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Criminal Punishment under Russian Law of a Person for Failure to Report

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Abstract

The aim of the study is to investigate the criminal punishment under Russian law of a person for failure to report on the existence of his second citizenship via the main provisions of the Russian science of criminal, migration, and international law. As a result, the guilty person is aware of the social danger of failure to fulfill the obligation. In conclusion, the crime provided by Article 330.2 of the Criminal Code of the Russian Federation, is deemed completed at the time of expiry in

the period during which the person was obliged to file a corresponding notification.

Keywords: Notification, Citizenship, Residence Permit, Crime.

Castigo penal bajo la ley rusa de una persona por no informar

Resumen

El objetivo del estudio es investigar el castigo penal en virtud de la ley rusa de una persona por no informar sobre la existencia de su segunda ciudadanía a través de las principales disposiciones de la ciencia rusa de derecho penal, migratorio e internacional. Como resultado, la persona culpable es consciente del peligro social de no cumplir con la obligación. En conclusión, el delito previsto en el artículo 330.2 del Código Penal de la Federación de Rusia se considera concluido en el momento del vencimiento en el período durante el cual la persona estaba obligada a presentar la notificación correspondiente.

Palabras clave: Notificación, Ciudadanía, Permiso de Residencia, Delito.

1. INTRODUCTION

Migration in the modern world is a logical result of the processes of globalization. Without it (first of all, labor migration), modern political, economic and socio-cultural development is impossible. Federal Law No. 142-FL of 04.06.2014 On Amendments to Articles 6 and 30 of the Federal Law On Citizenship of the Russian Federation and Certain Legislative Acts of the Russian Federation criminal law of the Russian Federation was amended by Article 330.2, which

establishes criminal liability for failure to fulfill the obligation to file a notice of the presence of a citizen of the Russian Federation of the citizenship (nationality) of a foreign state or residence permit or other valid document confirming the right to permanent residence in a foreign country.

There is also a mechanism for registering citizens of the Russian Federation who have citizenship (citizenship) of a foreign state or a residence permit in a foreign country in this Law. That is, in fact, its purpose is to create an information database containing information on persons who have citizenship (nationality) of a foreign state or a residence permit in a foreign country, which fully meets the requirements of Federal Law No. 152-FL of July 27, 2006 (as amended on July 21, 2014) On personal data. It should be noted that earlier in the Russian legislation there was no such mechanism for registering the relevant categories of citizens (Yang et al., 2019).

Kaufman (2016) believes that there is no public danger in such act and there are no legal consequences in the awareness or lack of information of the Russian Federation about the presence of its citizens at the same time citizenship of another state. The author believes that the legislator has only one goal: to strike a preventive blow on the unreliable persons, who are dangerous in their connection with the criminal environment (and this is neither more nor less than the rest of the world). According to Kaufman's (2016) opinion excessive criminalization brings very significant damage, if the excess criminal

law is applied in practice, it distorts the meaning and content of the actual criminal policy (Kaufman, 2016).

It seems to us that the appearance of the investigated norm and all of the Law is directly connected with ensuring the security of the Russian Federation and strengthening the control over migration processes. As noted by Ostapets, the emergence of this rule was the result of the events in the Ukraine and related issues of ensuring the security of the Russian Federation, and, so, in general, the political situation in the world (Ostapets, 2016). The deputy of Russian parliament Sergey Neverov described the motive for introducing criminal responsibility for committing considered act:

The state must know whether the citizen is in public and legal relations with another country, what duties he has. After all, acquiring citizenship, a person is not endowed only with rights, but also duties, including military duty, the duty to defend the interests of this country (Neverov, 2016: 10).

2. METHODOLOGY

The basis of the research was the main provisions of the Russian science of criminal law, migration law, and international law. There is no doubt that the criminal laws of Germany and France substantially influenced the criminal laws of Tsarist Russia and the first Republic of Estonia. However, the uniqueness of Russian criminal law should also

be taken into account; for instance, one of the leading criminal jurists of Russia, Tagantsev, based his treatment of the topic purely on normativist ideas. The concept of crime was explicated by Tagantsev to be a legal relationship between an individual and society. Crime is dangerous because it creates relationships between the offender and society and between the offender and injured party that differ from the legal order. Crime and punishment as legal phenomena represent the object of criminal law.

The Federal Migration Service was an agency responsible for implementing the state policy on migration and also performing law enforcement functions, functions for control, supervision and provision of public services in the field of migration. The Federal Migration Service was responsible for the issuing of Russian international passports, resident registration and immigration control in Russia. Headquartered in Moscow, FMS was charged with the investigation and enforcement of over 500 federal statutes within the Russian Federation. FMS is led by a Director who is appointed by the Prime Minister of Russia.

