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TÍTULO: Características de la responsabilidad por crímenes contra la familia y los menores en la ley penal de Rusia.

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RESUMEN: Este documento aborda la responsabilidad de delitos contra la familia y menores de edad en virtud de la ley penal de Rusia. Estudiamos el sistema y ciertos tipos de intrusión criminal en un menor, sus signos objetivos y subjetivos, así como la práctica de su aplicación en el campo de la lucha contra los delitos contra los menores. El trabajo justifica la relevancia de este documento, identifica el objeto, el propósito del estudio y la posibilidad de aplicar sus resultados en la práctica. Justificamos en este artículo la necesidad de proteger a la familia y los menores de las invasiones criminales en las relaciones sociales.

PALABRAS CLAVES: crimen, menor de edad, familia, Código Penal de la Federación Rusa.

TITLE: Characteristics of the responsibility for crimes against the family and minors in the criminal law of Russia.

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ABSTRACT: This document addresses the responsibility of crimes against the family and minors under Russian criminal law. We study the system and certain types of criminal intrusion in a minor, its objective and subjective signs, as well as the practice of its application in the field of the fight against crimes against minors. The work justifies the relevance of this document, identifies the object, the purpose of the study and the possibility of applying its results in practice. We justify in this article the need to protect the family and children from criminal invasions in social relationships.

KEY WORDS: crime, minor, family, Criminal Code of the Russian Federation.

INTRODUCTION.

The issue of protecting the rights of a child, including criminal legal means, is closely linked to the problem of protecting family relationships. It is based on the fundamental constitutional provisions based on the recognition of the priority of human rights in the international law. The international legal standards in this area, the provisions of the 1948 Universal Declaration of Human Rights (Art. 3, 7), the International Covenants on Civil and Political Rights (P. 1 of Art. 23), on Economic, Social and Cultural Rights (Art. 10) dated December 16, 1966, the UN Convention on the Rights of the Child dated November 20, 1989 (Article 3.2, 19.1, 27.1) are of great importance in the protection of these interests [J.I. Selivanovskaya, M.V., 2014]. They are recommended to provide assistance to the family, especially when it is created and as long as it is obliged to take care of dependent children and their upbringing, and the broadest protection from insult, abuse, neglect or exploitation.

The implementation of the norms of these international legal acts and the Constitution of the Russian Federation is intended to promote criminal legislation. It acts as one of the means of protecting the family and minors from all forms of physical and mental violence, abuse, and cruel treatment (including on the part of parents, guardians or any other person caring for children).

The means of raising children should exclude ill-treatment. Every year, about 2 million children in Russian families are subjected to violence, cruel and harsh treatment, more than 2 thousand children die from the criminal acts of their fathers or other close relatives, another 2 thousand minors become victims of cruel treatment by their parents. Only in the first half of the year 2016, 622 people were condemned for child abuse under Art. 156 of the Criminal Code of the Russian Federation [Russian Newspaper., 2016].

Statistical data on sustained high levels of crimes against the family and minors indicate the need to strengthen the criminal legal protection of children as a means of countering these attacks. In view of the above, the importance of this research topic is increasing. All this actualizes the indicated problem and brings it to a higher level of scientific knowledge.

DEVELOPMENT.

The research object is represented by social relations concerning the criminal law protection of family foundations and the legal interests of minors, which are formed to ensure both material and non-material conditions for the normal physical, intellectual, spiritual and moral upbringing of the minor, the formation of his/her personality, proper functioning of the family, the existence of adult disabled children and parents, as well as those related to responsibility for crimes against the rights and legitimate interests of the family and minors.

The study purpose is to determine, - on the basis of a comparative analysis of legislation, criminal law literature and statistical data, - the effective measures to counter criminal encroachment on the family; to form a conceptual approach to establishing the responsibility for crimes against the

family and minors in the law, and to develop on this basis the proposals for improving certain norms of Chapter 20 of the Criminal Code of the Russian Federation (designed to protect such an object as the rights and legitimate interests of the family and minors).

The practical application of the research results consists in the possibility of using the scientific recommendations and conclusions contained in it to improve the relevant criminal law in lawmaking, in judicial practice, in the process of teaching the Special Part of Criminal Law and the special course on "Crimes against person".

Methods.

The methodological basis of our study is represented by the dialectical method of scientific knowledge, as well as general (analysis, synthesis, logical, system-structural, specific sociological, statistical, generalizations, comparisons, analogies) and special (private scientific) (formal legal, comparative legal, historical legal) methods.

Results and Discussion.

