



*Olga L. Dubovik*

## **Crimes against public security: systematization of crimes in the Russian Criminal Code and the Polish Criminal Code**

### ***Introduction***

Despite the adopted conventions, establishment of common positions in relation to fight against crimes against public security, the criminal law regulation in different countries differs significantly. Here we should point out the problems of classifying such acts and defining the characteristics of elements of crimes, determining the amount and types of penalties imposed for their commission. Despite all the pursuit to unify the criminal law concerning the fight against terrorism, extremism, and other dangerous infringements on public security and efforts made in this regard, so far we can observe there are common goals and aspirations with significant differences in details.

In this regard, the indicative ones are differences and common features of criminal law governing liability for infringement on public security in the Russian Federation and the Republic of Poland, and which are explained by historical, cultural, political, geographical and other peculiarities of these countries.

Study of legal regulation of the grounds and conditions for fighting crimes against public security has traditionally received close attention from lawyers, both scholars and practitioners. In recent years, hundreds, if not thousands of works (monographs, articles) have been published about it; analytical documents have been prepared, interstate and national structures have been created to solve this problem. It is natural since the said group of criminal infringements is characterized not only by a high degree of public danger, prevalence of certain types of criminal infringements (for example, banditry or hooliganism in some periods of the Russian history, or terrorism in the late 19th – early 20th centuries and in the recent past<sup>1</sup>), increased public and media attention to specific facts and actions of law enforcement agencies and court, but also by a variety of crimes, difficulty of establishing signs of the objective and subjective sides, complications in differentiation from administratively punishable acts in some cases and, of course, by the need to ensure such a good as public safety by means of criminal law<sup>2</sup>. At the same time, almost until the end of the 20th century, this interest of specialists and society displayed, if it is possible to put it this way, in the established segments of scientific discourse and law enforcement practice, was stable.

---

<sup>1</sup> Gorbunov K.S. Terrorism and legal regulation of counter-terrorism. Monograph. M.: Molodaya Gvardiya, 2008.

<sup>2</sup> Poczucie bezpieczeństwa obywateli w Polsce identyfikacja i przeciwdziałanie współczesnym zagrożeniom // E.M/ Guzik – Makaruk, red. Warzaa: Lex, olters Kiuver business, 2011. –383 s.



The situation began to change in connection with a) “revival” of certain types of crimes; b) committing them in regions where they were not previously observed (piracy); c) spread of such crimes which have always been perceived as something exceptional (terrorism, hostage taking); d) emergence of new threats (violation of safety rules at nuclear facilities, theft or extortion of nuclear materials or radioactive substances, production and trade of chemical weapons, etc.); e) involvement of theoretically law-abiding citizens in illegal activities (mass disorders in connection with football matches); f) change in motivation of criminal behavior, change in goals: instead of revenge or political confrontation, economic interests emerge that are embodied in the desire to seize natural resources or in effort to destroy and demean certain ethnic groups, religious minorities, etc. and deprive them of their cultural and historic background.

This list can be continued. However, it is also clear from the above that new challenges have arisen, to which criminal law and science shall beat back.

In this regard, the lawyers often talk about the phenomenon of new criminalization”<sup>3</sup> which followed a large-scale liberalization of criminal law in the final decade of the 20th century and at the beginning of the 21st century in many countries (including Russia during the sanctions reform). In principle, no matter how to evaluate this phenomenon, positively or negatively, its appearance is a natural, regular response of society and government to new and twice-born criminal infringements that, certainly, are not limited to the sphere of public security, but also affecting the economic activity, environmental protection, fighting against the organized and corruption-related crimes, etc.

## ***Trends and purposes of changes in criminal law***

The wave of “new criminalization” and need to protect public security against infringements related to the “classical” type or to the new, twice-born one (such as terrorism) have affected the interests of individual countries, social groups, and citizens to different extents. Certainly, national lawmakers’ decisions have been strongly influenced by international agreements, deterioration in the criminal situation, increase in crimes of terrorism, expectations of citizens regarding their security, the European Union member states controversial policy regarding migration and, of course, questionable practice of prosecution, imposition, and execution of punishment to persons suspected, accused (and convicted) for organizing, participating, and committing the acts of terrorism (together with many other accusations including violent crimes, drug traffic, etc.).

