

Ruslan OVCHIEV

The South-Russia Institute of Management – branch of the Russian Presidential Academy of National Economy and Public Administration (RANEPA), Rostov-on-Don

Problems of Development of the National Security in Modern Russia

ABSTRACT

The article is devoted to analysis of state and prospects for development legislation in the sphere of national security, to identification the existing weaknesses and to looking for way for improvement. Noting a comprehensive nature of social relations in this sphere which are regulating by various branches of law there is a conclusion about certainty of contradictions, lacunas, overlapping of relevant provisions, their dynamism and instability. Non-existence of adequate systematization in this sphere of legislation makes a great obstacle for settling relevant problems. The problem of activation works in this direction becomes more and more urgent, and, in the author's opinion, it can be settled by generation a legal package in the sphere of national security as a rather independent comprehensive branch of legislations.

Key words: *security, national security, systematization of legislation, branch of legislation, institution of legislation, comprehensive branch of legislation, threat to national security, codification, rationalization of legislation.*

Legal regulation in the sphere of national security is up against a number of problems. The first is that the public relations in this sphere are governing by various branches of law: constitutional, administrative, international and others. Improvement of effectiveness of legal regulation in this sphere demands studying of philosophical and legal grounds that are consolidating these branches in a certain complex on the unified basis of law, and reference to special legal and rather-legal analysis of data concerning internal and natural structure of this complex .

The second problem is that the public relations in the sphere of national security are developing, new challenges of life face public authorities, and for settling these challenges a revised legislation is necessary. Previous statutory acts are going out of date, material changes are making in current legislation, repeal of obsolete laws takes place. The necessity of systematization and adjustment of current statutory acts, their consolidation is at the top of the agenda.

However, as Krokhhina Yu.A. notes, analysis of regulatory and scientific sources makes it possible to draw a conclusion that at the moment national legislation and scientific literature failed to generate a single conceptual structure in the sphere of security protection of the Russian Federation which could be used for systematization. Frequently in this sphere concepts and definitions are interpreted in different ways, in reality it impedes their application, results in fierce disputes in scientific environment, impede adequate understanding of threats and problems as regards national security.

At that it is to be noted that a secure foundation in legal regulation of national security has been created already: more than 70 federal laws have been passed. Both President of the Russian Federation (who adopted 200 decrees) and Government of the Russian Federation (approved about 500 regulations) have contributed to creation of a legal basis. A large amount of other by-laws exists and operating as well. However, the problem is that they are relating to particular threats and challenges which are constantly arising practically in all spheres of social life unrelated and governed by various branches of law.

The third problem in legal regulation of national security results from the above mentioned situation; it is that there is no any cumulative systematization of legislation governing social relations in this sphere. To a wide extent it is coming from departmental tunnel thinking of lawyers who often do not want to combine forces with their colleagues from other branches for systematization of national security legislation. Meanwhile the problem of activation works in the sphere of legal regulation of national security takes the position of top priority.

As Bartosh V. M. notes, it is obvious that improvement of the quality of life of Russian citizens and national security threats countermeasures, which are in effect in this sphere, are impossible without development and improvement of the regulatory system. One of the directions of this improvement is: systematization of legislation – regulating of statutory materials in the sphere of national security for purposes of systematization and improvement of its effectiveness.

Systematization as a form of regulating legal provisions suggests several focus areas. It starts with collection and processing of already existing statutory acts. Such processing, first of all, means registration of these acts, their arrangement in any defined system and keeping and this will considerably ease for lawyers further work of with these statutory acts.

The following focus area is incorporation of legislation, this type of systematization is the most available for the majority of subjects of law, in response of which publication of various regulatory collections takes place.

And one more form of systematization is consolidation of legislation; its point is in cancellation of multiple statutory acts. This effect can be achieved by generation of large uniform blocks in the legislation structure.

Codification is an important form of systematization of legislation. This is a form of regulating of regulatory materials in any particular sphere of social relations, which results in codifying statute acting as the principal one among all other regulations applicable in the said sphere. In any particular branch of legislation it ensures a considerable part of legal regulation or implementing a function of generating a branch.

Proceeding from criterion of depth and scope of coverage of changeable and newly introduced regulatory materials there are several types of codification:

- Conditionally- complete codification refers to maximum achievable coverage and to system integration of regulatory materials within itself. Of course, one hundred percent — codification of regulatory materials is unachievable. The Code, always, makes a core, main body of any branch or segment of the branch, supplemented by a number of any other acts of legislation. That is why such codification is known as conditional;

- Partial codification of regulatory materials. Such codification results in acceptance of the code regulating certain segments of social life.

Currently legal regulation of social relations across several branches of law is taking the position of important tendency in development of Russian legislation. Such tendency arouses growing interest of science in consistency of integral legislative control. Works targeted on definition the place the structures of legal provisions, regulating relationships in the most important spheres of social life, take in the present day system of law, may serve as an example. As a rule, they are not the only one independent branch of law and legislation. They may include a huge structure of national security laws, as well. This is a complicated and conflicting block.

