

ISMGE 2020**II International Scientific and Practical Conference "Individual and Society in the Modern Geopolitical Environment"****CRIMINAL LEGAL MEANS PREVENTING SPREAD OF DANGEROUS INFECTIOUS DISEASES IN MODERN SOCIETY**

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rozhnov@volsu.ru***Abstract***

COVID-19 pandemic outlined the necessity for reforming Russian criminal legislation and providing better incentives for prevention of dangerous infectious diseases. While acknowledging respective changes made to the Criminal Code (i.e. the renewed edition of Article 236), the authors nevertheless consider measures taken by the lawmakers to be insufficient. Combining elements of crime with different public danger levels (the material element and the so-called element of danger); in Part 1 of Article 236 seems dubious; it is unclear who the restrictions accumulated in Article 236 are addressed to; besides, notions of accidental and intentional guilt could be disorienting for courts. Some forms of criminal behaviour were unreasonably disregarded in the Code, such as infliction of damage to a specific individual by intentionally infecting with a disease that simultaneously creates a risk for infecting an indefinite number of people. The legislators unreasonably ignored the necessity for reforming Article 248 of the Criminal Code that in its present version imposes responsibility only for violating safety rules related to handling microbiological (or other biological) agents and toxins leading to direct consequences. However, the recent experience of COVID-19 pandemic demonstrates it is necessary to establish the element of danger i.e. to shift the moment of noting criminality to the stage when a violation of rules creates only a threat of causing or spreading epidemics or pandemics. Basing on the research results, the authors make recommendations on improving criminal legislation for providing sanitary and epidemiological welfare of the nation.

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Keywords: Coronavirus pandemic, criminal behaviour, dangerous infectious diseases, element of creating danger, intentional infecting, sanitary and epidemiological rules.

1. Introduction

COVID-19 pandemic became another factor highlighting issues concerning improvement of criminal legal means that prevent dangerous infectious diseases. Familiar problems reappear time and time again, disrupting fragile sanitary and epidemiological welfare with a new biological threat to mankind, genetic diversity, populations of specific continents and countries. Currently, the Register of publicly dangerous diseases, adopted by the Resolution of the Russian Federation Government on December 1, 2004 (with changes made as of January 31, 2020), lists 16 infections and infection groups sharing such attributes as severity, high disability and mortality rates, relatively fast spreading. At the same time, the latter attribute of dangerous infectious diseases largely depends on responsibility with which individuals (including infected ones) and legal entities are following special hygienic requirements and rules for preventing such diseases.

2. Problem Statement

Ignoring such requirements and rules is objectively and subjectively related to transmission of infection and must be prosecuted by the criminal law. However, specialists point out gaps in current Russian criminal legislation regulating responsibility for infecting with publicly dangerous diseases other than venereal diseases and HIV (Norvartyan, 2015). This is why law scientists suggested multiple times to establish such elements of crime as infecting with a publicly dangerous disease and creating a risk of infection within Chapter 25 of the Criminal Code of the Russian Federation (Norvartyan, 2015; Vlasenko, 2011). Also, Article 236 of the Criminal Code was often criticized because its previous version included only material elements of crime and made it impossible to take into consideration the number of victims in case of actual deaths (Vlasenko, 2011).

3. Research Questions

Despite the existence of rapidly spreading diseases and the fact that large-scale epidemics and pandemics were declared one of the main threats to national security as far as in 2009 (Russian National Security Strategy, 2009), Russian legislators did not provide a prompt response to criticism and the only changes made in the abovementioned article were related to penal sanctions.

Specifics of establishing the element of violation concerning sanitary and epidemiological rules partially explain why Article 236 was previously in low demand in legal practice. According to our estimations based on statistical data published in the law press (Chuchaev, 2019), for a decade (2008-2017) the average number of registered cases for this crime was 37.5 per year.

However, the coronavirus situation eventually ushered Russian legislators to take decisive action in order to improve criminal legal guarantees of the sanitary and epidemiological welfare of the nation. It became impossible to ignore contagiousness of a new virus and its unprecedented unpredictability in terms of symptoms and possible complications.

Federal Law No. 100-FZ of April 1, 2020, On amending the Criminal Code of the Russian Federation and Articles 31 and 151 of the Criminal-Procedural Code of the Russian Federation, imposes a stricter punishment for violating sanitary and epidemiological rules mentioned above; introduces a new

specially qualified element of crime imposing a more severe criminal responsibility in case of death of two or more persons caused by negligence of the perpetrator; as well as complicates the structure of the main element of a crime. The latter change criminalized a violation of sanitary and epidemiological rules that did not actually cause mass disease or poisoning but was capable of doing so (Ryadnev, 2004). This innovation was represented by adding a line “or creating a threat of such consequences” to Part 1, Article 236 of the Criminal Code.

