

# Socio-legal Nature of Lawful Infliction of Harm by Police Officers in Conditions of Justifiable Defense

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**Abstract:** The article discusses issues devoted to particular problems of the circumstances excluding the criminality of a deed. The article analyzes the opinions of scientists about the essence of lawful harm. The obtained results are applied to the activities of police officers in conditions of justifiable defense. Attention is drawn to the contradictions between the norms on the use of weapons provided in the Federal Law “On Police” and the Criminal Code of the Russian Federation. The purpose of the article is to determine the legal and social nature of lawful harm caused by police officers. In order to achieve this goal, the following tasks were solved: an analysis of scientists’ opinions on the considered issue was carried out; the functions of criminal legal norms regulating the infliction of lawful harm were revealed; the importance of legally significant acts provided by the norms of criminal legislation was determined. The methodological basis of the research is represented by both general scientific and private scientific research methods. The most commonly used method was analysis. The result of the study is the conclusion that if a police officer causes harm to law-protected interests, in the presence of circumstances excluding the criminality of a deed, then such actions are lawful in form and socially useful in content. The obtained data can be used both for further study of the institution of lawful harm and for training police officers.

## 1 INTRODUCTION

The fulfillment of the tasks, assigned to police officers, involves the use of active measures to combat crime, including the use of firearms (Gabor, 2016). Cases, when police officers have the right to use firearms, are regulated in Art. 23 of the Federal Law of the Russian Federation “On Police”. However, Part 9 of Art. 18 of this law contains provisions on the exclusion of liability of police officers for harm caused to persons and organizations through using firearms, if it was carried out on the grounds and in the manner prescribed by law. One of these laws is the Criminal Code of the Russian Federation (hereinafter referred to as “CC RF”), which provides the right of citizens to the justifiable defense in Art. 37 of CC RF.

The fulfillment by police officers of their professional duties involves the suppression of various conflict situations and socially dangerous encroachments, including those ones committed against them (Shkabin, 2020). The life and health of citizens and police officers often depends on the speed and decisiveness of their actions. At the same

time, in the theory of criminal law there is no unequivocal answer about the ratio of the norms that determine the institute of justifiable defense and the norms of the Federal Law of the Russian Federation “On Police” regulating the use of firearms in order to protect themselves or other citizens from socially dangerous encroachments.

The analysis of law enforcement practice also shows that until now a unified approach has not been developed regarding the priority of the norms of criminal or administrative law in the legal assessment of the actions of police officers who used firearms in a state of justifiable defense. These circumstances cause significant difficulties and lead to errors in the qualification of actions of police officers, who used firearms. These facts determine the need for theory and practice in conducting scientific research aimed at clarifying the social and legal nature of the lawfulness of harm caused by police officers. The study of the criminal-legal aspects of the use of firearms by police officers is connected with the fact that in such situations, social relations are almost always violated, which are protected by criminal law. At the same time, the preliminary investigation

bodies are obliged to make a procedural decision on the unlawfulness (criminality) or legality of such actions.

## 2 MATERIALS AND METHODS

In preparing the article, the following materials were used: Criminal Code of the Russian Federation; Federal Law "On Police"; forensic practice; Russian and foreign scientific publications devoted to the considered problem. The methodological basis of the research is represented by the universal dialectical method of scientific knowledge. Both general scientific and private scientific research methods were applied.

## 3 RESULTS AND DISCUSSION

Justifiable defense is one of the types of circumstances excluding the criminality of a deed provided by the Chapter 8 of the Criminal Code of the Russian Federation, adopted in 1996. The acts stipulated in this chapter were enshrined precisely in the criminal legislation due to the fact that they are outwardly similar to crimes (Piontkovsky, 1961). Moreover, S.F. Milyukov notes that "a deed committed in a state of justifiable defense or extreme necessity, as falling under the characteristics of the Special Part of CC RF, has a coincidence that is not formal, but active, real" (Milyukov, 1998). Accordingly, the norms of criminal legislation, providing for specific circumstances excluding the criminality of a deed, as well as the conditions and limits of their legality, are designed to determine the boundaries of lawful infliction of harm to protected criminal relations. This conclusion is based on the provisions of the current criminal legislation, namely the Chapter 8 of CC RF, in the title of which it is indicated precisely the exclusion of the criminality of a deed. In addition, the norms included in this chapter, for the most part, begin with the words – "It shall not be deemed a crime when harm is inflicted ...".

