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Formation of the Concept of "Composition of the Crime" in the Russian Doctrine and Specifics of Its Embodiment in the Composition of Crimes against Family Rights under the 1903 Criminal Code

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Abstract

Introduction: the article considers protection of marriage, family, matrimony, childhood and other issues of family relations under the 1903 Criminal Code. Purpose: to establish when and how the concept of "composition of the crime" appeared in the domestic doctrine of criminal law, to reveal its main content at that time, and to identify signs of the composition of crimes against family rights under the 1903 Criminal Code. *Methods:* to achieve this goal, the author uses rules and techniques of formal and dialectical logic; abstraction and generalization; deduction and induction; historical, comparative legal and formal legal research methods; system analysis; methods of interpretation of legal norms; study of documentary sources; materials and conclusions of previous studies, etc. Results: it is established when and under what circumstances the concept of "composition of the crime" appeared in the domestic doctrine of criminal law; its essence at that time is revealed. The composition of criminal acts against family rights under the 1903 Criminal Code is analyzed; they are divided by severity and classified by object of encroachment. The author identifies subjects and determines features of their status and legal technique used for this purpose, as well as reveals and describes the specifics of the subjective side of perpetrators. Forms and methods of committing criminal acts against the rights of family members according to the specified Code are shown, an object of encroachments in these cases is analyzed, and peculiarities of the status of victims are revealed. *Conclusion:* the article shows formation of the concept "composition of the crime" in the domestic criminal law doctrine, demonstrates a development level of the legal technology in criminal law acts of Russia at the turn of the XIX and XX centuries, and discloses our predecessors' ideas about criminal law protection of marriage, interests of the family, the rights of its members and kinship relations, as well as about social danger of acts.

Keywords: 1903 Criminal Code, criminal encroachments against family rights, general composition of the crime, special composition of the crime, doctrine of Russian criminal law, special subject of crime, special victim, object of criminal encroachments, types of objects of crime, traditional family values, penal system.

5.1.1. Theoretical and historical legal sciences.

5.1.4. Criminal law sciences.

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Introduction

Recently, 120 years have passed since the Russian Emperor Nicholas II approved a new Criminal Code (hereinafter referred to as the 1903 Code). The corresponding decree (issued in 1903 in accordance under the Julian calendar) contained an order to publish the text of the 1903 Code and that this act would be put into effect within the time limit that the emperor would appoint separately [1, p. 4].

This monument of domestic criminal legislation had a poor law enforcement history. It was put into effect gradually, to a limited extent and on a small territory of the country due to the reluctance of the penal system to implement the innovations laid down in the document. So, according to Professor G.E. Kolokolov, its introduction was postponed for an indefinite period due to the impossibility of widespread use of solitary confinement, as provided for by the 1903 Code, due to the complete unsuitability of existing prisons, as well as "the lack of correctional institutions for juvenile offenders and the lack of organized patronage" [2, p. 7].

The October Revolution of 1917 and the following breakdown of the former legal system terminated the application of the 1903 Code. The People's Commissar of Justice of the RSFSR P.I. Stuchka wrote in the summer of 1918, "The old laws were "burned". In vain some of our revolutionaries began to cut out the "code of the Russian revolution" from the burnt leaves that survived in this conflagration (burnt leaves may mean the Code of 1903 – the author's note) instead of creating really new revolutionary laws. The proletarian revolution implies creativity" [3, p. 3].

During the Soviet period, the 1903 Code was neglected by researchers for ideological reasons. In the literature published at that time, one can find only brief, politically tinged characteristics of the 1903 Code. This is how it was described in the legal dictionary, repeatedly republished in the middle of the twentieth century: "one of the most reactionary criminal legal acts of tsarist Russia. It was published on the eve of the first Russian revolution, during the years of the rise of the revolutionary movement in Russia. Its publication on the eve of the first Russian revolution was caused by the fact that the 1845 Code of Criminal and Correctional Punishments could no longer satisfy tasks of the landowner-bourgeois government's struggle with the impending revolution" [4, p. 554]. Only in the 1980s, at the time of the political system transformation, researchers became interested in the document; nowadays there is a large number of scientific publications on this topic. Undoubtedly, this interest is triggered by a fundamental change in the socio-political system, the revival of private property, and the desire to gain positive experience in law-making, correlated with new socio-economic conditions. In our opinion, there other significant circumstances. First, it was thoroughly elaborated. The Editorial Commission was formed to develop and guide the project. It consisted of famous scientists of that time who left a great mark on criminal law science, whose creative legacy is still in demand – N.A. Neklyudov, N.S. Tagantsev, and I.Ya. Foinitskii. Second, it was widely discussed by the legal community. To illustrate what has been said, it is useful to give some details. The General Part of the draft 1903 Code, together with an explanatory note, was sent to practicing lawyers and theorists of criminal law with a request for comments. At the same time, these documents were

