CIVIL RIGHTS: HOW POSSIBLE ARE THE PRECONDITIONS AND PROVOCATION FORM CRIMES IN CONDITIONS OF SANCTIONS OF FOREIGN COUNTRIES

DERECHOS CIVILES: ¿CUAN POSIBLES SON LAS PRECONDICIONES Y LOS CRÍMENES DE FORMULACIÓN DE PROVOCACIÓN EN CONDICIONES DE SANCIONES DE PAÍSES EXTRANJEROS?

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abstract

The present article is devoted to the abuses and circumvention of regulations in the civil law, in the situation of foreign countries sanctions. Modern geopolitics ask for our country's timely legal and political reactions to the increasing sanctions of foreign countries. Such a situation is skillfully combined with the consequences of the global financial crisis and is a fertile ground for the growth of fictitious bankruptcies, unilateral refusal of fulfilling civil-law obligations, and actions to bypass the law. Abuses and circumvention of regulations in the civil law can be sustainable prerequisites for the growth of crimes in the conditions of sanctions in foreign countries. The work was performed under the grant of the President of the Russian Federation for the state support of young Russian scientists and candidates of Sciences (Competition – MK-918.2018.6). The subject of study is the «Legal challenges to improve the quality and competitiveness of goods, works and services under the sanctions of civil turnover of the Russian Federation».

Keywords: Abuse of civil law; civil tort; crime; sanctions of foreign countries; provocation of crime.

Introduction

Abuses in the civil law may well be prerequisites, and sometimes even the methods of committing a crime; in particular, the following can be attributed among them: transactions that bypass the law; corporate disputes, raider seizures of business; making rare, unnamed, mixed and other similar transactions; criminal money laundering and financing of terrorism; creating the artificial cash debts; fictitious marriage; submission to the court the counterfeit evidence in a civil or criminal case, and etc.

The sanctions of foreign countries are geopolitical actions of foreign countries, which try to restrain Russia's economic growth in various ways (laws, restrictions, provocations, informing war, breach of contractual obligations, etc.), and in some cases provoke local wars bordering on Russia, and pinpoint attacks on national sovereignty. Sanctions create special conditions for the flow of civilian traffic, which in their essence are close to an economic crisis. The subjects of civil law are forced to act and conclude contracts in the limited market conditions, and sometimes even in the absence of competition in domestic commodity market. Special sanctions' conditions create grounds for the abuse in civil law, which often coexist with a crime, and may be interrelated or provocative.

Research Method

The following various and general scientific methods, and techniques of logical cognition were used in the present work: analysis and synthesis, abstraction, system-structural, functional and formal-logical approaches. Achievement of the stated goal was facilitated by use of formal legal and comparative legal methods.

Results and Discussion

The times when it was fashionable to say "dashing 90s" has ended. Nowadays, it is not often the open crime that can be found in legal law-enforcement and human rights activities by using the old methods of committing a crime, although this happens. It may seem on one hand that the criminal world has loosened its grip or social life has become calmer. However, such a judgment would be wrong, as the criminal community evolves with modern Russia. Ways of crime, as well as tools and methods of hiding it are in movement from year to year, but the goals of criminals and motives are always the same.

For the past 10 years, one can observe a steady tendency for criminal communities to comply with law even more than some enterprises and state bodies. But the number of crimes does not decrease, the number of provocations or, conditionally speaking, “soft pushing” of civil law subjects to commit a crime, is growing solely on the basis of norms and methods of civil law. What is the paradox of this behavior? Open crime is not popular. It is much faster and more efficient to create a fictitious marriage, non-existent monetary debt, assignment of rights of claim, and other situations by “proxy”. Now, provocation is the essence of remote-controlled crime in a number of cases on the basis of civil law methods. All this indicates the urgent need for development of the institution of legal restrictions in the complex, the most diverse, including public, circles (Belyaeva et al, 2017; Ol'ga et al, 2018; Kuksin et al, 2016; Makogon et al, 2018; Butko et al, 2017; Muyambiri & Chabaefe, 2018).

The Representative of the Cambridge Law School (UK), A.J. Ashworth, states in his scientific article on doctrine of the institution of provocation that in the English law, provocation is usually viewed as a matter that is part of a reduction of sentence, being not fundamental enough to be characterized as the complete protection or exemption from criminal liability. The author notes that particularly in murder cases, defense is successful when members of the judiciary know or have certain doubts that the accused has killed during a sudden loss of self-control caused by provocation, which was enough to force a prudent person to do what he did in the objective reality. This study identifies two important factors, including the role of the instigator in causing an incident, and the role of perceived injustice (Ashworth, 1976).

A.J. Ashworth touches an important institution of legal science in his study. From the point of view of civil law methods of provoking a crime, it is possible to express the point of view according to which the provocateur, using non-criminal measures to induce a crime during investigation, often justifies his position either by completely refusing to testify against himself (Article 51 of the RF Constitution), that all his actions lie strictly within the framework of civil, or by so-called economic relations, for example, by virtue of art. 421 of the Civil Code of Russian Federation (principle of freedom of contract). Therefore, the provocateur is not the subject of a crime. This state of affairs makes it impossible to initiate criminal proceedings on the composition of crimes related to fraud, since the subjects of these crimes are often driven by third-party figures, i.e. the tools of direct manipulators (criminal provocateurs).

Other representatives of the Cambridge Law School (UK), for example, J.R. Spencer, G. Virgo also devoted their scientific research to the field of jurisprudence, which both directly and indirectly

are related to the problems of provocation of crime by criminal community in civil law ways. This allows us to conclude that institution of provocation is not of erosion, and the civil law component of the research gives a small element of scientific novelty to this issue (Spencer, 2001; Virgo, 2001).

