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ON SOME ISSUES OF METHODOLOGICAL FOUNDATIONS IN STUDYING THREATS TO PUBLIC SECURITY

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This article investigates the sources of threats and conceptual approaches to the formation of public security's threats assessment. It is alleged that the sources of danger to the vital interests of society will be not factors and conditions, but causes and conditions that determine the development of certain actions and events, which in our situation constitute a threat to public safety. To further research are offered two major threats to public security: subjective intention and objective possibilities of infliction harm, which can be represented as kinds of threats.

Keywords: public security, methodology, threat, conditions and factors, legislative concept of security threat.

“Ensuring security” as a legal category covers separate directions of state activity to prevent, reveal and neutralize threats to its security. As we have already pointed out, the existing legislation of the Russian Federation unfortunately enshrines not only the notion of “public security”, but also notions of various types of threats to public security.

We consider it necessary not only to develop the methodological foundations of the study threats to public safety, but also to clarify the sources of threats and conceptual approaches to the formation of assessment for threats to public safety.

Moreover, as rightly pointed out in the scientific literature, the objective of public safety not only to protect the interests of a particular object, but also to reduce, diminish, eliminate, prevent hazards and threats [12, 16]. This means that public security can be ensured both through activities aimed at its protection from existing threats (offenses relapse, etc.) and by averting, prevention, termination, neutralization the very threats undermining public security. In practice it is appropriate to use both variants of ensuring public safety. Threats to public security to a large extent determine the direction of activity and competence of public authorities that ensure it, their use of administrative coercive measures.

Detection the types of threats to public safety and suggestion measures for their elimination are not possible without understanding the concepts of threats.

Concerning understanding security threats and its normative enshrining the point of view of the subjects of law-making is constantly changing. However, the lack of uniformity lets to conclude about the complexity and sophistication of the threat not only as a legal category, but also as a phenomenon.

For example, in the Russian Federation Law "On Security" under the threat of security offered to understand the totality of conditions and factors that endanger the vital interests of an individual, society and the state. Real and potential threat to security objects, which proceeds from the internal and external sources of risk, determines the content of activities to ensure internal and external security (see article 3 of the Law) [1]. It is likely that the legislator used the notion of threats given in philological dictionaries. In the Explanatory Dictionary of Russian Living Language of V. I. Dahl' threat means "to menace, try to frighten, bring danger, and keep someone in fear, under apprehension" [6, 470]. In the four-volume dictionary of the Russian language under "threat" understand "promise to cause any harm, trouble, bringing danger to somebody, distress, unhappiness, unpleasant event" [13, 462]. In another dictionary of the Russian language the concept of threat is formulated in two meanings: "intimidation, promise to cause somebody harm, evil; possible danger" [10, 823].

And if the previous RF Law "On Security" contained specific definitions, then the currently valid Federal Law "On Security" [2] does not contain the concepts of security threats, and moreover there is no even the concept of security.

Analysis of the legal literature on the issues of safety and security threats also leads to the conclusion about a diversity of approaches to determination security threats.

So, according to K. A. Strelnikov, the threat is the most concrete form of manifestation of social danger created by purposeful activity. If a threat has been realized

and adverse economic, political and social consequences have come, then we can talk about an emergency situation [18, 11]. However, it appears that a threat may arise not only as a result of purposeful activity, but also by the occurrence of natural and man-made disasters.

Also, some authors understand security threat as a totality of conditions and factors of specific sphere that endanger the vital interests of an individual, society and the state; and under security risks they consider the possibility of unwanted consequences of a process, phenomenon or fact, which is measured by the probable amount of loss [14, 336]. Delimitation of conditions and factors by a particular sphere, and the difference of the proposed definition from the definition of the RF Law "On Security" are not entirely clear.

Definition and types of threats to public security offered by A. I. Stahov seem to be interesting. Threat to security in the legal system of the Russian Federation, in his opinion, consists of natural and man-made environmental factors that endanger constitutional and legitimate interests of an individual, society, the state and the nation, as well as offenses and legal incidents (conditions) that contribute to the emergence and (or) development of such factors [15].

Further, the author, based on the logical analysis of the legislative concept of security threat, argues that the category, in fact, is a totality of separate sources of danger to the vital interests of an individual, society and the state, called conditions and factors creating danger to these interests.

