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Features of legislative modeling of crimes against justice

Abstract: It is considered the features of a legislative regulation of norms on responsibility for crimes against justice. The author investigated separate signs of corpora delicta and made some suggestions for improvement from the legislative description. In particular, according to the author, Article 287 of Criminal Code of Azerbaijan Republic providing responsibility for infringement of life of the person, which is carrying out justice or preliminary investigation, needs further improvement. Comparison of sanctions of the general and special norms demonstrates that the legislator did not strengthen, and commuted a penalty for commission of this crime that causes the necessity to bring it into accord with sanctions of articles about responsibility for similar crimes. Besides, the ratio of the concepts ‘justice’ and ‘legal proceedings’ is considered, the comparative analysis of the foreign legislation on responsibility for crimes against justice is made.

Keywords: justice; crime; responsibility; legal proceedings; encroachment.

It is known that at creation of a system of the Special part of the criminal legislation some signs of a patrimonial subject to encroachment were considered. In particular, they point to that valuable hierarchy of the public relations which is given preference by the legislator on this or that historical interval of time. However, the analysis of the existing criminal legislation shows that the structure of criminal codes in this regard is strictly not sustained [8, p. 124-125]. Therefore,

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for example, norms on responsibility for violation of rules of weapon handling are not distinguished in independent chapter as it is made concerning the crimes connected with illicit trafficking in drugs and psychotropic substances. Article 200-1 about responsibility for illicit trafficking in medicines is located in Chapter 24 of Criminal Code of Azerbaijan Republic under the name “Crimes against Economic Activity” in spite of the fact that health of the population acts as direct object of this crime. In addition, Chapter 25 of Criminal Code “Crimes against Public Safety and Public Order” which articles it is also expedient to arrange according to different heads needs further dispersal on certain heads depending on standard objects.

Crimes against justice are concentrated in Chapter 32 located in Section XI of Criminal Code of Azerbaijan (hereinafter, the CC of AR) on crimes against the government. The norms protecting the public relations on administration of justice represent special cases of official abuses and an order of management. At the same time, it is unlikely possible to agree with a position of the legislator who arranged norms on violation of normal activity of institutions on serving sentence and pre-trial detention centers (Article 317), transfer or departure of the forbidden objects to the persons which are contained in institutions on serving sentence or pre-trial detention centers (Article 317-1) and also production, storage, concealment, carrying or use of the forbidden objects by the persons which are contained in institutions on serving sentence or pre-trial detention centers (Article 317-2 of the CC of AR) in chapter about crimes against an order of management. We believe that as execution of the punishment has a direct bearing on administration of justice, the specified norms have to be located in chapter about crimes against justice.

According to us, Article 287 of the CC of AR providing responsibility for infringement of life of the person, which is carrying out justice or preliminary investigation, needs further improvement. Criminal Code of Azerbaijan contains



several standards of the similar contents – one general and two special, the distinction between which is made generally on the victim and subject to encroachment: murder in connection with implementation by the victim of the office or public debt (Article 120.2.3 of the CC of AR); infringement of life of the state or public figure (Article 277 of the CC of AR) and infringement of life of the person which is carrying out justice or preliminary investigation (Article 287 of the CC of AR).

Responsibility for infringement of life of the persons, which are carrying out justice or preliminary investigation (Article 287 of the CC of AR), is provided in the legislation of Azerbaijan for the first time. Inclusion of this norm in Criminal Code pursued the aim to increase safety of life and health of employees of judicial bodies and their relatives. However, comparison of sanctions of the general and special norms demonstrates that the legislator did not strengthen, and commuted a penalty for commission of this crime. So, murder of the witness who gave testimony on criminal case can be punished by lifelong imprisonment while murder of the judge who pronounced a sentence on this case can be punished by imprisonment for up to twenty years. Withdrawal from this provision to us seems in one of the following options: change of the sanction of article by inclusion in it of lifelong imprisonment, or decriminalization of this norm when infringement of life of employees of judicial bodies is qualified under the Article 120.2.3 by Criminal Code of AR.

The question of reference to implementation of justice of activity of the Constitutional Court belongs to the category of debatable. Some experts in the sphere constitutional and law of criminal procedure believe that the Constitutional Court does not carry out justice [29, p. 8-9]. According to other authors, the justice, which is carried out by the Constitutional Court, differs from justice on consideration of criminal and civil cases [1, p. 38].



There is no unity of opinions on the matter and among experts in the field of criminal law. Some of them consider that the justice which is carried out by the Constitutional Court, is not covered by a concept of justice applicable in the head of "Crime against justice" [3, p. 44-45; 13, p. 24-27; 5, p. 617; 15, p. 618]. As other authors believe, activity of the Constitutional Court is also covered by a concept of justice and is object of the considered group of crimes [6, p. 770; 10, p. 88; 16, p. 41]. This position is represented to us only true, as activity of the Constitutional Court, despite specifics inherent in it, nevertheless is inseparable from justice implementation.

