

Liability for Crimes of Extremism within the Context of the Federal Law “on Operational Search Activities”

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Keywords: Criminal Law, Operational and Investigative Activities, Crimes of Extremism, Exemption from Criminal Liability.

Abstract: The purpose of this research is to identify a set of issues related to criminal liability for extremist crimes in terms of Federal Law "On Operational Search Activities" dated August 12, 1995. The objectives of the research are to identify the current trends in extremist activity and to examine the provisions of the Criminal Code and the Federal Law "On Operational Search Activities" in terms of their deficiencies and conflicts, which will allow more effective counteraction to this group of crimes. Theoretical basis of the research is the works of Russian and foreign scientists and lawyers. The empirical basis of the study is the official statistical data (2013 - February 2021). Based on the information resources studied, the dynamics of the crimes in question has been identified, characterized by a predominant upward trend. It has been documented that in the current context of the global pandemic, extremism has taken on new trajectories, involving the increased use of telecommunication technologies with its funding taking the form of charity. It is noted that the Law "On Operational Search Activities" retains its autonomous regulatory value for criminal law of the Russian Federation in the context of exemption from criminal liability for those members of a criminal group, cooperating with the body, engaged in the operational-search activity (Article 18 (4)). However, the relevant regulations contradict both the terminology of criminal law and the notes to Articles 282.1 and 282.2 of the Criminal Code of the Russian Federation. It concludes that the Criminal Code provisions shall prevail, as they are based on the voluntariness of ceasing criminal activity and do not require additional positive post-criminal behavior.

1 INTRODUCTION

One of the prerequisites for this study was the trend towards an increase in the number of registered extremist crimes observed in Russia in recent years: from 896 in 2013 to 1,265 in 2018. However, in 2019 there was a significant decrease in their number (585). However, this figure is not so much due to inaction by extremist organizations but rather to changes in criminal legislation (Akram et al., 2021). 833 crimes of extremism were committed in 2020, and in January-February 2021 they amounted to 149 (Beshukova, 2020). Although their relative share in the total number of crimes recorded during the relevant periods is only 0.0004%, the public danger of these attacks is not reduced and is expressed in the real possibility of large-scale negative consequences in the form of destabilization of the socio-political situation in the country.

In the context of a global coronavirus pandemic, extremism is taking the following trajectories. First,

the spread of criminal ideology through the use of information and telecommunication technologies is intensifying (Borovkov and Borovkova, 2017; Costello et al., 2016). In particular, in 2020, 340 public calls for extremist activities were committed in this way in Russia (Article 280 of the Criminal Code) (Beshukova, 2020). Secondly, a new form of financing extremist activities has emerged, disguised as charity: cases of criminal use of funds to support victims of COVID-19 have been documented around the world (Dzebisov, 2019). On the whole, it must be stated that various social and economic issues have worsened precisely against the background of the pandemic, which has led to a reduction in the educational impact of educational institutions and other cultural and leisure facilities due to the shift to a distance format.

It is also worth noting that on May 29, 2020 the President of the Russian Federation adopted a new version of the Strategy for Combating Extremism in

the Russian Federation until 2025, which identified the improvement of legislation and law enforcement practice in this area as one of the challenges of State policy. Addressing it appears to involve analysis of the range of problems associated with criminal liability for extremist crimes, both from the perspective of the current Criminal Code of the Russian Federation and its relationship to other laws and regulations, including the Federal Law "On Operational Search Activities".

Modern legal doctrine pays considerable attention to the factors contributing to the spread of extremism (T. Frissen, C.M. Parra, M. Gupta, P. Mikalef, M. Akram, A. Nasar, A. Rehman, M. Costello, J. Hawdon, T. Ratliff, T. Grantham); the concept and content of extremist activities (Z.M. Beshukova, N.A. Zhukova, I.A. Yaroshchuk); optimization of systemic ties between the Criminal Code of the Russian Federation and the Federal Law "On Operational Search Activities" (V.B. Borovkov, V.V. Borovkova, I.A. Wormsbecher), operational and investigative countering some extremist crimes (P.I. Ivanov, T.N. Belyaeva). At the same time, it seems that the development of promising models for the prevention of the multidimensional phenomenon of extremism (and its individual manifestations) is currently particularly relevant and requires a comprehensive approach.

