

## **CRIMINAL LAW REGULATION OF RELATIONS OBJECTIVIZED IN VERBAL EXPRESSION**

Pursuant to art. 14 of the RF Criminal Code (hereinafter, the 'RF CrC') a socially dangerous act committed guiltily which is prohibited by the CrC under threat of punishment shall be deemed to be a crime. Hence, the federal law expressly specifies the nature of a crime admitting as such an absolutely deliberate act of human conduct, in other words, an action. All and any acts of human conduct which are subject to legal treatment shall possess inner motivation, i.e. these shall be conscious acts where a person is duly aware of their criminal consequences (socially dangerous, in terms of criminal law) and, as a result, be in control of the person's will at the time of their commission in the real world. The person's awareness of the fact that the act he or she is committing poses a social danger also provides for an opportunity to specify the designation of the criminal trespass, or namely, the criminal offence. Here, the social values which manifest themselves in society in form of social relations and which are closely protected by the state serve as the target for a criminal trespass. Despite the obvious fact that social relations exist in the objective reality, the negative impact on them by crime commission does not attract the attention of a common person, since such socially destructive consequences tend to be mainly the object of concern with reference to public institutions and government authorities. However, in certain cases a criminal act does infringe not only social relations but also some objects of the material world and materialized values. As a consequence, we can speak of the subject of crime. Scientists do not share a unanimous opinion as to what the subject of a crime is. Conventionally, this is deemed to be what the criminal is

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placing his impact on. Still, there is a group of researchers who strongly believe that the subject of crime exclusively refers to the material world objects to which the properties of a thing are attributed, whereas another group justly adheres to an opinion that an impact in its legal sense does not come down to an exclusively physical contact, but presupposes other correlations of phenomena in the objective reality. G.P. Novoselov seems to be right in his supposition that 'although there is no motivation to waive the acknowledgement of both the material and the ideal as the subject of a crime, it should be emphasized that a criminal impact shall be deemed not only a physical contact, but also all and any other forms of relations between the guilty person and the subject of a crime'.<sup>1</sup> Following this understanding of the subject of crime, verbalized information, i.e. some language and speech phenomena, can serve an ideal value at which a criminal can target his unlawful impact.

Criminal law regulation of speech phenomena should not be reduced particularly to the description of a specific object. Objectification of speech can likewise be attained by way of commission an action in a 'verbal' form. In this case it would

be reasonable to consider various types of actions, the variety of specific manifestation of which does not affect the main point. Notwithstanding, the major interest is obviously attached to acts infringing on the specific object, since under these circumstances the substantive characteristics of speech become most important.

It shall be reasonable to refer the following to the offences infringing on speech phenomena, i.e.:

- *violation of the secrecy of correspondence, telephone conversations, postal, telegraph or other communications (art. 138, the RF CrC)*. In such case a person gains unlawful access to the verbally expressed written or oral information (in whatever language that may be) the privacy of which is guaranteed by art.23, part 2, the RF Constitution.

- *Refusal to grant information to citizen (art. 140, the RF CrC)*. This particular case refers to the combination of the verbal subject of an offence and the verbal way of its commission, since the said constituent element covers the refusal on the part of a representative of the public and/or local self-government in violation of art. 24, part 2, the RF Constitution, or else provision of incomplete or deliberately false information (i.e. written or oral utterances which do not meet the requirement for the completeness and validity of the transferred data). The major problem here is to resolve on the extent of the validity

<sup>1</sup> G.P. Novoselov. The Complete Course Book of Criminal Law, in 5 vol. / ed. A.I. Korobeyev. V. I. The Crime and Punishment., St. Petersburg, 2008, pp. 344–345. (G. P. Novoselov is the author of a chapter).

of the transferred information which shows itself through the availability/absence of all or any important data and the precision of their reproduction, from the point of view of the Russian language rules. Pursuant to the Federal Law № 149-FZ, dated July 27, 2006, 'On Information, Information Technologies and Information Protection'<sup>2</sup> (hereinafter, 'Law on Information') various modes of information storage and provision, both in the official language of the Russian Federation and in the language of the republics belonging to the Russian Federation. Refusal may also take the form of both an absolute omission of action, i.e. basically non-provision of information, and a combinatory omission, when the failure to perform the legal obligation may take the form of a physically active written or oral performance by the subject.

- *violation of author's and neighbouring rights (art. 146, the RF CrC)*. The foregoing article combines two separate elements of an offence. Art. 146, s.1, the RF CC, specifies the responsibility for the appropriation of authorship (plagiarism), whereas art. 146, part 2, the RF CrC, regulates the issues of responsibility for the illegal use of objects of author's right or neighbouring rights, and also their acquisition, possession, and transportation of pirated copies of literary works or sound records. A rational

explanation is given in Decree of the RF Supreme Court Plenary Session of April 26, 2007, № 14, under the title 'On the practice of consideration of criminal cases on violation of author's, neighbouring, invention and patent rights and on illegal use of a trademark'<sup>3</sup>, i.e. 'in consideration of criminal cases on violation of author's and neighbouring rights the courts shall take into account that author's right covers both published and unpublished scientific productions, literary works and works of art which result from creative activity and exist in some material form (written, oral, audio or video, graphic or stereo form). It is absolutely clear that verbalization can take place in any language.