From this point of view, in the legal system of the Russian Federation the sources of risk to vital interests of an individual, society and the state are:

- 1) factors that create the risk to constitutional and legal interests of an individual, society, the state and the nation;
- 2) conditions that create the risk to constitutional and legal interests of an individual, society, the state and the nation.

Following his logic, the author assumes that factors that create the risk to constitutional and legal interests of an individual, society, the state and the nation in the legal system of the Russian Federation are different manifestations or action of objects and phenomena of environment that create the possibility of infliction harm to the constitutional and legal interests of an individual, society, the state and the nation (hereinafter referred to as malicious impacts).

Accordingly, the conditions that create the risk to constitutional and legal interests of an individual, society, the state and the nation in the legal system of the Russian Federation are illegal actions (inaction) contributing to the emergence and (or) development of malicious impacts of phenomena and objects of environment [16].

Subsequently, the author develops his position on the understanding of security threats, the essence of which can be reduced to the fact that the threat to security consists of formally determined malicious natural and man-made environmental factors related to the subjected to official state estimation lawful actions (activity) of legal entities and individuals to use objects, processes and phenomena – man-made and natural sources of danger to the constitutional and other interests of an individual, society, state and nation, as well as offenses and legal incidents contributing to the emergence and (or) development of these factors [17, 16].

That is, the author proposes to consider as security threats only natural and man-made factors, which may be caused by a variety of situations: lawful use of objects, phenomena and processes (of licensed activities); offenses that contribute to emergence of the identified factors; legal incidents in the form of an explosion, fire, accident, earthquake, flood, etc.

We agree that the threat to public safety can be natural and man-made situations. But the possibility of infliction damage is possible not only as a result of these phenomena, but also many others.

However, we disagree with assigning the factors and conditions that could be dangerous to security threats. A. I. Stahov, as well as the legislator (in the design of the RF Law “On Security”) has taken into account neither the etymological meaning of these words, nor position of other social sciences exploring determinacy of processes and phenomena.

Factor is a wider concept that includes not only conditional, but most importantly causal determination. The concept of “factor” is very broad in scope and is used to refer to various types of determinants: causes, conditions and circumstances, moreover, not only a phenomenon, process and status, but also context and situation are denoted with the help of factor. So, B. F. Kevbrin rightly notes that in the notion of determinism “is fixed the existence of determining factors (the unity of forces, interactions, etc.) that give effect to the process of development” [8, 123].

And consequently the sources of threat to the vital interests of society will be not factors and conditions, but causes and conditions, which determine the development of these or those actions and events, in our situations ones that endanger to public security.

It seems that the developers of the National Security Strategy of the Russian Federation up to 2020 were more true when they formulated the concept of national security threat using instead of the term of “threat” the phrase that represented its dictionary meaning “the possibility of harm”, which gave a more clear formulation of the concept of national security threats, and also allowed to change the amount

of alleged threats that some authors [9, 32] propose to limit only to the threats from the use of objects posing a danger to the society, or the occurrence of natural disasters and other extraordinary circumstances.

As a result, in the National Security Strategy of the Russian Federation up to 2020 under a national security threat should be understood a direct or indirect possibility of harm to constitutional rights, freedoms, decent quality and living level of citizens, sovereignty and territorial integrity, sustainable development of the Russian Federation, defense and state security [3].

The analysis and consideration of the proposed by us definition of public security allows to formulate the definition of threat to public security as the possibility of harm to legally protected rights and freedoms of an individual, material and spiritual values of society, constitutional system, sovereignty and territorial integrity.

We consider it essential not only to define the concept of threats to public security, but also their types.

Threats to public security can be classified according to different bases, or criteria.

It is necessary to take into account the essence of security, which, we believe, covers: prevention of security threats, adequate response to the emergence of security threats and elimination the consequences of security threats manifestations as of personal, state as well as public one.

The general definition of threat to public security should be considered through two basic components: subjective intentions and objective possibilities of harm infliction that can be represented as types of threats.

“The possibility of harm infliction” means that an event or wrongful act is assumed, or it certainly can happen in respect of an object of legal security. The definition of “quite assumed” indicates a remote or hypothetical nature of the possibility of committing a wrongful act or the occurrence of an event. In this case, we can talk about a potential threat to public security. The definition of “certainly can happen” focuses the subject of public security on taking urgent measures to protect an object from a real threat.