Scientific novelty of the research is determined by the analysis of regulations on the exemption from criminal liability, enshrined in the Federal Law "On Operational Search Activities", in comparison with the content not only of the General, but also the Special (notes to Article 282.1 and Article 282.2) part of the Criminal Code of the Russian Federation, as well as with the foreign criminal legislation.

The purpose of this research is to identify the range of problems related to criminal liability for extremist crimes in terms of the Federal Law "On Operational Search Activities". The objectives of the research are to identify the current trends in extremist activity and to examine the provisions of the Criminal Code and the Federal Law "On Operational Search Activities" in terms of their deficiencies and conflicts, which will allow more effective counteraction to this group of crimes.

2 MATERIALS AND METHODS

The theoretical foundation of the research was formed by the works of Russian legal scholars (T.N. Belyaeva, Z.M. Beshukova, V.B. Borovkov, V.V. Borovkova, I.A. Wormsbecher, A.T. Dzebisov, N.A.

Zhukova, P.I. Ivanov, V.P. Konyakhin, I.A. Yaroshchuk), scholars from Netherlands (T. Frissen), Norway (M. Gupta, P. Mikalef, C.M. Parra), USA (M. Akram, M. Costello, T. Grantham, J. Hawdon, A. Nasar, T. Ratliff, A. Rehman) and Uzbekistan (M. Niyazov). The legal basis of the research is presented by the Criminal Code of the Russian Federation, Federal Law "On Operational Search Activities" No. 144-FZ, dated August 12, 1995, the Decree of the President of the Russian Federation "On the Approval of the Strategy for Countering the Extremism in the Russian Federation until 2025" No. 344, dated May 29, 2020, the Order of the Investigative Committee of Russia "On Measures to Counter Extremist Activities" No. 109, dated July 12, 2011, as well as the Criminal Codes of the Republic of Belarus, the Republic of Kazakhstan, Ukraine and the Code of Criminal Procedure of the Republic of Kazakhstan. The empirical framework includes Determination of the Constitutional Court of the Russian Federation No. 2875-O, dated December 22, 2015, as well as the official statistics from the Main Information and Analysis Center of the Ministry of Internal Affairs for the period from 2013 to February 2021. The methodological background of the research was formed by general scientific methods of inquiry: dialectical and systematic structural, and as particular scientific methods – legalistic and statistical.

3 RESULTS AND DISCUSSION

Both the legal definition of extremism and its doctrinal characterization are multidimensional [6]. In particular Z.M. Beshukova, based on the scope of this concept, identifies a three-tiered system of relevant crimes, including: a certain range of acts enshrined in Chapter 29 of the Criminal Code (which would appear to include Article 280.2), offences related to terrorist activities, criminal offences in which extremist motives are a mandatory element of the offence, any other offences committed for the above reasons, acting as aggravating circumstances, and other offences "conditionally related to extremist activities" (for example, Articles 136, 141 of the Criminal Code) (Akram et al., 2021).

In light of the above, it is clear that a whole system of law enforcement agencies is involved in the process of countering extremist activity. Thus, in 2020, the internal affairs agencies detected 500 extremist crimes, the Federal Security Service

detected 294 crimes, procuracy bodies detected 27 crimes, investigative agencies of the Investigative Committee detected 9 and the penal correction agencies detected 1 crime (Beshukova, 2020). The fields of investigative activities within the framework of countering extremism are also quite broad. It is no coincidence that the Investigative Committee points out the need for a whole range of investigative measures, including measures to suppress extremist crimes, to detect, neutralize and disband emerging and active youth nationalist groups and other extremist communities, to identify and eliminate the sources and channels of funding of extremism, and to counter the use of the Internet for extremist purposes. All these should not exclude but be carried out in a manner that strictly respects human rights and freedoms Ivanov, P.I., (Belyaeva, 2017).