- *divulgence of the secret of adoption (Art. 155, the RF CrC)*. In this constituent element of a crime the offence (divulgence) is its verbal expression, while the secret of adoption (which is subject to abidance under art. 139, the RF Family Law Code) appears the subject matter of the criminal law protection. Judges who have rendered the judgment on adoption, officials authorized to carry out the state registration of adoption, as well as other persons otherwise familiarized with the adoption case bear the responsibility to keep the adoption information confidential. Adoptive persons are the only ones who can in their own right and at their discretion divulge

<sup>2</sup> 'Parlamentskaya gazeta'. 2006. August 3.

<sup>3</sup> 'Rossiyskaya gazeta'. 2007. May 5.

the said information. From the linguistic point of view on the secrecy of adoption, the secret may be expressed in the official language of the Russian Federation, since the judicial act and the Civil Registry entry will be written and made in it, and also in any other language, and since other persons, to whom the secret has been disclosed accidentally or by the adoptive persons themselves can be brought to responsibility.

- *registration of illegal land transactions (Art. 170, the RF CrC)*. In the majority of cases the illegal impact of such offences infringes the data contained in the land cadastre or in the registration entry made by the Federal Registration Service of the Russian Federation, and which state the existing rights of certain persons for the land plot. Pursuant to art.13, part 1, of Federal Law № 28-FZ 'On the State Land Cadastre'<sup>4</sup> dated January 02, 2000, the state land cadastre documents shall be maintained and kept in the Russian language. Consequently, making entries in any other languages does not bring forth any legal consequences nor entail criminal responsibility. The same can be applied to the Uniform State Register of Rights for Real Estate and Its Transactions, the rules of keeping which were specified by the RF Government Decree № 219 (see part 10) dated February 18, 1998<sup>5</sup>.

- *illegal use of trademark (art. 180, the RF CrC)*. Trademark, service mark, name of place of origin or designations similar to them may serve a target of such crime. Pursuant to art.1482, part 1, the RF Civil Code, a verbal mark may represent a trademark. For this case the restrictions in respect to the trademark design (and these also cover service marks which specify the works and services) are imposed only in connection with its registration and, therefore, there are no restrictions whatsoever from the point of view of the language. Nor does the law make any stipulations concerning the name of place. Art. 1516, the RF Civil Code, comments that 'a name of place which is legally protected, is a designation representing or containing the present-day or historical, official or unofficial, full or short name of the country, city, town or settlement, of the area or other geographical place, or also the representation derived from such name, which has become known as a result of its use in connection with the goods or merchandise the specific description of which is exclusively and mainly determined by the natural environment and/or human factors characteristic of the particular geographic place'. Where the designation is designed in a foreign language, or in the language of peoples of the Russian Federation, in all and any described cases, the application to be filed for the state registration of the right shall be ac-

<sup>4</sup> 'Rossiyskaya gazeta'. 2000. January 10.

<sup>5</sup> 'Rossiyskaya gazeta'. № 42. 1998. March 4.

accompanied with the translation of the designation into the Russian language. All the foregoing also applies to the warning instructions on the said objects not registered on the territory of the Russian Federation. The warning instructions are represented in letters of the Roman alphabet, with the only exception of the name of place of origin of goods which stands for the Cyrillic abbreviation of 'HMPT'.

- *illegal receipt and divulgence of information constituting commercial, tax or banking secret (art.183, the RF CrC)*. Pursuant to art.3 of Federal Law № 98-FZ 'On Commercial Secret'<sup>6</sup>, dated July 29, 2004, all and any information revealing certain economic or legal character may obtain the status of a commercial secret at the discretion of the possessor of the right. In this case the information may be expressed in any language whatsoever.

The tax secret status is specified in Art.102, the RF Tax Code. All and any information in respect to a taxpayer which has become known to the taxation and other authorities, except for the cases specified by law, may be referred to as such. As a general rule the great bulk of the tax reports is filed in the official language of the Russian Federation. However, data on the taxpayer's transactions and international contracts may also be files with the said taxation authorities. These data shall be kept

<sup>6</sup> 'Rossiyskaya gazeta'. 2004. August 5.

as strictly confidential, irrespective of the language in which they became known. Issues in connection with the data constituting a banking secret are resolved in a similar way (see Art.26 of Federal Law № 395-1 'On Banks and Banking'<sup>7</sup>, dated December 02, 1990).

- *abuses when issuing securities (emission)(art.185, the RF CrC)*. The insertion into a securities emission prospectus of knowingly false information, and likewise the confirmation of an emission prospectus containing information known to be unreliable, or the confirmation of results of the emission known to be unreliable are referred to as alternative actions included as a compound into the objective part of constituent elements of a crime. The Russian Federation Federal Financial Markets Service issued Order #07-4/pz-n, dated January 25, 2007, specifying the Standard rules of securities emission and prospectus for securities registration<sup>8</sup>. In order to comply with the forms enclosed into the Standard rules, the Federal executive body in charge of the prospectus registration accepts information in the Russian language. Supplementary documents attached to the application, which may from

<sup>7</sup> 'Rossiyskaya gazeta'. 1996. February 10.

<sup>8</sup> 'Registered with the RF Ministry of Justice on March 15, 2007 under № 9121.' Bulletin normativnykh aktov federal'nykh organov ispolnitelnoy vlasti', № 25. 2007. June 18.

time to time contain information in a foreign language, shall be filed together with their officially authenticated translation. Henceforth, any misrepresentation in the said documents may likewise take place only in the Russian text.

