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**Correlation between extremist crimes
under Articles 280 and 282 of the Criminal Code
of the Russian Federation, and rehabilitation of Nazism
(Article 354.1 of the Criminal Code
of the Russian Federation)**

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The problem of correlation between extremist crimes under Articles 280 and 282 of the Criminal Code of the Russian Federation, and rehabilitation of Nazism within the doctrine of criminal law and legal practice is not confined solely to the competition of different provisions of criminal law.

The present work makes conclusions and formulates proposals on the application of criminal law on the basis of legal analysis of corpus delicti of the said crimes and provisions of the crime qualification theory. Unlike rehabilitation of Nazism, incitement as inducement influencing particular behaviour being a mandatory feature of the objective side of crime under Article 280 of the Criminal Code of the Russian Federation, requires that a law practitioner has a qualification for the aggregate crime foreseen by Articles 280 and 354.1 of the Criminal Code of the Russian Federation. For the correct application of the law, when features of crimes foreseen by Articles 282 and 354.1 of the Criminal Code are found simultaneously in a certain act, it is necessary, taking the psychological concept of denial and approval into account, to consider the categoricity degree of the opposite judgement of the facts and crimes established by the Verdict of the International Military Tribunal for the trial and punishment of the major war criminals of the European Axis countries, as well as the substantiality of public criticism of the decisions of the Nuremberg Tribunal and the USSR activities during the Second World war on the basis of the subject's gender, social, racial, ethnic, religious or linguistic affiliation or attitude to religion.

Keywords: public calls for extremist activity; incitement of hatred or enmity, as well as humiliation of a person or group of persons on grounds of sex, race, nationality, language, origin, attitude to religion, as well as membership of a particular social group; sentence of the International Military Tribunal for the trial and punishment of the major war criminals of the European Axis countries; competition of criminal law norms; aggregate crime.

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1. Introduction

The Federal Law No. 128-FZ dated May 05, 2014, “On introduction of amendments into certain legislative acts of the Russian Federation” supplies the national criminal law with Article 354.1 of the Criminal Code of the Russian Federation titled “Rehabilitation of Nazism”. Criminalization of the deeds foreseen by the provisions of the named articles has been criticized by criminal law experts.

Thus, Inogamova-Khegay L.V. remarked that the emergence of Article 354.1 “Rehabilitation of Nazism”, criminalizing public denial of facts established by the Verdict of the Nurnberg Tribunal, approval of crimes established by the Verdict, spreading fraudulent information on the acts of the USSR in the years of the World War II, public expression of explicitly disrespectful information on the Days of Military Glory and commemoration dates of Russia associated with defence of the Fatherland, desecration of symbols of the military glory of Russia is an example of excessive competition of provisions of criminal law. The listed deeds are currently included into other regulations of the present Criminal Code (on extremist activity, hooliganism, vandalism, defamation). From now on, law practitioners have to deal with excessive competition of the provisions and decide, whether to apply one provision on the denial of the Verdict of the Nurnberg Tribunal, or, together with it, apply provisions on several counts. The provisions of the Article concerning the denial of the Verdict of the Nurnberg Tribunal are just a special case of extremist activity, which is prohibited “throughout” other articles of the Criminal Code. Why introduce another “twin article”? Article 354.1 of the Criminal Code is needless and excessive; it is better to withdraw it from criminal law (Inogamova-Khegay, 2015: 37).

2. Problem statement

In the researches published by now, the problem of correlation between extremist crimes

and rehabilitation of Nazism has not been comprehensively analysed for a number of reasons (Borisov, 2015; Borisov, 2012; Kuznetsov, 2014); Len’shin, 2011). The subject matter has not evidently presented itself in judicial practice due to the emergence of Article 354 of the Criminal Code of the Russian Federation.

Executive directives issued on the federal level do classify the stepped-up cases of intentional distortion of history, rehabilitation of Nazi and Fascist ideas as the main extremist threats of modern Russia (*Strategiia protivodeystviia...*, 2014). At the same time, it is common for criminal law to state that the disposition of the criminal law on rehabilitation of Nazism contains three different public acts: denial of facts established by the Verdict of the International Military Tribunal for the trial and punishment of the major war criminals of the European Axis countries, approval of crimes established by the said Verdict, and spread of fraudulent information on the acts of the USSR in the World War II. We suppose, that not all the deeds of the objective element of the current corpus delicti, despite the common “publicity” feature, have similarities with the extremist crimes foreseen by Articles 280 and 282 of the Criminal Code of the Russian Federation, and the correlation between them cannot be reduced to competition between general and special criminal law norms.