At that, the decisions of national lawmakers, despite the fact that implementation of international legal rules is mandatory, awareness of common ideas and need for concerted actions are characterized by specific approaches and nuances significant for fighting against the most dangerous infringements on public security. This shall be considered not

---

<sup>3</sup> Ref.: Dubovik O. L., Averina K. N. At the Confluence of Criminal Law and Law of Minor Offenses: Substantive Problems // Police and Investigative Activities. 2009. No. 1. P.?.; Dubovik O. L. Criminal and Administrative Law: Interaction, Development Trends, and Disputable Problems of Legal Liability // Law and Politics. 2019. No. 2. P. ?; Dubovik O. L., Ryorikht A. A. Distinction between Criminal and Administrative Liability: Theoretical Grounds and Practical Consequences // Legal Research. 2017. No. 5. P. 107 – 123.



only in order to combat this type of criminal behavior and to ensure law and order, but also – far more often – to harmonize criminal legislation and actions of judicial authorities.

That is why it is interesting to compare rules establishing responsibility for infringements on public security under the Criminal Code of the Russian Federation (hereinafter the Criminal Code of the RF) and the Criminal Code of the Republic of Poland (hereinafter the Criminal Code of the RP). We must consider that both countries are parties to the relevant conventions and are states of the continental system of law (although Poland has been guided by the French model, and Russia – by the German one). Besides, it is necessary to consider not only the traditions of legal regulation, the features of criminalization, and the ways of formulating the specific legal penal prohibitions (even if they are proposed in international legal acts obliging both Russia and Poland), but also the real situation. Unlike the Russian Federation and the European Union as a whole, especially Germany, Poland pursues a stricter policy towards migrants from Islamic states. Claims against Poland are held at various levels – in the European Council, the European Commission, at the time of negotiations of subsidies, etc. But such a tough policy of PiS (Prawo i Sprawiedliwość) gives results: unlike Belgium, Germany, France, and other EU member states, not a single act of Islamic terrorism has been committed to this day in Poland. You can talk about the violation of human rights in connection with refusal to accept Syrian, Afghan, and other refugees, or you can talk about the task to ensure public security and to prevent acts of terrorism and other infringements on public security. The experience of the Russian Federation (in the sphere of lawmaking and law enforcement) shows that it is not easy to solve this problem.

## ***Systematics of crimes against public security under the Criminal Code of the RF and the Criminal Code of the RP***

It is quite different. The Criminal Code of the RF for crimes in the field of public security (Chapter 24) includes 41 articles containing basic and qualified elements of the crimes<sup>4</sup>, and the Criminal Code of the RP, section XX “Crimes against public security” includes only 11 articles. Among such crimes, the Polish lawmaker identifies, one may say, “summarized” crimes interpreted in the Russian doctrine as referring to other groups of infringements on benefits protected by law, for example, on the environment.

Considering the above, the list of crimes against public security under the Criminal Code of the RP shall be indicated taking into account that a number of acts may be punishable according to the additional criminal legislation. This is due to the fact that, unlike Russia, there is no complete (absolute, comprehensive) codification of the criminal legislation in Poland, as in many other countries. In addition to criminal codes, acts of mixed criminal-and-financial, criminal-and-economic, criminal-and-environmental, and other legislation are effective. Besides, in many countries, including Poland, there is an institution of criminal liability for minor offenses along with liability for administrative offenses. Besides, for example, with regard to ecological crimes (significantly connected with infringements on pub-

---

<sup>4</sup> Training Comments on the Criminal Code of the Russian Federation. 2-nd edition. Edited by A. E. Zhilinskiy. M.: Eksmo, 2006.



lic security, namely, ecological security), the criminal liability is established not in Criminal Codes, for example, in France and Sweden, but in Environmental Codes adopted in these countries.

