EXTREMISM AS A FACTOR OF DESTABILIZATION OF THE LEGAL ENVIRONMENT: LAW–THEORETICAL REPRESENTATION

Dina Viktorovna Alontseva
Olga Anatolyevna Lavrishcheva

ABSTRACT
The purpose of the article is a comprehensive scientific study of theoretical and practical problems associated with the implementation of the basic principles and directions of countering extremism as a threat to the national security of Russia. The methodological basis of the research was based on general scientific, private, and special methods of cognition. Methods of formal logic: description, comparison, classification, analysis and synthesis, and others, allowed characterizing the transformations in the field of countering extremism at the present time. The results of the study allow us to conclude that the definition of extremism is a very controversial issue, since there is no consensus among scientists in this respect, which emphasizes the importance and indicates the need to develop an agreed concept of extremism for its recognition at the national and international levels. Based on the theoretical and legal analysis of various interpretations of the term “extremism”, we have formulated this concept in its modern interpretation.

Keywords: Extremism. International law. Russian legislation. Scientific doctrine.

EXTREMISMO COMO FATOR DE DESESTABILIZAÇÃO DO AMBIENTE JURÍDICO: REPRESENTAÇÃO LEI–TEORIA

EL EXTREMISMO COMO FACTOR DESESTABILIZACIÓN DEL ENTORNO JURÍDICO: REPRESENTACIÓN TEÓRICA DE LA LEY

RESUMEN
El propósito del artículo es un estudio científico exhaustivo de los problemas teóricos y prácticos asociados con la implementación de los principios básicos y las direcciones de la lucha contra el extremismo como una amenaza para la seguridad nacional de Rusia. La base metodológica de la investigación se basó en métodos científicos generales, privados y especiales de cognición. Métodos de lógica formal: descripción, comparación, clasificación, análisis y síntesis, entre otros, permitieron caracterizar las transformaciones en el campo de la lucha contra el extremismo en la actualidad. Los resultados del estudio nos permiten concluir que la definición de extremismo es un tema muy controvertido, ya que no hay consenso entre los científicos a este respecto, lo que hace cuestionar la importancia y indica la necesidad de desarrollar un concepto acordado de extremismo para su reconocimiento a nivel nacional e internacional. Basándonos en el análisis teórico y jurídico de diversas interpretaciones del término “extremismo”, hemos formulado este concepto en su interpretación moderna.


INTRODUCTION

Extremism in modern Russia is a large-scale and complex threat to the national security of this country, since it targets the constitutional foundations of the state, sovereignty and territorial integrity of the Russian Federation, destabilization of the internal political and social situation by stirring up hatred or enmity based on gender, religion, or nationality, etc. This negative phenomenon is the most dangerous. It is the basis for terrorist activity as an extreme form of manifestation of extremist tendencies in all social spheres.

In addition, it must be borne in mind that the expansion of borders and the increase in the danger of extremism, unsettled regional and local armed conflicts giving rise to extremism, the predominant participation of structures of transnational organized crime in the implementation of international terrorist activities, the growth in the scale of illegal drug and arms trafficking in modern conditions is a global threat not only to the national security of our country, but also to the world’s international security.

Over the past decades, not only within our country, but also in the international arena, different aspects and more modern forms of struggle against all manifestations of extremism have been developed at the legislative and scientific level. The necessity and importance of studying the basic principles and aspects of countering extremism as a modern and global threat to national security in our country results from the following reasons.

Firstly, there is no clear regulation of the concept of “extremism” at the legislative level which gives rise to its various theoretical and legal interpretations and creates problems in law enforcement. Secondly, thirteen independent acts are recognized as extremist activities, the responsibility for which is not clearly delineated between the norms of the Code of Administrative Offenses of the Russian Federation and the Criminal Code of the Russian Federation. Thirdly, the presence of certain problems caused by the shortcomings of the legislative technique. So, for example, there is an unjustified confusion (combination) of two differing concepts of “extremist community” and “organized group” at the legislative level; to attribute not only hatred, but also enmity to the motive of crimes of an extremist orientation cannot be considered reasonable, since the term “enmity” characterizes not motives, but objectively existing relations based on mutual hatred, and so on.

All this necessitates a deep and comprehensive study of the main scientific and practical approaches to identifying and researching problems in the field of criminal prosecution for extremist crimes, elucidation of the reasons affecting these crimes, and the development of directions for countering extremist activities in Russia.