3. Discussion

Article 280 of the Criminal Code of the Russian Federation characterizes a socially dangerous act with public calls for extremist activity. Article 1 of the Federal Law No. 114-FZ dated July 25, 2002 “On the counteraction of extremist activity” lists various unlawful acts, each of which constitutes a separate offence, including essential elements of offences foreseen by other Articles of the Criminal Law. Appeal is one of the forms of active influence on the

consciousness, will, and behaviour of people with the purpose of inciting them to a certain type of violent action. As long as Article 354.1 of the Criminal Code “Rehabilitation of Nazism” does not include a call addressed to an indefinite scope of persons accompanying the actions of the objective aspect of the crime which basically is demonstration of one’s opinion to the public.

Moreover, the crimes foreseen by Articles 280 and 354.1 of the Criminal Code of the Russian Federation have different objects of offence. The main immediate object of public calls for extremist activity is the social relations developed around protection of the constitutional order, political system and security of the Russian Federation (*Kommentariy k Ugolovnomu kodeksu...* Borzenkov, 2013: 845). The immediate object of rehabilitation of Nazism is peace, peaceful co-existence of different peoples and existence of humankind as a biological species, which are not a part of any relations protected by the regulations concerning extremist crimes.

It makes the provisions of Articles 280 and 354.1 of the Criminal Code adjacent, which means that as the deed is qualified, the rules on competition of criminal provisions are excluded. Should the public calls for extremist activity deny the facts established by the Verdict of the Nurnberg Tribunal, or should they be accompanied with approval of the crimes established by the Verdict, as well as spreading fraudulent information on the acts of the USSR in the World War II, the deed shall be qualified as aggregate crime foreseen by Articles 280 and 354.1 of the Criminal Code of the Russian Federation.

A more sophisticated correlation is found between the essential elements of the crimes foreseen by Article 282 of the Criminal Code “Incitement of hatred or enmity, as well as abasement of human dignity” and Article 354.1 of the Criminal Code “Rehabilitation of Nazism”.

Paragraph 7 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 11 dated June 28, 2011 “On judicial practice of criminal cases of extremist kind” explains that Article 282 of the Criminal Code of the Russian Federation understands actions inciting hatred or enmity as utterances, justifying and (or) stating the necessity for genocide, massive repressions, deportations, other unlawful acts including application of force towards any nation, race, believers of any religion and other groups of persons.

The first two deeds of the essential component of corpus delicti, foreseen by Article 354.1 of the Criminal Code of the Russian Federation, contain a reference to the conclusion of the Verdict of the Nurnberg Tribunal. According to the Verdict confirming the indictment, the accused were inculpated with committing crimes against Peace by planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances; War Crimes against Humanity. Moreover, the accused were inculpated with participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing. The Tribunal accused the Imperial Cabinet, the leadership of the National Socialist Party (known as SS), including the security service (known as SD), the Secret State Police (known as the Gestapo), the storm troopers of the National Socialist Party (known as SA), the general headquarters and the command authorities of the German Armed Forces of the crime pursuant to the Charter of the International Military Tribunal for the trial and punishment of the major war criminals of the European Axis countries (Gorshenina, 1955 : 45).

Evaluating the similarity of the foresaid deeds with the ones foreseen by Article 282 of the Criminal Code, aimed ad incitement of hatred or enmity as well as abasement of dignity of a person

or a group of persons, specific attention should be paid to the criteria selected by the perpetrator for such deeds, whether it is gender, race, nationality, language, origin, attitude to religion, or belonging to a certain social group. Commitment of the said unlawful acts for political or ideological reasons does not constitute an offence foreseen by Article 282 of the Criminal Code of the Russian Federation, while the Verdict of the International Military Tribunal had established the facts and (or) crimes committed on such grounds. Thus, the Nurnberg Tribunal determined that on April 6, 1939 the German Forces began a war of aggression and invaded Greece and Yugoslavia without warning, and Belgrad was bombarded by German Air Forces. At the beginning of the assault, Hitler announced to the German people that it had been essential, as the presence of British Forces in Greece (who helped the Greek to defend themselves against Italians) was an indicator of the Great Britain's attempt to spread the war to the Balkans (Gorshenina, 1955 : 428). The denial of such facts, justification of such crimes in order to incite hatred or enmity, as well as abasement of human dignity, the deed does not constitute an offence foreseen by Article 282 of the Criminal Code of the Russian Federation, and the deed shall be qualified under Article 354.1 only.

At the presence of circumstances coinciding with the criteria listed in Article 282 of the Criminal Code selected for the incitement of hatred or enmity, as well as abasement of human dignity, in the facts and crimes stipulated in the Nurnberg Verdict, the law practitioner shall pay attention to the following.

According to Definition dictionaries of Russian language, "denial (to deny)" stands for rejecting the necessity, compulsoriness of something; bring to destruction (abstract); announce the wrongness of something, to dispose of a fact, to reject a fact; while "approval" means supporting, appraisal, recognition (Efremova,

2000; Ozhegov, 2007; *Tolkovyy slovar'*... Ushakov, 1935-1940).

The formal logic only knows the opposite poles of proposition, the positive and the negative one. In a natural language there is a wide scale of intermediate semantic meanings approaching affirmation or denial. These facts mean that positive and negative propositions are not always opposed to each other in a natural language.

