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LEGAL BOUNDARIES OF STATE SECURITY: A COMPARATIVE ANALYSIS OF PUNISHMENT LIABILITY FOR PUBLIC CALLS AGAINST THE SECURITY OF THE STATE

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ABSTRACT

The relevance of the article is determined by the inclusion of Article 280.4 in the Criminal Code of the Russian Federation (hereinafter referred to as the Criminal Code of the Russian Federation), which is largely explained by the special military operation conducted by the Armed Forces of the Russian Federation since February 2022. The changes carried out within the framework of this area of development of criminal legislation make it possible to ensure the most accurate correspondence between the means of criminal legal influence and the degree of public danger of the act. These circumstances necessitate the development of theoretical proposals for the application of novelties of the criminal law. Moreover, to date, there is no judicial interpretation in cases of this category, which does not allow us to talk about compliance with uniform approaches to the application of relevant criminal law norms. There are problems in the methodology of investigating these crimes and conducting expert research. The purpose of the work is to characterize the signs of the corpus delicti provided for in Article 280.4 of the Criminal Code of the Russian Federation and the practice of applying this legal norm based on the analysis of normative legal acts, literary sources and law enforcement practice. The article touches upon significant theoretical issues and problems of law enforcement practice, suggests ways to resolve contradictions and improve the criminal law.

Keywords: Extremism; Public appeals; Extremist activity; Social group; Criteria of extremism; State security.

1 INTRODUCTION

The institution of responsibility for public calls to carry out activities directed against the security of the state is undoubtedly a new criminal law phenomenon, the expediency of introducing which, as well as its practical significance, can be assessed only after a certain period of time of law enforcement (Rakhimov et al., 2024). But, at the same time, it is already possible to identify and evaluate certain theoretical problems related to the establishment and implementation of the norms included in the content of Article 280.4 of the Criminal Code of the Russian Federation.

First of all, we emphasize the obvious haste in adopting the new Article 280.4 of the Criminal Code of the Russian Federation. As the researchers emphasize, no high-quality doctrinal and criminological research has been conducted in this regard.

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Although scientists recognize this approach as already very typical for Russian lawmaking, including when introducing new criminal law prohibitions (Reshnyak, 2023). And the Constitutional Court of the Russian Federation emphasizes that such a legislative technique within the framework of criminal law is "an extreme (exceptional) means of responding to the facts of illegal behavior by the state" (Constitutional Court of the Russian Federation, 2014; Constitutional Court of the Russian Federation, 2018).

Therefore, as modern authors correctly emphasize, "the lack of a scientific basis often causes difficulties in the interpretation and subsequent application of new provisions of the criminal law, which, in turn, does not contribute to the formation of uniform law enforcement practice, and can lead to contradictory decisions in criminal cases, each of which is the fate of specific people" (Pisarevskaya & Dvorzhitskaya, 2023). Unfortunately, the content of Article 280.4 of the Criminal Code of the Russian Federation was no exception. We see only one justification for this – the difficult conditions in which our country finds itself and the need to restrain any criminal activity in all directions by criminal law prohibitions. Although we believe that politics here should be more balanced, in connection with which we share the opinion that when criminalizing acts that significantly restrict the freedom of speech of citizens, the momentary problem associated with the desire to correct objectionable "public sentiments" should not be solved (Kharchenko, 2021; Rshdan et al., 2024).

2 MATERIALS AND METHODS

The methodological basis of the research is based on the provisions of dialectics, formal logic, philosophy and sociology of law. The work uses general and particular methods of scientific knowledge: the historical and legal method - when considering the development of domestic legislation in the field of countering activities directed against the security of the state; statistical and other sociological methods – when studying materials of law enforcement practice, collecting and summarizing the results of a survey of respondents; the comparative legal method was used in the process of studying the legislation of foreign countries in terms of preventing activities directed against the security of the state; the formal legal method, as well as analysis, classification and others were used to study the current criminal and administrative legislation in the field under consideration; the synthesis and method of legal modeling allowed to formulate scientific provisions on the qualification of crimes provided for art

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. 280.4 of the Criminal Code of the Russian Federation, and a more precise differentiation of criminal liability in this area at the legislative level.