With regard to penal prohibitions, it is necessary to point out the most significant difference in the lawmaking decisions of the Russian and Polish lawmakers from the very beginning. Section XX of the Criminal Code of the RP begins with Article 163 which establishes liability for causing the dangerous events if they threaten life or health of many people or property in significant amounts, such events may be: 1) fires; 2) destruction of building, flooding or slide of ground, rocks, or snow; 3) ignition of explosive or flammable substances or other sudden release of energy, spreading of toxic, burning substances; 4) sudden release of nuclear power or ionizing radiation. Article 164 contains data on the immediate danger created by the actions specified in Article 163. Logic that requires differentiation of penal prohibitions led to the fact that Article 165 establishes liability for other dangers, including creation of threat of epidemic or infectious diseases, epizootic diseases, and plant diseases; for production or introduction into circulation of substances, foodstuffs, or other goods harmful to human health, or pharmaceuticals that do not meet the binding quality requirements; for damage to equipment or creation of impossibility to use the equipment, especially equipment that supplies water, power, heat, gas, energy, or equipment that provides protection from danger, etc<sup>5</sup>.

Three articles of Section XX of the Criminal Code of the RP provide liability for financing the crimes of a terrorist nature (Article 165a), piracy (Article 166), and maritime banditry (Article 170). At that, piracy means hijacking of ship and aircraft by false pretense or violence against person or threat of such violence, and maritime banditry means arming or adapting of a ship to commit robbery at sea or service on such a ship<sup>6</sup>.

According to this article, the crimes against public security that are specific as per characteristics of objective aspects and have no direct analogy in Russian criminal law are contained in Article 167 of the Criminal Code of the RP: liability arises for placing the equipment or substances threatening the safety of persons or property on the ship or aircraft (§1), for damage or deterioration of navigation devices or inability to maintain them, if this can create a security threat (§2). In the process of determination of the crime nature, the provisions of Article 167 of the Criminal Code of the RP shall be compared with rules of the Criminal Code of the RF on transport crimes, diversion, sabotage, terrorism, etc.

According to general structure of the Criminal Code of the RP and traditions of articles organization, this section separates the articles on preparation (Article 168) and active repentance (Article 169), i.e. criminal legal instructions that are regulated in the general part of the Criminal Code of the RF.

Finally, Article 171 of the Criminal Code of the RP contains a general prohibition of production and circulation of hazardous substances. Liability is imposed on the person who without proper authorization or contrary to its conditions, produces, converts, accumulates,

<sup>5</sup> Kodeks karny część szczególna komentarz. Tom II. Komentarz do art. 117 – 277 k.k. Andrzej Zoll. Ed. Wyd. Krakow: Zakamycze, 2006.

<sup>6</sup> Kodeks karny. Kodeks karny. Praktyczny komentarz. Mozgawa Marek. red. Krakow: Zakamycze, 2006.



owns, uses, or sells explosive substances or equipment, radioactive materials, equipment emitting ionizing radiation, or other object or substance that can threaten life and health of many individuals or property in significant amounts<sup>7</sup>.

Thus, the Polish lawmaker has chosen the option of primary formulating the general prohibition of infringements on public security, unlike the Russian one, who specifies a number of detailed prohibitions, for example, in the sphere of fighting against terrorism (Articles 205–206<sup>6</sup>). Concerning crimes that infringe on two or more rights protected by law, different approaches are observed as well. According to the Criminal Code of the RF, some actions are related to infringements on environment (Chapter 26) or on public health (Chapter 25), if we are talking about actions that led to spreading of epidemics, epizootic diseases; production, storage, transportation, sales of goods and products, carrying out of work or rendering of services that do not meet safety requirements. In contrast to regulation adopted in the Criminal Code of the RP, the Russian Criminal Code contains a number of special prohibitions concerning circulation of hazardous substances and materials. But as mentioned above, it is necessary to consider that many prohibitions are contained in the Polish criminal-and-commercial and environmental-and-criminal legislation, and therefore there is no point in talking about legal gaps, although prohibitions and restrictions on handling such substances, materials, equipment, plants are formulated in different ways.