LITERATURE REVIEW

Among the dissertations dealing with this aspect, one can especially note: V.A. Burkovskaya, Criminal Religious Extremism: Criminal law and criminological foundations of counteraction (BURKOVSKAYA, 2006); L.I. Zalikhanova, Criminal law and criminological characteristics of the incitement of national, racial, religious hatred (ZALIKHANOVA, 2001); R.M. Uzdenov, Extremism: criminological and criminal legal problems of counteraction (UZDENOV, 2008); S.N. Fridinsky, Countering extremism activity (extremism) in Russia (socio-legal and criminological research) (FRIDINSKY, 2011); S.A. Yudicheva, Criminal liability for organizing and participating in an extremist community (YUDICHEVA, 2014); A.A. Mozhegova, Extremist crimes and offences of an extremist nature in the criminal law of the Russian Federation (MOZHEGOVA, 2015).

Thus, a large number of concepts, ideas, and scientific views have accumulated in the arsenal of domestic science, substantiating the legal nature of extremism and various problematic aspects of countering this negative phenomenon. At the same time, the analysis of domestic scientific works on the topic under study indicates that in the science of criminal and criminal procedural law, insufficient attention is paid to modern organizational and legal instruments for countering extremism on the territory of Russia, which entailed the need for a comprehensive scientific understanding of these issues.

METHODOLOGY
The methodological basis of the research includes general scientific, particular, and special methods of cognition. The general scientific dialectical method allowed considering the problem of legal relations arising in the legal regulation of countering extremism in its various manifestations, substantiating the advantages and disadvantages of various approaches to the study of this issue, demonstrating changes in the legislation of the Russian Federation, regulating these relations in terms of the totality of internal and external factors. Methods of formal logic will be used to characterize transformations in the field of legal regulation of countering extremism in its various manifestations at the current stage, and to identify flaws in normative regulation. The methods of scientific knowledge will help to conduct a study of the current legislation for its relevance to the problem under consideration. In order to correlate various legal norms, comparative legal and formal legal methods will be applied in the article. The use of a combination of various methods allowed solving the assigned tasks and achieving the stated goal.

Empirical methods. Analysis and generalization of Russian experience in improving domestic legislation will lay the foundation for harmonizing existing legislative acts to increase the level of consistency in the government bodies’ actions. The method of substantive analysis will ensure the completeness, reliability, and consistency of the data obtained as a result of generalization. With the help of predictive methods, trends in the development of the object under study will be determined and a vision of possible positive or negative consequences of the implementation of the Russian Federation legislation provisions will be provided. Some sociological (modeling, extrapolation) and statistical (classification, correlation) methods of cognition will be used to identify certain patterns and trends in the development of the object under study and to determine the main contradictions and ways to overcome them. The use of qualitative research methods (analysis and generalization, comparison, modeling, etc.) is results from the need to formulate hypotheses and productive ideas, and the need to understand and explain the data already available.

RESULTS
The definition of extremism is a highly controversial issue, since there is no consensus among scientists on this matter, which emphasizes the importance and indicates the need to develop a single concept of extremism for its recognition at the national and international levels. The theoretical background for the formation of such a legal category as extremism was laid at the beginning of the 20th century. It was during this historical period in France that the idea was formed that supporters of various political movements who are ideologically convinced of certain political views and slogans are extremists (MARKEDOV, SHARAVIN, 2002).

As a consequence, such an interpretation of extremism, taking into account the modern realities of the development of society, was reflected in domestic scientific and referential literature. For example, A.A. Kotenev and S.V. Lekarev in the Modern Encyclopedic Dictionary note that it is necessary to understand extremism as “adherence to extremes in views, measures, and actions” and “adherence in politics and ideas to extreme views and actions” (KOTÈNEV, 2001).

Domestic scientists M.I. Labunets and V.Yu. Vereshchagin formed the concept of political extremism, understanding it as a special ideology based on common principles, which are based on intolerance towards opponents; violent actions that have a physical effect on them and suppress them (VERESHCHAGIN, 2003). It can be observed that this term is revealed from the political point of view and is not legal in nature.

In the modern sense, the term “extremism” should be perceived not only as adherence to a certain ideology, but also as a set of illegal acts implemented in practice. It is necessary to note E.P. Sergun’s opinion, who discloses the concept of “extremism” as actions for which domestic legislation provides for responsibility; “adherence to a certain system of views and ideas based on intolerance to the fundamental principles of the constitutional order of the Russian Federation and democratic rights and freedoms of man and citizen protected by the state, characterized by internal willingness to be actively involved in translating such views into reality in criminal ways” (SERGUN, 2009). Thus, it gives the broader understanding of this concept and clearly defines the object of the crime (not only the political system and social order, but also the legal status of a person).