The norms protecting activity of both vessels, and other bodies rendering assistance to vessels in justice function implementation are provided in chapter about crimes against justice. Thus, as a patrimonial object of this group of crimes justice in a broad sense acts. In legal literature the offer on use for designation of a specific object of this group of crimes of the term "legal proceedings" as wider according to contents, including activity not only vessels (actually justice), but also other bodies promoting justice implementation was stated. This group of crimes is offered to be called as "Crime in the sphere of legal proceedings" [4, p. 26; 11, p. 9]. We believe that such position is rather reasonable and meets with approval.

Some authors specify the public relations providing normal functioning of judicial bodies as patrimonial object of the considered group of crimes [9, p. 89; 12, p. 145]. In the theory of criminal law along with a patrimonial object of this group of crimes, allocate also specific object which correct establishment promotes right differentiation of these crimes from other socially dangerous acts committed by employees of judicial bodies. In particular, difficulties arise at a difference of the considered socially dangerous acts from the corruption crimes and crimes against an order of management interfaced to impact on physical integrity of officials.



In the sphere of justice, it is necessary to understand set of the public relations developing in the course of the functioning of courts, bodies of preliminary investigation, inquiry, prosecutor's office and bodies executing judicial acts for realization of goals and justice tasks as specific object of crimes. At the same time, the legislative regulation of an object is carried out through various signs: a subject, governed (stereotypes) of behavior in the field, the victim, the benefits, the rights and legitimate interests of participants of legal proceedings.

Along with the relations in the sphere of legal proceedings at commission of crimes against justice also other related relations can be broken owing to what the majority of crimes of this category are among two-object and multi-object. In particular the crimes violating the rights and the interests of the persons which are carrying out justice and their relatives, that is housing, labor, property and other rights and the interests of specified persons [15, p. 784; 2, p. 434]. If as a result, of intervention in implementation of justice the illegal judgment is made, it can violate the rights and the interests of other persons. The victim or the defendant on criminal case, the claimant or the defendant in a civil case, etc. can be such persons. The rights and the interests of these persons can also act as the signs characterizing a direct data object of crimes.

The question of the victim in crimes against justice is of particular interest and deserves attention as in some cases depending on the victim responsibility is differentiated and punishment in various encroachments is defined. Differently the victim in the crimes connected with impact on various rights and legitimate interests - life, health, freedom, honor and advantage, property and others is defined. So, in particular, Criminal Code as the victim is specified in Article 288 judges and their close relatives, the prosecutor the investigator and others. In Article 289 of Criminal Code is told about insult of participants of judicial proceedings. As a part of infringement of life of the person which is carrying out justice or preliminary investigation by the victims act: judges, the prosecutor, the



investigator, the person making inquiry, the defender, the expert, the court supervisor, the bailiff and their close relatives.

Rather wide circulation in legal literature and the criminal procedure legislation along with the term “participant of process” got the concept “participant of legal proceedings”. Legal proceedings are treated not only as activity of the courts on consideration and permission of criminal, and civil and administrative cases, but also activity of other subjects entering the procedural relations with bodies of inquiry and preliminary investigation, prosecutor's office, court for realization of the relevant rights and duties [14, p. 7].

Therefore, legal proceedings mean not only judicial activity, but also activity of all other public authorities and officials entering with judicial authorities the procedural relations and promoting them in performance of necessary functions on disclosure of crimes and exposure of guilty persons.

As the analysis of the procedural legislation testifies, the concepts “process” and “legal proceedings” are synonyms, that is have identical value. Respectively, it is possible to draw a conclusion that also the concepts “participant of legal proceedings” and “participant of process” have identical value. At the same time, Article 287 of Criminal Code of AR establishing responsibility for infringement of life of the person, which is carrying out justice or preliminary investigation, speaks not about all participants of legal proceedings, and only about some.

The analysis of a disposition of norm on disclosure of data on the security measures applied concerning employees of court and law enforcement agencies and also the norm provided in Article 316 of Chapter 34 by Criminal Code of Azerbaijan about crimes against an order of management leads to a conclusion that the victim, his representatives, the suspect, the defendant, their defenders and representatives, civil claimants, civil defendants in criminal case, their representatives, witnesses, experts, translators, witnesses can be participants of criminal proceedings. Article 7.0.18 of the Code of Criminal Treatment specifies



exhaustive list of the persons who are involved in judicial proceedings and able to be the victims from this crime.

