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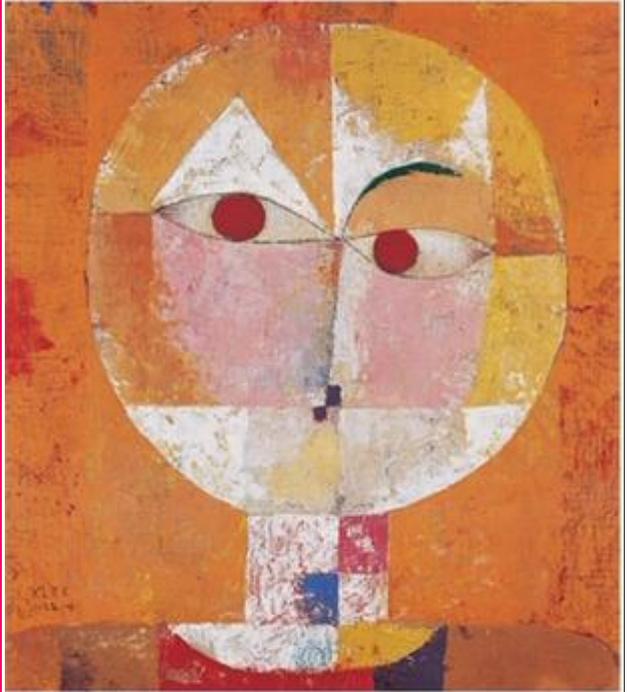
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Security of the person and criminal remedies for its provision

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Abstract

The study aims to investigate the security of the person and criminal remedies for its provision via the dialectical method of scientific knowledge, the methods of analysis, synthesis, induction, deduction, as well as the method of scientific modeling. As a result, the provisions establishing criminal liability for sexual abuse through the Internet have been included in criminal laws of the countries of the European Union. The authors concluded that the time has come to replace in the Russian criminal law the title of Section VII Crimes against the Person with the title Crimes against the Security of the Person.

Keywords: Security, Criminal Law, Human Rights, Crime

Seguridad de la persona y recursos penales para su provisión

Resumen

El estudio tiene como objetivo investigar la seguridad de la persona y los recursos penales para su provisión a través del método

dialéctico del conocimiento científico, los métodos de análisis, síntesis, inducción, deducción, así como el método de modelado científico. Como resultado, las disposiciones que establecen la responsabilidad penal por abuso sexual a través de Internet se han incluido en las leyes penales de los países de la Unión Europea. Los autores concluyeron que ha llegado el momento de reemplazar en el derecho penal ruso el título de la Sección VII Crímenes contra la Persona con el título Crímenes contra la Seguridad de la Persona.

Palabras clave: seguridad, derecho penal, derechos humanos, delincuencia.

1. INTRODUCTION

Ensuring security of the person is the most difficult for a state, since it involves security and protection of a wide variety of rights, freedoms, interests and benefits of each person, including those that constitute the sphere of intimate, interpersonal and family relations, that is those, which are sufficiently private, the right of intervention in which a state reserves for itself only in extreme cases, as a rule, after a criminal attack committed against them. At the same time, as a rule, citizens assess the activities of a state in the field of security based on the evaluation of their own security. Therefore, it seems quite legitimate and logical that security of the person has become a central category in political discussions in the field of security (SORENSEN, 1996).

Today in the process of globalization and the ideas of a new cosmopolitanism human security issues reach a new level. According to the Constitution of the Russian Federation, man, his rights and

freedoms are the highest value, so their recognition, observance and protection are proclaimed the duty of the state, whereby it takes various measures aimed at the fulfillment of this duty and above all legal duties. One of the basic Russian laws designed to ensure security is the Federal Law On Security. It should be noted that the said law does not disclose the essence of security of the person: it does not reflect any list of vital interests or benefits of a person, nor the level of legal protection, nor the types of threats and their degree of danger to a person. The mechanism to ensure the security of the person is not disclosed. According to HERLEY AND VAN OORSCHOT (2018), science is the best and only way to study security. At the same time, today it is necessary to apply an interdisciplinary systematic approach in the development of the general theory of science of security, taking into account the complexity of the concept of security.

