the Criminal Code) and other offences committed on such grounds, which are considered an aggravating circumstance under article 63, paragraph 1 (f), of the Code. We will consider the above crimes in terms of their possible commission in pre-trial detention centre's and penitentiary institutions of the penal correction system.

Given the diversity of extremist crimes (article 105, part 2, item "l"; article 111, part 2, item "f"; article 112, part 2, item "f"; article 213, part 1, item "b"; etc.), we have identified only those crimes in which extremist motives are part of the main offence (article 280 of the Criminal Code "Public calls for extremist activities"; article 282 of the Criminal Code "Incitement to hatred or enmity, as well as humiliation of human dignity"; article 282.1 of the Criminal Code "Public calls for extremist activities"; article 282 "Incitement to hatred or enmity, as well as disparagement"; article 282.1 "Organization of an

extremist group"; and article 282.2 "Organization of an extremist organization".)

In order to correctly document the objective nature of the offence, it is necessary to distinguish between sections 280 and 282 of the Criminal Code. Article 280 of the Criminal Code establishes liability only for public calls for extremist activities, while the public dissemination of information justifying the commission of unlawful acts against individuals on the basis of race, ethnicity or religious affiliation, or information justifying such activities, should be classified under article 282 of the Code, where there are other elements of that offence.

At the same time, according to O. Ermakov, on the basis of the court verdicts studied, the practice follows the way of mutual absorption of Art. 280 and Art. 282 of the Criminal Code. For example, in a situation where a perpetrator publicly expresses hatred or enmity towards a particular social group and/or its representatives and simultaneously calls for violent actions against the latter, the qualification of the offence is often limited to an indication of either Article 280 or Article 282 of the Criminal Code. Most often, only Article 282 of the Criminal Code is applied in such situations (Yermakov, 2014).

Analysis of the norms of the criminal law allows proposing a number of recommendations for documenting and collecting evidence of extremist activities of the international public movement "AUE" under Articles 280 and 282 of the Criminal Code, taking into account the signs indicated in the decision of the RF Supreme Court, among prisoners serving sentences in the institutions and bodies of the penal correction system.

The publicity of the articles is set out in Decision No. 11 of the Plenum of the Supreme Court of the Russian Federation, 28 June 2011, Moscow "On Judicial Practice in Criminal Matters". Public appeals (article 280 of the Criminal Code) refer to appeals to others, expressed in any form, such as oral or written, or by technical means, to induce them to engage in extremist activities. In establishing the thrust of the appeals, the provisions of Federal Act No. 114 of 25 July 2002 on Combating Extremist Activities must be taken into account. The question of the publicity of the appeals should be resolved by the courts taking into account the place, manner, setting and other circumstances of the case (appeals to a group of people in public places, at meetings, rallies, demonstrations, distribution of leaflets, putting up posters, distribution of appeals by mass mailing messages to mobile phone subscribers, etc.). The crime is considered as completed since the moment of public announcement (distribution) of at least one

appeal, irrespective of the fact whether it was possible to induce other citizens to carry out extremist activity or not.

Thus, based on the plenum of the Supreme Court and articles 280 and 282 of the Criminal Code, it follows that, in the course of public statements, the staff of correctional institutions (hereinafter, prisons) and remand centre's (hereinafter, detention centre's) must document the statements indicated in Article 1 of Federal Law No. 114 of 25 July 2002 'On Combating Extremist Activity', within correctional institutions, which:

1. Incite social, racial, national or religious discord among the convicts. In this case, hatred towards inmates who do not adhere to "AUE", "thieves' beliefs", "thieves' code", "thieves' notions", "blatnaya notions".
2. Propaganda of exclusivity, superiority of inmates promoting "AUE" or inferiority of other inmates.
3. Obstructing the lawful activity of state authorities, including calls to oppose the officers of correctional institutions and Detention centre.
4. Calling for reprisals, murder of staff members of correctional institutions and Detention centre.

Such statements may include: "Zone get up!", "AUE! Life to thieves! Death to cops!", "No to the regime, death to cops, AUE!", "AUE, escape!", etc.

For the correct classification and documentation of criminal activity under article 282.1 of the Criminal Code, "Organizing an extremist association", we must refer back to the Plenum of the Supreme Court, which indicates that an extremist association (Criminal Code article 282.1) is a stable group of persons who have united for the preparation or commission of one or more extremist crimes, characterized by the existence within it of an organizer (leader) and the stability of its structure and the coordinated action of its members. At the same time, an extremist association may consist of structural subdivisions (parts).

Let us disclose the characteristics of an extremist community and relate them to a community of convicts united by thieves' (prison) ideas operating in a penitentiary institution:

1. The presence of two or more persons with the characteristics of the perpetrators. In correctional institutions, in one way or another, every convict is a member of the community of convicts united by thieves (prisoners) ideas, as every convict is obliged to comply with the prison rules.