It appears that, depending on the source of threats, they can be distributed into two large classes: internal and external. This division is largely conditional since in one case can dominate internal characteristics and in another – external. For example, in relation to an individual we can talk about such its internal (intra-personal) juridical features as the legal infantilism, nihilism, unlawful orientation, directives, social and legal passivity [19, 8-11, 14] and others, the presence of which

can threaten public security. External threats can be defined as ones that emanate from other persons, in particular, due to abuse of law, socio-legal passivity, avoidance to perform legal duties, corruption and other offenses.

We share the view of A. A. Ter-Akopov that when in the apparent significance of domestic threats external threats have dominant position, that is why the system of external threats to public security should be studied specifically, i.e., as a relatively separate object [19, 14].

In view of a comprehensive approach to the understanding of public security as a state of protection of vital interests of an individual, the state and society from socially dangerous deeds, natural disasters, accidents and other emergency situations, the causes and conditions that create a potential or real threat to them, their sustainable development, and guaranteed realization and protection the interests of an individual, the state and society, regulated by the norms of administrative law, we consider it possible to talk about the threats in respect to an individual, society, the state and the threats that arise from socially dangerous deeds, natural disasters, accidents and other emergency situations, the causes and conditions that create a potential or real threat to them.

This is due to the fact that public security is a basic category and includes the security of a person since society is composed of people (individuals) and ensuring the safety of each individual will contribute to public security. In turn, State security cannot be achieved without contributing to ensuring public security.

Threats to public security can be divided depending on legal facts, the impact of which will or may cause real harm to an individual, society or the state

In modern jurisprudence under the legal facts understand the specific life circumstances which are connected with legal norms through certain legal consequences.

We agree that legal facts are only those fragments of our reality that are involved in the sphere of law (according to N. G. Alexandrov, a legal fact – it is not just a fact of life, but the fact that is in a certain way regarded by law norms [4, 243]), and thus act as material-legal phenomena [7, 7], and entail the need for a different kind of measures (including administrative ones) aimed at eliminating or minimizing them.

Depending on the presence or absence of persons' will in a legal fact, legal facts are divided into actions, events and statuses.

Legal action – this is a volitional behavior of people, the external expression of the will and consciousness of citizens, organizations and public formations. The distinguishing feature of this kind of legal facts is that the law norms associate with

them legal consequences precisely because of the volitional nature of legal actions.

Legal actions are very diverse and play different roles in the process of legal regulation.

Legal facts of an action are classified primarily on the basis of how they are consistent with the requirements of legal norms and the requirements of the rule of law. According to this feature legal facts of an action are divided in two main varieties: a) lawful acts; b) unlawful acts (offences). And if the first do not pose a threat to public security, the second type of actions is one of the most serious threats to public security.

Lawful action is a volitional behavior that conforms to prescriptions of law, in line with the content of the rights and duties of subjects.

Lawful actions can be divided into three main groups: a) individual (legal) act; b) legal deed; c) lawful behavior that creates in law an objectified result that has economic or cultural value (efficient action).

The greatest threat to public security is unlawful act, which we consider as a volitional behavior that is inconsistent with legal requirements, violates legal rights, is out of keeping with legal responsibilities assigned to individuals.

Here is emphasized an objectively wrongful act, which refers to the act of volitional behavior that is of purely external nature caused by ignorance of law, some contradictory norms, etc. (author's note. Category "objectively wrongful act" is designed by I. S. Samoshchenko [11, 39]). This includes acts of behavior that express an innocent failure to perform legal duties, "objective" violation of legal rights (unjust enrichment, etc.), that is, everything that from a slightly different angle of view can be called as legal anomaly [5, 37]. This kind of illegal actions entail legal consequences, which are usually limited to the restoration of the violated legal status, implementation of legal obligations, i.e., protection measures.

Among misconducts the main significance has an offense – an action (inaction) that generates legal responsibility.

Offence is a guilty unlawful action (inaction). Signs of an offense are also reflected in *corpus delicti*, i.e., in the totality of its aspects and elements enshrined in legal norms. By the nature of public danger offences are divided into crimes and misconducts (administrative torts, disciplinary misconducts, civil offenses, etc.).

Considering misconducts as well as crimes as socially dangerous offenses, it should be assumed that the main in their delimitation is the quality of public danger: crimes as opposed to misconducts express the danger of a person to society as a whole.

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