- *malicious evasion of providing the investor or the controlling authorities with the information on securities in compliance with the RF securities law (art.185.1, the RF CrC).* Art.6 of Federal Law № 46-FZ 'On Protection of Investors' Legal Interests on Securities Market'<sup>9</sup>, dated March 05, 1999, regulates the provision of the investor with the information referring securities circulation. The rules of obtaining such information is connected with the general practice of clerical work and the requirements for licensing procedures for certain types of activities set under the RF law. Therefore, following the general rule the foregoing information is provided in the Russian language.

- *illegal export or transfer of raw and other materials, equipment, technologies, scientific and technical information, illegal performance of works (provision of services) which may be used when creating weapons of mass destruction, armament and military technology (art.189, the RF CrC).* Federal Law № 114-FZ 'On Military Technical Collaboration of the Russian Federation with For-

eign States'<sup>10</sup>, dated July 19, 1998, regulates the legally acceptable export of the objects in question. Scientific and technical information in tangible form can also be exported both legally and illegally. Russia has had a long-term tradition to adopt lists of merchandise and technologies of such kind<sup>11</sup>, which allows to precisely define the scope of these objects. In the majority of cases it concerns information which constitutes the Russian Federation State secret. Therefore, in order to comply with the general rules of clerical work the major part of the data, specifications, etc. is rendered in the Russian language.

- *unlawful actions in event of bankruptcy (art.195, the RF CrC).* The said article unites three different constituent elements of a crime connected with securing the creditors' rights in case entities go bankrupt. In terms of the issue under consideration, the given offence implies several actions which can constitute its constituent elements of a crime enumerated in the article. They include, in particular, the concealment of information concerning property, the amount thereof, the location, or any

<sup>10</sup> 'Rossiyskaya gazeta'. 1998. July 23.

<sup>11</sup> See also 'List of merchandise and technologies of dual nature which can be used in production of armory and military equipment and with reference to which export control can be imposed', adopted by RF Presidential Decree, № 580, dated May 5, 2004 (as amended on March 6, 2008). Rossiyskaya gazeta'. 2004. May 4.

<sup>9</sup> 'Rossiyskaya gazeta'. 1999. March 11.

other information concerning property, and property rights and obligations, and likewise the concealment, destruction, falsification of bookkeeping and other record documents reflecting economic activity of an entity or an individual entrepreneur, and these shall be dealt with within the framework of the general rules of keeping the books. Federal Law № 129-FZ (as amended on November 03, 2006) 'On Book-keeping'<sup>12</sup>, dated November 21, 1996, appears to be the major legal act regulating the specifications in respect to keeping books and records. The said legal act imposes the main requirements for the primary documents and general accounting records, yet, it gives no direct indication as to their language. However, its further adopted by by-laws, i.e. acts of Ministries and Agencies (orders from the RF Rosstat (Goscomstat), also orders from the RF Ministry of Finance), in defining various standard forms of documents, use only the RF official language. Order from the RF Ministry of Finance № 67n (as amended on September 18, 2006) 'On the forms of bookkeeping records of entities'<sup>13</sup>, dated July 22, 2003, can serve a vivid example of such acts. Generally speaking, the data and information on the property, etc., may not be reduced to

books and bookkeeping documents only. Various excerpts, the texts of contracts, etc. can be drawn up in any language.

- *fictitious bankruptcy* (art.197, the RF CrC). The offence corresponds to the announcement known to be false concerning the insolvency. Pursuant to art. 63, part 1, the RF Civil Code, the liquidation commission shall place in press media in which data concerning state registration of a legal person are published, a publication concerning its liquidation and about the procedure and period for declaring claims by its creditors. Following Order from the RF Federal Taxation Service № SAE-3-09/355@ 'On provision of printed matter and publication of the state registration of legal entities in compliance with the Russian Federation law on the state registration'<sup>14</sup>, dated June 16, 2006, 'Vestnik gosudarstvennoy registratsii' was named as such periodical. Composition of the data being published in the said periodical was fixed in Schedule 2 to the foregoing Order. Despite the fact that there is no direct indication as to the language of the publications and judging from the already published information, there is an opinion that as a general rule such information is being published in the Russian language, since the required publicity for bankruptcy procedures can be gained in this particular way.

<sup>12</sup> 'Rossiyskaya gazeta'. 1996. November 28.

<sup>13</sup> 'Bulletin normativnykh aktov federal'nykh organov ispolnitelnoy vlasti'. 2006. July 10.

<sup>14</sup> 'Finansovaya gazeta'. 2003. № 33.

- *evasion of payment of tax and/or insurance contribution by natural persons (art. 198, the RF CrC) and by organizations (art.199, the RF CrC)*. Including in the declaration or other documents when the filing of them is obligatory under the RF laws on taxes-and-duties constitutes a *modus operandi* for such offences. Therefore, in this case we deal with the mixed form of the omission of action which is represented by the non-performance by a person or/and entity of the duty imposed on them by way of performing conations. Written information expressed in a strictly standard form of an accounting (fiscal) instrument is deemed an ideal target of crime. The RF Supreme Court provides an explanation for the formal expression of the said information. 'A tax return is a written taxpayer's statement concerning the received income and spared expenses, the income sources, tax privileges and the tax amount charged, and also concerning other data connected with the computation and payment of taxes. The tax return shall be filed by every taxpayer on every tax subject to payment by this particular taxpayer, unless it is otherwise provided in law on taxes-and-duties in the prescribed form, following the rule and within the term fixed under the said law (art.80, parts 2, 6 and 7, the RF Tax Code). All and any documents specified in the RF Tax Code and adopted by federal laws in compliance with the said Code which serve the grounds

