

Boskhamdzhieva N. A.

LEGAL GROUNDWORK FOR ENSURING PUBLIC SECURITY

*Boskhamdzhieva Natal'ya
Antonovna,
c.j.s. (PhD of jurisprudence),
Professor of All-Russian Fur-
ther Training Institute of the
MIA RF, Associate professor,
Moscow region, Domodedovo
city, 3 Pikhtovaya street, zip
code 142022.*

Presents the results of the analysis of normative legal acts regulating social relations in the field of ensuring public security in present-day Russia. The author notes the existence of a certain kind of problems: in conceptual and terminological framework, in a multiplicity of variations of public safety depending on the regulated branch of public legal relations, the lack of a systematic approach to rule-making.

Keywords: public safety, legislation, security of personality, identity, security authorities.

The decision of the President of the Russian Federation on the need for modernization of all spheres of the modern Russian state necessarily involves careful analysis of the current legal reality. We need a thorough analysis of the current system of social relations, with a dominant focus on the role of legal norms [4, 76-77].

Consideration of the current legislation on the issues of ensuring public safety indicates a lack of a systematic approach and existence of significant disadvantages in the formation of the normative-legal framework in this field. There is, in particular, the lack of scientific validity of normative and legal acts, their internal controversy, and declarative nature regarding the settlement of various issues, the lack of a systematic approach for determining the nature, structure, content, and the mechanism of development and approval documents on the issues of ensuring public safety.

Russian state policy in the field of public security, as rightly, in our opinion, noted in a special legal literature, is a part of domestic and foreign policy of

modern Russia and is a set of coordinated and united by a single conception political, organizational, social and economic, legal, information, special and other measures [5, 66].

Sharing the given position, it seems appropriate in this case to stop on the analysis of the legal measures of ensuring public safety, above all, its legal basis.

Earlier, the author has already noted that at the present time in the active process of formation of the modern approach to ensure public security of Russia, this issue again raises a great interest. So much so that in recent years has been adopted a number of normative legal acts. The main ones are: the Federal Law No. 390-FL from 28.12.2010 "On Security", the Federal Law No. 256-FL from 21.07.2011 "On the Safety of the Fuel and Energy Complex", RF Presidential Decree No. 537 from 12.05.2009 "On the National Security Strategy of the Russian Federation until 2020", RF Presidential Decree No. 590 from 06.05.2011 "Questions of the Security Council of the Russian Federation (with the "Regulation on the Security Council of the Russian Federation", "Regulation on the Interdepartmental Commission of the Security Council of the Russian Federation for the Public Security"), and others [3, 34].

The mechanism of legal influence on ensuring public security covers a very wide range of relations of social life, the norms of which can be divided into four groups.

The first group is the legal rules governing the system of internal and external conditions that prevent a threat to safety of an individual. Thus, the Constitution of the Russian Federation [1] obliges to obey the state rules public authorities, local self-government bodies, officials, citizens and their associations, determines the range of officials and public authorities to ensure the security of a person (the President of the RF, the Government of the RF, the Constitutional Court of the RF, etc.).

The second group consists of norms defining the powers of public authorities and local self-government bodies and their officials to ensure the safety of a person. It includes the norms governing the rights and duties of the Security Council of the Russian Federation, Armed Forces, Foreign Intelligence Service, Federal Security Service, law enforcement agencies, internal troops, Civil Defense, security authorities, bodies of legislative, executive, and judicial power, etc. Legal norms of the group define the powers of public authorities, the limits and procedure of their implementation and impose on them the obligation to ensure exercising the rights and freedoms of a man and citizen, protection of life and personal integrity.

The third group of rules governing the relations on ensuring security of a person consists of norms defining the powers of local self-government bodies for

the direct ensuring of life safety of a municipality population, regulation and protection of the rights and freedoms of a man and citizen. In recent years have been implemented series of measures for the formation of local self-government in the Russian Federation, the expansion of autonomy in decision by a population of local issues and especially in the protection of the rights and freedoms of a man and citizen, ensuring their safety. In each subject of the Russian Federation adopts normative legal acts defining the powers of local self-government bodies and their officials to exercise the functions of ensuring security of a person.

The fourth group consists of norms defining the rights and duties of citizens, the implementation of which must not violate the rights and freedoms of others, and norms providing for responsibility for their violation.

At the same time stating the fact of abundance of normative acts and certain norms relating to the regulation of various secondary provisions of substantive law, of operational-search and other procedural means to counter attacks on the public security of the Russian Federation, it should be recognized that in the current situation there is a lack of integral system of legislation in the field of ensuring public safety. The existing legal regulation covers only a part of the public relations, as a rule, not always associated with each other and with the immediate tasks of coordinating to counter a variety of threats to public security.

