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## PROBLEMATIC ISSUES OF DETERMINATION THE OBJECT OF HOOLIGANISM<sup>1</sup>

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Here is disclosed the author's position on the object of hooliganism. Having identified the differences of the categories of "public order" and "public safety", the authors conclude that the generic, specific and main direct object of hooliganism is public order.

**Keywords:** hooliganism, crimes against public order, crimes against public safety, public order, public safety.

A detailed characteristic of hooliganism has been given in the works of scientists of prior years. At that, a rather ambiguous disclosure of the content of crime object draws attention. And this is despite the fact that responsibility for hooliganism in Russian criminal legislation has quite a long history. However, it is unlikely that this fact itself ensures uniformity of opinions. Especially when you define the object of such a crime as hooliganism. First, the previous criminal codes attributed hooliganism to different types of crime. Second, in case of hooliganism the harm is inflicted to many social relations. Third, the norm providing for criminal responsibility for hooliganism was being constantly subjected to change, not having found the stability so far. And, finally, in all the known editions the disposition of the relevant article always had a complex legal structure.

Bearing in mind that criminal-legal literature provides a detailed analysis of the various points of view about the object of hooliganism [9], we consider it

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appropriate to adduce the main ones, as well as to designate our own position on the issue.

Based on the structure of the Criminal Code of the RF the generic object of hooliganism can be defined as a totality of social relations that ensure public safety and public order. The question is how to develop a unified approach to the concept of “public order” and “public safety”, as well as how to correlate the generic, species and direct object of hooliganism. We remind, that article 213 of the Criminal Code of the RF, which criminalizes an act of hooliganism, is included in chapter 24 of the Criminal Code of the RF “Crimes against Public Safety” section IX “Crimes against Public Safety and Public Order”. The problem is whether the generic object unified for all the crimes in this chapter or there are two separate generic objects.

In the theory of criminal law, the question of generic object of hooliganism is controversial. In relation to article 206 of the Criminal Code of the RSFSR, there were suggested several points of view. Some scientists recognized the existence of several separate generic objects specified in article 10 of the Criminal Code of the RSFSR [7, 143; 10, 306]. At the same time, some researchers believed that crimes provided for in this chapter had a single generic object specified in the very title of the chapter [14, 348], or that we should talk about two kinds of generic objects: a) public order and public safety, and b) the health of population [12, 410]. In this case, we should agree with the scientists who believe that section IX of the Criminal Code of the RF contains two generic object – “public safety” and “public order” that cover different public relations, as well as the tenth chapter of the Criminal Code of the RSFSR contained three groups of separate public relations: “public order”, “public safety”, “the health of population”. Of course, crimes against public safety and public order are closely related, which allowed the lawmaker to combine the structures of these crimes in one section of the Criminal Code of the RF. At the same time, each of these groups of public relations has certain specificity.

The foregoing means that the clarification of the concept of “public order” and its delimitation from the concept of “public safety” is fundamental in deciding the issue concerning the object of hooliganism. As we have already pointed out, this issue has been extensively enough studied by V. I. Zarubin [9].

The concept of “public order” is a more administrative-legal definition. Meanwhile, its study was paid attention of also specialists in other branches of law. And not all of their definitions of public order were the same.

Experts in the field of administrative law have given the concept of public order in its broad and narrow sense. In the broad sense of the word – it is a combination of all social ties and relations occurring under influence of the full range of

social norms, as opposed to the rule of law, which includes only the relations regulated by law norms. Accordingly the public order as a broader category includes also the rule of law. Almost the same, but a few in other words, was said about the public order in the general theory of law. Here public order is considered as a social category that covers the system (state) of volitional, ideological public relations, which are predetermined by economic basis and characterized by the correspondence of conduct of their participants to social norms (legal and non-legal ones) that dominate in society. The authors of this definition draw attention to the fact that the concept of public order includes only socially significant public relations [16, 12].

Generally legal definition of public order was suggested by I. N. Dan'shin: "Public order is an order of volitional public relations occurring in the process of conscious and voluntary compliance by citizens of the rules of conduct in the field of communication that are established in law norms and other norms of non-legal nature, thereby ensuring a smooth and stable joint life of people in conditions of developed society" [7, 68].

