

DESECRATION OF DEAD BODIES AND THEIR BURIAL PLACES: LEGISLATION IMPROVEMENT ISSUES

PROFANACIÓN DE CADÁVERES Y SUS LUGARES DE ENTIERRO: PROBLEMAS DE MEJORA DE LA LEGISLACIÓN

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ABSTRACT

For a long period of time, the main regulator of relations associated with various encroachments on the bodies of the dead and the places of their burial was religion; however, the transition of society from traditional to post-industrial predetermined the changes in settlement of the analyzed crimes. In order to preserve the moral principles and moral health of society, the Criminal Code of the Russian Federation singles out an independent group of crimes that infringe on public morality, one of which is Desecration of the dead bodies and their burial places. The article discusses issues related to the commission of encroachments on the bodies of the dead and the places of their burial. They presented the description and characteristics of the objects of encroachment, as well as qualified compositions. The dialectical approach to the disclosure of legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and specific scientific methods are utilized to gratify the aims of the study. The author substantiates the consistency of the approach regarding the synonymy of the concept "violation" and "desecration".

Keywords: Desecration; public morality; human remains; burial places.

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RESUMEN

Durante mucho tiempo, el principal regulador de las relaciones asociadas a diversas usurpaciones de los cuerpos de los muertos y los lugares de enterramiento fue la religión; sin embargo, la transición de la sociedad tradicional a la posindustrial predeterminó los cambios en la solución de los delitos analizados. Con el fin de preservar los principios morales y la salud moral de la sociedad, el Código Penal de la Federación de Rusia destaca un grupo independiente de delitos que infringen la moralidad pública, uno de los cuales es la profanación de los cadáveres y sus lugares de enterramiento. El artículo aborda cuestiones relacionadas con la comisión de usurpaciones de los cuerpos de los muertos y los lugares de su entierro. Presentaron la descripción y características de los objetos de invasión, así como composiciones calificadas. El enfoque dialéctico para la divulgación de los fenómenos y procesos jurídicos utilizando métodos científicos generales (sistémicos, lógicos, de análisis y de síntesis) y científicos específicos se utilizan para satisfacer los objetivos del estudio. El autor corrobora la consistencia del enfoque en cuanto a la sinonimia del concepto "violación" y "profanación".

Palabras clave: Profanación; moralidad pública; restos humanos; lugares de enterramiento.

INTRODUCTION

Modernity demonstrates the deformation of public morality, which reflects the level of values that have developed in a particular society.

Due to the fact that the state cannot be indifferent to unmoral manifestations, special attention in the criminal legislation is paid to the crimes against public morality. This category is collective and includes a fairly wide list of compositions provided for by the Criminal Code of the Russian Federation, one of them is Desecration of the dead bodies (NicGhabhann, 2017). Most people will experience significant stress upon learning that the corpse of a close family member or a loved one has been mutilated (Baker et al., 2015). Although it may seem to them that the deceased is a victim of a crime (or other offense), in practice it is the experience of those who are still alive that often determines the laws (Huang, 2015; Štrkalj et al., 2020).

Therefore, to a large extent, unfortunately, the Desecration of graves, the deceased bodies, gravestone damage, etc. have become the norm for many representatives of the younger generation of the 90-ies and 2000-ies. Wanting to derive material benefits, the criminals, crossing all the boundaries of what is permitted, steal monuments from burial places, metal fences, wreaths and even toys left to honor the dead. Others, not pursuing any specific goal, plunder grave recklessly because of hooligan motives (Najman, 2019; Tienda Palop & Currás, 2019; Noureldin Abdou, 2022).

Statistical data allow us to conclude that the number of crimes committed has remained unchanged since 2016. This actualizes the consideration of legislation on prosecution to identify shortcomings.

METHODOLOGY

The study was based on a dialectical approach to the disclosure of legal phenomena and processes using general scientific (systemic, logical, analysis and synthesis) and specific scientific methods. The objectives of the study conditioned the appeal to special-legal methods (in particular, to

comparative legal).

RESULTS AND DISCUSSION

It should be noted that in the process of society development, the acts covered by the specified composition (Desecration of the dead bodies and the places of their burial) were subjected to various criminal legal regulation, which directly depended on the factors of influence concerning the regulation of social relations during a specific historical period (Dickerson & Ceeney, 2015; Temperman & Koltay, 2017).

It is possible to speak about the detailed regulation of the analyzed acts only since the adoption of the RF Criminal Code in 1996, which marked the beginning of a new round in the regulation of public relations associated with the encroachments on the bodies of the dead and burial places, taking into account modern realities. The legal regulation of the analyzed tort has undergone a number of positive modifications, taking into account the trend of restrictions in the legislation (Jones, 2017). The list of items, in respect of which an encroachment can be committed, was significantly expanded, qualified compositions were singled out due to their increased public danger. The first of them indicates the implementation of encroachments based on political, ideological, racial, national, religious hatred or enmity, etc. (Štrkalj et al., 2020).