According to V.I. Vlasov, extremism differs from other types of illegal offenses (crimes) by a set of certain elements: goals and motives, which are based on religious, national, ethnic hostility and enmity, exacerbated by the socio-political vectors for development of a particular state (VLASOV, 2003). O.V. Karyagina and I.V. Burov...
revealed the essence of the term “extremism” through the enumeration of the types of illegal acts that describe extremist activity: 1) aimed to change the constitutional order, a characteristic feature of which is the use of violence; 2) terrorist-bent orientation, the basis of which is the public justification of terrorism and other terrorist activities; 3) extremist orientation, encroaching on the rights and freedoms of a person and a citizen, depending on his social, racial, national, religious or linguistic background or attitude to religion; 4) contributing to extremism, including the financing of these actions” (KARYAGINA, 2016).

Therefore, we can state that they adhere to the point of view that extremism is the ideological superiority of some people over others due to various factors (linguistic, ethnic, racial, or religious hatred or hostility, etc.), and they consider activities in the extremist sphere as the realization of their beliefs and ideas, by committing certain illegal acts or appealing for their commission. Thus, one may observe that the interpretations of the term “extremism” we have analyzed are the most general and can be specified, supplemented, and made precise. They provide a framework for understanding the term, which, unfortunately, has begun to appear quite often in the vocabulary.

For our country, the manifestation of extremism is especially dangerous. More than 190 peoples live on the territory of the Russian Federation, who adhere to various religions, political, and social views. These factors together are a determinant of interethnic and religious conflicts. Extremist activities take away a huge number of innocent lives, cause irreparable harm to people, instill fear and horror in society or even the whole world, and also undermine the authority of the state and the law enforcement system, pose a real threat to the livelihood of our state, violate the Russian citizens’ constitutional rights and freedoms, and encroach on public order.

In Russian society, this phenomenon is widespread and, of course, causes irreparable harm and damage to the socio-cultural and socio-economic development of the state. According to the statistics of the Ministry of Internal Affairs of Russia, 585 extremist crimes were registered in 2019, and the number of these crimes amounted to 449 over January–June, 2020, and by the end of October 2020 their number increased to 708. It can be observed that in 2018 similar crimes numbered in 1265, in 2017 their number was 1521 [Prosecutor General’s Office of the Russian Federation: official website [Electronic resource]. - Moscow. - Updated within 24 hours. - URL: http://www.genproc.gov.ru (Date of access 06.10.2020)]. Despite a significant decrease in the number of extremist crimes, this problem remains urgent. This is explained by the fact that extremism as a criminal phenomenon is constantly transforming and acquiring new features and forms, which complicates the process of its complete eradication.

Within this research, it is necessary to dwell on the international aspect of the evolution of this term. In addition, it should be emphasized that several conventions have been developed and are currently operating in the international arena, which regulate the legal interpretation of extremism and the principles of combating this negative phenomenon.

Council of Europe Resolution 1344 (29 September 2003), Paragraph 3 explains the concept of extremism as follows: “... a form of political activity that explicitly or subtly denies the principles of parliamentary democracy and is based on the ideology and practice of intolerance, alienation, xenophobia, anti-Semitism, and ultranationalism” [PACE Resolution “On the Threat to Democracy from Extremist Parties and Movements in Europe” dated September 29, 2003, No. 1344 (2003) [Electronic resource]: as of November 1, 2020 // Consultant Plus: legal reference system: website. - 2020. - URL: http://www.consultant.ru/ (Date of access: 01.11.2020)].

The broader understanding of the term “extremism” is regulated in the Shanghai Convention: “this is an act aimed to seize power or keep it by violent methods, to change the constitutional system of the state through coercion, and a violent encroachment on public safety, including the organization in the above purposes of illegal armed groups or participation in them; and it is prosecuted according to criminal law” Shanghai Convention on Combating Terrorism, Separatism and Extremism (Shanghai, June 15, 2001) [Electronic resource]: as of November 1, 2020 // Consultant Plus: legal reference system: website. - 2020. - URL: http://www.consultant.ru/ (Date of access: 01.11.2020)].

However, these international acts have a regional character and extend only to a number of specific countries that took part in their signing and ratification. Thus, there is currently no uniform interpretation of the term “extremism” at international scale. The main reason for this is that each country, regarding its priority factors (historical, cultural, political, and religious), seeks to independently regulate this concept in the national standards.