for the computation and payment of taxes and/or duties, stand for 'other documents' named in articles 198 and 199, the RF Criminal Code. The following may, in particular, refer to such documents, i.e., excerpts from the sales ledger, from the journal of income and expenses and economic operations, a copy of the register of the received and drawn up invoices (art.145, the RF Tax Code), computations of advance payments and payroll registers (art. 243, 398, the RF Tax Code), reference letters on the amount of the paid taxes (art.244, the RF Tax Code), annual reports (art.307, the RF Tax Code), proofs of the right for tax privileges'<sup>15</sup>. The Order from the RF Ministry of Finance № 62n 'On adoption of the format of the uniform (simplified) tax return and the rules of its filling in'<sup>16</sup>, dated July 10, 2007, provides a detailed explanation of the particulars concerning filling in of the information into the tax return. Considering the type of information to be included into the document, it appears obvious that all the information in question shall be provided in the Russian language. Yet, in our opinion, it would be reasonable to make an expressed reference about the language into Schedule 2, part 1,

<sup>15</sup> *Resolution № 64 of the Plenum of the RF Supreme Court of December 28, 2006, "On the practice of application of criminal legislation on responsibility for tax crimes by courts" // 'Rossiyskaya gazeta'. 2006. December 31.*

<sup>16</sup> 'Rossiyskaya gazeta'. 2007. August 8.



s.1, to the Order. The said likewise concerns the other foregoing documents, since their formats have been adopted by different by-laws and imply the requirement for the filling in in the Russian language.

- *communication known to be false concerning act of terrorism (art.207, the RF CrC)*. In this case manipulation of public safety takes place when a person in any form whatsoever (be it oral, written, graphic or done with the aid of technical means) brings to the notice of state agencies, organizations and persons authorized to take measures in connection with the obtained information, misleading information on the preparation, attempt or performed act of terrorism. It seems obvious the information can be communicated in the official language, in the language of peoples of Russia, as well as in a foreign language. It is important that in this case the criminal intent of the person who was trying to disturb the system of public relations was aimed at the fact that the content of his or her information was understandable to the addressee, or that its content could be made clear.

- *illegal issuance or forgery of prescriptions or other documents giving right to receive narcotic means or psychotropic substances (art.233, the RF CrC)*. Article 26 of Federal Law № 3-FZ 'On narcotic drugs and psychotropic substances' (as amended on October 25, 2006)<sup>17</sup>, dated Janu-

ary 08, 1998, provides an explanation that medical prescriptions for narcotic means and psychotropic substances have to be written on special forms. The format of such forms and the regulation for their filling in have been fixed by Order from the RF Minzdravsotsrazvitiye № 110 (as amended on February 27, 2007)'On prescription and writing out of medicines, medical products and specialized foods for diet therapy'<sup>18</sup>, dated February 12, 2007, following and in compliance with the provisions of the said law. Directions for filling in the prescription form provide rather detailed instructions (which is most unusual for Russian legislation) as to its language, and this is probably connected with the special type of the remedies to be prescribed. For example, in the section 'Rp:' the international non-proprietary, commercial or other name of the medicine registered in the Russian Federation shall be written in Latin, and this section shall also bear the dosage. The section 'D.S.' specifies in the Russian language or in the language of peoples of the Russian Federation the way of the drug administration (in a detailed way). This means that the normative act expressly stipulates the prerequisite for the information of the drug administration and its single dose in the official language of the RF. The failure to provide the said information in the prescription makes it null and void, and the dis-

<sup>17</sup> 'Rossiyskaya gazeta'. 1998. January 15.

<sup>18</sup> 'Rossiyskaya gazeta'. 2007. May 15.

charge of the respective prescribed drug illegal. All and any other data in the prescription shall be written in the official language of the RF, since it provides information about the patient, his/her diagnosis, and also about the medical doctor who has written out the prescription and the medical institution which has approved of it.

- *concealment of information concerning circumstances creating danger for life or health of people (art.237, the RF CrC)*. The Russian Federation Constitution safeguards the minimal set of social rights in the medical sphere for each person. Art. 41, part 3, of the Constitution specifies the principle of responsibility for public officers for concealment of the facts and circumstances posing threat to the life and health of people. In its essence this particular constituent element of a crime should be referred to the group where personal constitutional rights become the target of crime. Various normative legal acts set rules in connection with information of this type. For instance, these are Federal Law № 52-FZ 'On sanitary and epidemiological health of the population'<sup>19</sup>, dated March 30, 1999 (as amended on December 30, 2006), and Federal Law № 68-FZ 'On protection of the population and areas against natural and anthropogenic emergencies'<sup>20</sup>, dated

December 21, 1994 (as amended on October 30, 2007). From the disposition of legal norms it becomes obvious that public officers of the federal executive authorities, of the authorities belonging to the subjects of the Federation, to the municipal bodies, those belonging to the institutions and organizations must within their competence bring this information to the knowledge of all and any threatened people. This means that such information must be supplied in their familiar language. However, it should be clarified whether public officers can be made responsible in case they failed to supply the said information by reason of their inadequate knowledge of the language. Respectively, there arise two situations. In one of them a person who is a native Russian speaker fails to provide the said information to persons who do not know Russian and are not obliged to know it (e.g. foreign workers). In the other, a foreign speaking CEO or just a public officer, with no knowledge of Russian, fails to provide the information to the Russian-speaking people. It appears that in such cases the responsibility appears only in case a public officer is obliged to know the language and how to communicate in it. In connection with art.237, part 2, the RF CrC, this consideration appears senseless, since for the qualified personnel, i.e. for people holding public offices in the RF or in its subject, also heads of local administration it is a prereq-

<sup>19</sup> 'Rossiyskaya gazeta'. 1999. April 6.