The second qualified composition is dedicated to the victims and participants in the fight against fascism. The introduction of this composition does not cause any controversy. This need is conditioned by the level of society degradation, because at the present stage, the objects of encroachment are often military graves, as well as the structures that are dedicated to the memory of the participants and the victims of the fight against fascism. So, at present, researchers have noted the growth of cemetery and memorial extremism. In particular, Huang explains this by the fact that at the present stage, spiritual degradation has reached the stage when the places and structures dedicated to the memory of participants and victims of the struggle against fascism, including military graves, have become the objects for the ugliness of nationalists, and satanists (Huang, 2015).

However, the current edition of the Art. 244 of the RF Criminal Code is imperfect, due to which it seems necessary to highlight a number of problems related to the interpretation of this norm and its law enforcement aspects.

As the subjects of criminal law protection, the domestic legislator names only the bodies of the deceased, as well as burial places, grave structures and cemetery buildings, while, for example, the ashes of a deceased person are not included in such subjects.

The German Criminal Code contains several rules regulating the responsibility for the acts not only in relation to the body of a deceased person and the place of his burial, but also in relation to the memory of him (Stepputat, 2018). §168 contains a different approach of the legislator, when, along with the body (a part of the body) of a deceased person, the places of burial or public commemoration, the ashes of a deceased person are also singled out as an object.

In turn, the Art. 297 of the Criminal Code of Ukraine provided for "responsibility not only for the desecration of the grave, of the body (remains or ashes), but also, importantly, over the urn with the ashes of the deceased, as well as for their illegal possession, as well as the grave objects."

We believe that this approach is the most optimal, since the used legal structure is more detailed and satisfies modern needs in this area, due to which it can be perceived by the domestic legislator.

Let's also note that at the present stage, Russia accepts foreign experience actively in the field of cremation, which is becoming more and more widespread, and it is promoted mainly on the grounds that it is safer for life and more hygienic than ordinary burial in a cemetery (Stepputat, 2018; Najman, 2019)

Today, the legislator's position does not allow to consider the bodies of stillborn children (fetuses) with the signs of antenatal death as an object of criminal abuse unambiguously under the Art. 244 of the Criminal Code of Russia. However, those who died in the womb are the objects of the funeral culture of society on the basis of belonging to the genus of people. In any case, this applies to stillborn children during the last months of pregnancy (as it appears with the period of 22 weeks and more). The abuse of their bodies is just as immoral, blasphemous, socially dangerous as the abuse of the bodies of those who have died because of brain death, therefore it would be advisable to supplement the Article 244 of the Criminal Code of Russia with regard to the subject of stillborn children who have reached the age of 22 weeks of uterine development. The life of a person is the life of his brain - having reached 22 weeks of uterine development, a person should be considered a full-fledged subject of the right to life (Jones, 2017; Seidemann, 2018).

The next problem, which must be singled out separately, is related to the characteristics of the acts that characterize the outward manifestation of the considered crime. The essence of the problem is in the fact that the legal literature has not developed a unified approach to understanding the relationship between the concepts of "violation" and "desecration".

The result of the fragmentation in the interpretation of the acts in question is the lack of understanding of their relationship, which entails the existence of a number of negative aspects that need theoretical revision. One of which is the lack of a unified approach to understanding their essence.

Comparison of the given definitions indicates that their only difference is in the encroachment subject: if in the case of violation, these are human remains, then in the case of Desecration, they are the places of burial. This version of the correlation of the considered concepts in the doctrine is actively supported by Dickerson and Ceeney, who points out that "violation" is always directed at a body, and "desecration" is committed only in relation to religious buildings (Dickerson & Ceeney, 2015; Khan, 2022).

However, in our opinion, this approach cannot be considered perfect, based on the semantic meaning of the concepts under consideration. The concept of "violation" can cover the commission of immoral acts not only over the remains of a person, but also over burial places.

Semantic analysis of the concepts of "violation" and "desecration" in the Russian language made it possible to conclude that they are synonyms and are not limited by strict subject frameworks.

We believe that these circumstances indicate some inconsistency of the approach that distinguishes between the concepts of "violation" and "desecration", due to the lack of sufficient arguments in its favor.

Let us also note, in support of our position on the synonymy of the analyzed concepts, that the

legislators of some states use only one of them in legal norms.

One of the approaches is based on the fact that “violation” is not applied at all, and these acts are covered by the single concept of “desecration”.

So, for example, the Art. 195 of the Norwegian Penal Code deals with the “desecration” of a corpse, which can be expressed in the removal of it without permission from the care of another person, exhumation and removal from burial sites.

Besides, the Art. 262 of the Polish Criminal Code sets liability for the “desecration” of a corpse, human ashes and the resting place of the deceased, which also includes the robbery of a corpse, a grave (or another resting place).

That is, the examples given also testify that the body of a deceased person can still be the subject of Desecration.