3 RESULTS

It should be noted that there are controversial issues regarding the meta location of Article 280.4 of the Criminal Code of the Russian Federation and the definition of the object of criminal encroachment. As we established earlier, the main direct object of this crime is public relations for the preservation of the security of the state, which is interpreted very broadly and covers a very voluminous range of state activities in various areas. The only exceptions are those social relations that are protected separately by Articles 205.2, 280, 280.1, 280.3, 284.2 and 354 of the Criminal Code of the Russian Federation.

If we turn to the structure of the Special part of the Criminal Code of the Russian Federation and analyze the location of Article 280.4 of the Criminal Code of the Russian Federation, it is obvious that it turned out to be located among the so-called extremist crimes. According to scientists, it is not in its place, but should be located among the encroachments on the external security of the state (Inogamova-Hegai, 2023). In our opinion, the issue is quite controversial, since based on the content of Article 280.4 of the Criminal Code of the Russian Federation and the prerequisites for its adoption, it does not follow that it ensures the external security of the Russian Federation. Otherwise, we believe that there would be a direct or indirect indication of this, but there is no such indication.

According to the explanatory note, which was drawn up in order to justify the inclusion of Article 280.4 of the Criminal Code of the Russian Federation, it was stated that this norm is aimed "at protecting ... the national interests of the Russian Federation, the rights and freedoms of citizens from new forms of criminal activity and threats to state security," and also that the introduction of Article 280.4 will allow "... to prevent the mass dissemination of appeals to other persons in order to encourage them to commit illegal actions to the detriment of the security of the state," (Polovchenko, 2023; Polovchenko, 2021a; Petrovskaya, 2023) and as a result of the adoption of the relevant law as a whole, this will "... contribute to improving the effectiveness of the system for detecting, preventing and suppressing criminal activities carried out in order to undermine the foundations of the constitutional system,

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the country's defense capability and state security" (Pushkarev et al., 2019; State Duma of the Federal Assembly of the Russian Federation, 2023; Vasyukov, 2021).

Accordingly, it is quite acceptable that the security of the Russian Federation is interpreted very broadly here, and therefore covers both internal and external types of security.

In favor of this approach, it suggests that the perpetrator may publicly call for the commission of at least one of the crimes provided for in the articles 189, 200.1, 209, 210, 222-223.1, 226, 226.1, 229.1, 274.1, 275-276, 281, 283, 283.1, 284.1, 284.3, 290, 291, 322, 322.1, 323, 332, 338, 355 - 357, 359. And this is a very colossal set of crimes that are actually found throughout the Special part of the Criminal Code of the Russian Federation, but in general, taking into account the new legal approach, capable of violating one or another industry responsible for the security of the state.

This approach does not cause a positive assessment by scientists, since its social and legal validity is not seen, especially since, as E. N. Karabanova correctly points out, "in the explanatory note, there was no argument about attributing the relevant crimes to activities threatening the security of Russia" (Karabanova, 2023; Shugurov & Pechatnova, 2023). As a result, it is not clear to law enforcement officers or society according to what criteria the specified list was formed, why some crimes were included in it, and others were not. It is not even clear what these crimes have in common, except for their formal inclusion in the scope of the concept of activities directed against the security of Russia. Unfortunately, the obvious arbitrariness and randomness in the formation of this criminal law prohibition lies on the surface, which in the future may have a very negative impact on law enforcement activities.

It turns out that calls for the commission of racial crimes within the framework of a single norm have actually been criminalized. Let's assume that this was done so as not to burden the legal content of each construction of individual norms with additional features in the form of public appeals. Perhaps in the future we should follow the path of preserving Article 280.4 of the Criminal Code of the Russian Federation and filling its notes with an indication of other crimes that involve public calls for terrorist activities, extremist activities, mass riots, etc. (now all these are separate elements of crimes). Thus, uniformity will be achieved in ensuring the equivalent protection of the security of the Russian Federation in all areas, which may be included in the very concept of state security.