In the theory of criminal law, a point of view is expressed and reasoned, according to it if the behavior of a person contains signs of any of the types of lawful infliction of harm established by law, then this circumstance a priori excludes their criminal wrongfulness, social danger, and, as a consequence, the presence of signs specific *corpus delicti* (Dmitrenko, Chin, 2020). Criminal unlawfulness is excluded due to the fact that there are some norms in

the criminal law that provide for these deeds as lawful, and there is no public danger due to the presence of a socially useful purpose for the persons who commit them (Steinhoff, 2016). The influence of a certain external factor is also important, which is virtually impossible to overcome in order to achieve a socially approved goal, without harming the benefits of law.

Thus, following the generally accepted interpretation of the institution of circumstances excluding the criminality of a deed, a number of conclusions can be drawn that are necessary to understand the functions of the norms that regulate them.

Firstly, they resemble crimes outwardly. It is expressed in the fact that a number of objective and subjective signs of a socially useful deed are identical to the features provided by specific articles of the Special Part of the Criminal Code of the Russian Federation.

Secondly, the social basis for excluding liability for caused harm is the absence of public danger in these acts.

Thirdly, the legal basis for excluding the criminal unlawfulness of these deeds is their regulation by the norms of criminal law. As indicated in a number of sources, they are criminally lawful (Dmitrenko, 2015).

Accordingly, despite the outward similarity with a crime, the presence in the action or omission of a person of signs of one of the types of lawful infliction established by law, characterizes it as a lawful act provided by the norms of criminal law. For this reason, we believe that the terms "circumstances excluding the criminality of a deed", "criminally lawful deeds" and "lawful deeds provided by the norms of criminal law" should be considered as synonyms.

No less important are the issues concerning the normative regulation of the circumstances excluding the criminality of a deed, namely: whether they are provided only by the norms of criminal law or can they be regulated by the norms of other branches of law; can the norms of other branches of law restrict, expand, clarify or cancel the action of criminal law, providing for the considering circumstances. The need to resolve them is due to the fact that law enforcement officers (judges, interrogators, investigators), establishing such a legal matter as the presence in an act of a person of signs of circumstance excluding the criminality of a deed, must give a legal assessment to this fact. This assessment is expressed in the application of the norms of criminal law regulating lawful deeds. For this purpose, law

enforcement officers must study the features of the committed act, compare them with the signs provided in the norms regulating a specific circumstance excluding the criminality of a deed (justifiable defense, extreme necessity, reasonable risk, etc.). At the same time, it should be borne in mind that each type of criminal lawful act has obligatory features that characterize it as such and make it possible to delimit them from each other, as well as criminal and legally significant deeds provided by criminal law norms.

It should be clarified that, speaking about legally significant deeds provided by the norms of criminal law, we are based on the opinion of V.N. Kudryavtsev, who drew attention to the fact that only one that complies with legislative provisions can be recognized as a deed (legal act) of lawful significance. They can be both requirements and prohibitions or permissions. If a person is not aware of the social significance of his behavior or does not direct his will, then, according to the scientist, such behavior does not meet the necessary criteria. It means that such a deed cannot be recognized as legal, it can only be characterized as legally significant (Kudryavtsev, 1982). For example, causing harm to law-protected interests by a person who is in a state of insanity (Clause “a”, Part 2 of Article 97 of CC RF) is regulated by the norms of criminal law and entails criminal consequences. However, it is not performed under the actual control of the consciousness and will of the person. For this reason, it should be recognized as criminally significant. Such acts are not criminally lawful.

#### 4 CONCLUSIONS

Thus, we can formulate the conclusion of the analysis. It consists in the fact that in cases where it is established that the act committed by the police officer is one of the circumstances excluding the criminality of a deed provided in Art. 37-43 of CC RF, then it cannot be recognized as criminal, despite harm caused to an object protected by criminal law. In other words, such actions are lawful in form and socially useful in content. For example, if a police officer acts in conditions of justifiable defense, the harm caused to him is criminally legitimate, and the person himself cannot be prosecuted.

This conclusion is confirmed by the provisions of Part 9 of Art. 18 of the Federal Law from February 07, 2011 N 3-FZ (edited from February 24, 2021) “On Police”, determining that “A police officer shall not be liable for any harm caused to persons and organizations through the use of physical force,

special means and firearms, should such use of physical force, special equipment and firearms, be conducted on the grounds and in accordance with the procedure established by federal constitutional laws, this Federal Law and other federal laws.”

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