As for domestic legislation, the concept of “extremist activity” is mentioned in the Federal Law of July 25, 2002.
No. 114-FZ [Federal Law of July 25, 2002 No. 114-FZ On Combating Extremist Activities [Electronic resource]: as of November 1, 2020 // Consultant Plus: legal reference system: website. - 2020. - URL: http://www.consultant.ru/ (Date of access: 01.11.2020)] by a mere enumeration in Art. 1 of all essential features that reveal the current interpretation of this concept. Furthermore, it is necessary to highlight several legal conflicts that were admitted by the legislator when interpreting this concept. The understanding is based, first of all, on the view of extremist activity as a socially dangerous act, through a clear enumeration of unlawful actions (enumeration approach); the legal categories of “extremist activity” and “extremism” according to their meaning are equated and considered as synonyms; Art. 1 lists the acts, the responsibility for which goes beyond the framework of the Criminal Code of the Russian Federation [Criminal Code of the Russian Federation of June 13, 1996 No. 63-FZ (as amended on October 27, 2020) [Electronic resource]: as of November 1, 2020 // Consultant Plus: legal reference system: website. - 2020. - URL: http://www.consultant.ru/ (Date of access: 01.11.2020)] and is regulated in the Code of Administrative Offenses of the Russian Federation [The Code of Administrative Offenses of the Russian Federation of December 30, 2001 No. 195-FZ (ed. from 15.10.2020, as amended on October 16, 2020) [Electronic resource]: as of November 1, 2020 // Consultant Plus: legal reference system: website. - 2020. - URL: http://www.consultant.ru/ (Date of access: November 1, 2020)].

DISCUSSION

Mandatory elements are singled out as part of any crime which allows revealing and characterizing the features of this type of illegal behavior. One of the traditional and essential elements of a crime is the object. The correct identification of the object allows differentiating the corpus delicti, giving legal qualifications according to the actually committed actions. On the basis of this element of the corpus delicti, the nature of the crime and its social danger are established, which determines the choice of means used to prevent or solve a crime. The question of the essence of the object of a crime within the framework of criminal law is still controversial. For instance, subjective human rights, legal norms, benefits (interests) of people or legal relations are treated as the object of a crime.

It should be noted that the hierarchical relationships of the norms of the current Special Part of the Criminal Code of the Russian Federation [Criminal Code of the Russian Federation of June 13, 1996 No. 63-FZ (as amended on October 27, 2020) [Electronic resource]: as of November 1, 2020 // Consultant Plus: legal reference system: website. - 2020. - URL: http://www.consultant.ru/ (Date of access: 01.11.2020)] are manifested in the levels of classification of crimes by institutions, depending on the object of the crime. The main elements of extremist crimes are revealed in the Criminal Code of the Russian Federation (Articles 280, 282, 282.1, 282.2, 282.3 of the Criminal Code of the Russian Federation) and are regulated in Chapter 29 of the Section "State Power Crimes", which deals with unlawful acts against the foundations of the constitutional order and security of our state. Thus, it can be stated that the generic object of these offenses is, first of all, state power in its various legal manifestations, which ensures the stability of the fundamental principles of the constitutional order and security of the Russian Federation and favors the effective functioning of state bodies and ensures the normal realization of the service interests in local government or state service.

In addition, the foundations of the constitutional system are declared in Chapter I of the Federal Constitutional Law “Constitution of the Russian Federation” [Constitution of the Russian Federation (adopted by popular vote on December 12, 1993) [Electronic resource]: as of November 1, 2020: subject to amendments introduced by the Laws of the Russian Federation on amendments to the Constitution of the Russian Federation // Consultant Plus: legal reference system: website. - 2020. - URL: http://www.consultant.ru/ (Date of access: 10.11.2020)] as the fundamental principles defining the essence of a democratic social legal state, the constitutional and legal status of an individual, the foundations of the economic basis and the rule of law, and also governing the formation mechanism of government bodies and coordination arrangements between them.

The legal content of the security of the Russian Federation was revealed in the Law of the same name dated March 5, 1992, No. 2446-I, which has now become invalid. This act regulates the essence of this concept through the disclosure of its constituent elements: the safety of society and the individual. Security is understood as the state of protection of the vital interests of the individual, society, and the state from internal and external threats, and vital interests can be interpreted as a set of needs, attending to which reliably ensures the existence and possibilities of progressive development of the individual, society and the state (ANDRIYANOV, 2017).