In modern criminal law, considerable attention is paid to certain types of crimes against the family and minors. In many works of Russian and foreign authors (A. Glenn, C. Mower [1997], M. Chaffin, D. Finkelhor, R. Onrmrod [2009], M. Castan, S. Joseph [2014], R.R. Gaifutdinov, F.B. Muljukov [2017], D. Finkelhor, K. Mitchell, J. Wolak [2004]), the authors analyze the individual elements of these crimes and issues of responsibility for them [Universal Declaration of Human Rights", 2018]. However, there are few studies devoted to the whole system of crimes against the family and minors and their objective and subjective features at present.

Some authors suggest that Chapter 20 of the Criminal Code of the Russian Federation “Crimes Against Family and Minors” should be moved to Chapter 25 and called “Crimes against Family, Minors, Public Health and Public Morality”. As an argument, it is given a circumstance that these crimes fall out of the group of crimes with the generic object “person”.

It is impossible to agree with such a position, since the concept of “minor” is covered by the concept of “person” in the criminal legal sense. In addition, as rightly noted in the literature, these elements of the crimes of the proposed Chapter 25 have other generic, specific (S.I. Nikulin) and main immediate (T.N. Nurkayeva) objects, and therefore, are not included in Chapter 20 "Crimes Against Family and Minors" [Nurkaeva T.N., 2017].

The interests of family and minors act in them as an additional, incidentally protected object. More often such an object exists in the qualified types of crimes; for example, failure to pay for the children's maintenance (P. 1 of Art. 157) affects both the legitimate interests of the child and the legal foundations of the family as an institution of society. Child's substitution (Art. 153) violates not only his/her rights, but also the rights of his/her parents.

According to P.G. Ponomarev, "the interests of family and minors are closely intertwined, so they represent a single species object of criminal legal protection" [Russian Criminal Law, 2001]. V.S. Saveliev, arguing that “the issue of protecting the minor's identity is organically linked to the issue of protecting family relations” has the same opinion [Savelieva V.S., 1988].

Contrary to the opinion expressed in the educational literature (N.I. Vetrov [2001], T.O. Koshayeva [2001] et al.), stepchildren, as rightly pointed out by L.L. Kruglikov, are not the subjects of alimony non-payment [Criminal Law of Russia. Special Part, 2012]. Therefore, one cannot agree with the judgment (S.A. Razumov et al.), albeit based on the provisions of Art. 96 and 97 of the Family Code of the Russian Federation, that the person who has actually raised the child and is not his/her

parent or adoptive parent, can act as the injured party to the crime in question, as well as a stepson and a stepdaughter [Comments to the Criminal Code of the Russian Federation, 2007].

S.A. Razumov quite widely defines the circle of disabled adult children, having the right to alimony - these are the persons who, due to physical or mental illness, cannot work and provide for their existence. Their disability should be supported by appropriate medical documents [Comments to the Criminal Code of the Russian Federation, 2007]. However, in accordance with Art. 85, 89, 90, 93–97 of the Family Code of the Russian Federation, clause 7 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 56 December 26, 2017 “On the Application of Law Related to Alimony Recovery by the Courts in Case Consideration”, the disabled adults who are entitled to alimony should be the persons recognized in the prescribed manner as persons with disabilities of I, II or III groups, as well as persons who have reached the generally established retirement age [Russian Newspaper. December 29, 2017].

The considered crime, according to N.I. Vetrov, is lasting [2001, p. 339], and according to S.I. Razumov - continued [2007, p. 420].

In the notes to Art. 1511 of the Criminal Code of the Russian Federation, repeated retail sale of alcoholic beverages to a minor by a person is recognized as retail sale to a minor of alcoholic beverages by a person who has been subjected to administrative punishment for a similar act at the time when the person is considered to have been subjected to administrative punishment. Thus, the definition of retail sale to a minor of alcoholic beverages is given through its concept, in particular, it is stated that “retail sale... is recognized as retail sale...”.

Meanwhile, retail sale (Eng. retail ['riteil]) is defined as the sale of goods to the final consumer (individual) in the literature. In the English dictionary, retail is defined as "to sell in small numbers, portions, or quantities", and it doesn't matter how exactly the goods or services are sold (by means of personal selling, by mail, by phone or via a vending machine), as well as where they are exactly

sold (in a store, on the street or at the consumer's home). Unlike wholesale trade, the goods purchased in the retail trade system are not subject to further resale (according to clause 1 of Article 492 of the Civil Code of the Russian Federation), but are intended for direct use.

The retail sale of alcoholic beverages in relation to Art. 151¹ of the Criminal Code of the Russian Federation means the sale of alcoholic beverages by legal entities (organizations), regardless of their organizational and legal forms and forms of ownership, by the individual entrepreneurs in labor relations and directly by the buyers (individuals) under the retail sale contracts (sellers), including the provision of catering services for personal, family, home consumption and other purposes not related to business activities.