However, in that context some authors noted that according to the French doctrine there is no such thing as complicated and casuistic branches of law not subject to codification, especially taking into consideration that actions against excessive complication and casuistry make one of the primary goals of codification.

As Alexeev S.S. wrote, systematization of regulatory generalizations is fully developed in Civil Law. It formed as a result of focused legislative activity of applicable government authorities which, basing on findings of legal science, achievement of juridical culture, are able to give to laws a considerable degree of abstractness, to unify, to adjust all legal materials.

The primary goal of codification is consolidation within the frameworks of single legal instrument a set of norms regulating a particular sphere of social life, or norms of different branches, regulating relatively equal, immediately interconnected with each other categories of social relations. In Article 15 Statute of the International Law Commission of United Nations there is a definition of the core of codification: “more exact formulation and systematization of law in those spheres areas where the norms prescribed by vast practice of states, precedents and doctrine, are.”

At the same time lots of aspects of the problem at issue are left unstudied. In particular, serious consideration should be paid to the factors promoting formation of comprehensive branches of law, to understanding the place of these branches in the law system and in the legislative system. It plays increasingly important role since the processes of globalization and integration,

approximation and even merger of legal systems are not only at the level of legal institutions adaptation, but at the level of legal ideas; this is of greater importance and has more severe consequences.

As regards national security there are seven areas of social relations where apply varieties of legal relations subject to national security law with single objective but different on their specific characteristics. Among them:

- Legal relations in defence;
- Legal relations in defensive-industrial security;
- Legal relations in state and public security;
- Legal relations in economic security;
- Legal relations in information security;
- Legal relations relating to terrorism;
- Legal relations in international security.

The task of creation on this basis any comprehensive, systematized branch of law is of great challenge and needs teamwork, not only because it is necessary to analyze and to summarize a huge amount of regulations. The fact is that structural parts which make a comprehensive branch of law, as well, are comprehensive compositions which, also, consist of comprehensive institutions and sub-institutions of law.

In several conceptual documents there are certain attempts to place any milestones on this way. In particular, such reference points are in the Concept of development of legislation of the Russian Federation for the period until 2012 (approved by the Chamber of Commercial and Industry of the Russian Federation). The section devoted to problems of national security of the Russian Federation in the social and economic sphere and to security of business activity, there are a number of neat description of national security legal regulation state and its weaknesses.

The modern legal science the number of attempts to give reasons for existence of any new branch of law is constantly growing. In this regard it is noteworthy that structuring such criteria for law branches as subject and method of legal regulation is insufficient, and searching for new grounds for systematization of any structures of regulations takes place.

In what legal form can systematization of national security law take place? In the Constitution of the Russian Federation three types of laws subject to adoption at the federal level are specified: federal laws, federal constitutional laws and amendments to the Constitution of the Russian Federation acts. However there are also codes and Fundamental principles of legislation which failed to be specified in the Constitution of the Russian Federation. Publication of Fundamental principles of legislation by the federal state and acceptance of relevant codes by federal entities were in tradition for the Soviet state. In the USSR 16 Fundamental principles of legislation have been accepted which provided further codification of the national legislation.

In today's Russia comprehensive branches of legislation are developing rapidly and hold a high position in the legal structure of Russia, actually forming a sub-system of legislation. Composite of these branches creates a necessary legal basis for improvement the law structure. At the same time, as correctly noted Milushin M.I., comprehensive compositions in law investigator, it is necessary to clarify a number of concepts: in particular, legal structure definition.

It is proposed to supplement the legal structure definition, as a set of laws and other regulations concerned with hierarchy and intersubordination, with instruction relating to interrelations existing among prescriptions of regulations and their parts, and modes of laws communication. As one of special features of the legislation structure Milushin M.I. specifies existence in it besides

branch and hierarchical structures a federal structure. And now, let's consider what factors affect formation and development of comprehensive compositions in the Russian legislation structure. In that behalf the following factors should be marked:

On the first hand: identification of objectives providing the most effective legal regulation in separate branches of public administration. On the second hand: best composition in the legislation structure of private and public interests, private and public regulation methods. On the third hand: availability of one or more active centers which are forming control communications within the limits of comprehensive branch of legislation.

At the same time in the legislation system of the Russian Federation one can specify three types of legal comprehensive compositions: the first type is a comprehensive branches of legislation which are the same as relevant law branches, and their sub-branches and institutions as well; the second type is a comprehensive branches which structure includes comprehensive or multi-sector sub-branches and institutions; and the third thy includes comprehensive sub-branches and institutions.

If we take up a set of norms regulating national security as a comprehensive legislative structure, we will be able to single out from it both comprehensive institutions and comprehensive sub-branches of legislations. In this case the legislation institutions in the sphere of national security should be considered as a set of norms regulating a certain group of homogeneous social relations. For example, institution of military obligations in the defence sphere, etc.

The legal grounds for citizens of the Russian Federation to soldier are specified in the Constitution of the Russian Federation and in the federal law No. 53-FZ "Concerning Military Duty and Military Service", dated March 28, 1998.

The sub-branch of legislations in this sphere is a set of institutions combined in certain regulatory acts which are controlling a considerable group of homogeneous social relations. In the sphere of national security such sub-branches can include military law, economic security law, information security law, etc.