Thus, it can be argued that the main objects of safety and security are: firstly, the state with its constitutional foundations and sovereignty; secondly, the constitutional and legal status of an individual with close reference
to his rights, freedoms, and legitimate interests; and thirdly, society, including its moral and material values. Therefore, one may state that the specific object of the main extremist crimes provided for in the Criminal Code of the Russian Federation is, in a narrow sense, the security of the individual, and in a broad sense—the security of the state, which is related to the object of protection through the constitutional system.

At the same time, it is necessary to emphasize that there is still no uniform understanding of the direct target of extremist crimes in criminal law science. So, for instance, in his scientific article “The Target of Crimes Associated with the Implementation of Extremist Activities”, H.M. Muzhakhoev writes that the direct object of the illegal acts provided for in Art. 280 of the Criminal Code of the Russian Federation “Public Calls for the Commission of the Extremist Activity” are usually public relations associated with the constitutional prohibition of the extremist activity or its prevention (MUZHAKHOEV, 2017).

As a direct object of a criminal offense, responsibility for which is provided for in Article 282 of the Criminal Code of the Russian Federation, according to M.U. Yakhyaeva, are:

1) legal status, which includes such elements as constitutional rights and freedoms of a citizen and a person, honor, and dignity, which they have the right to protect by legal means, regardless of race, religion, and take full advantage of it;

2) sanctions of a constitutional nature for inciting national, racial, and religious hostility and enmity;

3) a set of public relations of a legal nature, which are formed regarding the unity of visions in relation to the policy implemented in Russian society and intergroup understanding in this area (YAKHYAEVA, 2016).

In the domestic literature, there are other points of view regarding the understanding of the direct object of the considered types of crimes. For instance, conducting a comprehensive criminal-legal and criminal-political analysis of extremism, A.G. Khlebushkin points out that the main object of organizing the activities of the extremist community is, first of all, the foundations of the constitutional establishment of interpersonal relations: “in these norms, obligatory motives are indicated—a certain civil enmity or hatred” (KHLEBUSHKIN, 2007). Of great importance for the correct qualification of the main elements of extremist crimes (in addition to the object) is the objective side, which is understood as a system of signs that determine the criminal legal significance of a socially dangerous act as an external event or external activity of a subject.

For each corpus delicti of extremist crimes its own actus reus is stipulated. So, for instance, the actus reus of the crime under Art. 280 of the Criminal Code of the Russian Federation “Public Calls for the Commission of the Extremist Activity” is reflected precisely in active actions. This viewpoint was reiterated in judicial practice: public appeals should be understood as “appeals expressed in any form to other persons to induce them to carry out extremist activities” [paragraph 4 of the Plenum Resolution of the Supreme Court of August 26, 2011, No. 11 [Plenum Resolution of the Supreme Court of the Russian Federation of June 28, 2011 No. 11 “On Judicial Practice in Criminal Cases with respect to Crimes of Extremist orientation” (as amended on September 20, 2018) [Electronic resource] // Consultant Plus: legal reference system: website. - 2020. - URL: http://www.consultant.ru/ [Date of access: 11.11.2020]).] For a more accurate understanding of the actus reus of this type of crime, it is necessary to follow the norms of the current Federal Law of July 25, 2002 No. 114-FZ [Federal Law of July 25, 2002 No. 114-FZ “On Combating Extremist Activity” [Electronic resource]; as of November 1, 2020 // Consultant Plus: legal reference system: website. - 2020. - URL: http://www.consultant.ru/ [Date of access: 01.11.2020]). In this respect, the following factors are of great importance: the place, the setting, and the way of appealing (active actions at rallies, meetings, and demonstrations; the distribution of leaflets with encouraging appeals; and sending messages via e-mail or through various mobile operators).

The crime will be considered completed from the moment of public proclamation of at least one of the appeals having the signs of an extremist nature, while the result of such an appeal does not matter. It is important to emphasize that the main qualifying feature of this corpus delicti is its commission through various forms of information and telecommunication technologies, namely, Internet networks, e-mail, media, etc. The actus reus of the crime “incitement to hatred or enmity, as well as humiliation of human dignity” is characterized by the active actions indicated in part 1 of Article 282 of the Criminal Code of the Russian Federation: firstly, actions aimed to incite hatred or enmity; secondly, actions aimed to humiliate the dignity of a person or a group of persons, which are aimed to incite hatred or enmity, as well as to humiliate the dignity of a person or a group of persons based on gender, race, nationality, language, origin, attitude to religion or belonging to any social group.
An original approach regarding the interpretation of the actus reus of this type of crime was proposed by L.I. Zalikhanova in her dissertation: “the actus reus of the considered corpus delicti is formed by actions aimed to disseminate information and appeals or to commit other actions that form a feeling of alienation, discontent, anger, and revenge between people of different nationalities, races, and religions, which inevitably leads to interethnic, interracial, and interreligious clashes” [ZALIKHANOVA, 2001].