Last but not least, to establish foundations for state rule of law in Russia the legal system must consistently implement and incorporate the constitutional provision on both the generally recognized principles and norms of international law (IL) and the international treaties of the Russian Federation (RF). The 1993 RF Constitution enshrined this provision for the first time in the history of the country's constitutional development. It is important to emphasize that this is not an ordinary

constitutional norm but the norm of the highest order – the general legal principle (for Russian law) and one of the foundations of the constitutional order of the country.

3. RESULTS

The main direct object of the crime provided by article 330.2 of the Criminal Code of the Russian Federation, are the social relationships ensuring the normal activities of Federal Executive authorities of the Russian Federation for control and supervision in the sphere of migration, associated with the registration of the Russian Federation citizens, who have citizenship (nationality) of a foreign state or a residence permit in a foreign country. The subject of the crime being investigated is a written notification, which the guilty person does not file within the period established by law. According to Part 6 of Article 6 of the Federal Law of 31.05.2002 No. 62-FL On the Citizenship of the Russian Federation, the following information about the citizen of the Russian Federation in respect of whom it is served shall be entered in the notice:

a) surname, name, patronymic; b) date and place of birth; c) place of residence (in the absence of such a place of residence, and in the absence of a place of residence and place of stay, the place of actual residence); d) the serial number and passport number of a citizen of the Russian Federation; e) the name of the other available

citizenship, the series, number and date of issuance of the passport of a foreign state; f) date and reason for acquiring another citizenship; g) information on the extension of the validity of the document for the right of permanent residence; h) information on the appeal to the authorized body of a foreign state on the withdrawal of the said citizen (Soo et al., 2019):

1) A copy of the passport of a foreign state or other document confirming the existence of another nationality and (or) a document for the right of permanent residence in a foreign country;

2) A copy of the passport of the citizen of the Russian Federation or another document certifying the identity of the said citizen on the territory of the Russian Federation (including a document certifying the identity of a foreign citizen on the territory of the Russian Federation and recognized by the Russian Federation in that capacity, in the event that the said notification is filed by a foreign citizen who is lawful a representative of a citizen of the Russian Federation specified in part four of this article).

In the case of filing notice by an authorized representative of a person, the following shall also be attached to the notification:

1) a copy of the power of attorney certified in accordance with the legislation of the Russian Federation on the notary;

2) a copy of the passport of a Russian citizen by an authorized representative (if the authorized representative is a citizen of the Russian Federation) or a copy of the document certifying the identity of the foreign citizen in the territory of the Russian Federation and

recognized by the Russian Federation in that capacity (if the authorized representative is a foreign citizen) (Indriastuti, 2019). In addition to the listed documents, along with the notification, other documents confirming the information indicated in it are submitted. (The act of the guardianship authority on the appointment of a guardian or curator, the certificate of the birth of the citizen of the Russian Federation who has not reached the age of eighteen years, for example).

The forms of the relevant notifications are approved by the Order of the Federal Migration Service of Russia of July 28, 2014 No. 450 (Edited on 20.07.2015) On approval of the forms and procedure for filing notifications of the presence of a citizen of the Russian Federation of another citizenship or residence permit or other valid document certifying the right for his permanent residence in a foreign country. The procedure of accounting and received written notifications is regulated by the Decree of the Russian Federation Government dated of 30.07.2014 No. 733 On approval of Rules of implementation of the Federal migration service and its territorial bodies have given written notification that citizens of the Russian Federation have citizenship of another state.

On legal construction *corpus delicti* of a crime, that is foreseen by article 330.2 of the criminal code of the Russian Federation, is formal.

The objective side of the act is represented by a single sign - an act in the form of inaction. As noted by Naumov: "Criminal inaction is understood as socially dangerous, willful and passive behavior. It

means, that a person has not committed the actions that it had to do and could do because of the responsibilities that lay on him" (Naumov, 2008: 10). In this case - due to the blanket nature of the analyzed regulations the obligation of the notification stipulated in article 6 of the Law. Thus, the appropriate person must submit a written notification of the presence of another citizenship or document for the right of permanent residence in a foreign state to the territorial body of the federal executive body authorized to carry out functions of control and supervision in the field of migration at the place of residence of the citizen within the Russian Federation in the absence of such - at the place of his stay within the Russian Federation.

In the absence of his residence and place of stay within the Russian Federation - at the place of his actual stay in the Russian Federation) within 60 days from the date of acquisition by the citizen of another nationality or receipt of the document on the right of permanent residence in a foreign country. In addition, in the case of acquisition by the citizen of the Russian Federation each of another nationality or receiving him each new document on the right of permanent residence in a foreign state, the citizen or his lawful representative is obliged to submit about this new notification (part 11 of article 6 of the Law).