When considering the existing and being developed normative acts strikes the eye an apparent redundancy and multiple duplication of both legal and normatively-technical requirements on the issues of ensuring private “*security*” entered by concerned departments. Especially has increased the number of laws, standards, norms, and rules governing the procedure of parrying by population the threats of techno-industrial and ecologically-natural origin.

Currently, there are the following federal laws in force “On Protection of Population and Territories from Emergency Situations of Natural and Man-made Nature”, “On Fire Security”, “On Road Traffic Safety”, “On Radiation Safety of Population”, “On Sanitary and Epidemiological Welfare of Population”, “On Transport Safety”, “On the Quality and Safety of Food Products”, etc. Not exclude the emergence in the near future the laws of security on “road transportation, agriculture, pipeline management and other similar normative legal acts”. Have been developed and approved the principles of state policy in the field of ensuring chemical, biological, nuclear and radiation safety of the Russian Federation for the period up to 2010 and beyond, the State Economic Security Strategy of the Russian Federation, the Environmental Doctrine and Information Security Doctrine of the Russian Federation.

Most of these acts are of single-type in many ways or confirm the provisions of already existing laws: standards of work safety, sanitary and building codes, traffic regulations, rules of safe operation. This does not stop concerned departments, which together with the projects of next group of laws suggest creating new federal services and agencies, offices and departments that would manage the types of security needed only for the mentioned departments.

There are virtually no mechanism for implementing the national security policy, detected system-forming components of its regulation and control, classification of specific threats, dangers and challenges along with the derogated by them needs, values and interests, there are very few specific recommendations for performers in the adopted laws and being developed drafts of laws.

Similar structural flaws are inherent to other laws and draft laws. The focus of these is usually given to powers (rights, responsibilities and duties) of the various public authorities, to the requirements for ensuring, supervision over activities, for reducing various costs. Usually repeated everything what is provided for by applicable legal and normatively-technical documents (the Russian Constitution, laws, provisions on specially authorized public authorities, standards, norms and rules). Quantitative indicators of safety, criteria for the assessment of quality and effectiveness of efforts to its maintenance and improvement absent in the known laws and their projects.

Recently, the Federal Migration Service has been actively suggesting introducing as part of the national security of the Russian Federation the issue of combating illegal migration. In this case, the FMS of Russia defines illegal migration and problems associated with it as one of the most dangerous factors, which, along with the international terrorism, threatens the security of not only individual countries and regions, but also on an international scale [7, 123-130]. Moreover, it is argued that in the grand scheme of things illegal immigration long ago ceased to be a chaotic and rudderless process. Meanwhile, it should be noted that the issues of migration cannot in any way be considered only as a source of security threats. These problems should be solved at the level of departments within the approved by the Government of the Russian Federation Concept of regulation migration processes in the Russian Federation. Of course, the illegal (uncontrolled) migration can become a threat to individual and group security of the host population – because of increased competition in the local labor and housing markets, the monopolization of migrants in some sectors of economic activity, conflicts of ethnic and sub-ethnic stereotypes and norms of behavior, social and cultural marginalization of some part of migrants, their criminalization.

In the law on national security there is a clear gap associated with countering threats and challenges of the most vulnerable and valuable object – way of public and social life, which has historically been tested and meets the essential needs of both an individual and society, and the state in general. In this case, it is about protecting public and spiritual values from the so-called anthropogenic-social hazards associated with exposure of different information flows to the consciousness of people, in particular – sometimes deliberately generated by some media.

State-legal securing of public safety and the issues of its improving are organically related to political, economic, social, administrative reforms in the country, what requires their systematic theoretical analysis, determining the place and role of public safety in connection with the implementation of a nation-wide Strategy of National Security of the Russian Federation up to 2020.

It should be noted that in the domestic legislation and scientific literature has not yet been developed a common conceptual apparatus in the field of ensuring public security of the Russian Federation. This circumstance often leads to an ambiguous understanding of the content of different definitions in theory and makes problems in law enforcement practice.

Thus, the Law “On Security” from 1992 considered security as a state of protection of the vital interests of an individual, society and the state. However, since 1997 has become a widely used the term of “national security of the Russian Federation”, which is understood as “the security of its multinational people as the bearer of sovereignty and the only source of power in the Russian Federation” [2].

According to N. P. Patrushev, this term, which is borrowed from western countries, initially caused a lot of disputes due to the semantic differences in the definition of “national”, and the multinationality of our state, but later the said term has become firmly established in the scientific use, what seems quite grounded in the conditions of community awareness of the role and place of Russia in the present-day world [6, 3-12].

However, it must be recognized that the quality of normative legal documents on safety should be assessed as unsatisfactory. To prove this situation is enough to take a look at the articles 13, 55, 56, 71, 72, 74, 82 and 114 of the Constitution of the Russian Federation, which regulate the issues of ensuring security. In the Constitution of the Russian Federation are used such concepts as “security of the State” (art. 13, 56), “State security” (art. 114), “security” (art. 71), “public security” and “ecological safety” (art. 72).