In the narrow sense of the word the public order was understood as an arising from the interests of all the people, regulated by the norms of law, morality, rules of community life and customs system of volitional public relations occurring mainly in public places, as well as public relations emerging and developing outside of public places, but in their nature ensuring protection of life, health, honor of citizens, consolidation of national wealth, public peace, creation of normal conditions for activities of enterprises, institutions and organizations [8, 7]. A. V. Seregin characterized the public order as "a regulated by law norms and other social norms system of public relations, the establishment, development and protection of which maintains public and personal safety of citizens, respect of their honor, human dignity and public morality" [13, 4].

The mentioned researchers place different accents. Giving the definition of public order, M. I. Eropkin considered an order as public one depending on the place where emerged and developed (public areas) protected public relations. In contrast, A. V. Seregin believed that public nature of "public order" is predefined by the content of public relations, and not by the place of their exercising. He also emphasized the close connection of public order and public morality.

Differences in judgments of scientists concerning the content of the concept of "public order" do not finish at that. Some legal scholars include public safety in the content of the concept of "public order". So, O. N. Gorbunova writes: "Public relations, which create in the State the climate of calm and security, form the system of volitional public relations, the totality of which can be called public order in

the narrow sense of the word" [3, 118]. Similar statements were said by I. I. Vereemeenko. He believes that public order as a specific legal category represents a conditioned by the development needs of society "system of public relations emerging and developing in public places in the process of human communication, legal and other social regulation of which provides personal and public safety of citizens and thereby the climate of tranquility, coherence and eurhythm of social life" [2, 27].

Representatives of the science of criminal law also tried to give a definition of public order through inclusion in it a fairly wide range of public relations. For example, P. F. Grishaev writes that public order means an order governing relations between the members of society, according to which each of them is obliged to follow the rules of society enshrined both in law norms and in norms of morality. Compliance with these rules of conduct by all the citizens guarantees public safety, that is, safe conditions of daily life and activities of the members of society [4, 6].

Nowadays, there are points of view that are opposite to those, which have been defended by O. N. Gorbunova and I. I. Veremeenko. They all come down to the fact that public safety is a broader concept and includes public order. For example, A. V. Gotovtsev argues that if "public order" is ensuring of human security, then "public safety" is both safekeeping of property and normal operation of the sources of increased danger threatening man and society. Hence the conclusion that the concept of "public safety" is somewhat broader than the concept of "public order" [4, 13].

In literature you may meet such judgments, according to which there is almost no difference between public order and public safety [11, 15].

These statements cannot be considered impeccable. Some authors have directly spoken up against them [9]. We also believe that in the title of Section IX of the Criminal Code of the RF the terms of "public order" and "public safety" are used as equally generic, each of which has an independent content. They are similarly used in part 1 article 2 of the Criminal Code of the RF. This conclusion comes out of the detailed analysis of other normative acts. In particular, the content of article 3 of the Federal Law No. 3-FL from February 07, 2011 "On the Police" [1] suggests that the legislator has laid on the police, on the one hand, the protection of public order, and on the other - ensuring public safety. This may be one of the proofs that from the standpoint of the legislator the public order and public safety are different and not included in the content of each other concepts.

We fully agree with the given by V. I. Zarubin definition of public order. Under public order he understands settled by the rules of law and morality public relations that in their totality ensure public peace, conventional norms of behavior,

the normal activity of enterprises, institutions and organizations, transport, safety of all types of property, as well as respect for public morality, honor and dignity of citizens [9].

As correctly noted by S. S. Yatsenko, if public order is embodied in the creation of a climate of public tranquility, favorable external environment of human activity, which provides normal rhythm of public life, then public safety is reflected in the creation of a secure environment when dealing with sources of increased danger and holding high-risk works [15, 19]. Substantial differences between the concepts of “public order” and “public safety” are associated with the normative means of settlement these phenomena. Public order is achieved as a result of streamlining of public relations through using all forms of normative regulation, whereas public safety – only with help of legal and technical norms [5, 15].