It should be particularly emphasized that the Federal Law "On Operational Search Activities" currently retains, to a certain extent, its autonomous regulatory value for Russian criminal law, since it supplements its General Part with the possibility of exemption from criminal liability for a member of a criminal group, cooperating with the body carrying out the investigative work (Article 18 (4)) (Konyakhin, 2002). This legal provision has been repeatedly criticized due to its conflict with the articles of the General Part of the Criminal Code providing for grounds for exemption from criminal liability, as well as the lack of a statutory mechanism for its implementation (Niyazov, 2020).

The most obvious characteristics of the inconsistency between the established rule and the content of the Criminal Code are as follows. First, Article 18 (4) of the Federal Law "On Operational Search Activities" uses the term "unlawful action", which seems unsuitable due to several circumstances. The literal interpretation of such wording suggests that the regulation in question applies to violations of rules of any sector. However, it goes without saying that the commission of an administrative offence or a civil tort and the exemption from criminal liability cannot be linked to the functions performed in cooperation with the investigative body (<https://legalacts.ru>, 2015). If, however, we ignore such a wording and presume that this is a crime, there is no justification for using only one of its characteristics – wrongfulness – and levelling out the menace to public. In particular, the perpetrator of an illegal but insignificant act shall not be exempt from criminal liability, but shall not subject to it at all. In addition, the analyzed regulation does not explicitly stipulate that an

unlawful action must be among the crimes that the person has actively contributed to solving, which is highly debatable. Finally, there is no indication of the category of crime committed. Restriction in Chapter 4, Article 18 of the Federal Law "On Operational Search Activities" is established by the legislator only in relation to the onset of grave consequences, without specifying whether these are the constructive features of individual offences or some discretionary powers of the court in assessing the factual circumstances of any action.

Secondly, as one of the conditions for the exemption from criminal liability in the case in question, the law provides for the fact that a person has been involved in cooperation with the body carrying out the operational search activity. In the context of this research, it can be agreed that an important aspect of countering extremist activity is timely and rapid disruption of its funding channels and sources (Parra et al., 2021). However, the systematic material support for the relevant criminal abuses appears to be provided by persons of majority age. At the same time, the promotion of extremist ideology and dissemination of related materials is also increasing among adolescents (<https://mvd.rf>, 2021; Wormsbecher, 2016). Given that the age of criminal liability for offences related to extremist activities is 16 years, the question of investigative measures involving minors remains relevant (Wormsbecher, 2018). Content of Article 17 (1) and (2) of the Federal Law "On Operational Search Activities" shows that the assistance to the bodies, engaged in the operational-search activity may be contractual with adult legally capable persons. In this regard, the Constitutional Court of the Russian Federation has clarified that assistance of minors in the preparation or the carrying out of the operational-search measures is only possible on a non-contractual basis (Zhukova and Yaroshchuk, 2020).

Thus, a comparative analysis of the legislative description of the conditions of exemption from criminal liability contained in Article 18 (4) of Federal Law "On Operational Search Activities" and notes to Article 282.1 "Organizing an Extremist Community" and Article 282.2 "Organizing the Activity of an Extremist Community" of the Criminal Code of the Russian Federation allows for the conclusion that the latter are prioritized, as they are based on the voluntary cessation of the criminal activities of the organizers and other participants in these crimes and do not require additional positive post-criminal behavior.

At the same time, it is worth noting that the idea of exemption from criminal liability in the presence of a cooperation contract deserves support, but requires detailed elaboration both in terms of legislative provisions and the nuances of its application in practice. Speaking in favor of the idea of including in the Criminal Code of the Russian Federation of all the regulations inherent in its Common Part, we note the presence of positive experience of foreign states in this area. Thus, Article 67 of the Criminal Code of the Republic of Kazakhstan provides for the possibility (rather than the obligation) of exemption from criminal liability for a person who has fulfilled all the conditions of a procedural agreement. At the same time, Article 612 of the Code of Criminal Procedure of the Republic of Kazakhstan specifically establishes that the cooperation contract shall be aimed at facilitating the detection and investigation of extremist and terrorist crimes, and, crucially, conclusion of such a contract shall not constitute the grounds for exempting a person from civil liability to the victims and the civil plaintiff. An even more radical position on this issue is taken by the legislators of Ukraine (Article 43 of the Criminal Code) and Belarus (Article 38 of the Criminal Code), who regard this circumstance as precluding criminality of an action.

