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IMPROVEMENT OF THE LIABILITY STANDARD FOR VEHICLES OR MEANS OF COMMUNICATION DESTRUCTION

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Abstract

Consistent with the determination of the legislator's attitude towards the crime of disqualification of vehicles and means of communication, it is necessary to identify the problems of improving criminal legislation on liability for disqualification of vehicles or means of communication, taking into account the theoretical and practical problems for the correct qualification. The purpose of this article is to justify changes in the current norm of the Criminal Code of the Republic of Abkhazia and its transfer from one chapter to another. Public danger of the investigated crime committed by a person having special powers in the sphere of management and security of vehicles and ways of communication corresponds to cases that caused death of a person by negligence and acts committed by a group of persons by prior agreement. In this regard, this qualifying characteristic should be placed in another part of the article under investigation. In this connection, it is proposed to differentiate criminal liability not only on the basis of consequences, but also on the basis of objective criteria related to participation in the commission of a crime of several persons within a group of persons by prior agreement or organized group. As a consequence, by its legal nature, this crime refers not to crimes against traffic safety and transport exploitation, but to crimes against the foundations of the constitutional order and security of the state. Based on this, the crime under study should be moved to Chapter 29 of the Criminal Code of Abkhazia.

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1. Introduction

The given research is directed on perfection of norm about responsibility of disruption of vehicles and ways of communication in the Criminal Code of the Republic of Abkhazia. Despite the fact that such attempts in Russian science have already been made by such prominent scientists as: Kolchin (2009), Protsenko (2004), etc., we have studied works of Russian scientists, as well as materials of criminal cases and conducted a survey of law enforcement officers due to lack of study of this issue within our country. An attempt to study this problem at the scientific level is being made for the first time in the Republic of Abkhazia.

2. Problem Statement

The improvement of the norm is the extent to which the content of the article under consideration in Chapter 29 of the Criminal Code is correct.

3. Research Questions

The issue of the possibility of improving the criminal legislation of Abkhazia on liability for the disrepair of vehicles or means of communication is one of the key issues in the study of this issue. For a more detailed study, attention should be paid to the number of offences in this direction. The main state body in the Republic of Abkhazia that is working to reflect the main phenomena and processes occurring in the social and economic life of the state is the Department of State Statistics of the Republic of Abkhazia. In accordance with the topic under study, we are interested in Chapter 3.4 "Offences" of the collection "Abkhazia in figures. 2018", which is prepared by the above mentioned body. In accordance with which, we can cite the following data:

1) dynamics of crimes in the sphere of traffic safety violations and transport operation by vehicle drivers (fatal) – for 2013 – 31; for 2014 – 25; for 2015 – 19; for 2016 – 20; for 2017 – 18; for 2018 – 19.

2) dynamics of crimes within the framework of theft – for 2013 – 339; for 2014 – 364; for 2015 – 648; for 2016 – 602; for 2017 – 718; for 2018 – 917.

It should be noted that there is no more precise gradation by type of crime committed in the above two areas. However, the crime of disqualifying vehicles or means of communication is in both groups. According to the criminal cases studied, the article 155 of RA Criminal Code "Theft" was introduced in practice instead of the article 265 of RA Criminal Code "Disqualification of vehicles or means of communication", which is necessary in our opinion. It is also advisable to pay attention to the fact that the number of latent crimes on the subject under study takes place and accordingly increases the importance of the subject under study. Proceeding from the statistical data on the Republic of Abkhazia, decriminalization of the considered crime is observed, therefore, the statistics on Article 265 of RA Criminal Code is absent. From 2006 to 2018, 32 criminal cases were registered in the Republic of Abkhazia, of which 28 cases were theft of non-ferrous metals worth 10 million 432 thousand 996 rubles. The second place is occupied by the theft of copper parts from the locomotive depot by 11 tons. The third place is occupied by the theft of railway rails. In 2006, there was one case of theft of copper parts from a locomotive depot for the amount of 433,863 rubles. Thus, cases of this category in the Republic of