translated into German and French and sent to many foreign scientists. The comments received were collected, systematized and printed in five volumes, and the comments of foreign scientists were presented both in the original language and in translation into Russian. After reviewing all the comments received (it took 26 meetings to discuss them), the revised Draft and explanatory note (where the comments were analyzed and the position of the Editorial Committee on their acceptance or rejection was justified) were re-printed [5, p. 193].

At the same time, it should be noted that the main attention of modern researchers is focused on the General Part of the 1903 Code. We have not been able to find a single scientific publication specifically devoted to the analysis of the structure of illegal acts against family rights enshrined in the Code of 1903 (this term went out of circulation after 1917, although it was used in Russian legislation for almost a century; the first book of the Code of Civil Laws from the 10th volume of the Code of Laws of the Russian Empire was called "On the rights and duties of the family"). For the sake of accuracy, it should be noted that certain issues of liability for unlawful acts against family rights under the 1903 Code are addressed in some publications, but only within the framework of more general topics, while composition of these acts is not analyzed. They just state whether former prohibitions in criminal legislation were preserved or abolished, or new ones emerged. For example, half a page is devoted to these issues in the article of Yu.Yu. Gartseva [6, pp. 263–264].

While we observe the destruction of traditional ideas about the family, the role of men and women, child rearing, aggressive propaganda of same-sex marriages, the declaration and realization of children's rights to gender reassignment in the world and, in particular in Western countries, the issue of protecting traditional family values is acute in Russia. So, it is important to study the criminal law protection of interests of the family, the rights of its members and kinship relations at the turn of the XIX–XX centuries and to determine what acts were considered socially dangerous and to what extent, etc. It is also worth noting that in 1903 the very concept "composition of the crime" was relatively new for domestic legal science, not as elaborated as it is now, different from modern ideas. Therefore, we turn to the history of this concept formation.

When and how, with what content did the concept of the composition of the crime appear in the national doctrine?

When did the concept discussed appear in the doctrine of domestic criminal law? How was it disclosed? To answer this question, it is advisable to turn to domestic textbooks, since all relevant doctrinal provisions are systematically reflected there.

Apparently, the first Russian textbook of criminal law was the work of I.E. Neumann, published in 1814 [7]. A Russian edition of this book was prepared in accordance with the personal order of the Minister of Public Education of the Russian Empire A.K. Razumovskii in February 1813 to compile, among others, an educational book – a manual on Russian criminal law. The author Johann Georg Josias Neumann was born in Marburg (County Kassel, now the territory of Germany) in 1780, he graduated from the university there and the age of 27 years were invited to Russia to participate in the work of the Commission for drafting laws. In 1809 he was appointed professor of Russian law and state economy at Kazan University, and in 1811 he moved to a similar position at the University of Dorpat. Neumann lived most of his life in Russia and died here [8].

So, as our analysis shows, in this work the desired concept is not used at all. A year after the publication of I.E. Neumann's work, O.I. Goreglyad's book "The experience of writing Russian criminal law" was published [9], which some modern researchers consider to be the first Russian textbook of criminal law [10]. It is not entirely clear why these authors give priority to O.I. Goreglyad's textbook. They may not know I.E. Neumann's textbook (it is not mentioned in the above article). It is also possible that due to Neumann's origin, they do not consider him a Russian author and do not take him into account. Anyway, in Goreglyad's work, the concept of the composition of the crime is not only not disclosed, but is not even mentioned.