<sup>20</sup> 'Rossiyskaya gazeta'. 1994. December 24.

uisite to know the Russian language and to carry out their activity in the official language of the Russian Federation.

- *illegal dissemination of pornographic materials and articles (art.242, the RF CrC), manufacture and turnover of materials and articles bearing pornographic images of minor children (art.242.1, the RF CrC)*. Russian legislation does not hold a legal definition of pornography. Conventionally, legal studies base on the conceptual character of the term itself which literally means 'depiction of obscenity'. Apart from visual images which in a rough and naturalistic form show sexual relations, video and audio recordings, texts and theatre performances of this type can also be referred to this group. The failure to provide the definition is not of particular importance, since in Russia there are restrictions imposed for the 'light' and erotic productions as to the performance of the said acts. The main obstacle on the way of this legal norm application is lack of the rules for the legal turnover of porno produce. In fact, the language used in porno materials and articles does not bear much significance as long as the physiology and naturalism they depict become known to a person.

- *destruction or damaging monuments of history and culture (art.243, the RF CrC)*; Monuments of history and culture, nature complexes, other objects under the state protection, as well as valuable historical or cultural

articles or documents constitute a target of this type of crime. The issue of attribution of the foregoing objects to the above group is resolved in each particular case by way of expertise. However there are certain legal indicators to determine such attribution. Art.7, RF Law № 4804-1, 'On export and import of valuable objects of culture'<sup>21</sup>, dated April 15, 1993 (as amended on November 02, 2004), contains a model list of categories of objects which refer to specific regulation by law. The language of the works of art, literary works, inscriptions and/or documents in this case is of no significance, irrespective of whether it is a modern or dead language. The decisive opinion exclusively belongs to the fact of value of the particular object from the point of view of history or culture.

- *Treason (art. 275, the RF CrC), espionage (art. 276, the RF CrC), divulgence of state secret (art. 283, the RF CrC), loss of documents containing state secret (art. 284, the RF CrC)*. First and foremost, information which constitutes the RF state secret serves the target of State Treason. Its issuance by a person who had access to the state secret, and the espionage of Russian citizens presuppose the illegal turnover of this information to the detriment of the national defense capability and safety of this country. Pursuant to art. 29, part 4, the Russian Federation Constitution,

<sup>21</sup> 'Rossiyskaya gazeta'. 1993. May 15.

the list of data constituting the state secret is determined by the federal law. Art.2, RF Law № 5485-1, 'On the RF State Secret'<sup>22</sup>, dated July 21, 1993, specifies the protected by state information in the sphere of its military activity, foreign policy, economy, intelligence, counterintelligence, and operational investigation the divulgence of which can damage the national safety of the Russian Federation. The law expressly regulates the major provisions in respect to the reference of information to the state secret security of the state secret, and to undertaking measures to preserve its confidentiality. The list of such information is adopted by Decree of the Russian Federation President, № 1203<sup>23</sup>, dated November 30, 1995. The Russian Federation Government has also adopted 'Rules of reference of information constituting the state secret to various levels of sensitivity'<sup>24</sup>, and 'Rules for working out the list of information referred to the state secret'<sup>25</sup>. In accordance with the level of sensitivity information referred to the state

secret is classified as highly important information, top secret information and confidential. Traditionally highly important information includes data in the sphere of military activity, foreign policy, economy, science and research, intelligence, counterintelligence, and operational investigation the divulgence of which can damage the national interests of the Russian Federation in any or several of the said spheres. The top secret information generally includes data in the sphere of military activity, foreign policy, economy, science and research, intelligence, counterintelligence, and operational investigation the divulgence of which can damage the interests of a Ministry (Agency) or a branch of economy of the Russian Federation in one or several of the said spheres. Confidential information includes all and any other data constituting the state secret. In this case the damage inflicted on the interests of a business entity, institution or organization in the sphere of military activity, foreign policy, economy, science and research, intelligence, counterintelligence, and operational investigation is deemed the damage to the national safety of the Russian Federation. It is obvious and natural that the major part of this information generates, remains and circulates in the official language of the Russian Federation. Notwithstanding, there are no restrictions whatsoever in the regulatory documents, and therefore, certain information, e.g., referring to

<sup>22</sup> 'Rossiyskaya gazeta'. 1993. September 21.

<sup>23</sup> Sobraniye zakonodatelstva Rossiyskoy Federatsii, 1995. № 49. art.4775.

<sup>24</sup> .the RF Government Regulation, № 870, dated September 4, 1995 (as amended on May 22, 2008). Sobraniye zakonodatelstva Rossiyskoy Federatsii. 1995. № 37. art. 3619.

<sup>25</sup> .the RF Government Regulation, № 443, dated July 23. 2005. Sobraniye zakonodatelstva Rossiyskoy Federatsii, 2005. № 31. art. 3224.

the issues of counterintelligence, international trade and foreign policy can be compiled in a foreign language. The same can be applied to the characteristics of the target of espionage as a separate constituent element of a crime, and to the divulgence of the state secret.

