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Constitutional Values and Axiological Aspects of Understanding a General Object of Crime in the Criminal Law Doctrine

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Abstract

Introduction: the article considers a problem of constitutional values that form the basis for axiological understanding of a general object of crime and a category “general object of crime” from a value standpoint. *Purpose:* to analyze current approaches to the definition of the general object of crime as a legal good, i.e. axiological aspects of the general object of crime. *Methods:* a dialectical method is used to clarify concepts “constitutional value” and “general object of crime”; a comparative legal method – to compare the concepts discussed. *Results:* current scientific works are aimed mainly at substantiating their fundamental importance and solving theoretical problems of embodying constitutional values in the form of norms-principles, norms-goals, etc. Constitutional values are the basis for defining the general object of crime as a legal value. Considering the general object of crime from a value standpoint allows us to determine which values, interests or legal benefits are recognized by society as so significant that their violation is a crime. *Conclusion:* the category “general object of crime” covers an individual who has suffered from a criminal act and his legal interests, such as life, health, property. Provisions of the Criminal Code of the Russian Federation, in general, reflect a value-based approach to determining the general object of crime.

Keywords: legal value; constitutional value; crime; general object of crime.

5.1.2. Public law (state law) sciences.

5.1.4 Criminal law sciences.

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Introduction

Nowadays, there is a growing interest in axiological problems in Russia, both in the scientific community, including in many areas of legal scientific knowledge, and from the public authorities.

Acceleration of the pace of life, which humanity has not yet encountered, complication of the social structure, leading to a new psychological state of a person and the whole society, digitalization of all spheres of public relations, and emergence of new challenges and threats to the civilizational development of Russia necessitate the search for new approaches to the analysis and assessment of the current value system and their protection. This is also confirmed by the social request formulated by the President of Russia in the Decree No. 809 of November 9, 2022 "On Approval of the Foundations of State Policy for the Preservation and Strengthening of Traditional Russian Spiritual and Moral Values". The Decree emphasizes that "understanding social, cultural, technological processes and phenomena based on traditional values and accumulated cultural and historical experience allows the people of Russia to respond in a timely and effective manner to new challenges and threats, preserving the all-Russian civic identity".

In the context of modern social transformations, there is a need for legal reflection on existing axiological problems in order to describe new value legitimization.

Constitutional values as an axiological basis for defining a concept "general object of crime"

Nowadays, there are no unified approaches to understanding the content of the concept "constitutional values". There is no unity of opinion on issues of their essence, theoretical and constitutional nature, content, legal regulation, and the specifics of implementation in other branches of the national legal system.

In legal science, there are different views on the system of constitutional values, their correlation, hierarchy and balance. In this regard, first of all, it is necessary to analyze key approaches to the concept of constitutional values.

S.S. Alekseev finds constitutional values in the most diverse elements of law and mechanisms of legal regulation. According to him, legal values represent specific socio-legal phenomena, legal means and mechanisms (all that is called "legal tools" that provide the value of law and its guarantees), as well as "institutions expressing an optimal ratio of normative and individual regulation" [1, p. 167]. It should be noted that such a list is almost unanimously accepted by constitutionalists as fundamental universal legal values [2–4].

According to T.Ya. Khabrieva, any constitution proceeds from basic provisions that are recognized as "the value of this civilization" not only by developers of the constitution themselves, but also by the broadest strata of society [5].

V.I. Kruss speaks about the "normativity of constitutional values", highlighting appropriate forms of its expression: direct effect of constitutional provisions of a value nature; direct "value-regulating effect of human rights and freedoms"; "value connotation of constitutional principles"; "axiological certainty of legal guarantees" and fundamentally significant for our study "model and situationally defined balance" of constitutional interests and values [6].

L.A. Nudnenko also discusses constitutional value of the principle of combining private and public interests. In his opinion, private interests should be balanced with public ones and "fit into the context of collective values", ensure "consensus for balanced satisfaction" of individual and public needs [6].

N.E. Taeva considers constitutional values as "a complex constitutional-doctrinal, legal-logical and normative structure that arises as a result of the implementation of the axiological function of the constitution" [7], in the process of which stable social values-ideals are determined and further consolidated as constitutional proclamations: norms-principles, norms-goals, norm-tasks [8].

From O. Snezhko's point of view, constitutional values should be understood as fundamental, extremely generalized principles (goals, attitudes) underlying Russian statehood [9].