4 CONCLUSIONS

In summarizing all of the above, it can be stated that the primary areas of harmonization of the system links between the Criminal Code and the Federal Law "On Operational Search Activities" are as follows:

- 1) The Criminal Code of the Russian Federation shall regulate the conditions of exemption from criminal liability for persons assisting bodies involved in operational and search activities;
- 2) the content of the Federal Law "On Operational Search Activities" shall be brought in line with the conceptual and categorical framework of the Criminal Code of the Russian Federation. It seems that the further search for an optimal legislative model for countering extremism in Russia should be carried out through an analysis of the entire set of existing legal acts in this field.

ACKNOWLEDGEMENTS

The research was carried out with the financial support of the Kuban Science Foundation in the framework of the scientific project № ФНИ-ГО-20.1/16.

REFERENCES

- Akram, M., Nasar, A., Rehman, A., 2021. Misuse of charitable giving to finance violent extremism; A futuristic actions study amidst COVID-19 pandemic. *In Social Sciences & Humanities Open*. 4(1).
- Beshukova, Z.M., 2020. Mechanism of criminal law counteraction against extremist activity: content, structure, main areas of optimization.
- Borovkov, V.B., Borovkova, V.V., 2017. On the harmonization of the conceptual framework in operational search legislation. Criminal and operational search legislation: problems of interdepartmental links and prospects for the improvement: materials of the interdepartmental scientific-practical conference. pp. 33 -38.
- Costello, M., Hawdon, J., Ratliff, T., Grantham, T., 2016. Who views online extremism? Individual attributes leading to exposure. *In Computers in Human Behavior*. 63. pp. 311-320.
- Dzebisov, A.T., 2019. On the problem of the spread of extremism among young people. *In Theory and practice of social development*. pp. 62-65.
- Frissen, T., 2021. Internet, the great radicalizer? Exploring relationships between seeking for online extremist materials and cognitive radicalization in young adults. *In Computers in Human Behavior*. 114.
- Ivanov, P.I., Belyaeva, T.N., 2017. Operational search countering the financing of extremist activities. *In Works of the Academy of Management of the Ministry of Internal Affairs of Russian Federation*. 4(44). pp. 186 -191.
- Konyakhin, V.P., 2002. The theoretical foundations of the construction of the Common Part of Russian criminal law. p. 123.
- Niyazov, M., 2020. Ensuring human rights and freedoms in the course of investigative activities. *In Society and Innovation*. 1. pp. 278-286.
- On the dismissal of a request for a hearing the complaint by Kirill A. Polyakov concerning violation of his constitutional rights under Article 17 of the Federal Law "On Operational Search Activities": Determination of the Constitutional Court No. 2875 - O, 22 December, 2015. <https://legalacts.ru>.
- Parra, C.M., Gupta, M., Mikalef, P., 2021. Information and communication technologies (ICT)-enabled severe moral communities and how the (Covid19) pandemic might bring new ones. *In International Journal of Information Management*. 57.

The state of crime in Russia for January-December 2020,
<https://mvd.rf>.

Wormsbecher, I.A., 2016. Participation of minors in carrying out of the operational-search measures. Current issues of organisation and legal regulation of the activities of operational units of the Russian Ministry of Internal Affairs (dedicated to the memory of Professor D.V. Rivman). pp. 73 -78.

Wormsbecher. I.A., 2018. The right of citizens participating in investigative measures to be exempted from criminal liability. *In Journal of the Siberian Law Institute of Ministry of Internal Affairs of the Russian Federation*. 2(31). pp. 133 -138.

Zhukova, N.A., Yaroshchuk, I.A., 2020. Extremism: concept and genesis in the context of international legal scholarship. *In Nomothetika: Philosophy. Sociology. Law*. 45(1). pp. 113-119.