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It is also worth noting the undoubted uniqueness of the construction of the considered corpus delicti. It consists in the fact that all kinds of specifics, personification and targeting are excluded, which always act as a dominant feature in most of the compositions of other crimes. Indications of the commission of specific crimes are also excluded from the content of appeals: the place, methods, time, instruments of their commission, the mechanism of how to commit the relevant crimes (Bayazitova et al., 2023). Those authors are right who, considering related crimes involving public appeals, say that "any specifying indication automatically excludes a sign of publicity from its substantive component" (Kanunnikova, 2021; Russkevich, 2023). Scientists emphasize that even appeals addressed to family members, friends and other narrow circle of listeners dramatically reduce their social danger (Ermakova, 2016).

But certain specifics are still present in terms of strengthening criminal liability in Parts 2 and 3 of Article 280.4 of the Criminal Code of the Russian Federation. Here we note that the legislator quite justifiably provided in paragraph "b" of Part 2 of Article 280.4 of the Criminal Code of the Russian Federation for the use of additional means in the form of mass media, electronic or information and telecommunication networks, including the Internet (Ermakov et al., 2022).

The basis for recognizing the use of such means as circumstances that enhance responsibility is, firstly, the scale of the list of addressees, secondly, the significantly increased speed of dissemination of information calling for activities directed against the security of the state, thirdly, the physical presence of the subject of the crime anywhere in the world, which in itself introduces certain difficulties in the subsequent procedure for investigating such crimes.

In addition, it is quite obvious that the use of information and telecommunications networks, including the Internet, today looks more preferable than the use of so-called classical mass media (radio, television, newspapers, magazines) (Pushkarev et al., 2019; Digay et al., 2024). Moreover, these media outlets are currently under very strict and forced censorship (Paronyan & Apolsky, 2022), unlike the Internet space, the possibilities of which are virtually limitless, especially with the availability of workarounds for vpn-connections.

With its phenomenal ability to steadily increase the number of users around the clock, the Internet has great potential, incomparable with such familiar traditional media. The main preferential criteria of the Internet network over the mass media can be represented by the following indicators:

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- interactivity – having the term "interaction" as a key concept in its etymological component, this advantage of the "Internet" allows the exchange of information not unilaterally, but according to the "subject– object" formula, which is confirmed by the increasing popularity of the so-called online rallies (Maksimov, 2021);

- coverage – unlike subscribers and mostly the non-working part of the population, who are the main users of the media, the Internet network allows you to convey any kind of information to everyone who has the technical ability to connect;

- accessibility – if the possession of printed publications requires solvency, the establishment of a radio point, a certain technical resource, and watching TV shows requires free time, then the "Internet" is available almost constantly;

- feedback, which is one-sided in the media and information exchange online – on the "Internet", in connection with which the subject of the crime can enter into a dialogue, publicly addressing a variety of recipients of appeals, which is difficult to do with offline speeches, where, as a rule, only speak out and bring information of the right kind (Kulikov, 2022);

- attractiveness – especially for young people, whose fragile minds can succumb to virtually any external influence.

This significantly increases the public danger of those crimes that are committed using the Internet (Evdokimov, 2022). In accordance with these criteria, we consider that the sign "using electronic or information and telecommunication networks, including the Internet," should be moved from paragraph "b" of Part 2 to Part 3 of Article 280.4 of the Criminal Code of the Russian Federation and be considered as a particularly aggravating circumstance.

Further, we note that when constructing an aggravating feature in paragraph "a" of Part 2 of Article 280.4 of the Criminal Code of the Russian Federation, the legislator did not include the least dangerous form of complicity, called a group of persons (part 1 of Article 35 of the Criminal Code).

We believe that any form of complicity poses an increased public danger of a crime, rather than the public danger of a crime committed by a person alone. Whether each of these forms is more dangerous in relation to each other is a moot point. For example, in absolutely all articles of the Criminal Code of the Russian Federation devoted to attacks on the life, health and bodily integrity of victims, these forms of complicity are listed under one paragraph of the article: paragraph "g" of part 2 of Article 105; paragraph "g" of Part 2 of Article 110; paragraph "g" of Part 3 of Article

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110.1; paragraph "a" part 3 of Article 111; paragraph "g" of Part 2 of Article 112; paragraph "e" of Part 2 of Article 117 of the Criminal Code of the Russian Federation.