E.I. Klochko defines “constitutional values” as ideas, ideals, guidelines that have positive significance for the whole people and are the basis of the entire legal system, social and state development. They can be expressed both in abstract, non-formalized constitutional principles, and enshrined in the Constitution with the help of specific constitutional norms, which in this case will be the final element, the final legal form of expression of constitutional values that permeate the entire content of the Constitution” [10].

A.A. Kondrashov defines the essence of constitutional values, their functional purpose as follows: “constitutional values are general social principles (dogmas) with a legal connotation, enshrined in the constitution or arising from a systematic interpretation of several constitutional prescriptions, as well as identified during the interpretative activities of constitutional justice bodies, which aim to ensure the achievement of such a balance of interests of the individual, societies and states, where the highest value of personal human rights is prioritized within the framework of moral, social, ethical, legal, cultural and other fundamental foundations of human existence that have arisen during the course of civilizational development” [11, p. 22].

D.A. Avdeev notes that constitutional values are ideas, phenomena or socially significant circumstances that are subsequently fixed in the constitution (or other legal documents equated to it), acting as guiding provisions that determine the content of current legislation norms, based on the priority of constitutional values in regulating public relations [12].

A.P. Alekseev points out that constitutional values are ideas, goals, principles and institutions formulated as a result of constitutional law-making or the implementation of constitutional justice and enshrined in specific normative legal acts or judicial decisions of a constitutional nature and are the guiding basis for the behavior of most subjects of constitutional legal relations [13].

I.A. Karaseva defines constitutional values as fundamental legal principles that determine priorities for the development and protection of public relations in various spheres of life, en-

shrined in the constitution and deduced from its content through official interpretation [14].

S.P. Mavrin understands constitutional values as the constitutional and legal fixation of certain values, as a rule, belonging to the sphere of ideas, designed to materialize their qualities of usefulness, importance, significance and, in general, beneficence, as a rule, for all subjects of public relations that fall under the Constitution or for one or more categories of these subjects in certain cases [15].

N.V. Vitruk considers constitutional values as real objects, which are recognized as basic values and have found their consolidation and guarantee in use, realization, and protection [16].

According to S.E. Nesmeyanova, constitutional values are the most significant characteristics of various phenomena directly provided for by the constitution of the state, recognized or arising from its essence, contributing to the development of personality, society and the state [17].

A.G. Tikovenko notes that constitutional values can be defined as “fundamental (basic) extremely generalized principles (goals, general principles)... performing the role of a law-forming landmark” [18, p. 16].

E.S. Anichkin and Yu.A. Rudt believe that constitutional values are “the constituted public and private interests of participants in constitutional legal relations” [19, p. 88], which are important for the development of the state at a certain specific historical stage of its development and enshrined in the Constitution.

A brief review of the opinions presented allows us to conclude that most studies of constitutional values concern justification of their fundamental importance and are aimed at solving theoretical problems of embodying constitutional values in the form of norms-principles, norms-goals, etc.

The problem of constitutional values draws attention of criminal law theorists. They consider it in the course of the study of the concept “general object of crime”.

The criminal law theory about constitutional values as the general object of crime

The concept “general object of crime” as one of the key elements of criminal law, ensuring its consistency and integrity can be considered as a legal value. It helps identify and specify objects that are protected by criminal law and serve as the basis for determining the composition of crimes. Considering the general object of crime from a value standpoint allows us to determine, which values, interests or legal benefits are recognized by society as so significant that their violation is a crime.

Definition of the general object of crime is of practical importance in the application of criminal law. It affects qualification of crimes, definition of punishment, and the decision to initiate or terminate a criminal case.

According to V.N. Borkov, in the context of crisis and conflict events, geopolitical tensions, new challenges to the security of citizens and the state, the influence of statist ideology on criminal policy, formation of its goals, directions, and priorities increases [20].

In this regard, axiological approaches in criminal law have now received a new impetus in development, and understanding the category “general object of crime” from a value standpoint is relevant and justified.

In the science of criminal law, perception of the object of crimes as a set of social relations continues to prevail. In particular, A.I. Rarog points out that an object of crime is public relations protected by criminal law, to which harm is caused by a crime or an immediate threat of harm is created. L.D. Gaukhman defines the general object of crime as public relations protected by the apparatus of criminal law enforcement. V.A. Avdeev notes that the legal content of the crime object is formed by public relations protected by criminal law [21, p. 63]. However, he points out that the crime object is recognized as social relations, the content of which is generally recognized social values of a moral, political and other nature.