As such, the essence of security of the person today is not developed in detail in any of sciences, despite the fact that this concept is used quite often in various fields and branches of knowledge. Human security reflects the need for conceptual innovation in political, legal, national and international discourse. The analysis of existing approaches to the content of security of the person allows to narrow down its essence to protection of a person from various hazards or threats, the sources and factors of which are diverse: natural phenomena, mechanisms of functioning of technical instruments, behavior of animals and people (both conscious and unconscious). At the same time, the main means of ensuring security of the person is

still a state, since it represents a single important macrostructure that is important for security of the person (JAFARI ET AL, 2017: LESTARI ET AL, 2019: ANANE & ADU-MENSAH, 2019).

Criminal law is designed to ensure the security of the person from the most dangerous threats emanating from members of society themselves. It contains an exhaustive list of those acts that are the most dangerous for a person, society and state. Besides that, it establishes the most stringent means of state influence on persons posing a security threat. At the same time, it is noteworthy that the Criminal Code of the Russian Federation does not contain a direct reference to the protection of the security of the person. Only social and state security are defined as one of the objects of criminal law protection. Moreover, the concept of security of the person is not even mentioned in the Criminal Code of the Russian Federation (ROZNAI, 2014).

2. METHODS

In the course of the research, first of all, the dialectical method of scientific knowledge was used in the framework of philosophical understanding of the phenomenon of security of the person. The systematic approach allowed to comprehensively study the system of legal provision of security of the person in the aggregate and the integrity of its elements. The functional method made it possible to identify the functions of criminal law in the provision of security of the

person. In addition to these methods, the methods of analysis, synthesis, induction, deduction, as well as the method of scientific modeling were used, which allowed to study the model of provision of security of the person by criminal remedies.

3. RESULTS AND DISCUSSION

First of all, it is necessary to address the issue of the link between the concepts of security of the person and personal security. The positions of scientists on the connection of these concepts are significantly different. Some researchers identify them, others – distinguish. Thus, K.S. Belsky sees in the concepts of personal security and security of the person their connection as a part of the whole and the whole (respectively). Supporting the idea of differentiation of the concepts in question, we believe that they are on different planes. Security of the person is the absolute state of security of any person. This concept is complete and, therefore, is independently used, since it contains sufficient information and gives the idea of a person whose security is meant. In other words, it is about any person, an individual regardless of his/her social status (BODELIER, 2011).

The category of personal security defines that feature of a person, which is on the basis of threats to him/her. Therefore, in our opinion, the concept of personal security has a key feature – the status

of the person, whose security is assumed. Therefore, personal security should be discussed only in the case of endangering a person in connection with his/her social position. Quite clearly, the status of a person, which determines the danger or threat to such a person, can be traced in the norms of the Russian criminal law. Thus, Article 311 of the Criminal Code mentions the security of judges and other participants in criminal proceedings, and Article 320 of the Criminal Code mentions the security of law enforcement or supervisory authority officer. The status of a person determines the protection of interests, benefits, human rights and freedoms, such as life, health, honor, dignity in a number of Russian and foreign criminal law provisions (GEYSEN & VERBRUGGEN, 2003).

As a clear example of the provision of personal security, we can name personal security of witnesses and other participants in criminal proceedings. In foreign countries, the regulatory framework for the protection of witnesses and other participants in the criminal process has been functioning for a long time, in connection with which they have accumulated sufficient experience that is being adopted by Russia. The analysis of their provisions allows us to state that their personal security is under protection above all. The security of the person provided by the criminal law is reduced to the regulation of crimes against the person and some circumstances precluding the criminality of an act, in particular, the right to harm during justifiable defense and detention of the person who committed a crime.

The current Criminal Code of the Russian Federation provides protection of a wide range of rights, freedoms and interests of a person, most of which are concentrated in Section VII of the Criminal Code Crimes against the Person. Since the concept of security of the person implies certain measures aimed at eliminating a particular threat, the criminal law in the relevant criminal law provisions directly implements these measures, establishing a prohibition on infringement of various benefits, interests, rights and freedoms of a person. It ensures the security of such benefits and interests of everyone, such as life and health, freedom, honor and dignity, sexual freedom and sexual integrity, constitutional rights and freedoms, and normal development of minors. At the same time, the Russian legislator is in no hurry to make changes to the criminal law, which could reflect the priority of security of the person to a greater extent (ZWIERLEIN & GRAF, 2010).