Accordingly, purely legally, the measures of responsibility for persons who committed a crime as part of a group of persons are similar to the same measures as for persons who acted as part of an organized group, since the sanction is the same. In practice, we understand that the issue is being resolved towards stricter liability for accomplices in an organized group, but this is not always the case. In a number of other articles of the Special Part of the Criminal Code of the Russian Federation, the relevant forms of complicity are divided into different parts of the article: paragraphs "a" of Part 2 and paragraph "a" of Part 3 of Article 126; paragraphs "a" of Part 2 and Part 3 of Article 127; paragraphs "a" of Part 2 and paragraph "a" of Part 4 of Article 158; part 2 and part 4, Article 159 of the Criminal Code of the Russian Federation, etc. Here the question of the ratio of liability measures and which form of complicity is more dangerous is obvious.

In this regard, it cannot be said that the "group of persons" omitted by the legislator from paragraph "a" of Part 2 of Article 280.4 of the Criminal Code of the Russian Federation is a less dangerous form of complicity than the "group of persons by prior agreement", which the legislator took into account. All forms of complicity in relation to the composition of the crime under consideration assume that the perpetrators have a single intent, which is formed by two components. The first is awareness of the public danger of their actions and the actions of accomplices containing. The second is represented by a volitional moment and is expressed in the desire of each of the accomplices, regardless of the role performed, to commit such actions. This position is defended by leading experts on related crimes (Magnutov, 2022).

Accordingly, we believe that there is an objective possibility of committing this crime as part of a group of persons, i.e. if two or more perpetrators participated in its commission without prior collusion (Part 1 of Article 35 of the Criminal Code of the Russian Federation). For example, in a group chat on the Internet, one person in the process of communication begins to carry out calls for activities directed against the security of the state, a second, a third, etc. joins these calls. There was no prior agreement between them on making these calls, the intention of each participant arose already in the process of observing the open dialogue and the slogans expressed. To date, these actions cannot be qualified on the grounds of complicity, since the persons

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did not reach a preliminary agreement in advance to commit a crime. The only way to strengthen responsibility for such collective actions of the perpetrators is to recognize the commission of a crime as part of a group of persons without prior collusion as an aggravating circumstance, with reference to paragraph "b" of Part 1 of Article 63 of the Criminal Code of the Russian Federation, as recommended by the Supreme Court of the Russian Federation, for example, when qualifying simple complicity without prior collusion in the commission of theft (Supreme Court of the Russian Federation, 2003).

In this regard, in our opinion, paragraph "a" of Part 2 of Article 280.4 of the Criminal Code of the Russian Federation should be supplemented with the words "a group of persons". This will eliminate the existing legislative and law enforcement gap.

Next, we will consider the issue of the lack of legislative consolidation of the purpose of public appeals. As we have already indicated in the previous chapter, such a "purpose" is not specifically specified in the very norm of Article 280.4 of the Criminal Code of the Russian Federation. At the same time, with regard to other types of crimes involving public appeals, where the specification of the purpose is also not traceable, scientists make proposals to supplement the norms with this sign of the subjective side. For example, a number of authors propose "to recognize the purpose of inducing terrorist activity as a mandatory feature of the corpus delicti provided for in art. 205.2 of the Criminal Code of the Russian Federation, which will allow: firstly, to eliminate the uncertainty of the provisions of Article 205.2 of the Criminal Code of the Russian Federation and the possibility of its arbitrary application; secondly, to create reliable guarantees against unjustified criminal restrictions on freedom of speech; thirdly, to bring Article 205.2 of the Criminal Code of the Russian Federation in accordance with Article 5 of the Council of Europe Convention on the Prevention of Terrorism" (Shibzukhov, 2012; Beisov et al., 2013). But there are also those who disagree with this position and believe that this is not necessary, because "with the correct interpretation of the term "appeal", the designated goal is already implied ... its inclusion in the text of the dispositions of the relevant articles of the criminal law will unreasonably overwhelm their construction" (Shuisky, 2012; Polovchenko, 2021b).

