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The History of Russian and Foreign Criminal Legislation on the Abuse of Corpses and Burial Places

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This article gives a historical background and compares article 244 of the Russian criminal code, which provides the definition and punishment for corpse and grave abuse, with the laws of foreign countries for the same crimes. The similarities and differences of the different systems are examined and analyzed.

Keywords: corpse, burial place, grave, abuse article #244, tomb, destruction.

Our attitude to burial places – city cemeteries, rural grave-yards is the reflection of our consciousness, lighten up with spiritual culture or truncated, bellicose-barbaric, in the end our attitude to life and death, the way we understand existence finiteness and immortality. Each abuse of corpse and its burial place violates and destroys the society moral standards, which are down and out.

In general, any crime contemplated by criminal law is immoral. Crime perpetration causes criminal liability and moral censure such as estrangement, expression of defiance etc. But not every immoral action is acknowledged as a crime.

Abuse of corpses and burial places are considered crime in criminal law. One of the reasons is the social danger caused by them. The act tramples the respectful treatment of the deceased memory; morally ails the relatives and intimates of the deceased. «Among all the nations

of the world – wild, barbarian and educated, including modern Parisians – there is no one who doesn't respect the deceased» [1].

Grave-digging is known as one of the oldest crimes. Several millenniums ago criminals stole values from Egyptian pyramids, tumuli of Scythian chiefs etc.

Abuse of corpses and burial places was named vandalism, when in 445 ancient Germans robbed Rome and destroyed many memorials of antique and Christian cultures.

There were many historic examples of rich burial places subjected to devastation. Besides, abuse of corpses and burial places caused by religious and racial fanaticism, political reasons, revenge or other foul motives can be mentioned. The example are the pseudo-Dmitry corpse abuse (the body was shown off at the execution place with a fife put into the mouth and masquerade mask covering the disemboweled body) or the smugglers' punishment in ancient England – their

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bodies were “conserved” by tar and left on the gallows until complete destruction.

But, despite of the authorities’ use the corpse abuse for the purpose of punishment, these acts were considered crimes since early age.

In Russia the first lawful statement officially allocated the abuse of corpses and burial places was the Russian Truth. It contained the crime against faith. The allocation itself was covert. The abuses of corpses and burial places were considered as “mertvetsy svolochat” (corpses abuse) [2]. This term included the corpse robbery, cross excision (on the roads and graves), also small part excision from sacred objects. More specifically, these crimes were called the acts prohibited, repugnant with faith and church and punished the death penalty [3].

Obviously, the invited Byzantine church hierarchs made the dramatic influence and brought the new legal system. And according to the Byzantine laws (Ekhlog, Prohiron) the burial places pillage punished the arm cutting off.

The XIII century source the Regulations of Grand duke Vsevolod upon church courts and people and trade criterion concerning ecclesiastical crimes repeats the Regulations of duke Vladimir, and names “mertvetsy svolochayut” [2] in Article.

Later Military article of Peter I, being the military-criminal codex and dated 1715, also presented general crimes, e.g. criminal responsibility for abuse of corpses and burial places. The Article provided the following: “The one who steals from the Church or other places must be deprived of one’s life and the body should be broken on the wheel” [2].

In XIX century the Criminal and correctional Code dated August, 15, 1845 contained the article “About sacrilege, grave digging up for dead bodies robbery”. Article #256 included the responsibility for “grave digging up for dead bodies, robbery or desecration of the buried” [2]. The article also

provided the qualified composition of the named act - grave digging up for “any superstitious actions”, or caused by prank or drunkenness. The superstitious applying for mentioned above could be the superstition that arm of the dead saves from the bullet. The penalty for mentioned above acts differs from imprisonment into strait house for 6 months up to deportation to Siberia or to penal servitude

Article #257 of the Code qualified “monuments destruction or damage if it caused by malice pretence against buried or against the relatives of the buried” as a crime [2]. The second part of the article mitigated the penalty to fine those committed the crime only by thoughtlessness. Therefore, the abuse of corpses and burial places could be committed both deliberately and carelessly.

The Criminal and correctional Code of 1845 protected the religious policy of the Russian empire as the element of its social and political system. Prevailing Orthodox religion and the Church were the most reliable support of feudalism and important element in the Russian political system. Grave digging up and robbery of dead were not considered religious crimes although were provided by the second chapter of the Code named “About crimes against belief and violations the protecting enactments”. The articles implied any kind of grave digging up and robbery of dead independently of confession.