It should be noted that the criminal law of Russia protects the security of the person only from threats emanating from an individual. Other laws are designed to protect it from threats of a different nature, in particular, the emergency legislation. Foreign legislators follow the same way. For example, the Criminal Code of Germany provides protection from encroachment by individuals through the establishment of prohibitions to endanger life, freedom, inviolability of the person, etc.

The protection of the security of the person from information threats has become of particular interest in recent years, and not only in one country, but throughout the whole world due to single information space. The realities of life in any modern society allow us to state that an increasing number of citizens use various information and telecommunication technologies every day, especially social networks, which are also actively used for criminal purposes. This is clearly evidenced by the emergence of suicide communities on the Internet, the spread of various games that lead to suicide, the widespread dissemination of pornography, and especially with images of minors, the use of minors and young people to create pornography with their participation, their involvement in prostitution and commitment of acts of sexual abuse through social networks.

Today, many countries are aware of the realities of information threats to a person, especially for the fragile psychology of the younger generation, and try to provide protection against them. Thus, the Committee on the Rights of the Child of the Council of Europe stated the lack of protection of children from violence on the Internet a few years ago, which led to the adoption of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in 2007. Article 23 of this Convention prescribes criminal liability for any intentional proposal by an adult made through information and communication technologies to approach a child with an intention to commit any sexual violence and/or crime towards him/her related to the production of child pornography, if such a

proposal is followed by practical actions aimed at holding such a meeting.

As a result of the adoption of the specified Convention and the statement of such a requirement in it, the provisions establishing criminal liability for sexual abuse through the Internet have been included into criminal laws of the countries of the European Union. Moreover, the legislators of some countries of the European Union have established liability even more stringent than prescribed by the Convention (for example, Article 162.1 of the Criminal Law of the Republic of Latvia).

Russia ratified this Convention in 2013 with reservations that stipulate the absence of similar provisions in the Criminal Code of the Russian Federation. However, this does not mean that the behavior recommended by the Convention to be prohibited is allowed in Russia. The absence of the specified rule is leveled out by the interpretation of the concept of sexual abuse by the Plenum of the Supreme Court of the Russian Federation, which includes actions when a direct physical contact with the body of a victim does not happen, including the actions made with the use of the Internet, other information and telecommunication networks. Additionally, taking into account the popularity of correspondence with children and minors through social networks on sexual topics, representatives of the Russian scientific community strongly demand to include a similar provision in the criminal law, and that deserves approval and support.

The particular concern in Russian society today is the turnover of pornography with images of minors. The number of such information resources is truly enormous, the volume of materials on some websites is hundreds of gigabytes. According to the recommendations of the above-mentioned Convention of 2007, the use of minors for the production of pornography, including its creation by themselves through deception by adults, should be regarded as sexual abuse, which is not recognized as such in Russia and, thus, constitutes a serious omission of the Russian criminal legislation.

4. SUMMARY

In modern conditions when there are many threats every day for every person, it is necessary to develop an appropriate strategy to ensure the security of the person, which must start with the regulatory framework. The first step should be the introduction into the regulatory framework of the concept of security of the person and its clear distinction with the concept of personal security, filling this legal category with content (that is, the transfer from the field of theory and theoretical concepts into the legal field that will be the first step towards its implementation in practice).

We believe that the time has come to replace in the Russian criminal law the title of Section VII Crimes against the Person with the title Crimes against the Security of the Person. Firstly, such name can reflect the essence concentrated in the section on attacks to a greater

extent. Secondly, the very concept of security refers to the duty of a state to ensure it. That is why it will reflect the functions and guarantees assumed by the state, which are established by the state for every person on its territory. Violation of respective prohibitions will be the evidence of the improper performance of these functions by the state. A separate, independent group of this section should be a chapter on information security of the person, containing provisions on the protection of citizens and especially minors from information threats aimed at violating their normal development in the field of moral and sexual relations.

5. CONCLUSIONS

Nowadays the issue of legal provision of security of the person is very complex and requires detailed scientific study and serious research. Since security is a complex and multifaceted scientific category, there is an objective need for interdisciplinary research in this sphere. The conclusions drawn in this article should be the basis for further scientific research in this direction.

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