According to Art. 4.6 "The Period During Which a Person is Considered to be Subjected to Administrative Punishment" of the Code of Administrative Offenses of the Russian Federation, "a person who has been sentenced to an administrative offense is considered to be subjected to this punishment within one year from the end of the execution of the decision on administrative punishment"

In addition, the original wording of the Notes referred to a person who "was previously brought to administrative responsibility for a similar act within 180 days". Meanwhile, the mere fact of bringing to administrative, criminal or other legal responsibility does not at all indicate that a person has been convicted of the incriminated act and sentenced (punished), since the notion of bringing to responsibility includes also the process of drawing up a protocol on administrative offense and the materials attached to it (including legally illiterate cases, mistakes, gross violations of the law made by the officials regarding an improper person, a person who has not reached the age of administrative responsibility, not being the subject of administrative responsibility, etc., not to mention the falsification of an administrative offense case).

In view of the foregoing, as well as the definition of retail sale, provided for by clause 1 of Art. 492 of the Civil Code of the Russian Federation and the Federal Law No. 381-FZ dated December 28, 2009 “On the Fundamental Principles of State Regulation of Trading Activities in the Russian Federation”, it is proposed to change the wording of the Note to Art. 151¹ of the Criminal Code of the Russian Federation.

In summary, we can state that:

1. In criminal law, a person should be identified with a human. The Criminal Code protects the human rights and freedoms from the moment of its emergence. Otherwise, we would have to recognize the priority of the protection of rights and freedoms by age limit. Therefore, it is impossible to consider encroachment on minors in isolation from encroachment on family relations due to their inseparability, inalienability from each other.

2. We offer to read the Note to Art. 151¹ of the Criminal Code of the Russian Federation as follows: "Note: The repeated retail sale to a minor of alcoholic beverages by a person is recognized as a type of trading activity related to the sale to a minor of alcoholic beverages (for using in personal, family, home and other purposes not related to entrepreneurial activities), if this person has not been previously subjected to administrative punishment for a similar act within one year".

3. Stepsons (stepdaughters), guardians and trustees are not subject to an offense of alimony non-payment. Therefore, we cannot agree with the opinion specified in the literature, albeit based on the provisions of Art. 96 and 97 of the Family Code of the Russian Federation, that the person who has actually raised the child and is not his/her parent or adoptive parent, can act as the injured party to the crime in question, as well as a stepson and a stepdaughter.

Responsibility under Art. 157 of the Criminal Code of the Russian Federation may also be borne by adoptive parents (since after adoption, they assume the duties of parents to support children, they are equal in rights and obligations to parents by descent in relation to the adopted child) (clause 1 of

Art, 137 of the Family Code of the Russian Federation), regardless of whether the adoption is currently revoked (special subject).

CONCLUSIONS.

The crimes, responsibility for which is provided for by Chapter 20 of the Criminal Code of the Russian Federation, including 9 types of basic compositions, are the socially dangerous guilty acts under the criminal law and prohibited under the threat of criminal punishment - actions (less often - inaction) that encroach on the foundations of family relations and the legitimate interests of minors, as well as normal physical, intellectual, spiritual, moral and social development, committed with direct intent by a person who has reached the age of 16 years old (in some cases - 18 years old), endowed with respect to a number of crimes by the signs of a special subject.

The considered group of crimes provided for in Chapter 20 of the Criminal Code of the Russian Federation is differentiated into:

- 1) encroaching on the normal physical and moral development of minors.
- 2) encroaching on the legitimate interests of the family.

The first group of encroachments on the normal physical and moral development of minors includes four types of crimes: minor's involvement in the commission of a crime; minor's involvement in the commission of the antisocial acts; minor's involvement in the commission of acts that represent a danger to the life of a minor; retail sale to a minor of alcoholic beverages. All of them have a single main object, they are accomplished only by action and with direct intent. All four formulations suggest an increased age of criminal responsibility (18 years old). The responsibility for the first three types of crimes of this group (Art. 150, 151, 151² of the Criminal Code of the Russian Federation) is differentiated.

The second group of crimes against the legitimate interests of the family includes five types of criminal offenses: child substitution, illegal adoption; disclosure of the adoption secret; failure to fulfill the duties of raising a minor; non-payment of funds for the maintenance of children or disabled parents. All these crimes are aimed at a single main object - the family structure, the legitimate interests of the family. Some of them are accomplished by the actions, and some - by inaction, and always have the direct intent. As a general rule, the subject of a crime has the features of a special subject. The current legislation does not differentiate responsibility for any of the crimes of this group (Article 153–157 of the Criminal Code of the Russian Federation).

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