Citizens of the Russian Federation, which had at the date of entry into force of the Federal law of 04.06.2014 No. 142-FL On amending articles 6 and 30 of the Federal law On citizenship of the Russian Federation and certain legislative acts of the Russian

Federation citizenship (nationality) of a foreign state or a residence permit in a foreign country must submit a notification within 60 days from the date of entry into force of the act (that is until August 4, 2014). For persons who have not submitted a notification within 60 days, due to being outside the Russian Federation, the obligation is established to file such notification no later than 30 days after the date of entry into the Russian Federation (paragraph 2, parts 3, 4, article 6 of the Law).

On the basis of the specifics of the objective side, the analyzed crime should be attributed to the so-called continuous crimes, the essence of which is in a long, continuous implementation of a specific corpus delicti of a crime (prolonged failure imposed on the person duties). The crime provided for by Article 330.2 of the Criminal Code of the Russian Federation, deemed completed at the time of expiration of the period during which the person was obliged to file a corresponding notification (Dolzhikova et al., 2015). As the territorial body of the Federal Executive authority authorized on implementation of functions on control and supervision in the sphere of migration, we should recognize the territorial divisions of the Interior Ministry of Russia, which in connection with the abolition of the Federal migration service of Russia is entrusted the function.

In Accordance with the provisions contained in part 5 of article 6 of the Law, there are three alternative means of giving the notification: 1) personally; 2) through an authorized representative; 3) by mail through the Federal postal service. The procedure of giving notification

is specified in Appendix No. 3 to the Order of the Federal Migration Service of Russia. So, the notification is filled in one's own hand or with the use of technical means in the Russian language. When filling the notification, acronyms and abbreviations, as well as strikethrough and correction, are not allowed. If necessary, the letters of the Latin alphabet can be used to fill out individual graphs of the notification. All fields must be completed in the notification (Lee, 2019).

The receiving of the notification is confirmed by the signature of the authorized official of the territorial agency of the Federal Migration Service of Russia or an employee of the organization of the federal postal service on the notification form and the detachable part of the notification form, which is sealed by the seal of the territorial agency of the FMS of Russia for certain categories of documents or by an imprint of the calendar postmark of the organization of the federal postal communication, respectively. The organization of the federal postal service, is restricted in legal capacity or authorized representative of a citizen, legal representative, sends the main part of the notice and copies of the documents attached to him to the territorial body Federal Migration Service of Russia no later than the working day

following the day of receiving of the notification for the accounting.

To recognize the person guilty of the committing a crime under Article 330.2 of the Criminal Code of the Russian Federation, it is necessary to establish that he has a real opportunity to fulfill the obligation to notify the competent authorities. In the cases where the

implementation of this obligation was impossible due to the presence of force majeure (physiological condition of the person, man-caused or natural disasters, etc.), there is no composition of the investigated crimes in the actions of the person.

The subject of the crime under Article 330.2 of the Criminal Code of the Russian Federation, is special. In particular, they can be:

1) a citizen of the Russian Federation who has reached the age of 18 years and has citizenship (nationality) of a foreign state or residence permit or other valid document confirming the right to permanent residence in a foreign country;

2) the legal representative of a citizen of the Russian Federation who has not attained the age of 18 years, or who is limited in capacity, having citizenship (nationality) of a foreign state or residence permit or other valid document confirming the right to permanent residence in a foreign country.

The subjective side of the crime being analyzed is characterized exclusively by direct intent, due to the fact that the corpus delicti of a crime is formal. The guilty person is aware of the social danger of failure to fulfill the obligation to file the appropriate notification and wishes this. The motive and the purpose of this act does not affect on qualification, nevertheless they must be taken into account by the court when imposing punishment (Bukalerova, 2016; Bukalerova et al., 2017).

4. CONCLUSION

The main direct object of the crime provided for by Article 330.2 of the Criminal Code of the Russian Federation, are public relations that ensure the normal activity of federal executive bodies of the Russian Federation in control and supervision in the sphere of migration associated with the registration of citizens of the Russian Federation having citizenship (nationality) of a foreign state or a residence permit in a foreign country. The objective side of the crime refers to continuing crimes, the essence of which is a long, continuous implementation of a specific crime (long-term failure to fulfill the duties imposed on a person). The crime provided by Article 330.2 of the Criminal Code of the Russian Federation, is deemed completed at the time of expiry in the period during which the person was obliged to file a corresponding notification. The subjective side is characterized by direct intent.

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