The grave was determined as any depository of corpse accepted by religion, built in accordance with medical-police interment regulations that are crypt, burial-vault.

Worth mentioning is the fact that in the Code lawmaker specified the subjective badge of crime: “in order to rob or abuse the corpse...” to reach the superstitious objectives. In modern Criminal code of the Russian Federation the discretionary rule, provided by Art. 224, does not contain a straight specification of the criminal purpose.

The range of crime in the Code was narrow. It mentioned only graves, buried bodies, monuments and its beautifications. Cemetery buildings designed for burial procedures were not considered as the crime objectives.

The criminal Code of 1903 also contained the principles, similar to the mentioned above. According to chapter 1 Article 79 of 1903's criminal Code "the guilt of stealage or abuse the corpse whether buried or not" should punished the imprisonment in correctional house for the period up to three years. Qualified compositions provided the perpetration of "action abusing the morality" and caused by "superstition, folly, ignorance or drunkenness". These actions were the crimes against belief.

The criminal Codes of 1922 and 1926 did not contain the principles covering the deceased. The explanation to our opinion should be found in Soviet system itself. After the socialist revolution in Russia the idea of church and state separation were actively propagated. As the result, many religious objects and installations were destroyed. It was necessary to rebuild the destroyed economy of the country and the lack of building material lead to search for the alternative of the material from destroyed cemeteries, monuments, churches, temples, mosques etc. Therefore, providing the penalty for specified crime in Soviet Russia's criminal code would conflict with the Bolsheviks' actions.

However, Art. #229 of RSFSR's criminal code of 1960 [4] provided the criminal responsibility for the grave abuse and stealage the objects located in and on the grave. This issue was unamended until new RF criminal code of 1996 was adopted.

Operative penal canon greatly differed from Art. #229 of the 1960's Code. The changes were the following: first, the list of penal actions was extended essentially; second, the qualified compositions were brought [5].

After Soviet Union break-up the new states arisen on its territory implemented their own criminal policies. Today the new criminal codes generally similar to the USSR's criminal code have been adopted in all the republics of the former USSR. However, the principles concerning burial places abuse have their own specific differences.

For example, the Georgian criminal code (Art. #258) provides the action named "disrespectful behavior upon deceased" [6]. Disposition of the principle is similar to Art. #244 of Russian criminal law, but additionally mentioned is "stealage the objects located in and on the grave". The lawmakers of Kyrgyzstan (Art/ #263), have chosen the similar formula and incorporated the principle "stealage the objects located in and on the grave" [7]. The Ukrainian criminal law provides not only the objects stealage from the corpse but from the burial place as well. [8]

In Russian Criminal code the objects stealage from the corpse or burial place causes the disputes regarding the qualification of the action – whether it should be provided by Art. #158, Art. #244 or qualified as a cumulative action. In this regard Georgian, Kyrgyzian and Ukrainian criminal law are more precise.

The Uzbekistanian lawmakers also include the alternative compositions of the similar principal objectiveness, together with violation, the "collection the object located on the corpse, at the grave or in the burial place" [9]. We believe that in this case the job of the law machine was base on using the term "collection" instead of "stealage". Therefore, in theses circumstances there is the necessity to prove the lucre.

The main difference of Art. #244 of the Russian criminal code from the similar document of Azerbaijan (Art. #245) is that the Azerbaijanian one does not provide the objectiveness of principle, it just uses the simple disposition – "violation of the grave or the corpse" [10]. In order to understand the given principle completely we

should determine which actions the Azerbaijani lawmakers include into the term “violation”, besides, it is necessary to concretize the term “grave” - whether it includes tomb installations (monuments, headstones, different cemetery buildings etc.) or not, which is often very difficult to determine. Therefore, we can make a conclusion that the Russian Code determines “violation” more precisely.

As the distinction of this kind the Estonian criminal law includes the principle of objectiveness named “grave ravage or other violation of the buried memory” (Art. #199) for such actions as “submergence or other actions in order to extract from the sunken water-craft or from the seabed and elevation on the surface the shipwreck victims or property, as well as the stealage of the object located at the place of last pass away” [11]. We assume that the given principle provides only illegal actions upon extraction of corpses and property caused by shipwreck. Otherwise, the principle infringes the relatives of deceased to bury the body the way they consider right.