The broader point of view regarding the actus reus of the crime regulated in Art. 282 of the Criminal Code of the Russian Federation suggested A.E. Belyaev. He noted that “the actions provided for by Part 1 of Art. 282 of the Criminal Code of the Russian Federation, may consist in the dissemination of views, ideas, assessments or appeals; committing provocations (feigns, false accusations, etc.), which can be performed in oral, written or other forms.” As the scientist points out, “the dissemination of assessments, views, ideas, appeals, as a rule, relies on imaginary facts or biased information that arouses a feeling of hostility to the way of life, historical role, the structure of family and household relations, culture, mores and customs of a particular nationality, race, as well as cult values and rituals of a certain faith” [BELYAEVA, 2019].

This led us to conclude that there is a similarity in the scientists’ opinions cited above. They consistently perceive the content of actions that form enmity, conflict relations, and hostility between various social groups. At the same time, there are differences in the interpretations of the ways by which the guilty persons exercise their intent. This results from the fact that an expanded list of illegal actions is regulated, while their content is not revealed in the current Criminal Code of the Russian Federation.

Organization of an extremist community or a public or religious association or other organization, in respect of which the court adopted res judicata on the liquidation or prohibition of activity in connection with the engagement in extremist activities, subject to qualification under Part 1 of Art. 282.1 and under Part 1 of Art. 282.2 of the Criminal Code of the Russian Federation, respectively, is characterized by the commission of at least one of the following acts: establishment; leadership as a whole or part of the whole; creation of an association of organizers, leaders or other representatives of units or structural subdivisions of such an association. This conclusion was made on the basis of an analysis of judicial practical materials [Plenum Resolution of the Supreme Court of the Russian Federation of June 28, 2011 No. 11 “On Court Practice on Criminal Cases on Crimes of an Extremist Nature” (as amended on September 20, 2018) [Electronic resource] // Consultant Plus: legal reference system: website. - 2020. - URL: http://www.consultant.ru/ (Date of access: 11.11.2020)].

Analysis of criminal norms and norms of Art. 1 of the Federal Law “On Combating Extremist Activities” demonstrates that the concept of “extremist organization” is regulated at the legislative level: a religious or public association, in respect of which the court adopted res judicata on the liquidation or prohibition of activities in connection with the implementation of extremist activities. At the same time, it is necessary to consider the judicial practice according to which “a person can be brought to criminal liability under Art. 282.2, if the relevant acts were committed by him after the official publication of information on the recognition of the relevant organization as extremist and the prohibition of its activity on the territory of the Russian Federation by a court decision” [Plenum Resolution of the Supreme Court of the Russian Federation of June 28, 2011 No. 11 “On Court Practice on Criminal Cases on Crimes of an Extremist Nature” (as amended on September 20, 2018) [Electronic resource] // Consultant Plus: legal reference system: website. - 2020. - URL: http://www.consultant.ru/ (Date of access: 11.11.2020)]. The list of religious organizations and public associations, the activity of which is suspended or terminated by judicial procedure due to the proof of their extremist activities, is officially published on the website of the Ministry of Justice of the Russian Federation and posted in the media, for example, in the “Rossiyskaya Gazeta” [Order of the Government of the Russian Federation of 15 October 2007 No. 1420-r “On the official periodical print media that publishes the list of public and religious associations, other organizations in respect of which the court has adopted res judicata on the liquidation or prohibition of activity on the grounds provided for by the Federal Law “On Combating Extremist Activities”, and a list of public and religious associations, whose activities are suspended in connection with the implementation of extremist activities” [Electronic resource], as of November 1, 2020 // Consultant Plus: legal reference system: website. - 2020. - URL: http://www.consultant.ru/ (Date of access: 01.11.2020)].