Psychology describes a wide range of intermediary states between confidence in existence and in absence of something, found in proposition of different logical meanings, e.g. state of incomplete confidence, various degrees of possibility, or doubt. Admission of an opportunity or several solutions of one problem are expressed in conditional propositions, different from categorical ones.

The criminal law, which announced the principle of guilt, cannot ignore these definitions of "denial". For this reason, the refutation of the facts and the legal merits established by the Verdict of the International Military Tribunal for the trial and punishment of the major war criminals of the European Axis countries is not synonymic to the categorical proposition of the correctness of the opposite. Bodies of inquiry and preliminary investigation, as well as the court, need to, besides considering the circumstances of the deed, establish the degree of categoricity of such propositions in each case of denial of the facts and (or) approval of the crimes established by the Verdict of the Nurnberg Tribunal, and justify the evaluation of such deeds. In our opinion, evaluation of such verbal deeds require linguistic research (expertise) of the utterance.

4. Conclusion

With the provision of Part 1 Article 282 of the Criminal Code of the Russian Federation, the legislator criminalizes any deeds matching the corpus delicti of the said crime, including

the cases when the justification of proposition is based on the revision of the conclusions of the International Military Tribunal as one of the existing ways of inciting hatred or enmity, as well as abasement of human dignity. We suppose, that in such a case the norms of Article 282 of the Criminal Code contain a comprehensive corpus delicti, while the deeds described by Article 354.1 of the Criminal Code are simple and act as parts of a whole. For this reason, should the components of the said crimes be simultaneously present in a single deed of a subject, Article 282 of the Criminal Code shall be applied.

In accordance with the presented arguments, spreading fraudulent information about the acts of the USSR in the years of the World War II may be considered as a way of performing the deeds foreseen by Article 282 of the Criminal Code only if, distorting the facts of the acts of the Soviet State in the period of 1939-1945, the subject intentionally uses

fraudulent information on the circumstances and events justifying the position and solutions of the Soviet Union on the bases of one's gender, social position, race, nationality, religion, language or attitude to religion. In the absence of such information, spreading fraudulent information of the acts of the USSR in the years of the World War II shall be qualified under Article 354.1 of the Criminal Code of the Russian Federation.

Thus, should the inquiry body, investigator or court reveal the components of any extremist crimes (Article 280 and (or) Article 282 of the Criminal Code), and rehabilitation of Nazism (Article 354.1 of the Criminal Code) in a deed committed by a subject, in our opinion, it is necessary to follow the provisions of Part 1 Article 17 of the Criminal Code of the Russian Federation on the aggravate crime or turn to competition of comprehensive and simple criminal and legal provisions.

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Соотношение преступлений экстремистской направленности, предусмотренных ст.ст. 280 и 282 УК РФ, и реабилитации нацизма (ст. 354.1 УК РФ)

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Решение вопроса в доктрине уголовного права и правоприменительной практике о соотношении преступлений экстремистской направленности, предусмотренных ст.ст. 280 и 282 УК РФ, и реабилитации нацизма не сводится исключительно к конкуренции уголовно-правовых норм.

На основе юридического анализа признаков состава рассматриваемых преступлений и положений теории квалификации преступлений сделаны выводы и сформулированы предложения по применению уголовного закона.

Наличие призывов как воздействия, побуждающего к определенному поведению, в качестве обязательного признака объективной стороны преступления в ст. 280 УК РФ, в отличие от реабилитации нацизма, требует от правоприменителя квалификации по совокупности преступлений, предусмотренных ст.ст. 280 и 354.1 УК РФ. Для правильного применения закона при одновременном наличии в деянии признаков преступлений, предусмотренных ст.ст. 282 и 354.1 УК РФ, необходимо в соответствии с понятием отрицания и одобрения в психологической сфере обращать внимание на степень категоричности противоположной оценки субъектом фактов и преступлений, установленных приговором Международного военного трибунала для суда и наказания главных военных преступников европейских стран оси, а также основания публичной критики решений Нюрнбергского трибунала и деятельности

СССР в годы Второй мировой войны по признаку его половой, социальной, расовой, национальной, религиозной или языковой принадлежности или отношения к религии.

Ключевые слова: публичные призывы к осуществлению экстремистской деятельности; действия, направленные возбуждение ненависти либо вражды, а также на унижение достоинства человека либо группы лиц, по признакам пола, расы, национальности, языка, происхождения, отношения к религии, а равно принадлежности к какой-либо социальной группе; приговор Международного военного трибунала для суда и наказания главных военных преступников европейских стран, конкуренция уголовно-правовых норм, совокупность преступлений.

Исследование выполнено при финансовой поддержке Российского гуманитарного научного фонда и Красноярского краевого фонда поддержки научной и научно-технической деятельности в рамках исследовательского проекта «Комментарий уголовного законодательства о противодействии террористической и экстремистской деятельности» № 16-13-24001/16.

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