- *refusal to grant information to Federal Assembly of the Russian Federation or Chamber of Accounts of the Russian Federation* (art. 287, the RF CrC). The unlawful refusal to grant or evading the granting of information (documents, materials), and also the granting of information known to be incomplete or false to the Federal Council of the Russian Federation Federal Assembly, to the State Duma of the Russian Federation General Assembly or to the Russian Federation Chamber of Accounts, in case these acts have been committed by a public officer obliged to grant such information, have been criminalized as an official malfeasance. The general notions conform to the conventional approach specified in Federal Law № 24-FZ 'On information, information technologies and information protection'<sup>26</sup>, dated February 20, 1995. Therefore, information is defined as data on persons, entities, things, facts, events, phenomena and processes irrespective of the form of their representation, and documented information (documents)

information recorded on a material object bearing essential elements which allow its identification (art.2). The Federal Assembly Deputies are entitled with certain powers to make inquiries in government agencies and state bodies. The law specifies the following types of inquiries, i.e. a parliamentary inquiry, an inquiry from member of the Federal Council, from deputy of the State Duma (inquiry of deputy)<sup>27</sup>, inquiry from the Chamber of Accounts<sup>28</sup>. Correspondence between the government agencies is made in the official language of the Russian Federation; however, the information proper can exist in any language whatsoever. Consequently, introduction of amendments and corrections into the initial text can be carried out in any language.

- *official forgery* (art.292, the RF CrC). In Federal Law № 77-FZ 'On Obligatory copy of documents'<sup>29</sup>, dated December 29, 1994, the target of the crime (a public document) is defined as a document adopted by legislative, executive and judicial authorities. It can be binding, ad-

<sup>27</sup> Federal Law № 3-FZ 'On the membership status of the Council of the Federation and on the membership status of the State Duma of the Russian Federation General Assembly'. 'Rossiyskaya gazeta', 1994. May 12.

<sup>28</sup> Federal Law № 4-FZ "On the Chamber of Accounts of the Russian Federation" // Rossiyskaya gazeta". 1994. January 14.

<sup>29</sup> 'Rossiyskaya gazeta'. 1995. January 17.

<sup>26</sup> 'Rossiyskaya gazeta'. 1995. February 22.

visory or informative. Criminal-law doctrine and judicial practice appeal to the document in a narrower way, i.e. they consider that a public document must generate rights or obligations, and not only serve the information purposes. As a general rule, such documents must be worked out in the Russian language. However, intellectual forgery can be committed in any language, unless it alters the foregoing legal nature of documents.

- *unlawful issuance of the Russian passport and also the insertion of knowingly information false in documents, which entailed to the unlawful acquisition of Russian citizenship (art. 292.1, the RF CrC)*; 'Provision on Russian Federation passport, the blank passport sample and the description of the Russian Federation passport' adopted by Resolution № 828<sup>30</sup> of the RF Government, dated July 08, 1997, stipulates precise requirements in respect to the Russian Federation passport. The forenamed resolution also adopted the blank sample passport of the Russian Federation and the description of the passport. Pursuant to par. 2 of the Provision, 'blank passports are issued in compliance with the sample uniform applicable on all the territory of the Russian Federation and are executed in the Russian language. For the blank passports to be issued in the republics of the Russian Federation, insert cards can be

issued. They shall bear the image of the republic's national emblem and provide the insertion of the bearer's personal information in the national language (languages) of this republic. The format of the insert card is adopted by the executive authorities of the said republics and the Federal Migration service with advice and consent from the RF President's Heraldry Council. Paragraphs 4 and 5 of the Provision specify the list of data and the marks which must or may be inserted into the Russian Federation passport. Therefore, in case the passport has been issued unlawfully it may contain information in the Russian language or in the language of the RF subject, which does not correspond to the reality. 'Administrative regulations for the performance of the state function referring to the issues of citizenship', № 7491<sup>31</sup>, adopted by Order from the RF Ministry of Foreign Affairs on June 16, 2008, contain samples of all the documents to be submitted for the RF citizenship in its Schedules. Paragraph 27 of the Regulations stipulates that the application for the Russian citizenship shall be written in the Russian language. All and any documents to be filed together with the application (in case they are not issued in the Russian language) are subject to translation into the Russian language. The correctness of the translation or the authenticity of the

<sup>30</sup> 'Rossiyskaya gazeta'. 1997. July 16.

<sup>31</sup> 'Rossiyskaya gazeta'. 2008. August 13.

translator's signature shall be notari-ally certified. Therefore, the forgery of such documents is possible only in the Russian language.

- *falsification of evidence (art.303, the RF CrC)*; Both Criminal Procedural and Civil Procedural Codes of the Russian Federation concede any data which may be important for the court consideration of the case as evidence. Therefore, any speech phenomena, be it written or oral, expert and specialist opinions, material evidence, etc. may serve as such. Their language is of no importance.