In the textbook of criminal law by P.N. Gulyaev, published 11 years later, Goreglyad's book is mentioned as a respectable one, though having certain shortcomings [11, pp. I-II]. However, in the work of P.N. Gulyaev, the term "composition of the crime" is not used anywhere. The textbook of S.I. Barshev [12] published 16 years after P. Gulyaev's book also has no mention of it. Only in another work by S.I. Barshev, published much later, the term of the composition

of the crime is used only once in the meaning of the term "mechanism of a crime, "a criminologist needs forensic medicine when a medical examination is required to explain the composition of the crime (the emphasis added), as it always happens in cases where there is a suspicion of violent death, poisoning or bodily injury" [13, p. 19].

The earliest work (textbook) of a Russian legal researcher that we managed to find, where, among other issues, the doctrine of the composition of the crime is considered, dates back to 1863. It issued from the pen of the prominent Russian lawyer V.D. Spasovich [14]. In 1857–1861, he worked as a professor at Saint Petersburg University and lectured there on criminal law. These lectures formed the basis of this textbook.

The author of the textbook presented the composition of the crime as a set of all elements included in the content of the concept of a crime. It is worth noting that this combination combines both external (objective) and internal (subjective) sides of the crime. According to V.D. Spasovich, some of these elements are so important that a crime is simply unthinkable without them; they are called significant. Other elements are of such a kind that a crime can do without them, but they can influence the measure of punishment to a certain extent; they are called insignificant. As an illustration of this division, the author describes a murder case in which the bodily injury of the victim is a significant element, but whether it was committed with a knife, an axe, a stick, whether blows were inflicted on the chest or on the head are insignificant elements of the crime [14, p. 90].

The composition of the crime, according to V.D. Spasovich, can be general and special. The general one is formed by means of distraction (abstraction) and includes elements peculiar to any crime. New elements are added to the general composition in each individual crime, which are peculiar to this species alone and give it a special characteristic color [14, p. 90].

Summing up his analysis, V.D. Spasovich points out that a crime is conditioned by the presence of, first, an object of the crime, second, its perpetrator. It necessarily contains four elements: two forming its external side – action and its consequences, and two forming its internal side – will (to commit an act) and knowledge of consequences of the action [14, pp. 92–93].

V.D. Spasovich's views, apparently, were formed under the influence of German legal literature and foreign lawmaking of that time, where the criminal law doctrine was more developed than in domestic publications. Moreover, some researchers believe that V.D. Spasovich's textbook was based on the concept of the German criminologist, professor at the University of Berlin A.F. Berner [15, p. 306]. In this regard, it is worth noting that the Textbook on criminal law: General part by A.F. Berner was translated into Russian, and then published in Saint Petersburg by the above-mentioned prominent Russian lawyer and statesman N.A. Neklyudov [16]. This work was published in the original language several years before the publication of the textbook by V.D. Spasovich, if we rely on the list of key publications of A.F. Berner [17, p. 570].

The Russian edition of Berner's textbook had such a significant impact on the Russian science of criminal law that it was mentioned and characterized in the brief reference "Russia-science-criminal law", published in the famous encyclopedic dictionary of Brockhaus and Efron [18, pp. 847–848].

As in the work of V.D. Spasovich, in the textbook of A.F. Berner, the composition of a crime (Thatbestand) is defined in the most general form as a set of elements of a crime, while elements of a crime as a generic concept form a general composition of the crime and its specific elements form its special composition. A.F. Berner does not mention that not only species, but also generic elements are included in a special composition; V.D. Spasovich has this clarification.

A.F. Berner classifies elements of a crime in more detail than V.D. Spasovich. He divides them into essential (essentia), ordinary (naturalia) and accidental (accidental), while pointing out that only essential elements determine the concept and existence of a crime; ordinary and accidental ones have an impact on the measure of punishment. However, he does not explain how ordinary elements differ from accidental ones.

A.F. Berner describes key components of the general composition, such as an act, its subject, object and means of influence, and also shows their correlation. A.F. Berner does not use any special term to characterize these components (parts, elements of the composition, etc.). The act, according to the author, should serve as a basis, a skeleton for building the doctrine of a general composition of the crime, while everything else is predicates of the act as the subject [16, p. 338].