4. Purpose of the Study

This article attempts to analyse how adequate the changes that have been made to criminal legislation because of COVID-19 pandemic are in comparison to global and national security challenges.

5. Research Methods

The research methods include analysis of specifically-sociological data on application of criminal law articles guaranteeing sanitary and epidemiological welfare of the population, data demonstrating current COVID localization in Russia, as well as traditional humanities methods of theoretical research: analysis of specific legal norms, their comparison between one another and between conflicting social relations, abstraction, mental modelling, ascent from the abstract to the concrete, etc.

6. Findings

In general, the changes made by the legislators deserve approval. They can be justified not only by exceptional danger of certain infectious diseases but also by expensiveness of measures taken by Russian authorities to minimize spreading of dangerous infectious diseases and harmful consequences of pandemics. The explanatory note to the project of the abovementioned federal law claims that people are insufficiently motivated in maintaining personal and public safety and points out multiple violations of lockdowns, social distancing and other rules aimed at curbing the new biological threat (Explanatory note, 2020).

Stories about people who arrived from epidemiologically unfavourable regions or countries, escaped from medical observation and attended public areas or about medical employees who were supposed to be quarantined but instead went to work are widely discussed by the media and on the Internet (Kandinskaya, 2020; The medical case ..., 2020).

However, we must admit that even despite the changes made to the Russian Criminal Code, the problem of sufficiency and effectiveness of criminal legal means preventing spread of infectious diseases remains on the agenda. First of all, legislators demonstrate inconsistency in reforming the Russian Criminal Code with the purpose to improve legal means preventing people from getting infected with such diseases. The Criminal Code has another article incentivizing adherence to special rules which violation may lead to mass outbreaks of infection – Article 248, Violation of Safety Rules in Dealing with Microbiological or Other Biological Agents or Toxins, belonging to Chapter 26, Ecological Crimes.

As the commentators of said article rightfully noted, this crime poses a public danger because violation of safety rules on synthesis, cultivation, transformation and usage of microorganisms, toxins,

their fragments, etc. by medical, pharmaceutical, research and other organizations and institutions may not only lead to epidemics and epizootics but also to pandemics and irreversible damage to the environment (Chuchaev et al., 2009). These rules must be followed at least as responsibly as rules covered by Article 236 of the Criminal Code.

Nevertheless, Article 248 of the Criminal Code remained unchanged despite being subjected by law scientists to criticism similar to the previous version of Article 236 (Vlasenko, 2011). At the present moment, it is objectively needed to establish the so-called element of danger for violation of safety rules on handling micro- and microbiological agents or toxins that would impose responsibility not only when such violation led to negative consequences listed in the article (damage to human health, spread of an epidemic or an epizootic and other serious outcomes) but also when it caused the risk of some of them (e.g. of an outbreak or spread of epidemics or pandemics). It also seems reasonable to add to the article that the death of two or more persons caused by this crime must be classified as a severely aggravating factor.

We may assume that unwillingness of the state to criminalize some dangerous violations of the abovementioned rules is determined by statistical evidence. In 2008-2017 no crimes covered by Article 248 were registered in Russia. However, given current circumstances, these data must not calm the authorities down. Firstly, even one crime of this kind can have devastating or even catastrophic consequences. Secondly, nowadays said rules are in high demand, like they have never been before. Russia is ranked 2nd by the number of COVID19 tests, with over 100 000 tests performed on a daily basis. Vaccines are being actively developed and tested. Activities enabling early-stage detection of diseases and preventing the most dangerous consequences are unsafe themselves and require strict adherence to special rules.

Moreover, even the renewed version of Article 236 of the Criminal Code could use some improvement, primarily because description of criminal behaviour in part 1 of this article looks confusing. In fact, it combines two different elements – the material element of crime and the element of creating danger. This inevitably makes it seem doubtful that legislators would properly estimate public danger levels for criminal activities covered by one regulation.

We believe the difference in public danger level between violations that have already caused the mass disease or poisoning and violations that only caused the risk of such outcome is significant and consequently requires different penal sanctions for such actions.

Besides, it is worth mentioning that alternative structures often pose a threat of transferring attributes of one (associated) element of the crime to another. This threat is also present for the element of a violation of sanitary and epidemiological rules. Indication of negligence towards consequences such as mass diseases or poisoning can create a false impression among law enforcers that in relation to creating the risk of such consequences, negligence is also a form of guilt. Only existing means of criminal law interpretation are capable of clarifying this misunderstanding.