2. Group sustainability. The association of convicts according to S.V. Mikheeva and V.S. Mikhailov originated in the 19th century, but its existing form took shape in 1920-1930 and is associated with the emergence of a special layer among convicts "thieves in the law" (Mikheeva, Mikhailov, 2016).
3. The presence of an organizer (leader).
4. Distribution of roles between the group members. In the scientific literature touching on the criminal subculture, a clear distribution of roles of each convict depending on his status is always indicated (Ivashova, 2018). Accordingly, this attribute is clearly visible in the community of convicts united by thieves' (prison) ideas.
5. Presence of a prior agreement to commit extremist crimes together, i.e. an agreement that took place prior to the commencement of actions directly aimed at committing the crime.
6. The aim of the group is the preparation or commission of extremist crimes. Is one of the key points in terms of detection and documentation. The mere fact of having an association of convicts united by thieves (prisoners) ideas in correctional institutions does not correlate with an extremist association, unless it is proved that the aim of the association is to prepare or commit extremist crimes. In our opinion, such crimes include, in particular, murder, infliction of various degrees of harm to health of both inmates and correctional officers, committed on the grounds of political, ideological, racial, national or religious hatred or enmity or on the grounds of hatred or enmity towards any social group.

Thus, the mere fact of having in prison a community of convicts united by thieves (prisoners) ideas is not an extremist community, if they do not engage in the preparation or commission of extremist crimes.

As we mentioned above, the international public movement "AUE" was declared extremist by the decision of the Supreme Court of the Russian Federation. Thus, the question arises, are the community of convicts united by thieves' (prison) ideas and the international public movement "AUE" the same organizations?

In order to answer this question one should refer to the abovementioned decision of the Supreme Court of the RF. Thus, the decision states that from the materials of the case it follows that on the territory of the Russian Federation there is an international social

movement "AUE", whose first followers appeared in the 90s of the last century as a result of propagation of criminal ideology in the youth and teenagers environment, expressed in denial of generally accepted moral principles and the supremacy of law, propaganda of violence as a way of achieving the goals and hostility towards representatives of institutions of power.

The Supreme Court thus points out that the ideology in question is spreading among young people and adolescents.

These statements are repeated in the text of the decision, periodically. On page 4, paragraph 10, "Extremist materials are placed on the sites of AUE participants ... other materials harmful to the health of minors. Paragraph 10 states that "in order to reach the widest possible audience of young people, moderators of the Internet resources used by AUE often use open calls to extremist activity, violence, murder of persons singled out on the basis of nationality.....".

On page 8 paragraph 5 "Participants of AUE promote criminal traditions, a social behavior ... which has a negative impact on the development of minors and young people and is detrimental to society and the state.

The next attribute that can be highlighted is the adherence to criminal "thief", "prison" traditions and customs. On page 4, for example, "extremist materials are posted on the websites of AUE members, Nazi symbols are displayed, thieves and prison rules (the so-called concepts) are promoted and the "thief code" is strictly observed", on page 5 it is stated that "the unifying basis of AUE is criminal ideology». Indicating that the purpose of this organization is, inter alia, to prepare or commit extremist crimes. On the page 4 it states that "moderators of the Internet resources used by AUE often use calls to extremist activity, violence, murder of ethnic groups and police officers, public disobedience to the authorities and law enforcement, video and photo reports on the crimes committed. Under the influence of extremist and criminal ideology, extremist crimes, high-profile offenses, mass disorder, etc. are committed by AUE members in the framework of their activities and in the interests of the Movement. The analysis of the activities of "AUE" was conducted by the Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia in 2020, it prepared an expert opinion, which was examined in the court session, from which it is clear that AUE is a well structured and controlled organization - a youth movement of protest and extremist orientation, which includes not only

performers, but also the organizers. In AUE communities there is a clear division of status, roles, rights and responsibilities, as well as a strict chain of command in interpersonal relations, with 'gatherings' and 'meetings' used by the 'top' to organize and coordinate work. The movement promotes the idea of creating a "thieving" power as an antipode to the current state power, as well as the application of other laws ("notions"). The AUE shapes an extremist worldview of young people, led by protest behavior aimed at undermining universally recognized values and state institutions of power.

4 CONCLUSIONS

Thus, the analysis of the current legislation, law enforcement practice (in particular, court decisions) and scientific literature demonstrated that the international social movement "Prisoners' Unity", recognized as extremist by the Supreme Court of the RF (case № ACPI20-514S from 21.07.2020) and the community of convicts united by thieves (prison) ideas are not identical organizations. The mere fact of having a community of convicts united by thieves (prison) ideas in a penitentiary institution is not an extremist community unless they are engaged in the preparation or commission of extremist crimes. Therefore, criminal liability of convicts (suspects and accused) under Article 228.2 of the Criminal Code of the Russian Federation will occur only if their actions have the signs we have outlined earlier.

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