- *testimony or opinion of expert and/or specialist opinion known to be false or incorrect translation (art.307, the RF CrC), refusal of a witness or victim to give testimony (art.308, the RF CrC)*. As opposed to the previous constituent element of a crime, this case deals with strictly regulated forms of participation in criminal proceedings. The RF Criminal Procedural Code stipulates the possibility for all and any parties, taking part in the court proceedings or preliminary investigation in their capacity of victims, witnesses and/or experts, to give testimony in their native tongue (art.42, 56, 57, the RF CrPC). The law does not entitle a specialist with the similar right (art.59, the RF CrPC). Hence, an opinion can be made that persons from the first group can give true/false testimony in any language familiar to them, whereas the language requirement referring to

specialist evidence is much stricter and reduced to only the language of the criminal procedure, i.e. Russian (art.18, the RF CrPC). The translator, on the other hand, can do an incorrect translation/interpreting of a question and/or answer, which presupposes commission of a crime in different languages.

- *divulgence of data of preliminary the preliminary investigation (art.310, the RF CrC), divulgence of information concerning measures of security applicable with applied in respect to the judge and participants of the criminal trial (art. 311, the RF CrC), divulgence of information concerning measures of security applicable with respect to the officials of law enforcement and controlling agencies (art. 320, the RF CrC)*. Article 161, the RF CrPC, establishes rules of secrecy in preliminary investigation. Persons who hold no office in law enforcement agencies or judicial bodies and who have divulged in any way whatsoever information of the preliminary investigation are liable to criminal responsibility. As far as the way of such information divulgence does not matter, it can be made in any language. The main thing here is that it becomes available to at least one person outside the criminal case. Here we have to deal with the dual character of this information, since the procedural law assumes that the secret is held confidential in Russian. Federal Law № 45-FZ 'On the state protection of judges and officers of law enforce-

ment and controlling agencies'<sup>32</sup>, dated April 20, 1995, and Federal Law № 119-FZ 'On the state protection of victims, witnesses and other participants to the criminal proceedings'<sup>33</sup>, dated August 20, fixes the list and imposes the rules for the application of safety measures to the forenamed persons and their akin. Among other measures, for instance, the law permits to hold data about such persons confidential. Like in the previous case, despite the fact that regulations on the data presume that information is in Russian, these data can be divulged to the addressee in any language familiar to them.

In respect to actions which can be also expressed in the verbal form, there exist no restrictions as to the language. The RF Criminal Code acknowledges the possibility of a 'verbal' form of an action in form of/by way of a threat, coercion, canvassing, refusal, inducement, recruitment and involvement, divulgence and communication, fraud and abuse of trust, demand, registration, appeals, setting up of organizations, fixing of prices, bribery, corrupt declaration, abuse of powers, etc. The core feature of all the named actions is that they can inflict harm to the existing social relations. And for this they must be available to

their addressees. The exceptions are but very few and concern the actions which are connected with carrying on the activity subject to formal legal regulation. In such cases the action presupposes the use of the Russian language norms. Let us consider some examples. In certain cases we have to confront a combination of a specific verbal thing and also the verbal expression of the action.

- *mass riots (art. 212, the RF CrC).* Article 212, part 3, the RF CrC, imposes responsibility for appeals to aggressive disobedience to the lawful demands of the public authorities and to mass disorders, and the appeals to violence against people. Studies in criminal law traditionally consider appeals as individual specific addresses of a person to an undefined group of people, which affect their consciousness. The result of an appeal (whether the addressee understood it as a call for action, or not) is irrelevant. The said norm does not contain a reference to the way in which appeals can be performed (i.e. orally, in writing, through mass media, etc.). The main thing here is whether the expressed information is assimilated in the minds of people whose willful intent to perform the unlawful acts, described in the disposition of legal norms, has not yet taken shape. A particular characteristic of appeals is that certain information is being forced upon people (in other words, it aggressively affects their consciousness). The strong imperative effect

<sup>32</sup> Sobraniye zakonodatelstva Rossiyskoy Federatsii, 1995. № 17.

<sup>33</sup> 'Rossiyskaya gazeta'. 2004. August 25.



of the expressed utterance conceals social danger of the act. Consequentially, we adhere to an opinion that thoughts expressed in literary works (in fiction first and foremost) cannot be deemed appeals as they are neutral in their essence. It goes without saying that in this particular case we are talking, for instance, about such statements in the text which serve the artistic goal, i.e. the setting of a single literary environment irrespective of whether this particular literary work is a fiction story or an essay. Creation of a literary character implies generation of a variety of his views and also setting his life in a certain context. It is unlikely for an author to think of an exclusively fair character with only positive political views. As a result, it is impermissible to consider the author's disposition to his character as propaganda of anti-social values, even though the latter one might express illegal, from the point of view of criminal law, ideas or even has performed such acts. The same applies to literary works which are fully dedicated to such antiheroes. The reader's choice of books is an issue of their personal preferences and liking. In this case the reader, who makes a voluntary choice in favour of this or that literary work, is offered a chance to reflect upon a certain topic, so that he can form his own good judgment. It would be unreasonable to impair the importance of literary works, especially as part of mass culture, in setting the system of values, opinions

and ideas. However, this factor must and can be balanced with the preventive measures of the same sort, i.e. by way of improved propagation of sound ethical principals, rather than criminal-law prosecution of authors of fiction stories and essays. The only exceptions might be passages from literary works, articles, stories published in periodicals, for mass media have developed an important quality; it can easily communicate down information to the addressees. Therefore, literary passages which contain part of the author's verbally expressed ideas and which bear a passive negative impact in the literary work, being deprived of the context, acquire a strong negative effect. Obviously, from the point of view of the language, appeals can be made in any language, in case it is understandable to the addressee. The acts of persons who addressed their audience in the language which is not familiar to them, shall be considered in compliance with rules on errors of fact as a criminal attempt specified in art.212, part 3, the RF CrC. Where the appeals are accompanied by their translation/interpreting, both the person making an appeal for unlawful actions in his native tongue, and the one doing its translation/interpreting are equally liable to responsibility.