It is important to note that A.F. Berner offers readers a brief historical background in which he shows transformation of the concept under consideration. He points out that before the composition was called corpus delicti. At first, this name was used to refer to external traces of the crime, even if the perpetrator had not been known yet. The meaning of this expression was mainly procedural. The composition of the crime was contrasted with internal guilt (Thäterschaft). Modern science realized the inextricable link between corpus delicti and culpability, which is why it considers the latter as part of the composition of the crime, and does not pay attention to the procedural origin of the phrase in question. With such an expansion of the meaning of the term, the Latin expression testifying for something corporeal and material loses its meaning [16, p. 337]. Thus, according to A.F. Berner, the composition of the crime covers a subjective side of the act, awareness of the reality and the will to change it (although this expression – a subjective side – is not used by him).

In the introduction to the translated edition of A.F. Berner's textbook, his translator and publisher N.A. Neklyudov informed readers that he made additions where the author's ideas seemed incomplete to him and he made notes where he considered them sharply incorrect. In this regard, two circumstances are worth emphasizing: 1) a general idea of the composition of the crime, as outlined by A.F. Berner, was not criticized by the publisher, i.e. it was accepted; 2) later N.A. Neklyudov joined the editorial commission formed to develop the 1903 Code.

Review of the composition of criminal acts against family rights and their ranking by degree of severity

The 1903 Code includes Chapter 19 comprised of 19 articles, which provides for liability for criminal acts against family rights. The articles are only numbered, have no titles and are not grouped into paragraphs or other divisions. Along with this, the number of specific elements of acts provided for in the chapter exceeds the number of articles. If we proceed from modern ideas about the composition of the crime, then the following criminal acts can be distinguished in the chapter under consideration:

– coercion of one intending spouse by another intending spouse to marry (Part 1 of Article 408);

– coercion of one or both intending spouses by a third person to marry (Part 2 of Article 408);

– marriage with a person who obviously could not understand the meaning of his actions or direct his actions (Article 409);

– marriage by deceiving a groom or a bride (Article 410);

– knowingly entering into an incestuous marriage (Article 411);

– entering into a new marriage with the existence of the former spouse in the absence of a permit provided for by law for such a marriage (Article 412);

– deliberate participation of a clergyman of the Christian faith in the solemnization of a sinful marriage (Article 413);

– marriage of a person who has reached the age of majority with a person who has not reached such age (Article 414);

– marriage of a person of Christian faith with a non-Christian (Article 415);

– marriage with a relative, the degree of kinship with whom is not considered incest, but makes the marriage invalid (Article 416);

– taking away an unmarried woman for marriage with her consent, but without the consent of her parents, provided that this woman has reached the age of majority, but at the same time is under twenty-one years old (Article 417);

– adultery (Article 418);

– adultery with a married person (Article 418);

– refusal to provide food and maintenance to parents, obviously in need, if the perpetrator had the means to do so (Paragraph 1 of Article 419);

– persistent disobedience to parental authority or rough treatment of the mother or legitimate father (Paragraph 2 of Article 419);

– marriage contrary to the strong prohibition of the mother or legal father, if the perpetrator has not reached the age of twenty-one (Paragraph 3 of Article 419);

– ill-treatment of a minor by a guardian or a caregiver (Paragraph 1 of Article 420);

– resort to begging or other immoral occupation or giving away a ward who has not reached the age of seventeen by a guardian or a caregiver for this purpose (Paragraph 2 of Article 420);

– coercion of a ward who has not reached the age of twenty-one to marriage by a guardian or a caregiver, provided that the marriage was contracted (Paragraph 3 of Article 420);

– giving away a ward who has not reached the established age to be employed an industrial enterprise for the employment by a guardian or a caregiver (Article 421);

– coercion by a guardian or caregiver of a person under the age of twenty-one to marry him/her by abuse of his/her power, if the marriage was contracted (Article 422);

– neglect of a minor or other person if it has led to the commission of a crime by the supervised person (Article 423);

– not a statement about someone's birth or death to an authorized person who keeps metric books or records about it, in the case when the perpetrator was obliged to make a statement (Article 424);

– failure to include information about birth, death or marriage in metric books or records by a person, a clergyman of a non-Orthodox religion or an employee who is obliged to keep them (Article 425);

– failure by negligence to enter proper information into metric books or records of birth, death or marriage by a clergyman of a non-Orthodox religion or an employee who is obliged to keep these books or records (Paragraph 1 of Article 426).

– negligently entering incorrect information into metric books or records of birth, death or marriage by a clergyman of a non-Orthodox religion or an employee obliged to keep the specified books or records (Paragraph 2 of Article 426).