So, according to the Constitution of the Russian Federation shall be provided:

- the security of the State, moreover ensuring the country integrity and

preservation of the constitutional system are not included in this task (paragraph 5 of article 13 prohibits “the creation and activities of public associations whose aims and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation, at undermining its security, at setting up armed units, and at instigating social, racial, national and religious strife”);

- the security of the Russian Federation, that is, under article 1- of the State” (but not the country), moreover ensuring country defense is not the task of ensuring state security, (art. 55 and 71);
- protection of the constitutional order, but not the State (art. 56);
- security of citizens, that is, not all people (art. 56);
- public security, that is, not the security of the State (art. 72);
- environmental safety, that is, not public security and not security of the State (art. 72);
- human security, which is different from the protection of human life and health (art. 74);
- the security of the State, which does not include its integrity (art. 82);
- public security, that is, the security provided by the State, but not the security of the State, besides the national defense is excluded from ensuring State security (art. 114).
- State security, that is, the security provided by the State, but not the security of the State, moreover the national defense is excluded from ensuring State security (art. 114).

Thus, commensuration of articles of the Constitution of the Russian Federation directly related to the safety shows that the concept of “object whose security is ensured by” is not defined and its estimated volume is divided contradictorily. However, any normative legal acts either embody this ambiguity and contradictions in the practice of social life, with all its consequences, or will be contrary to the Constitution of the Russian Federation.

Reconstruction of the articles of the Constitution of the Russian Federation on the basis of definition the relations of security shows that the threatened party is not defined as a subject of safety relation, is not a legal entity (“man” and “the people”) and the interrelations with a protecting entity are not based on the exchange (i.e., are not a social function, but charity).

In connection with consideration the issue of forming a legal framework to ensure public safety, there is a clear need for a federal law on ensuring public

security in the Russian Federation, in which shall be enshrined the main provisions of the Strategy of Public Safety, including the goals and objectives of state policy to ensure public safety, specifying the form of threats to public safety, the formation of mechanisms of overcoming, determining the competence of various departments and mechanisms for the coordination of their activities.

References:

1. Constitution of the Russian Federation (adopted on National Voting, December 12, 1993). *System GARANT* [Electronic resource], Moscow: 2012.
2. Decree of the President of the Russian Federation No. 1300 from December 17, 1997 "On Approval the Concept of National Security of the Russian Federation [Ukaz Prezidenta RF ot 17 dekabrya 1997 g. № 1300 «Ob utverzhdenii Kontseptsii natsional'noi bezopasnosti Rossiiskoi Federatsii»]. *SZ RF – Collection of Laws of the Russian Federation*, 1997, no. 52, article 5909; 2000, no. 2, article 170.
3. Boskhamdzhieva N. A. Public Security as Socio-legal Category [Obshchestvennaya bezopasnost' kak sotsial'no-pravovaya kategoriya]. *Administrativnoe pravo i protsess – Administrative Law and Process*, 2012, no. 11.
4. Dugenets A. S., Boskhamdzhieva N. A. The Role and Place of Police in the System of Ensuring National Security of the Russian Federation [Rol' i mesto politzii v sisteme obespecheniya natsional'noi bezopasnosti Rossiiskoi Federatsii]. *Aktual'nye problemy publichnogo prava v Rossii i za rubezhom – The Topical Issues of Public Law in Russia and Abroad: proceedings of all-Russian scientific-practical conference*, Moscow: Peoples' Friendship University of Russia, 2011.
5. Dugenets A. S., Mel'nikov A. V., Vasil'ev F. P., Dashko M. N. The Issues of Administrative-law Regulation of Ensuring Security in Present-day Russia [Voprosy administrativno-pravovogo regulirovaniya obespecheniya bezopasnosti sovremennoi Rossii]. *Administrativnoe pravo i protsess – Administrative Law and Process*, 2012, no. 3.
6. Patrushev N. P. Peculiarities of Present-day Challenges and Threats to National Security [Osobennosti sovremennykh vyzovov i ugroz natsional'noi bezopasnosti]. *Zhurnal rossiiskogo prava – The Magazine of Russian Law*, 2007, no. 7.
7. Romodanovskii K. O. *About the Measures to Ensure National Security in the Sphere of Migration. Miscellany. Issue No. 4. Scientific Problems of the National Security of the Russian Federation* [O merakh po obespecheniyu natsional'noi bezopasnosti v sfere migratsii. Sbornik. Vypusk 4. Nauchnye problemy natsional'noi bezopasnosti Rossiiskoi Federatsii]. Moscow: 2007.