The coronavirus pandemic made relevant some practical issues that occurred while interpreting provisions of Article 236 of the Criminal Code. First of all, there is the question of criminal legal evaluation of intentionally infecting another person with a dangerous disease other than HIV or venereal diseases. The answer to this question may seem evident only at first sight. It is not always adequate to

classify a crime only by an article imposing criminal responsibility for a specific crime against life or health or for a homicide. It is not an exceptional situation when intentional infecting of one or several persons poses a clear threat of mass infection or poisoning or actually causes them. Such behaviour probably requires classification by several articles of the Criminal Code – the article imposing responsibility for inflicting damage to life or health of one or several persons and Part 1 of Article 236. However, this perplexity could have been avoided if legislators had paid more attention to the scientists' suggestion to establish within Chapter 25 of the Criminal Code such elements of crime as infecting with a publicly dangerous disease and creating a risk of infecting with such disease (Norvartyan, 2015; Vlasenko, 2011).

It should be mentioned that criminal codes of several foreign countries already have such elements of crime. For instance, according to §155 of Norwegian Criminal Code, any person knowing he is suffering from a contagious venereal disease who infects or exposes another person to infection is liable to imprisonment for up to three years.

Finally, another issue became more acute during the coronavirus pandemic – the subject of violation of sanitary and epidemiological rules. Article 236 of the Criminal Code does not specify characteristics of persons bearing responsibility for the crime covered by the article. This leads to the assumption that the subject of such violations is any person with general characteristics.

Still, there is a popular opinion in scientific literature that violations of sanitary and epidemiological rules have a special subject – the person responsible for fulfilling these rules (Kobzeva, 2014). This idea seems attractive because it takes into account the results of systemic interpretation of criminal legislation calling for specifying the subject in the context of regulations establishing such rules. The law enforcers must acknowledge or not acknowledge someone as the subject of a violation of sanitary and epidemiological rules basing on the rules and who they are addressed to – and specify every time, whether the person in question was supposed to follow these rules.

All this does not exclude criminal responsibility of individual persons for such violations (Kruglikov, 2012; Kudryavtsev & Naumov, 1997) because numerous sanitary and epidemiological rules are addressed to them. For example, nowadays it is obligatory for everyone to wear personal protection (face mask and gloves). However, even if the rules that were violated are obligatory for all citizens, the crime still has a special subject - the person responsible for following these rules. Criminal codes of some foreign countries underline this by disposition of respective articles. For instance, part 1, Article 336 of Belarus Criminal Code characterizes the subject violating sanitary and epidemiological rules as any person obliged to follow these rules. We think Russian legislators should adopt this law-making practice. Proper characterization of the crime subject would enable law enforcers to clearly specify what rules exactly were violated and what persons were responsible for following them in each case.

7. Conclusion

We can summarize the study results as the following conclusions.

1. Measures taken by Russian legislators to optimize criminal legal means preventing spread of dangerous infectious diseases deserve approval. As epidemics and pandemics become a serious threat to national security, it is completely justified to strengthen criminal responsibility for

violation of sanitary and epidemiological rules that caused mass infection as well as to differentiate responsibility depending on the outcome of such infection and to criminalize violations that only created the risk of such consequences. However, even now the problem of sufficiency and effectiveness of criminal legal means preventing spread of dangerous infectious diseases is not fully solved.

2. In order to strengthen the criminal law guarantees of protecting people from threats related to coronaviral or other dangerous infections and to minimize various negative consequences of current as well as other pandemics and epidemics, it is recommended to make the following changes to Russian criminal legislation: 1) to establish within Chapter 25 of Russian Criminal Code special elements of intentionally infecting another person with a dangerous infectious disease and intentionally creating a risk of such infection by a person aware of having such a disease; 2) to impose criminal responsibility in Article 248 of Russian Criminal Code for violating safety rules on handling microbiological or other biological agents or toxins that caused a risk of epidemics or pandemics or their spread; 3) to separate the element of crime for violation of sanitary and epidemiological rules that caused a risk of mass human infection or poisoning as the first part of Article 236 of the Criminal Code, accompanied with a milder penalty; respectively, the current Part 1 must become Part 2 of this Article; 4) to specify directly in dispositions of Article 236 of the Criminal Code the scope of subjects of violation of sanitary and epidemiological rules, i.e. persons that bear the responsibility for following such rules.

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