– failure to comply with the rules on the procedure for maintaining or storing metric books or records of birth, death or marriage, as well as providing them to established by law places by a clergyman of a non-Orthodox religion or an employee obliged to keep these books or records (Paragraph 3 of Article 426).

It is noteworthy that this chapter does not fix any elements of the aggravating circumstances. On the contrary, one of the articles of the chapter (Article 415) includes the second part, describing the basis for exemption from punishment for the act provided for in the article (the occurrence of a circumstance leveling possible harm from a certain type of crime). There is no word "note" in this place of the legislative text and formally this fragment is part of the article, however, in terms of content and essence ("the guilty person is released from punishment if a non-Christian who married him converted to Christianity when married") it is a note, that is, some kind of explanation, addition to the main text of the article.

In total, there are two such structures in the 1903 Code: the already mentioned Part 2 of Article 415 and Part 3 of Article 367 (the latter provides for the exemption from criminal liability of workers who took part in a strike if they started work at the request of the authorities or the head of the enterprise). The modern Russian Criminal Code, pursuing the goal of liberalization and humanization of criminal liability, is regularly supplemented with new notes to articles of the Special Part regulating conditions of exemption from liability (punishment). This toolkit has become so widespread (at the beginning of 2023, there were more than 40 articles with relevant notes in the Special part) that researchers become interested in the legal nature of such notes and consider problems arising from their application [19].

Taking into account general provisions formulated in Article 3 of Chapter 1 "On criminal acts and punishments in general" of the 1903 Code, two crimes provided for there (parts 1 and 2 of Article 408) belong to the category of grave (since the perpetrator serves hard labor), while fifteen acts – the category of offenses (articles 414–419, 421, 423, 424, 426 with arrest or a fine being the most severe punishment), the rest are classified as crimes (ordinary). The most common punishment in Chapter 19 is arrest, which is second only to monetary penance (Article 2 of the 1903 Code), is provided for in seven articles of the chapter and could be imposed for up to six months (Article 21 of the 1903 Code).

Legal structures and techniques used in Chapter 19 look quite modern if one replaces some outdated words more familiar ones. Moreover, the text is written in an accessible and, as a rule, non-contradictory language. At the same time, the legal technique of this chapter is not perfect. In some cases, the legislator divides articles into unnumbered parts (Article 408), in others – the article has no parts, but breaks up into numbered paragraphs (articles 419, 420 and 426), or has parts, with one of them being divided into paragraphs (Article 413).

Classification of criminal acts against family rights by objects of encroachment

To systematize encroachments on family rights, it is reasonable to take as a basis the classification proposed in the explanations of the Editorial Committee [20, pp. 158–159]. This classification stems from the differentiation of a generic object of encroachment on specific and immediate objects and helps to better understand intention of developers of the 1903 Code. The draft code, discussed by the Editorial Committee, differs markedly from the final version of the 1903 Code, therefore, the classification presented below is our interpretation of the original version.

The developers point out that a family union is conditioned by marriage and results into the rights of spouses in relation to each other, arising from the fact of birth of the rights of children, the rights and obligations of children in relation to parents and vice versa, finally, is a kinship union. So, it is logical to begin the classification of the acts in question with encroachments on marriage and continue with encroachments on other objects related to marriage:

1) encroachments on the foundation of a family — a marriage involving free agreement of persons capable of marriage; this includes acts consisting of entering into invalid marriages, whether through the fault of one of the marrying (forced or deceptive marriages) or both (illegal marriages), and criminal activity is possible both on the part of the marrying and persons authorized by the state to conclude marriages and certify them (articles 408–417);

2) encroachments on the marital union, the only case of which in the chapter under consideration is adultery (Article 418), since other cases of criminal acts of spouses in relation to each other are provided for in other (general) chapters of the 1903 Code;

3) criminal acts of children against parents that could not be provided for in other chapters of the 1903 Code, since their punishability is due solely to the duty of childish respect (Article 419):

a) refusal to provide parents with food;

b) rudeness against parents;

c) disobeying the legal prohibition of parents to marry if the perpetrator has not reached the age of 21;

4) criminal acts of parents or substitute parents against children, the punishability of which is due solely to the parental duty of caring for children; these include (Articles 420-423):

a) child abuse;

b) forcing a minor to marry;

c) conversion of a minor to begging or immoral occupation;

d) failure to carry out proper supervision of a minor by a person who is entrusted with such supervision in accordance with the established procedure;

5) acts endangering the family and civil status of a person by failure to fulfill the duties assigned to the perpetrator by law in order to ensure correct maintenance of metric records:

a) failure to declare birth or death in accordance with the established procedure (Article 424);

b) non-fulfillment or negligent fulfillment of obligations to maintain, store or provide metric books or records of birth, death or marriage (articles 425, 426).