According to the Decree of the President of the Azerbaijan Republic No. 409 of April 20, 2011 “About modification and additions in Decree No. 246 of January 5, 2000”, “About application of the Law of the Azerbaijan Republic”, “About Court Supervisors and Bailiffs”, functions of bailiffs are assigned to executive officials. Thereof the terms “bailiff” and “court supervisor” in Criminal Code were changed, and in Articles 287, and is equal in Articles 288.2, 301.1 the CC of Azerbaijan are replaced with the term “executive official”.

One more group of the possible victims in articles about crimes against justice is made by relatives and close relatives of the persons specified in the relevant articles. The criminal legislation of Azerbaijan refused broad interpretation of the victims in the form of relatives and relatives, specifying in a number of articles only on close relatives of the persons, which are carrying out justice. The point of view, according to which for the victim to persons not only relatives, but also friends [12, p. 159; 17, p. 382], or otherwise speaking, such persons who are equated to close relatives owing to the developed vital circumstances that is whose destiny for the victim is very not indifferent [7, p. 295]. The groom or the bride of the victim, or his children, the close friend or the spouse's relative can be carried to such persons. According to the family legislation children, parents, grandsons, grandmothers, grandfathers, full and not full sisters and brothers treat relatives on the direct descending and ascending line. In the personal rights adoptive parents and adopted and their posterity are by origin equated to relatives.

Article 7 of the Code of Criminal Procedure of Azerbaijan Republic contains a list of close relatives where along with spouses and parents including adoptive parents children, including the adopted brothers and sisters, grandmothers and grandfathers belong [18].



At the same time, in the note to Article 307 of Criminal Code of AR is said that the person which did not inform on the crime prepared or committed by his spouse, parents, children and close relatives whose circle is established by the legislation [19] cannot be brought to trial under this article. According to us, such reference in the article of the Criminal Code is inadmissible in view of what follows to Article 307 to specify by the CC of AR in the note what categories of persons it is necessary to understand as close relatives.

The norms regulating responsibility for crimes against justice are known to the legislation of the certain states of the CIS. In spite of the fact that they are in many respects similar, nevertheless also distinctive signs are peculiar to them. In particular, the Criminal Code of the Russian Federation provided in Article 295 and Article 340 of the CC of the Republic of Kazakhstan about responsibility for infringement of the persons who are carrying out justice the list of the victims is exhaustive [20, 21]. Nevertheless, the CC of Kazakhstan unlike the Criminal Code of the Russian Federation does not contain the instruction on the juror and on the other person participating in administration of justice. As it was already noted, in Article 287 the CC of Azerbaijan considerably narrows the circle of the possible victims and instead of "close persons" it is told only about "close relatives".

In the CC of the Republic of Tajikistan (Article 357) and the Kyrgyz Republic (Article 319) as the victim not "juror", as in the Criminal Code of the Russian Federation (Article 295), and "assessor" is called that is expanded considerably by a circle of the possible victims [22]. Article 305 of the CC of the Republic of Moldova carries the persons promoting implementation of justice [23] to a circle of the victims. Article 379 establishes to Criminal Code of Ukraine responsibility for infringement of life not only judges, but also national or the juror or their close relatives in connection with their activity connected with justice implementation. Therefore, infringement of life of the person conducting preliminary investigation



under this article is not qualified what it is hardly possible to agree with. Besides, in this article the purposes and motives of encroachment are not specified [24].

Norms similar are provided to consider also in the criminal legislation of the European states [27]. So, in particular, about responsibility for "premeditated murder of magistrate, the lawyer, juror to whom any obligation for public service at execution is assigned by them in connection with execution of these duties if the status of the victim is obvious or known to the performer" is told in Article 221-4 provided in Chapter 1 "About Infringement of Human Life" of the Section 1 "About Deliberate Infringement of Life" Criminal Code of France [25]. Punishment for this crime is lifelong imprisonment. As it is seen from the content of this norm, the status of the victim has to be obviously known to the guilty person [25].

Article 464 of the CC of Spain located in Chapter 7 "About Obstruction to Justice and Violation of a Professional Duty" provides responsibility for infringement of life, inviolability, freedom, sexual freedom or property as revenge to such persons as the applicant, the party, the defendant, the lawyer, the prosecutor, the expert, the translator, the witness, for their activity in trial [26].

Of course, the given reasons are not full and probably debatable. However, they absolutely definitely say that signs of an object of criminal protection at creation of a system of the Special part of the criminal legislation are used insufficiently strictly. Moreover, as it is represented, it is necessary to bring into accord with the system of the Special part of the criminal legislation not theoretical classification of subjects to criminal encroachment, and on the contrary, to bring this system into accord with the classification of objects developed in the theory. It is demanded first of all by practice of use of criminal norms that, certainly, deserves special consideration.



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