It should be noted that in part 1.1. Articles 282.1 and 282.2, responsibility for the following actions is regulated: persuading, recruiting or otherwise involving a person in the activities of an extremist community (public association or religious organization), in respect of which the court has taken res judicata on the liquidation or
prohibition of activities in connection with the implementation of activities of an extremist nature. The act, the responsibility for the commission of which is provided for by Part 2 of Art. 282.1 of the Criminal Code of the Russian Federation, regarding the actus reus, consists in the commission of an action—participation in an extremist community, by which it is necessary to understand affiliation to such community and participation in preparation for the commission of one or more crimes of an extremist orientation and (or) the direct commission of these crimes, as well as the execution of functional responsibilities by a person to support the activities of such a community (funding, provision of information, and record keeping).

The act prohibited by part 2 of Art. 282.2 of the Criminal Code of the Russian Federation is characterized by the commission by a person of intentional actions aimed to achieve the goals of an extremist organization (conducting conversations in order to promote the activities of a banned organization, recruiting new members, and direct participation in ongoing events). However, in our opinion, the wording of Art. 282.2 of the Criminal Code of the Russian Federation is not entirely correct, since the title of the article and its content do not coincide.

The actus reus of the criminal encroachment “financing of extremist activities” is revealed in Art. 282.3 of the Criminal Code of the Russian Federation and is represented by the implementation of the following actions, which are aimed to provide or collect material resources, or provide services of a financial nature, which were initially attracted to sponsor the organization, prepare, and commit a criminal act or criminal acts with an extremist orientation, or to carry out activities by an extremist community or an extremist organization (ZHURAVLEV, 2018).

Subjective signs of any criminal offense are the subject and the mens rea. Certain signs are characteristic of the subjects of extremist crimes. Firstly, it is an individual, namely: citizens of Russia, foreign citizens, and persons without citizenship. At the same time, general and special subjects of these types of crimes can be noted (part 2 of Art. 280 of the Criminal Code of the Russian Federation), the latter include persons engaged in the production (publication) of print media, television programs, leaflets, etc. – editors and other managers, as well as authors of articles, reports, and programs, which contain appeals for the implementation of various types of extremist activities.

Secondly, the presence of mental sanity, which in the science of criminal law is understood as “the mental status of a person, which determines his ability to realize the actual nature and social danger of his actions and to direct them” (ALDOKHINA, 2017). In Art. 21 of the Criminal Code of the Russian Federation, the analyzed feature of the subject of a crime is determined through insanity, which includes two legal and four medical criteria. If the former means the inability of a person to realize the actual nature and social danger of his act or to direct it, then the latter include an indication of four types of mental deviations: chronic mental disorder, temporary mental disorder, dementia, or another morbid condition of the psyche. If at least one medical and one legal criterion is identified, criminal liability is excluded.

Thirdly, reaching the age established by the criminal law. In accordance with Part 1 of Art. 20 of the Criminal Code of the Russian Federation “a person who has reached the age of sixteen by the time of the commission of a crime is subject to criminal liability” [Criminal Code of the Russian Federation of June 13, 1996 No. 63-FZ (as amended on October 27, 2020) [Electronic resource]: as of November 1 2020 // Consultant Plus: legal reference system: website. - 2020. – URL: http://www.consultant.ru/ (Date of access: 01.11.2020)]. In addition, according to Part 3 of Art. 20 of the Criminal Code of the Russian Federation, a juvenile is not subject to criminal liability if he, although he has reached the age of criminal responsibility established by part 1 or part 2 of this article, but due to a mental retardation not associated with a mental disorder, could not be fully aware of the actual nature and social danger of his actions or failure to act during the commission of a socially dangerous act.


With regard to all crimes of this category, except for public appeals to carry out extremist activities, a qualifying feature is regulated at the legislative level: the commission of an act by a person using his official position (Clause “б” Part 2 of Art. 282, Part 3 of Art. 282.1 and Part 3 of Art.282.2 of the Criminal Code of the Russian Federation). Moreover, at the level of the Plenum Resolution of the Supreme Court of the Russian Federation (2011), clarifications are provided on who is included in the list of this category of persons. In particular, these are “officials with the features provided for in Note 1 to Article 285 of the Criminal Code of the Russian Federation,
state or municipal employees who are not officials, as well as other persons who meet the requirements provided for in Note 1 to Article 201 of the Criminal Code of the Russian Federation” (Plenum Resolution of the Supreme Court of the Russian Federation of June 28, 2011 No. 11 “On Judicial Practice in Criminal Cases with respect to Crimes of Extremist orientation” [as amended on September 20, 2018] [Electronic resource] // Consultant Plus: legal reference system: website. - 2020. - URL: http://www.consultant.ru/ [Date of access: 11.11.2020]).