Subjects and the subjective side of criminal acts against family rights

The range of subjects of criminal acts specified in paragraphs 1–4 of the classification given in the previous section of our paper is actually disclosed there (for example, in Paragraph 1 these are those who are getting married and persons authorized by the state to conclude marriages and certify them, etc.). The subjects of criminal acts specified in the sub-paragraph “a” of Paragraph 5 of the classification could be any persons who are legally obliged to declare birth or death and those provided for in the sub-paragraph b of Paragraph 5 of the classification – clerics of any religion, except Orthodox, and employees who are assigned duties fixed in articles 426 and 427 of the 1903 Code.

At the same time, in Chapter 19 of the 1903 Code, there is a structure, which, according to a modern terminology, can be called a “special subject of the crime”. It is a sane person who has reached the age of criminal liability and possesses, in addition to general, additional features provided for by law and deterministic qualities of the object of the crime, which allow this person to commit a socially dangerous act provided for by the relevant criminal law norm [21]. When the 1903 Code was adopted, there was no such a term in legal science, but the corresponding method of legislative technique had been known from previous legislation.

Subjects of criminal acts determined in Chapter 19 of the 1903 Code can be classified as special: Article 412 (“a married person”); Part 1 of Article 413 (“a Christian clergyman”); Paragraph 1 of Part 2 of Article 413 (“a non-Christian clergyman”); Paragraph 2 of Part 2 of Article 413 (an employee authorized to keep metric records); Paragraph 3 of Part 2 of Article 413 (a best man); Article 414 (a person who has reached the age of majority); Article 415 (“a Christian”); Article 418 (“a married person”); articles 420, 421 (“parent”, “guardian”, “caregiver”); Article 422 (“guardian”, “caregiver”); Article 423 (“the one obliged to take care of a minor or other person”); Article 424 (“the one obliged by law to declare the birth or death to an authorized person), articles 425 and 426 (“a clergyman of a non-Orthodox Christian denomination who is obliged to keep metric books

and records of birth, death or marriage", "an employee obliged to keep metric books and records of birth, death or marriage marriage").

Criminal acts against family rights provided for in the 1903 Code can be divided according to the perpetrator's attitude to the act committed and its consequences.

The first group includes those that are committed solely with intentional guilt. This predominant group, in turn, is comprised of several subgroups.

First of all, it is necessary to specify the subgroup that constitutes serious crimes; there are two of them and they are fixed in parts 1 and 2 of Article 208. Crimes of this category can only be committed intentionally. So, Part 3 of Article 48 of the 1903 Code stipulates that such acts "are punished only if there is intentional guilt".

Another subgroup consists of fourteen crimes (so-called ordinary, not serious) provided for in the chapter under consideration. Their belonging to the first group is due to the following. Part 4 of the already mentioned Article 48 contains an instruction that crimes with negligent guilt are punished "only in cases specified by law". However, none of the relevant articles of the chapter (409–413, 420, 422, 425) indicates a negligent guilt. Moreover, in relation to many crimes (parts 1 and 2 of Article 412, part 1 of Article 413, paragraphs 1–3 of Part 2 of Article 413) it is indicated that the subject of the act is aware of certain essential circumstances, awareness of which makes it impossible, in principle, to commit an act by negligence.

The last subgroup includes most offenses described in the chapter under consideration. As a general rule, liability for offenses occurs regardless of whether they are committed intentionally or by negligence (Part 5 of Article 48). However, Chapter 19 (articles 414–416, Article 418, paragraph 1 of Article 419) indicates that perpetrators are aware in advance of essential circumstances of the offense, knowledge of which excludes commission of the crime by negligence. For example, in Article 414 it is indicated that liability comes for marrying a person who, obviously for the perpetrator, has not reached the age of majority. As we can see, this technique, which is now also in demand in legislation to characterize the subjective side of the crime, is widely presented in Chapter 19 of the 1903 Code. Therefore, these acts could only be committed intentionally.