Abkhazia are qualified as crimes against property. Thus, for example, the theft of state property in the form of MF-100 and M-120 wires by unidentified persons in the amount of 88792.85 rubles was committed, the case was initiated under Article 155 of the Criminal Code of the Republic of Abkhazia (RA Ministry, 2007). The current version of the Criminal Code of the Republic of Abkhazia implies as traffic safety and operation of vehicles or communication routes. Speaking of safety, these norms ensure protection of life and health of people. But in practice it is rather difficult to bring to justice those who committed a crime under Article 265 of the Criminal Code of the Republic of Armenia. A real example is the criminal case #1003/5 on the fact of theft of railway tracks R-65 and damage to the construction of the bridge over the river Nishoni for the total amount of 433 thousand 863, 9 rubles at the ferry line of Acegvara-Gal (RA Ministry, 2003). Thus, the work of the railway transport was disrupted, which could lead to serious consequences, but the case was initiated under Article 155 of the Criminal Code of the Republic of Armenia. And there are a lot of such examples. Proceeding from the above, the following conclusions can be made, as Article 265 of the Criminal Code of the Republic of Armenia does not apply, it is necessary to speak about the changes that should be made in the article under consideration. Behind the norm of the law there is always the benefit which it protects. And accordingly, the higher the importance of this good, the higher the degree of protection should guarantee a normative-legal act, which seems quite logical. And there are certainly cases where the interests of protecting certain relations go beyond a single State and are regulated by intergovernmental instruments. Taking into account "the exceptional importance of the development of direct international rail transportation of passengers and cargo" of the Republic of Abkhazia and the Russian Federation, an agreement was made between the Government of the Republic of Abkhazia and the Government of the Russian Federation on the conditions for organizing direct international rail transportation. This is an example of the above cooperation for the purpose of both safe and successful development of relations in the field under study (Agreement between the Government of the Republic of Abkhazia and the Government of the Russian Federation on the conditions of organization of direct international railway communication. Ratified by the Law of the Republic of Abkhazia dated 24.11.11. №3020-c-IV/).

It should be noted that the theory of Russian criminal law has already considered the issue of improving the CC norm more than once.

1) Thus, Kuchayev (1990) in his doctoral dissertation proposed the following option of constructing this criminal law norm –

"Damage to rail, water and air transport systems."

1. Deliberate destruction, damage, otherwise causing unsuitable condition of technical systems ensuring safe functioning of railway, water and air transport, as well as creation of obstacles for safe movement or operation of transport, if it could lead to the onset of consequences provided for by part two of the present article, shall be punished by imprisonment for the term from one to three years, restriction of freedom up to two years or correctional works for the term up to two years.

2. The same act resulting in the infliction of less serious bodily harm or major material damage shall be punishable by deprivation of liberty for a term of three to seven years and restriction of liberty for a term of two to five years.

3. The act referred to in paragraph 1 of this article, which resulted in serious bodily injuries, a vehicle accident or other serious consequences shall be punishable by deprivation of liberty for a term of seven to ten years.

4. The act provided for in paragraph 1 of this article, which resulted in the death of the victim or the crash of a vehicle, shall be punishable by deprivation of liberty for a term of ten to fifteen years.

5. Careless destruction, damage, otherwise bringing of technical systems of railway, water and air transport in a condition which does not provide safety of transport, creation of hindrances for safe movement or operation of transport if it has entailed consequences specified in parts two and three of the present article, is punished by imprisonment for the term up to five years or restriction of freedom up to five years.

6. The same act that caused the death of the victim or the crash of a vehicle is punishable by imprisonment for a term of five to ten years (Kuchaev, 1990).

It seems that this proposal should be evaluated critically. It seems that from the point of view of elimination of conflicts of application of criminal law it is wrong to introduce new terminology in the Criminal Code, in particular, "technical systems". This factor will only complicate the application of the rule under study. It is also doubtful whether the proposal to extend the limits of criminal liability for this act by establishing it for a negligent act would be appropriate. Such expansion does not correspond to the degree of social danger of the act.

2) Protsenko (2004) proposes the following version of the criminal law norm on liability for the disqualification of vehicles and means of communication:

a) Part 1 provides for liability for intentional destruction, damage or otherwise causing unsuitable condition of a building, structure, vehicle or other communication lines and other equipment, if these acts created a threat to life or health of people or causing major damage – shall be punished by imprisonment for a term from 2 to 6 years.)

b) Paragraph 2 – for the seizure of the items mentioned in paragraph 1 of this article, as well as the acts referred to in paragraph 1 of this article, committed with the use or threat of use of violence dangerous to life or health – shall be punishable by deprivation of liberty for a term of between 4 and 8 years.

c) If the acts resulted in serious or moderate damage to health, death or major damage through negligence, the following shall be punishable by deprivation of liberty for a term of 8 to 15 years (part 3)).

d) The acts provided for in paragraph one of this Article, committed through negligence and resulting in consequences described in paragraph three of this Article, shall be punishable by restriction of liberty for a term of up to 5 years or imprisonment for the same term with or without deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years (part 4)" (Protsenko, 2004).

It seems that the position expressed should also be evaluated critically. In particular, it also seems unreasonable to extend the limits of criminal liability for the crimes in question by establishing liability for negligent conduct.