The issue of provocation of crime in Russian legal science has been studied in sufficient volume and, in fact, is not something new, of course, not devoid of sharp and controversial issues.

From a scientific and practical point of view, in an article by A.L. Osipova, he notes: “Russian judicial practice turned out to be most susceptible to such provocation criteria as repeated offers of a police agent to hand over the drug to him after suspect’s refusal; the lack of information in the case file about the previous criminal activity of the suspect; repeated ORM, pursuing identical goals; action of the suspect is primarily in the interests of the police agent, not of third parties (drug dealers) ” (Osipov, 2014).

Legal and especially human rights practices often encounter a significant role for law enforcement officers who may go beyond the scope of operational search measures using provocative methods such as unwarranted aggression; involvement in a near-legal event adjacent to the operational search activity; actions in atmosphere of a traumatic situation for the provoked person; bringing situation to the downgrade of self-esteem, reputation provoked in order to fit the latter's actions under the predicted results of operational search activities; and other methods.

In this case, civil law methods of provocation also have a place to exist. For example, blackmail by disseminating information and losing reputation in the workplace; threat of termination of marriage; threat of bad credit history; threat of loss of business reputation in business, etc. Also, cases of close interaction of criminal communities and corrupt law enforcement officers are not rare.

The work of V.A., the turtle, indicates that provocative activity can be classified according to the types of its commission into simple and complex (Cherepakhin, 2014).

The classification proposed by the author fully reflects the main current trends in understanding the institution of provocation of crime.

C. Fijnaut and L. Paoli point to "legal reform as a method of combating organized crime" as new legal tools to combat this phenomenon, in their study on organized crime in Europe. Government agencies fighting against organized crime are introducing exceptional tools, the use of which is possible only within the framework of legal reform. At the same time, although legal reform does not separately lead to any real result in preventing and reducing organized crime, in the modern social communication system, it functions as one of the best ways to calm the public opinion on this not-simple question (Fijnaut C., Paoli, 2004).

C. Fijnaut and L. Paoli in also indicate in their work that, for example, the Spanish policy in field of combating organized crime is mainly reflected at the national level by several legal reforms adopted without regard to the global criminal policy of other European states. The main goal of these reforms is to provide a response to the pressure of international or European institutions, assistance to criminal justice, elimination of problems of criminal law, and development of legal mechanisms in the field of combating organized crime (Fijnaut C., Paoli, 2004).

Another foreign scholar J. Finkenauer poses a rather acute question in his scientific work: "what is an organized crime?" This complex issue is studied from different planes both as a research problem and as a global political problem (Finkenauer, 2005). The author posed this question sharply, and controversially. Organized crime around the world is a political and social problem that is opposed to law and order. Of particular importance in this sense, is acquiring a crime legally savvy, or widely using legal methods of civil law. Such crime can still be called remote.

Speaking of Russian organized crime, one should take into account the remarkable fact that this social and legal phenomenon, in addition to the large number of works of Russian scientists, has been also studied by Western lawyers. For example, the journal "Theoretical Criminology" (Theoretical Criminology) in 2015 devoted an entire special issue number 2 with the title “Crime and Criminal Justice in the Post-Soviet Space”.

D. Nelken from Cambridge concludes in his article that some countries in the post-Soviet space are strongly attracted to the European ideals of criminal justice, including joining the European Council or the Agreement on Human Rights. Thus, European requirements are already part of the legal systems of the post-Soviet countries, which is clear in the example of Estonia (Nelken, 2015).

In the Western legal press, there are also a large number of other interesting scientific works, among which, for example, are: J.V. Dijk, R. Arnold, L. Piacentini in collaboration with G. Slade, W.I. Torry, K.K. Ferzan and others (Dijk, 2007; Arnold, 2015; Piacentini & Slade, 2015; Torry, 2001; Ferzan, 2013).

Findings

Thus, the analysis of the scientific literature in the field of institute of provocation, as well as organization and activities of organized crime,

allow us to identify some civil-law methods of provocation of crime.

The criminal community can carry out provocations of crimes in the following civil law ways:

1. Execution of transactions that make a detour of the law (on this issue, you can familiarize yourself with interesting works of E.D. Suvorov, N.S. Yumasheva and other authors) (Suvorov, 2008; Yumashev, 2015). Transactions themselves on the one hand may be legal, but the other side of them speaks about criminal intent. Such practical situations can be seen in corporate disputes, where there is a conflict between founders or between founders and the sole executive body.

2. Execution of rare, extravagant, legal, unnamed, mixed and other similar transactions that are so uncommon that they appear in contractual business practice as precedents (on this issue you can familiarize yourself with interesting works of A. G. Karapetov in collaboration with A. I. Saveliev, A. A. Uralova, G. Bruinsma in collaboration with W. Bernasco and other authors). The focus of crime in this case is that the victim or the provoked person believes in the uniqueness of legal construction of contract and, as a result, its civil law and criminal law. There is also a solid message and fanning of vanity and special reputation of a businessman. He is praised and pushed to do something that business rivals will never do, that is, to be the best (Karapetov A.G., Savelyev, 2012; Uralova, 2014; Bruinsma G., Bernasco, 2004).

3. Money laundering through civil transactions and other means, the list of which is sometimes endless. In Western legal science there are interesting publications on this topic, for example: D.A. Chaikin, R. Barone in collaboration with R. Cerqueti, A.G. Quaranta and others (Chaikin, 1991; Barone et al, 2012).

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