However, it should be said about another existing approach. For example, the legislator of Belarus by the Art. 347 of the Criminal Code uses a single term “violation” both in relation to a corpse and a grave, which also includes the abduction of a corpse or any other items that are located directly at a burial place.

The analysis performed demonstrates the lack of consensus regarding the correlation of these concepts. We believe that in view of the separation of two categories in the criminal law - "violation" and "desecration", as well as the presence of uncertainty in the legal doctrine regarding their comparison, the legislator needs to settle this issue, bringing his position within the framework of the criminal legislation of Russia.

Another problem is the imperfection of the legal regulation of the acts we analyze in the spectrum of qualified compositions.

Let's note that for a long time (2011-2020), the legislator ignored the low mobility of the compositions, united by clause "b", part 2 of the Art. 244 of the Criminal Code of Russia, their inconsistency with the actual social relations in this area.

At the same time, it should be noted that the composition covering the violation of the dead bodies and their burial places based on political, ideological, racial, national, religious hatred or enmity, etc., in our opinion, does not contradict the circumstances of real life and really regulates one of the most important aspects of social relationships (Varlet et al., 2020).

We believe that the commission of crimes on these grounds has a special destructive force, encroaching on universal human values and principles that have evolved throughout history. For example, the sense of faith in recent years has been brought by any of the religions to the level of affect, the consequence of which is such a religious ecstasy, which often develops into religious fanaticism, becoming the cause of religious clashes and even wars (Jones, 2017; Seidemann, 2018).

An illustrative example of massive crimes in this area are the atrocities of the Albanians, who encroached on the Serbian Orthodox cemeteries, the destruction of which continues even nowadays.

Thus, in 2017, 90% of the graves in the Serbian Orthodox cemetery of Kosovska Mitrovica were desecrated by Albanian Muslims (Huang, 2015; Najman, 2019).

In contradiction with the emerging realities, in our opinion, it was precisely the qualified composition that existed until April 2020 dedicated to the victims and participants in the fight against fascism.

In 2020, the legislator made an attempt to modernize the analyzed provisions. Thus, the criminal acts against military graves should be considered now in isolation from the concepts of "violation" or "desecration". In other words, now these unlawful actions form a separate corpus delicti (Article 243.4), and the legislator already operates with the concepts of "destruction" and "damage" in relation to them (Baker et al., 2015). We believe that this approach of the legislator is conditioned by the desire to emphasize the special significance of these acts, since they harm not only public morality, but also encroach on the emotional well-being of the whole nation. However, despite the fundamental changes in this area, the legislator still does not pay due attention to the regulation of the legal protection of victims of global and local wars, as well as terrorist acts - thus, the main problem remains unaccounted for.

The combination of these actions into a separate corpus delicti is a kind of "innovation" of the domestic legislator, the effectiveness and expediency of which is not possible to assess on the basis of the fact that foreign legal orders do not demonstrate similar legal structures.

As an example, let us cite the approach of the Ukrainian legislator, who designed this norm as follows: desecration or destruction of the mass grave or the grave of the Unknown Soldier, as well as the monuments that were built in memory of those who fought against Nazism during the Second World War - Soviet soldiers - liberators, the members of the partisan movement, underground fighters, the victims of Nazi persecution, internationalist soldiers and peacekeepers, as well as persons who defended the independence, sovereignty and territorial integrity of Ukraine (Polymenopoulou, 2017).

We believe that it is advisable to bring the considered norm of the Criminal Code into line according to the Ukrainian legislation by adding the above provisions.

CONCLUSION

Summing up, it becomes obvious that the data presented by us emphasize a number of imperfections of the Russian criminal legislation in this area at the present stage.

First, the list of items that are subject to protection by the state seems to be limited. Secondly, in view of the indication of two categories in the law ("violation" and "desecration") and the absence of their legal definitions, there are inconsistent approaches in the legal doctrine with regard to their correlation. However, based on the semantic analysis of these concepts, we believe that they are synonymous - this fundamentally excludes all kinds of differentiation between them. In our opinion, it is possible to resolve the existing terminological collision, thereby eliminating the opinion that there is any difference between the analyzed concepts, possibly by using a single category by the domestic legislator (either "violation" or "desecration"), like in foreign legislation.

Thirdly, there is an objective need to improve the legal regulation of the analyzed acts, complicated by various elements - in particular, their commission in relation to "special" categories of burials.

Note that for a long time the legislator did not pay due attention to the provisions of the Art. 244 of the Criminal Code, namely, no changes have been made to them since 2011, and the transformations of 2020 seem to be somewhat controversial for us. This is due to the fact that a significant circle of public relations still remains "uncovered" - for example, today monuments to the victims of terrorism, local wars, etc. are outside the scope of legal protection. We believe that the borrowing of progressive foreign experience in this area by Russia will make it possible to bring the norm under consideration in line with the needs of modern Russian society.

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