The specific feature of the principle provided by Art. #313 of the Lithuanian criminal code is the responsibility of the person who “discloses the false conjectures about deceased that may cause the scorn or shake the respect of the memory” [12]. In San Marino republic there is the crime named “blasphemy and heavy outrage of deceased”. The trial on this case is carried out upon relatives’ complaint [13]. There is no special principle concerning the disclosure of the deliberately false information, detracting the dignity of deceased. Such action qualified upon general principle, envisaging the responsibility for damaging words.

Criminal laws of many countries contain the principles envisaging the criminal responsibility for infringement of respectful behavior of deceased memory and their burial places inviolability.

For example, the criminal code of Holland contains 5 articles, similar to Article 244 of the Russian criminal code. The person who violates or intends to violate the legal burial procedure (Art. #145), frustrates the funeral service with disorder of noise (Art. #146), wittingly prevents the access to cemetery or transportation the body to cemetery (Art. #148), wittingly profanes or destroys the grave, damages any monument built at cemetery (Art. #149), wittingly and illegally digs out and transfers the corpse (Art. #150) is criminally liable [14]. The above mentioned actions fall under administrative responsibility rather than a criminal one. Besides, in case the crime is committed with violation (any offensive actions) of corpse, the given action could be acknowledged as unpunishable upon Holland legislation, which is its the essential drawback.

The responsibility for frustration the funeral service and other ceremonies connected with deceased burial, envisaged in the criminal laws of San Marino (Art. #262), Japan (Art. #188), Lithuanian (Art. #188). In Lithuania the person carries criminal liability for the given actions in case the complaint of the victim, legal representative of the victim’s prosecutor.

The lawmakers of Switzerland criminalize the “dishonour of the deceased grave, corpse, corpse or parts of corpse extraction or the deceased ashes extraction under protest of an authorized person” (Art. #262) [15]. The responsibility for the deceased ashes extraction is the unique feature of the given law. In Russian legislation such action falls under provisions of the burial place profanation, since the “deceased body” term does not cover the ashes.

Close to the unique characteristic of the Switzerland criminal law - “ashes of the deceased” - is the one in the Japanese criminal law - “the remainder of the deceased hairs”. Article #190 provides the responsibility for “destruction, throw-out or misappropriation the corpse or the remainder

of the deceased hairs or the things put into the coffin” [16]. Moreover, the Japanese criminal code criminalizes “the unnaturally deceased burial without corpse external inspection” (Art. #192). It is supposed that special subjects, whose proxies and duties includes such actions shall respond for such action, otherwise the sense of the prohibition is lost, since not only the social relations connected with the memory of the deceased suffer, but also the management form.

The Danish lawmakers envisage that any person violating the sanctity of cemeteries or is guilty of an indecent treatment with corpses is subjected to punishment. [17] the principle could be accepted and interpreted loosely and it would be correct to define more specific range of actions or to refer to some publicly dangerous consequences.

The criminal punishment for these crimes (including qualitative composition) is limited within range from 2 to 5 years in all the listed legislations. In addition to custody, the fine can be applied (Estonia, Japan, France, Uzbekistan), arrest (Estonia, Lithuania, Ukraine, Uzbekistan), custodial restraint (Ukraine, Lithuania) and a correctional labour (Uzbekistan, Azerbaijan). In Switzerland upon these crimes uncertain sanctions like custody or fine without any limitations are envisaged.

In Art. #244 of the RF CC “corpse abuse and burial place” tribute to time is the distinguishing feature of the Russian criminal law. This can be explained by including the action into criminal liability.

In addition, acceptance the corpse abuse and burial place criminal arises from the religious principles. Despite the fact that there is no state religion in Russia the most of the believers are Orthodox.

“The Orthodox Church doctrine ... contains deeply respectful treatment of human body and flesh which is the basis of relics and relatives remains worship and all Christians and every person. Worship includes careful treatment of the deceased bodies” [18].”The burial place even if the body decomposed is the place consecrated by the Christian flesh and therefore holy [18].

At all times in Russia the body was considered the soul temple. Therefore, from the earliest times the cemeteries were worshipped as well as the deceased memory. Christian worship of the deceased is the guarantee for preservation of historical memory of Russians. The society which allows disrespect for human remains shows the disrespect for value and dignity of the human life on the whole.

In addition, there is the term in sociology named social memory. All the burial places are the memorial places, important to every person. And for any civilized society such places contain certain social memory. For example, the Additional protocol to Geneva conventions dated August, 12, 1949 regarding protection the victims of international armed conflicts, clause 1, art. 34 specified that “remains of the people who died because of occupation, ... held in respect and their burial places are held in respect” [19]. Human attitude to such “relics” is the demonstration of our culture.

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