We believe that in the case of Article 280.4 of the Criminal Code of the Russian Federation, the situation looks more successful, since in the note to the article the legislator exhaustively listed the elements of crimes, the commission of at least one of which is recognized as activities directed against the security of the Russian Federation. Accordingly, let's assume that the perpetrator of public appeals under the

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article in question pursues the goal of someone from the addressees of these appeals to commit some of the crimes provided for in the articles 189, 200.1, 209, 210, 222-223.1, 226, 226.1, 229.1, 274.1, 275-276, 281, 283, 283.1, 284.1, 284.3, 290, 291, 322, 322.1, 323, 332, 338, 355-357, 359 The Criminal Code OF the Russian Federation. And in this outline, the statement of Professor P. V. Agapov seems appropriate, who points out that "the appeal should be aimed at committing specific, definite actions" (Agapov, 2007). At the same time, we agree with Chernyavsky's position that in such situations it is important not to identify public appeals and public incitement to commit these crimes, since these are undoubtedly different categories, although they have certain similarities (Chernyavsky, 2017).

At the same time, a single goal within the framework of a single intent pursued by the subject of public appeals to violate the security of the Russian Federation will make it possible to qualify such a crime as one ongoing, regardless of the number of appeals and speeches with these appeals, as well as that they are committed periodically after a short period of time (Beshukova, 2020).

Further, it is important to note the need in some cases to qualify Article 280.4 of the Criminal Code of the Russian Federation in combination with other crimes.

Firstly, if the subject of public appeals himself organizes in the future the commission of the crime to which he called according to the note to Article 280.4 of the Criminal Code of the Russian Federation, or participates in its commission as an executor, then his actions are subject to additional qualification according to the corresponding article from the list of notes to Article 280.4 of the Criminal Code of the Russian Federation either as an executor, or – the organizer.

Secondly, if the actions specified in Article 280.4 of the Criminal Code of the Russian Federation are committed by a Russian citizen on the instructions of a foreign state, a foreign organization or their representatives (Nguyen et al., 2020), then the deed must be qualified in conjunction with high treason (Article 275 of the Criminal Code of the Russian Federation). We consider this position to be very important, since today cases of recruitment of citizens of the Russian Federation in order to undermine the security of the country from the inside have become more frequent, and therefore the need for such qualification will reflect a full accounting of the criminal activity of the subject of the crime.

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4 CONCLUSIONS

The corpus delicti provided for in Article 280.4 of the Criminal Code of the Russian Federation was introduced into the Criminal Code of the Russian Federation in an unprecedented difficult situation, accompanied by the need to ensure the internal and external security of the Russian Federation as a condition for its survival. The rush to adopt this norm has given rise to a whole range of controversial issues regarding its interpretation and enforcement.

We believe that Article 280.4 of the Criminal Code of the Russian Federation itself has an objective right to its legislative existence, but needs to be adjusted. We propose to make the following changes:

1) add a note to Article 280.4 of the Criminal Code of the Russian Federation indicating other crimes that can be publicly called for and that endanger the security of the Russian Federation, and those individual norms where such responsibility for appeals is currently prescribed should be abolished (these are Articles 205.2, Part 3 of Article 212, Articles 280, 280.1, 280.3, 284.2 OF the Criminal Code OF THE Russian Federation). Thus, the legal approach to the legal assessment and the degree of danger of public appeals as such will be unified;

2) add paragraph "a" of Part 2 of Article 280.4 of the Criminal Code of the Russian Federation with the words "a group of persons";

3) the sign "using electronic or information and telecommunication networks, including the Internet" should be excluded from paragraph "c" of Part 2 of Article 280.4 of the Criminal Code of the Russian Federation and provide for the use of these funds in Part 3 of Article 280.4 of the Criminal Code of the Russian Federation as a particularly aggravating circumstance.

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