In addition, according to paragraphs 2 and 3 of articles 419 and 421, the objective side of a number of other offenses from the chapter in question excludes negligence guilt of the persons committing them. Thus, according to paragraph 2 of Article 419 of the 1903 Code, "persistent disobedience to parental authority" is punishable. The manifestation of perseverance means "firmness and inflexibility in striving for something" [22, p. 966], that is, it indicates meaningful, purposeful and consistent behavior that excludes carelessness.

The second group includes acts that can be committed either intentionally or by negligence. This group is small, and it includes only three offenses in total (articles 423, 424 and Paragraph 3 of Article 426).

Well, the third group includes those acts that can only be committed by negligence. This group is even smaller than the previous one, it includes two offenses (paragraphs 1 and 2 of Article 426). Negligent guilt is conditioned here by the direct indication of the law (the commission of an act "by negligence").

Optional features of the subjective side of criminal acts (motive and purpose of the act, emotional state of the person before or during the crime commission) are usually not indicated in Chapter 19, and, therefore, they are not elements of the composition of criminal acts against family rights (respectively, they are not included in the subject of evidence in the case).

The exceptions are Article 417 and Paragraph 2 of Article 420. Article 417 establishes liability for taking away an unmarried woman for marriage with her consent, but without the consent of her parents, provided that this woman has reached the age of majority, but at the same time is under twenty-one years old. According to the text of the law, this offense includes as a mandatory element the purpose of the act – marriage with the woman who is taken away. Paragraph 2 of Article 420 stipulates the liability of a parent and other persons obliged to take care of a minor in the event that they give their ward to third parties for a specific purpose – for begging or other immoral occupation.

Form and methods of committing criminal acts against family rights. Characterizing victims and the object of encroachments

The vast majority of criminal acts against family rights according to the 1903 Code can be committed only through certain actions. At the same time, a considerable number (seven types)

of such acts, on the contrary, can be committed only in the form of inaction – non-commission of those actions that the perpetrator is obliged to commit (paragraphs 1 and 2 of articles 419, 423, 424, 425, paragraphs 1 and 3 of Article 426 of the 1903 Code). Actions and inaction in the modern science of criminal law are attributed to features of the objective side of the crime.

Methods of committing criminal acts against family rights provided for in the 1903 Code are very diverse: violence against a person (Article 408); threats of murder, very serious or grievous bodily harm (Article 408); deception in active (reporting knowingly false information) and passive (omission of significant circumstances) forms (Article 409); taking away a person (Article 417); coercion through the use of parental or guardianship authority (articles 420, 422); entering incorrect information into official documents (paragraph 2 of Article 426). If we proceed from modern ideas about criminal law, the listed methods (as well as action and inaction) are optional elements of the objective side of the relevant crimes.

When designing articles of Chapter 19, along with the technique "special subject of crime" discussed above, the legislator widely used a mirror technique – "special victim". This term and the corresponding concept in the science of criminal law appeared much later, in the Soviet period, which, however, did not prevent the use of this technique in lawmaking at the turn of the XIX and XX centuries, and earlier. This often happens: some techniques and approaches are first born and tested, show their effectiveness in any practice (not only in lawmaking), and only then are noticed, comprehended, justified in the theory of this activity.

Certain characteristics of the victim are not always included in the compositions when the crime causes harm to him, but only then it is necessary to narrow the circle of victims, limit it to certain conditions [23, p. 23]. In this case a "special victim" is an optional feature of the object of the crime. If elements of a special victim are not formulated in the law, properties of the victim are indicated by nature of the damage caused by the corresponding crime.

The identification of the victim's figure as an element of the object of the crime makes it possible to better reveal the essence of the crime, i.e. its social danger, and to reveal the mechanism of harm to public relations [24, p. 39].

The structure "special victim" is used in Chapter 19 of the 1903 Code in the following cases: Article 409 (a person "who obviously could not understand the meaning of what he was doing"), Article 410 ("groom", "bride"), Article 414 ("a person who obviously did not reach the age of majority"), Article 419 ("mother", "legitimate father"), articles 421 and 423 ("minor"), Article 422 ("a person under twenty-one years of age"). Thus, the special victim here is characterized by a certain state of health at the time of the crime commission, physical and mental condition, mental development, attitude to marriage; blood and legal relationship with the perpetrator; legal age (age of full or incomplete general or special legal capacity), and the age that determines physical and mental development.