## ***Liability for infringements on security established in other sections of the Criminal Code of the RP***

In contrast to the structure adopted in the Criminal Code of the RF, the Polish lawmaker has placed a number of criminal infringements on security (for example, in the sphere of defense) not in the section XX of the Criminal Code of the RP. Thus, Article 140 on the attempted act of terrorism is the first one in Section XVIII “Crimes against national defense”. The purpose of this action is to weaken the state power, and the direct object is a unit of Armed Forces of the Republic of Poland or defense equipment. Liability for hostage taking is described in Article 252 of the Criminal Code of the RP (Section XXXII “Crimes against public order”), the same as liability for participation in mass riots – in Article 254 of the Criminal Code of the RP. In accordance with Article 255a punishment is to be imposed on persons who distribute or provide information that can facilitate the commission of crime of the terrorist nature with the intent that such a crime be committed (§1), as well as persons who participate in the training which may make it possible to commit crime of the terrorist nature (§2). In both cases, the sanction is from 3 months to 5 years imprisonment. Creation of group and criminal community (Article 258) as well as crossing of the Republic of Poland state border in order to commit a crime of the terrorist nature are designated as crimes against public order. Article 263 contains liability for production or sale of firearms and ammunition without proper authorization. Thus, various approaches to systematics of crimes against public security and public order are traced.

---

<sup>7</sup> Kodeks karny.45 Wyd. Warszawa: C.H. Beck,2016. – 125 s.



Regulation of liability for infringements on security of people and property in the Code of Minor Offenses of the Republic of Poland. Since in Poland, as in France, and in a number of other countries, there is a triad of “crimes-criminal offenses-administrative delicts/offenses”, infringements on security are contained both in mixed acts of legislation, for example, environmental one, and in the Code of Minor Offenses (Sections VIII and X). Thus, Article 73 provides liability for failure to fulfill the obligation to report the danger to an authorized body or person (sanction in the form of arrest or fine), and Article 82 – for violation or non-fulfillment of fire-fighting requirements, Article 82a – for failure to execute duties, which impedes fire protection, Article 83 – for careless handling of dangerous objects. The same section contains two articles regulating liability for violation of the rules of animal care and handling. In accordance with Article 77, punishment is to be imposed on persons who do not follow the usual or prescribed measures while handling the animal, and according to Article 78 – if the animal is teased or frightened to the extent that it becomes dangerous. Section VIII of the Code of Minor Offenses “Offenses against public order and peace” also contains a number of offenses, for example, Article 50a – possession of dangerous objects<sup>8</sup>.

As already noted, individual crimes may be regulated in acts of mixed security legislation. Doctrine of the Polish law contains various approaches. Scientists and practitioners are engaged in lively discussions on the reform of Polish law governing liability for commission of crimes, criminal offenses, and administrative legislation in Poland<sup>9</sup>.

## Conclusion

It seems that opinion of the Russian lawmaker and the doctrine of criminal law in relation to the range of acts infringing on public security is more consistent. Most clearly it can be traced in relation to crimes of a terrorist nature<sup>10</sup>. Hostage taking is also the infringement on public security, not on public order. At the same time, it may be necessary to discuss the validity of headings in section IX, chapters XXIV and XXV of the Criminal Code of the RF because the objects of crime are public security, public health, public morality (and ecology in Chapter 26), but reference to the public order<sup>11</sup> is given only in the title of section, although crimes such as misconduct and vandalism infringe on this object (legal benefit).

It is necessary to clarify the concepts of “security”, “order”, their relationship, classification of types of security (state, defense, environmental, nuclear, etc.). In this regard, it is cer-

---

<sup>8</sup> Bojarski M. radecki W. Kodeks wykroczeń. Komentarz. 4 wyd. Warszawa: C.H. Beck, 2006.

<sup>9</sup> Na styku prawa karnego i prawa o wykroczeniach. Zagadnienia materialnego- prawne oraz procesowe. Księga jubileuszowa dedykowana profesorowi Markowi Bojarskiemu. Wrocław: Wyd. Wrocławskiego Uniwersytetu, 2016.

<sup>10</sup> Kochoi S. M. Comments on the Criminal Code of the Russian Federation (article-by-article). M.: Wolters Kluwer, 2011. P. –531 – 542.; Special Part of the Criminal Code of the Russian Federation: Comments, Court Practice, Judicial Statistics / Under general editorship of V. M. Lebedev, ed.-in chief A. V. Galakhova. M.: PH Gorodets, 2009. P. 476 –489.

<sup>11</sup> Kochoi S. M. Comments on the Criminal Code of the Russian Federation (article-by-article). M.: Wolters Kluwer, 2011. P. –543.



tainly useful to analyze the experience (positive and negative) accumulated during the criminalization of infringements on public security and related legal benefits in various countries.