

Comparative Legal Analysis of the Objects of Corpus Delicti In The Legislation of Russia and Some Other Countries

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Abstract

The purpose of the article is to substantiate the similarity of the objects of criminal and legal safeguard in the Criminal Code of the Russian Federation and other countries demonstrating their conditionality by the need to safeguard the most important social relations.

Methodology. The method of comparative legal studies was applied to compare the objects of criminal legal safeguard in Russia with those in other countries. The formal legal method, the systematic and dialectical methods, and the method of structural analysis were applied.

The author comes to conclusion that the criminal legislation of different countries of the global community, including the Russian Federation, provides for similar objects as the objects of crimes. The reason for this is that there are similar social relations that require criminal legal safeguard and a certain priority of values in democratic states.

The article was written with the support of Russian Humanitarian Scientific Foundation, project No 16-33-00017 “Complex, Intersectoral Institution of Legal Responsibility: Notion, Structure, Interconnections and Place in the System of Law”.

Keywords: crime; corpus delicti; objects of corpus delicti; social relations as objects; objects of safeguard.

1. Introduction to the problem.

It has become axiomatic in the legal science that along with the concepts “offence” and “crime” there is such concept as “*corpus delicti*”. For the purposes of the research the concept of “*corpus delicti*” needs to be considered along with the concept of the “object of offence”.

The term “*corpus delicti*” goes back to as early as Roman law from which it was adopted by continental legal systems. The phrase “*corpus delicti*” initially had a procedural meaning. In the 16th and the 17th centuries it meant all the traces of a crime in the external world. Only starting from the end of the 18th century the concept of *corpus delicti* was transferred to criminal law in the works of German scientists. However, its procedural origin reveals itself in the definition of this concept (Tagantsev, 1998, p. 145).

The concept of *corpus delicti* was adopted by Russian criminal law from the German criminal law doctrine that emphasized the fact that “*corpus delicti* is a pure notion without independent meaning; *corpus delicti* belongs only to the law and not the real life. Therefore, *corpus delicti* should be considered to be a product of legal consciousness, an abstraction of a real phenomenon but not the phenomenon itself. Nowadays such understanding is still intrinsic to the German criminal law doctrine. For example, the commentary to the Criminal Code of the Federative Republic of German says that “*corpus delicti* is a mental scheme that is a description of a human act in its abstract concept. A specific act corresponds to *corpus delicti* if it corresponds to the abstract concept” (Drehez/Trondle, 1985, p. 57). This allows to conclude that initially criminal law understood *corpus delicti* as the sum of characteristics that are divided by a subject’s consciousness into four blocks – the elements of *corpus delicti* which presence in a certain act allowed to consider it a crime.

Thus, the foundation for the study of *corpus delicti* was laid in the criminal law science and was further adopted by the theory of state and other sectors of legal science. It should be noted that the theory of state did not blindly copy the statements developed by criminal law. It explored the essential characteristics applicable to all sectors of legal science and provided arguments that any behavior of a subject which has a legal nature is characterized by certain constitutive elements (*corpus delicti*). The works of Kudryavtsev (1981) contain detailed elaboration of these statements. Nowadays it is axiomatic to claim that *corpus delicti* is a sum of objective and subjective characteristics provided for by the law. These characteristics qualify an act as a crime and are sufficient to impose criminal liability on the subject. *Corpus delicti* is made of four elements: an object and objective side of crime; a subject and subjunctive side of crime.

As it was mentioned earlier, a concept of an object of a crime needs to be defined. According to philosophical literature, the term “object” originates from Late Latin *objectum*, from Latin *objicio* – throw forward (oppose). Nowadays an object is defined as something that is opposed to a subject in his practical and cognitive activity. There are two main approaches to the concept of an object in philosophical studies. The first one considers an object via activity of a subject that is expressed in his interaction with other people in social relations. In this case, an object is a “part of objective reality which a subject is interacting with” (Philosophical Encyclopedic Dictionary, 2001, p. 397), it is “what exists beyond us regardless of our consciousness, phenomena of external world, material reality” (Ozhegov, 1983, p. 387). The second approach sees an object as a certain material or non-material welfare which causes subjects to enter social relations. In this case, an object functions as the object of interest of the subjects and therefore the object of their direct activity, a broadly understood activity. The legal category of the object of *corpus delicti* is a specific interpretation of philosophical definition of this concept.

2. Analysis and discussion

The legal literature defines an object of a crime as social relations to which harm is inflicted or which are put at threat of inflicting harm. The term “social” is defined as related to society, happening in society, connected to people’s activity in society (Ozhegov, 1983, p. 427). Social relations in this meaning could be defined as mutual communication, a connection between people (participants of the relations) based on certain interests (economic, political, cultural) and connected with people’s activity in society. It is worth mentioning that this definition is not the only one and is far from indisputable. Some scientists base their definition of society on Kant’s concept that all possible phenomena can be perceived as a result of human activity (Akhiezer & Yakovenko, 1997, p.47). However, a supposition that society also shapes a man is rather logical (Akhiezer & Yakovenko, 1997, p.71). “A man is a world of a man that is an object, the product of all social relations and a subject, the creator of personal deeds and objectified connections at the same time” (Akhiezer & Yakovenko, 1997, p.73).

If we look at the structure of the Special part of the Criminal Code of the Russian Federation (2016), we will see that it is composed depending on the peculiarities of a generic and specific object of crime. Legal criminal studies point that a generic object lies in the bases of separation into parts while the chapters are separated based on a specific object. A generalized list of objects of criminal legal safeguard are determined in Article 2 of the Criminal Code of the Russian Federation (2016).