An analysis of the materials of judicial practice shows that the circle of subjects to which the officials belong has been expanded. So, for example, they include not only persons exercising the functions of government representatives at various levels, but also persons performing managerial functions, both in a commercial and non-commercial organization, which do not have the status of state or municipal institutions. The mens rea of the types of extremist crimes we are considering is characterized by guilt, motive, and purpose. Particular importance in qualifying the committed act, within the framework of the analyzed offenses, is given to guilt, which is expressed in the form of direct intent.

As for the motive and purpose, this issue at the federal level is not clearly defined. So, for example, Article 282 of the Criminal Code of the Russian Federation does not provide for such signs of the mens rea of the crime as motive or purpose, it contains such wording as “actions aimed to...”. At the same time, the analysis of Art. 280 of the Criminal Code of the Russian Federation makes it possible to single out the general purpose of this corpus delicti: the failure to act or the commission of actions of a radical violent nature aimed to encourage a person to carry out various types of extremist activity.

Certain representatives of domestic science (L.V. Inogamova-Khegai, V.S. Komissarova, A.I. Rarog) highlight a special purpose that allows characterizing the mens rea of the corpus delicti under Art. 282.2 of the Criminal Code of the Russian Federation as “continuation of the activities of a liquidated legal entity or prohibited extremist activities of an organization that is not a legal entity” (ZHURAVLEV, 2018).

CONCLUSIONS

To sum up, a number of significant conclusions can be drawn. Firstly, the essential signs of extremism as a legal phenomenon are manifested in the following factors: it is realized not only in the implementation of radical (violent) actions, but also through exposure to ways of a non-violent nature (production and distribution of products, materials with an extremist orientation; psychological impact for the purpose of motivation regarding ethnic, national or religious enmity and hostility); it is a large-scale systemic phenomenon that is social in nature and combines ideological views and beliefs that contradict the norms of the current domestic legislation; the object of encroachments in the course of extremist activity is not only the foundations of state administration and public order, but also the constitutional and legal status of a person.

Secondly, in order to prevent the spread of new extremist crimes, it is necessary to eliminate the controversial interpretation between the norms of criminal law on the identity of the concepts of “extremism” and “extremist activity” by regulating the most accurate definition of the term “extremism” in the text of the current criminal law at the federal level. T

Thirdly, a systematic analysis of the mens rea and actus reus of extremist offenses regulated in the Criminal Code of the Russian Federation allowed more full and reliable understanding of the essence of all elements of these offenses; identifying gaps in the current criminal legislation in this area, without the timely elimination of which it is impossible to make a breakthrough in improving the norms of criminal responsibility for extremist crimes.

Fourthly, on the basis of the theoretical and legal analysis of various interpretations of the term “extremism”, the authors consider it necessary to formulate this concept in a modern interpretation. Extremism should be understood as “social unlawful behavior of both a radical and non-violent nature, based on extremely oppositional views, expressed both in actions and appeals for such actions that are directed against the foundations of the state system and government, public law and order and significantly violate constitutional rights, freedoms, and legitimate interests of other people”.
REFERENCES


FRIDINSKY, S.N. Counteraction to extremist activity (extremism) in Russia (socio-legal and criminological research) dis. ... Dr. Legal Sciences. Moscow: Kutafin Moscow State Law University, 2011, 336 p.


SERGUN, E.P. Extremism in Russian criminal law. dis. ... Cand. Legal Sciences. Tambov: The All-Russian State
University of Justice, 2009, 178 p.


YUDICHEVA, S.A. Criminal responsibility for organizing an extremist community and participation in it dis. ... Cand. Legal Sciences. Moscow: Moscow Region State University, 2014. 219 p.

ZALIKHANOVA, L.I. Criminal legal and criminological characteristics of the incitement of national, racial, religious hatred. dis. ... Cand. Legal Sciences. Rostov-on-Don: Kabardino-Balkarian State University named after H.M. Berbekov, 2001, 194 p.


---

1 Bunin Yelets State University, Yelets, Russia. E-mail: dina.alontseva@yandex.ru. ORCID: https://orcid.org/0000-0003-2486-9248.
2 Bunin Yelets State University, Yelets, Russia. E-mail: olgalevishcheva@yandex.ru. ORCID: https://orcid.org/0000-0003-4012-5505.

Received on: 29 Jan. 2021