Having detected the differences between the categories of “public order” and “public safety”, we come to the conclusion that the generic, species and main direct object of hooliganism is public order. We agree with the scientists who believe that the indication of public safety given by the legislator in the title of chapter 24 of the Criminal Code of the RF should be considered as a juridical inaccuracy. As has been stressed, public order and public safety are separate categories that cover by separate groups of public relations. In addition, chapter 24 of the Criminal Code of the RF is included in Section IX, where the generic object “public order” is specified along with the generic object “public safety”, and in article 213 of the Criminal Code of the RF, which establishes criminal responsibility for hooliganism, there is a direct indication of the main direct object of such crime – public order. From the literal analysis of the articles of the Criminal Code of the RF it follows that the generic object specified in the title of chapter 24 – “public safety” – is not in the plane of the generic object of hooliganism [9].

The theory of criminal law proposes several solutions to the problem.

A. V. Kudelich offers to regroup all the crimes contained in chapter 24 of the Criminal Code of the RF in four separate chapters: crimes against the foundations of public safety; crimes encroaching on public peace; crimes related to violation of special safety rules; crimes related to violation of the rules on dealing with dangerous items, substances and materials [11, 34]. The proposed classification although deserves attention, but, in our view, it is unlikely successful. The Criminal Code of the RF traditionally operates with the category of “public order”. This category is quite often used in other normative legal acts, including in the Constitution of the Russian Federation. Its exclusion from the Criminal Code of the RF may result, to some extent, in the inconsistency of the Russian legislation.

According to V. I. Zarubin, for the purpose of legally precise definition of the generic object of hooliganism the chapter 24 of the Criminal Code of the RF should be amended through adding to the title of the chapter the indication of public order. In this case, it will be possible to avoid some ambiguity. In addition, in the future reform of the criminal legislation of Russia, it is suggested take as a basis the provisions of the model code of the states-participants of the CIS. The authors of the code offer to include article on hooliganism into chapter 27 "Crimes against Public Order and Public Morality". The advantages of this approach, according to V. I. Zarubin, lie in the fact that, firstly, it shows independence of objects "public order" and "public safety" and, secondly, emphasizes the connection of public order with public morality, and one of the tasks of strengthening public order is precisely the protection of morals in our society [9]. It should be noted that the proposed approach has already been reflected in the Criminal Code of the Republic of Belarus (section XI chapter 30 article 339) and the Criminal Code of the Republic of Tajikistan (section IX chapter 25 article 237).

The amendments proposed by V. I. Zarubin, of course, eliminate the inaccuracy existing in the title of section IX chapter 24 of the Criminal Code of the RF. However, in our view, emerges another inaccuracy. The proposed amendments will actually lead to the fact that the titles of section IX and chapter 24 of the Criminal Code of the RF will exactly coincide: "Crimes against Public Safety and Public Order". This is acceptable only when a section consists only of one chapter. In particular, section XI and chapter 33 of the Criminal Code of the RF, section XII and chapter 34 of the Criminal Code of the RF have identical titles. As for section IX of the Criminal Code of the RF, in it, in addition to crimes against public safety, include crimes against population health and public morality, environmental crimes, as well as crimes against road safety and operation of transport. Thus, the title of section IX of the Criminal Code of the RF should be formulated in such a way as to fully cover all its chapters. And if purely philologically it is enough difficult to do this, then in any case there should not be a complete coincidence of the titles of a section and any chapter of the Criminal Code of the RF included in this section.

In this regard, it seems preferable to take the position of the authors of the model code of the CIS countries, although with some amendments. Defining the place of hooliganism in the Criminal Code of the RF, we propose to add to the section IX of the Criminal Code of the RF a chapter 24.1 "Crimes against Public Order and Public Morality" through moving in it articles 213 and 214 of the Criminal Code from chapter 24 of the Criminal Code, and articles 240-245 of the Criminal Code

from chapter 25 with simultaneous exclusion of the words “and Public Morality” from the title of the chapter. Thus, in Chapter 24 will be collected the most dangerous crimes that really threaten public safety, and in chapter 25 – crimes encroaching on population health. In general, in case of such a restructuring of chapters 24 and 25 of the Criminal Code the appropriate chapters (24, 24.1 and 25) in new version would more accurately reflect the objects of crimes included in them.

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