A legislator identifies the following objects: rights and freedoms of man and citizen; property; public order and public security; the environment; the constitutional system of the Russian Federation; maintenance of the peace and security of mankind. The content of an objects of a crime shows that a legislator classifies the most dangerous and significant social relations as objects of crimes.

The application of the comparative legal method allows to see that similar objects of criminal safeguard are fixed in the criminal legislation of other countries. This is particularly true regarding the criminal codes of the former Soviet Union countries. The Criminal Code of the Republic of Uzbekistan (2001) identifies the following objects of crimes: the individual, his rights and freedoms, interests of society and the state, property, the environment, the peace and security of mankind (Art. 2). The Criminal Code of the Republic of Kazakhstan (2001) lists the following objects of criminal legal safeguard: rights and freedoms man and citizen; property; public safety; the environment; constitutional order; the interests of society and the state; peace and security of mankind (Art. 2). Varying slightly in terminology, Criminal Codes of the Republic of Tajikistan (Art. 2) (2001), Ukraine (Art. 1) (2001), the Republic of Moldova (Art. 2) (2001), the Republic of Belarus (Art. 2) (2001) and the Kyrgyz Republic (Art. 2) (2001) provide for similar objects.

Criminal codes of many countries do not contain a special article determining a generalized list of objects of crimes. However, it is possible to make judgments about their variety based on the titles of the sections, parts or chapters.

The Penal Code of Norway (2001) has the following objects of offences: the relations that safeguard independence and security of the state (Chapter 8); the constitutional system (Chapter 9); civil rights (Chapter 10); relations connected with public service (Chapter 11); relations connected with public authority (Chapter 12); the general order and peace (Chapter 13); public security (Chapter 14); judicial relations (Chapters 15, 16); counterfeiting of money (Chapter 17), forging of documents (Chapter 18), sexual relations (Chapter 19); family relations (Chapter 20), and etc.

The Criminal Code of the Republic San Marino (2002) starts with chapters about crimes against the person (Chapters 1 and 2). The further analysis of the content shows that a legislator provided for the following objects of crimes: property relations; family relations; public safety; social order; the relations of morality; state relations; the relations of power; work-related relations.

According to the Criminal Code of Australia (2001), objects of crimes are: the relations of security of the international community and foreign countries; state relations; property relations; human security; the relations of national infrastructure.

The Criminal Code of Denmark (2001) contains the following objects of crimes: the relations of independence and safety of the state; constitutional relations; the relations of state authority; public order; work-related relations; procedural relations; sexual relations; property relations, and etc.

According to the Criminal Code of the Swiss Confederation (2002), the following objects are recognized as objects of crimes: the relations of the life and health; the relations ensuring freedom; family relations; public safety; interests of the international community.

The analysis of the Criminal Codes of Germany (2002), Poland (2001), France (2002), Argentina (2003) shows that approximately similar social relations lie in the basis of objects of crimes.. There are certainly some differences in terminology, succession and position of the crimes in chapters and sections of the codes.

3. Comparison

The Special Part of the Criminal Code of the Russian Federation passed in 1996 is well structured. It contains the following sections: crimes against the person (Section VII); crimes in the sphere of economics (Section VIII); crimes against public security and public order (Section IX); crimes against state power (Section X); crimes against military service (Section XI); crimes against the peace and security of mankind (Section XII). Generic objects of crimes can be determined in accordance with the sections: the social relations that ensure normal functioning and development of the person; social relations in the sphere of economics; the relations of public security and public order; the relations of state power; military relations; the relations that ensure the peace and security of mankind. Therefore, the separation into sections is made based on enlarged generic objects that include several specific objects. Thus, inside the generic object – the relations that ensure normal functioning and development of the person (Section VII) – the following specific objects of crimes can be singled out: the elations that ensure human life and health (Chapter 16); the relations of the freedom, honor, and dignity of the person (Chapter 17); the relations of the sexual inviolability and sexual freedom (Chapter 18), the relations that ensure normal functioning of the family and development of minors (Chapter 20).

The generic object of economic relations can be subdivided into the following specific objects: property relations (Chapter 21); relations in the sphere of economic activity (Chapter 22); the relations that ensure normal functioning of profit-making and other organizations (Chapter 23).

The relations of public security and public order (Section IX) can be classified into the following specific objects: the relations of general security (Chapter 24); the security of the population's health and public morality (Chapter 25); environmental relations (Chapter 26); the relations of traffic safety and the operation of transport vehicles (Chapter 27); information security relations (Chapter 28).

The generic object of crimes against state power contains the following specific objects: the relations of the fundamentals of the constitutional system and state security (Chapter 29); the relations of civil service and the service in local self-government bodies (Chapter 30); the relations in the sphere of the administration of justice; the relations in the sphere of administration procedures (Chapters 31, 32).

There is a number of specific objects that can be classified as independent ones. They are the relations of military service (Chapter 33) and the relations ensuring the peace and security of mankind (Chapter 34). As it follows from the analysis of generic and specific objects of crimes listed in the Criminal Code of the Russian Federation (2016), they are mostly similar to those provided for in the criminal codes of the countries mentioned above. This is due to the fact that there are groups of relations that require criminal safeguard in any state and society. And a distinctive feature of many criminal codes is that they contain crimes against the peace and security of mankind.

4. Conclusion

The criminal legislation of different countries of the global community, including the Russian Federation, provide for similar objects as the objects of crimes: the relations that ensure normal functioning and development of the person; economic relations; the relations of constitutional system; public security; the relations of state power; the relations that ensure national security, the integrity and sovereignty of the state. It can be explained by the fact that there is a certain priority of values and similar social relations in democratic states that require criminal legal safeguard.

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