A set of all sub-branches in the national security sphere makes a comprehensive branch of legislation which, theoretically, can be specified as national security law. Any sub-branches, included in it, are joining together with stable hierarchical control communications. Though there is no one regulation act in the national security law, nevertheless, objective and functional relations, problems and objects of regulation interconnect this set of regulations.

The necessity to create new comprehensive branch of legislation in the sphere of national security i.e. to carry out all-round systematization of any available regulating materials, to accept missing legislative instruments that are joining a set of norms in the law branch regulations, is coming from the objective to protect national interest of the country in the best possible way and from internal processes in the legislation itself.

On one hand, the regulating structure in this sphere is increasing, new laws are accepting, the scope of directions and problems for which regulation the legal base is creating, is widening. In particular, the federal laws focused on antiterrorism protection and struggle with extremism, corruption control and illegal migration, control of economic, information and other types of security have been passed and are in effect.

On the other hand in the sphere of national security there is no entirety and systematization in the unregulated branch of legislation, and there are traces of excessive interdepartmental orientation of many of legal instruments which make a core of a package of regulations.

Monitor of legislation in the sphere of national security regularly carried out in the Federation Council of the Russian Federation, provides a clear evidence of this fact. Resolution of the Federation Council of Federal Assembly of the Russian Federation No. 86-SF "About report of the Federation Council of Federal Assembly of the Russian Federation of 2007 "On the status of legislation in the Russian Federation" dated March 19, 2008, notes that "this interdepartmental orientation, on one hand, acts as a tool for organization activities of particular executive authorities, on the other hand — it makes the grounds for fragmentariness and inconsistency of legal provisions contained in these legal provisions. Contradictions, discretionary interpretation and declarativity of provisions of the laws regulating relationships in the sphere of national security of the Russian Federation are impeding their effective and object-oriented execution".

Based upon results of monitoring, the Federation Council proposed to develop and to adopt a federal law "Concerning national security of the Russian Federation". It should be a comprehensive legislative instrument that will give "consistent and clear answers on the following immediately interconnected questions: which and what security should be provided in the country? Where the security lie is and what does it consist of? How security of various legal entities can be harmonized and co-subordinated? Security of what should be provided? What threats can arise for security of subjects and objects of the law? What indicators (indicators, threshold levels) of development of the society, the state and the person should be in foundation of accepted decisions? Just who, by what methods and means must any threats, what responsibility he/she/they should bear for breach of this duty?"

The Federation Council suggests to enshrine in this law certain dimensional characteristics of life of the country, kind of indicators, threshold levels which violation should without delay starts in action mechanisms of adequate warning or counteraction to new challenges and threats to national security. Such law should be a sort of core, code systematizing the huge structure of regulations in the sphere of national security, to make for officials involved in the sphere of national security, legal responsibility for non-performance of their duties.

A group of regulatory decisions should be specified in the said law. On the first hand: authorities of governmental entities of various levels in the sphere of national security. On the second hand: rights and duties of citizens of the Russian Federation and their associations participating in security protection, their interactions coordination framework. On the third hand: forms and problems of the state and public control over enforcement of granted rights and execution of liabilities on national security protection.

Of course, this comprehensive law should be a result of careful analysis of all legislation on national security of the Russian Federation with respect to correct reflection in it national interests of Russia, systematization, optimality, comprehensiveness, efficiency, compliance with purposes, present-day conditions and threats to national security of the Russian Federation.

Before passing such law the comprehensive structure of national security legislation, being a set of regulatory legal acts and provisions of legislation grouped in institutions, sub-branches, branches of legislation, falls, as a unified whole, into blocks of norms regulating certain spheres of social life.

At the same time already at the present time national security legislation is a comprehensive composition with divergent internal structure. At the same time careful study of this structure demonstrates that national security legislation is a comprehensive branch of legislation characterized by weak control communications among regulations which make its part.

When considering the national security legislation from a federal and regional perspective, an insufficient development of regional structure in this sphere of normative regulation should be noted as well.

Rationalization of the available structure of legislation should be the initial step on the road to formation a new comprehensive branch of national security legislation. This rationalization should be carried out on the basis of relevant classifier of legal acts. Generation the classifier of legal acts provides an opportunity obviously find out comprehensive compositions in the structure of legislation and, as well, affects the formation and improvement of structure of these compositions.

When systematizing legislation application either only subject or only thematic classifier is impossible. For comprehensive compositions of legislation it should be viable to apply a subject classification which allows informing its users without any distortion. Generation of complete and comprehensive classifier of legal acts taking into consideration specific features of systematization the comprehensive compositions of legislation will make it possible to achieve proper systematization of current legislation of the Russian Federation.

In the Edict of the President “Concerning classifier of legal acts” problems of national security have been formulated in two sections. The first section of the classifier: 150.000.000 Defense. The second section of the classifier: 160.000.000 Security and law enforcement.

Within the frameworks of each section a set of problems which in common can make a core for detailed systematization of legislation and for formation on this grounds its new legislative branch — national security law, are specified.