3) Kolchin (2009) in his dissertation research proposes the following edition of Article 267 of the Criminal Code:

"Article 267. Disqualification of transport and its system

1. Destroying, damaging or otherwise making the transport and elements of its system unusable for operation, if these acts resulted in causing of average gravity or serious damage to human health or other serious consequences through negligence, shall be punished.

2. The same deeds that caused the death of a person by negligence are punished.

3. The acts provided for in paragraph one of this Article, which result in the death of two or more persons through negligence, shall be punished..." (Kolchin, 2009).

This proposal is also controversial. In particular, the author's reference to "elements of the transport system" as an offence is unfounded. In addition, the author excludes from the list of subjects of the act in question the means of communication.

According to Sarkisova (2014) Section 267 should read as follows "Deliberate disqualification of vehicles or transport infrastructure, as well as blocking of transport infrastructure:

1. Intentionally destroying, damaging or otherwise rendering unusable the vehicle or transport infrastructure objects, as well as blocking transport infrastructure objects, if these acts have created a threat of causing death, serious harm to human health or major damage, shall be punished ...

2. The same acts, which have resulted in causing serious harm to human health or serious damage through negligence, shall be punished by ...

3. The acts provided for in paragraph one of this article, which caused the death of a person by negligence, shall be punishable by ...

4. The acts provided for in paragraph one of this article, which result in the death of two or more persons through negligence, shall be punished ...".

And along with this article the author has proposed "Article 267 of the note 1 "Unwithdrawal of vehicles or transport infrastructure through negligence", singling out negligence as a separate form of guilt and, consequently, the article should be formulated differently. (Sarkisova, 2014).

Radchenko (2015) proposed the following edition of article 267 of the Criminal Code of the Russian Federation "Bringing into disrepair vehicles, communication lines and transport infrastructure facilities":

- part 1. Destruction, damage or unusable condition of the vehicle, communication lines, means of signaling or communication or other transport equipment, as well as blocking of transport communications, which create a risk of death, harm to human health and disruption of the transport infrastructure;
- part 2. The same acts resulting in causing serious damage to health or major damage through negligence,
- part 3. The same acts that caused the death of a person through negligence (Radchenko, 2015).

Opinions also differ as to the subject matter of the crime in question, and the authors propose different ways to improve the norm. For example, the theory of criminal law notes that the subject of the crime in question may be any property of others, including vehicles (Rusanov & Aryamov, 2018).

Acknowledging the scientific and cognitive value of the positions presented in the theory of criminal law regarding the possibility of improving the criminal legislation on liability for the disrepair of

vehicles and means of communication, we note that they are presented in relation to the Russian criminal legislation, which served as a model for the criminal law of the Republic of Abkhazia. However, some social, economic and political peculiarities of development of transport relations in the Republic of Abkhazia in this case could not be taken into account. The discussion was also prompted by the composition of the crime provided for by Article 265 of the Criminal Code of the Republic of Abkhazia regarding the material or formal composition of the crime, but this issue was also exhausted in time. Having answered the question of formal or material composition, based on the scientific works of Russian scientists, the crime specified in Article 265 of the Criminal Code of the Republic of Abkhazia of rendering unsuitable the means of transport or ways of communication, in relation to the existing practice, we understand that the second question is how acceptable it is for the Republic of Abkhazia with its post-war, undeveloped transport system. Today's realities for the Republic of Abkhazia are as follows:

1) the paths of development of a small country are severely limited by the political problems surrounding it as a de jure and de facto recognition of that country;

2) internal development opportunities are based on the resources of the tax sphere and financial assistance of the Russian Federation; (Agreement between the Ministry of Finance of the Republic of Abkhazia and the Ministry of Finance of the Russian Federation on the procedure for providing financial assistance for socio-economic development and ensuring a balanced budget of the Republic of Abkhazia № 01-01-06/06-43 of 17.03.2009).

3) the problems of the budget deficit lead to the fact that the average budget figure of the country fluctuates between 7.5 and 9 billion rubles, with the understanding that these amounts won't be raised overnight and won't solve even one sphere of problems of national scale. One of the reasons for this situation is the vagueness of the wording of objective and subjective elements of the crime provided for by Article 265 of the Criminal Code of the Republic of Armenia, as well as the gaps in the criminal legislation regarding the establishment of criminal liability for this type of crime. The theoretical understanding of the objective side of the crime leads us to the fact that this crime has a material structure, so the crime can be recognized as finished not from the moment of destruction, damage or ghosting of vehicles, communication lines, means of signaling or communication or other transport equipment, but only in case of the consequences described in the disposition of the article. In this regard, the practice proceeds from the fact that in the case of committing an action described in the disposition of the article, it is assessed as theft of someone else's property and is qualified under the relevant part of Article 155 of the Criminal Code. This is evidenced by the above statistics on the Republic of Abkhazia. It is also necessary to pay attention to and change the approach to the assessment of the subjective side of the composition, taking into account the high degree of public danger of the action, as well as the importance of rail transport for the country's defence capability and economy. It is difficult to suppose that, by making the track and means of communication unsuitable, a person does not realize the public danger of his or her actions. Therefore, the subjective side of the crime in question must assume deliberate guilt. Moreover, the previous criminal legislation and the current criminal legislation of foreign countries is already on the way of establishing responsibility for the intentional crime.