A number of researchers in their works point to the need to reconsider this approach. Thus, A.N. Karkhanov and A.V. Brilliantov note that, in particular, referring to the problem of

crimes against the person, for example, to murder, it was previously assumed that the object of murder is life not as such, but precisely in the sense of the totality of social relations [22, p.140]. In their opinion, such an understanding of human life as an object of murder clearly belittles the absolute value of a person as a biological phenomenon, turns a person into a carrier of social relations, replaces human life with relationships that ensure his/her existence.

Social values declared by the Constitution of the Russian Federation, as E.N. Karabanova rightly notes, are an axiological concept of the object of crime, which enshrines the duty of the state to protect these values in accordance with the trends prevailing in law enforcement practice [23].

From a legal point of view, the object of crime as an axiological concept is a benefit placed under criminal protection that suffers harm in case of encroachment [24].

According to the theory of the object of a criminal act as a legal good, objects of criminal encroachment are life, health, property and other values (goods) that the crime encroaches on and which are therefore protected by criminal law [25–28]. According to V.Ya. Tatsii, the crime object is “a socially defined value (benefit) that is harmed by a specific criminal act”, and “... that benefit to which real damage is caused by the crime or a threat of causing such harm is created” [29, p. 101].

The doctrine of criminal law reflects the idea that the category “general object of crime” unites both a victim of criminal encroachment and legal benefits (life, health, property, etc.) [30–32].

Thus, in our opinion, when determining the content of the general object of crime, it is necessary to rely on the provisions of Part 1 of Article 2 of the Criminal Code of the Russian Federation, fixing tasks of the Criminal Code of the Russian Federation, such as protection of human and civil rights and freedoms, property, public order and public safety, the environment, the constitutional system of the Russian Federation from criminal encroach-

ments, provision of peace and security of mankind, as well as prevention of crimes, which can be assessed as the most important legal values.

In the foreign science of criminal law, axiological approaches to the study of the general object of crime are also quite widespread. Thus, R. Dvorkin in his works analyzes the role of values, justice and public morality in determining an object of crime and forming criminal justice [33]. He emphasizes the importance of taking into account the balance of individual rights and values when determining the general object of crimes, argues that crimes should be considered in the context of their impact on the rights and interests of people, as well as values of the whole society and the state. R. Dvorkin attributed such values as life, freedom, security, justice and dignity to components of the general object of crime.

H.L.A. Hart is one of the British lawyers who studied a general object of crime. The key idea in his works is that the general object of crime is associated with a violation of social norms and values, and its definition should be based on objective standards recognized by society [34].

The thesis about correlation between a general object of crime and a system of constitutional values is very common among Italian researchers. In particular, E. Contieri believes that when analyzing the content of the general object of crime, "the socio-cultural context and moral values of society" should be taken into account [35, p. 203].

In the Romanian criminal law doctrine, researchers draw attention to the need to move from understanding the general object of crime as a system of public relations to the values dominant in society and enshrined in law [36].

The criminal doctrine of the People's Republic of China has been discussing the "theory of action" for a long time, according to which a socially dangerous act in criminal law means not only an actual, but also an evaluative judgment [37]. Thus, some Chinese researchers of crimi-

nal law believe that the actual basis of a socially dangerous act includes psychological, biological, social and personal factors that are its natural characteristics [38].

As we can see, the axiological approach to understanding the general object of crime is becoming more and more widespread in the foreign science of criminal law. Within the framework of the axiological approach, the general object of crime is considered as something more abstract and broad than just a physical object or a person who has been subjected to criminal encroachment.

Conclusions

Today, questions about constitutional values are becoming especially important for the science of criminal law, since they serve as a guideline for developing an axiological approach to understanding the general object of crime as a value.

The general object of crime as a value is a key aspect of criminal law. It includes values, such as life, freedom, property and security, and interests of society and the state.

The general object of crime associated with values implies damage to these values as a result of a criminal act.

Values as the general object of crime serve as the basis for the development of criminal legislation.

An important feature of values as the general object of crime is their universality. Values, such as man, his rights and freedoms, are recognized by all societies in the world, and they form the basis of international legal norms.

Undoubtedly, issues related to the formation of a protected value system are subject to change over time and the evolution of society. Therefore, criminal law should constantly adapt to new challenges and changes in public values in order to ensure effective suppression of crimes. Values as the general object of crime embody the basis of the criminal system, protecting the rights and interests of citizens, ensuring justice and maintaining moral and cultural standards of society.

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