The developers of the 1903 Code described the object of any crime as "an interest or benefit protected by a legal norm, which is encroached upon by a perpetrator" [25, p. 7]. This idea was probably formed under the influence of works of N.S. Tagantsev (a member of the Editorial Committee), stating that the positive thing in which the law is expressed is an interest taken under its protection; a legal norm, as a real element of public life, is a protected interest; a person who neglects legal norms directs his activity to this interest. This interest may be included in the legal sphere of a certain subject, and then an encroachment on the interest will also be an encroachment on a subjective law, or a known interest is protected by law as a public domain or good, regardless of its belonging to one or another subject [5, p. 40]. In turn, Tagantsev's views, apparently, were formed under the influence of German lawyers. In particular, he recognized the validity of the position of Gelstaner, who considered a specific legal good to be only a direct object of encroachment and pointed out that the essence of the crime is not limited to damage caused to a specific good; its true meaning lies in the opposition to the rule of law in the state. Therefore, the final legal object that a criminal encroaches on is always the state itself [5, p. 40].

The protection of the family, according to the developers of the 1903 Code, is necessary in the name of public interests, in view of which encroachments on the family union belong to the group of encroachments against conditions of the society. At the same time, the main task of legislation, according to the developers, is not to protect any particular private good of a particular person, but the public good, which is reduced to certain ethical principles that are subject to state protection as a necessary ba-

sis for the strength and steadfastness of family existence and marital status in general [20, p. 157]. Traditionally, religious canons and rules acted as ethical principles in the construction of criminal law norms, which is clearly demonstrated in articles 415 and 418 of the 1903 Code. Accordingly, religious interests acted as an additional object of protection in these cases.

According to the Editorial Commission, religious and moral principles permeate the entire system of state decrees on marriage. Those private rights that are subject to protection are protected only to the extent that their violation entails a fluctuation of religious and moral principles, which are extremely important for society [20, p. 160].

Conclusion

Due to a number of external and internal reasons, in recent years, the state and society have paid great attention to preserving and strengthening traditional spiritual and moral values of the Russian people and, in particular, the family and family values. In 2020, the Constitution of the Russian Federation was amended (approved by popular vote), according to which the family, motherhood, fatherhood, as well as the institution of marriage, as a union of a man and a woman, are subject to protection, which strengthens the traditional idea of marriage (paragraph "g.1" of Part 1 of Article 72). The Russian National Security Strategy assesses the situation in the country and the world as requiring urgent measures to protect traditional values. The Constitutional Court of the Russian Federation, in its Decision No. 24-P of September 23, 2014, indicated that within the meaning of Article 38 (Part 1) of the Constitution of the Russian Federation, family, motherhood and childhood in their traditional, ancestral understanding represent those values that ensure continuous generational change, are a condition for the preservation and development of a multinational people of our country, and therefore need special protection on the part of the state. The Decree of the President of the Russian Federation No. 809 of November 11, 2022, which approved the Foundations of State Policy for the Preservation and Strengthening of Traditional Russian Spiritual and Moral Values, as well as the Decree of the President of the Russian Federation No. 875 of November 22,2023 "On Holding the Year of the Family in the Russian Federation", is aimed at such protection. To popularize state policy in the field of family protection and preserve traditional family values, the Year of the Family is held in the country in 2024. In accordance with the Decree of the President of the Russian Federation No. 309 of May 7, 2024, family support is included in the 1st group of national development goals (subparagraph "a" of Paragraph 1), the Government of the Russian Federation is instructed to develop and submit a national project "Family" (subparagraph "a" of Paragraph 9).

The author hopes that the material of this work will help all interested persons to better understand ideas of our ancestors about family values and help find an optimal model of criminal law protection of family values. As the outstanding Russian lawyer, statesman and public figure N.D. Sergeevskii notes, the study of past eras provides an indispensable guide to the age-old experience of generations when contemplating about a new legislative regulation. To comprehend, evaluate and criticize the criminal law, it is necessary to know its history; otherwise, all our judgments will be deprived of a solid foundation [26, p. 8].

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