In our opinion, introduction of such changes will give the chance to provide safety of movement of a railway transport more effectively, and also will help in struggle against plunder on a railway transport,

and that also gives the chance to differentiate stealing (item 155CC RA) from infringement of the rules providing safe work of transport (item 155CC RA).

In the course of the conducted research we have revealed the following aspects which, in our opinion, should be taken into account in the process of improvement of the criminal legislation of Abkhazia on the responsibility for the disrepair of vehicles and means of communication:

a) The State's security relations in the field of transport security should be considered as a direct object of disruption of vehicles or means of communication. As a consequence, by its legal nature, this crime refers not to crimes against traffic safety and transport operation, but to crimes against the foundations of the constitutional order and security of the state (Chapter 29 of the Criminal Code of the Republic of Abkhazia). Based on this, the crime under study should be moved to Chapter 29 of the Criminal Code of Abkhazia.

b) The disruption of vehicles or means of communication may be carried out by persons having special powers in the field of management and security of vehicles and means of communication. Consequently, in the criminal law, the obsolescence of vehicles and means of communication by persons authorized to manage and ensure the safety of vehicles and means of communication must be regarded as a qualified crime.

From the point of view of legislative technique, the question arises as to whether the act in question should be referred to part 2 of the article or part 2 of the article in question. 3. It seems that the public danger of the investigated crime committed by the person having special powers in the sphere of management and safety of vehicles and ways of communication corresponds to the cases which have caused death of a person by negligence and to the acts committed by a group of persons by prior agreement. In this connection, this qualifying feature should be placed in part 2 of the article.

c) The disruption of vehicles or means of communication shall be regarded as a crime committed with two forms of guilt: intent in relation to the action taken or inaction and negligence in relation to the consequences that have occurred. Consequently, in the Criminal Code of Abkhazia it is necessary to indicate a sign of intentional nature of the committed act in the disposition of the criminal law norm, which establishes responsibility for the disrepair of vehicles or means of communication.

d) It is necessary to differentiate criminal responsibility not only on the basis of consequences, but also on the basis of objective criteria related to the participation in the commission of a crime of several persons in a group of persons by prior agreement or organized group.

From the point of view of legislative techniques, it is logical to place these qualifying characteristics in different parts of one article. Thus, acts committed by a group of persons by prior conspiracy and an organized group will have different degrees of public danger.

4. Purpose of the Study

The purpose of the work is a scientifically grounded legislative design and improvement of the criminal-legal norm providing responsibility for the disrepair of vehicles and ways of communication.

5. Research Methods

A comparative legal research method was used in the Republic of Abkhazia to identify the peculiarities of criminal liability for the disrepair of vehicles and means of communication.

6. Findings

The results obtained in the article allowed to recommend to the legislator in the Republic of Armenia to transfer the corresponding norm from one chapter to another, as well as in order to improve the norm to make appropriate changes in Article 265 of the Criminal Code of the Republic of Armenia.

7. Conclusion

From a legislative technical point of view, the decision to place these qualifying features in different parts of the same article seems logical. Thus, acts committed by a group of persons by prior conspiracy and an organized group will have different degrees of public danger.

Based on the suggestions to improve the criminal legislation of Abkhazia, we propose a new version of the criminal law provision on liability for the disrepair of vehicles and means of communication:

Article 279.1: Disqualification of vehicles or means of communication

1. Deliberate destruction, damage or otherwise rendering unusable the condition of a vehicle, means of communication, means of signaling or communication or other transport equipment, as well as blocking of transport communications, if these acts have resulted in negligence in causing severe or moderate damage to human health or causing major damage, -

are to be punished.....

2. Same deeds:

(a) Caused the death of a person by negligence;

b) Committed by a group of persons by prior conspiracy;

c) committed by a person having special powers in the field of management and security of vehicles and means of communication – shall be punished ...

3. The acts provided for in paragraph one of this article, which resulted in the death of two or more persons through negligence, or committed by an organized group, shall be punished ...

It should be noted that the proposed version of the new version of the criminal law norm on liability for the disrepair of vehicles and means of communication was supported by 60% of the law enforcement officers of the Republic of Abkhazia surveyed.

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