- *production, keeping, carriage, or sales of goods and products, fulfillment of work, or rendering of services not meeting safety requirements (art. 238, the RF CrC).* The rule of con-

duct specified in art.238, the RF CrC, can be violated, in particular, by way of unlawful issuance or use of a public document certifying the conformity of the said goods, works or services to the requirements of safety. The procedure of standardization, type approval and confirmation of compliance in the RF has been enacted into Federal Law № 184-FZ 'On Technical Regulation'<sup>34</sup>, dated December 27, 2002 (as amended on December 01, 2007). To comply with its provisions all the documents connected with the forenamed procedures have to be drawn up in Russian. Therefore, intellectual falsification in form of counterfeit of respective public documents can also be undertaken in the Russian language, as long as insertion of false information in a foreign language will not have any consequences whatsoever.

- *public calls to extremist activity (art. 280, the RF CrC)*. In essence, the description of this infringement, as much as language issues are concerned, does not differ in any way from other calls. Of certain interest is the aggravation of this crime, specified under art. 280, part 2, namely, the foregoing actions committed with support of mass media. In no case does the law specify any supporting characteristics in respect to the said mass media. Still, it is obvious that historically it was with the

growth of mass awareness and the expansion of various tortuous ideas that the increase in social danger in such cases was connected. Still, we have to admit that it is not always exactly so in the present-day environment. It would be unreasonable to speak about the increased mass-scale calls in case they are published in some exotic foreign language, or read, for instance, on the channel of a provincial foreign broadcasting station. The impact on social relations connected with the Russian Federation national security occurs, in particular, as a result of the influence of illegal ideas on the indefinite number of mass population. It seems that such impairment in mass population must activate application of art. 14, part 2, the RF CrC, and be deemed as an act of little consequence. All the aforesaid will also appear absolutely fair in connection with *the incitement of enmity or hatred, or else the abasement of human dignity (art. 282, the RF CrC) and public calls to unleash an aggressive war (art. 354, the RF CrC)*.

- *bringing person known to be innocent to criminal responsibility (art. 299, the RF CrC), illegal relieving from criminal responsibility (art. 300, the RF CrC), illegal detention, confinement under guard, or keeping under guar (art. 301, the RF CrC), rendering of judgment, decision or other judicial act known to be unjust (art. 305, the RF CrC)*. The forenamed acts are committed in a specific procedural form, i.e. by

<sup>34</sup> 'Rossiyskaya gazeta'. 2002. December 31.

inquiry bodies, investigator, procurator or court adopting a respective ruling (decision). The RF Criminal Procedural Code specifies uniform requirements in connection with the procedural documents: they are drawn up in the official language of the Russian Federation. Hence, the commission of acts connected with the illegal alteration of a person's procedural status is possible only in Russian.

- *denunciation known to be false (art. 306, the RF CrC)*. This type of crime is represented by any kind of application, whether personal or anonymous, addressed to the law enforcement or other public authorities or agencies whose duty it is to subsequently pass information on the committed crime to the law enforcement agencies. It is not requisite for the false information to be filed in the form of a procedural document, and, therefore, it can be submitted in any language.

Such acts as criminal insult (in various components of crime) and slander require special comment. They appear to be the most vivid examples of 'verbal' offences, and for this they are not devoid of certain complexity in their interpretation. First and foremost, it should be clarified why acts of threatening honour and dignity which can be described as purely private and belonging to the sphere of civil law by convention, shift to the category of socially dangerous. Criminal law, while taking into account the peculiarity of

these social relations, emphasizes certain features which increase the social threat of these offences. It is important for criminal law for the act to inflict harm on the system character of social life and break the structurally important links. As a consequence, the state undertakes all the available repressive measures to prosecute not just a person who spread false information about another person, but the one who committed it and who willfully and absolutely knew about the falsity of the spread information. Criminal responsibility for slander arouses only in case it is expressed in an obviously indecent form. In this case the impact is placed not only on the inner self-appraisal of the wronged person, but also on the ethical norms which are deeply rooted in the society. This is the reason why it is customary to distinguish between the subjective and objective aspects in qualifying slander. The subjective aspect reveals itself in the fact that, pursuant to the RF Criminal Procedural Code (art. 20, the RF CrPC), cases in connection with such crimes commission refer to the category of private prosecution, i.e. they are initiated exclusively in pursuance with the wronged person's claim, and their future life is directly connected with his will. The objective aspect refers to the necessity to prove in court the existence of willful intent to rudely disregard the honour and dignity of another person.

In our opinion, this distinguishes the foregoing components of crime from all the other verbal offences, the kinds of which have been named before. To make them publicly-known it is important that such acts would regard not only the wronged person, but would also comply with all the other parameters of social danger. Consequently, it appears insufficient to apply the general rule according to which the content of the insulting and/or slandering utterance must

be understandable to the offender and the wronged person. In order to qualify acts under the respective articles of the RF CrC, it is also important to prove that the form (known to be false or obviously obscene) was also obvious. Therefore, in this case the content and meaning analysis of this or that phrase, irrespective of the language of utterance, will be the major target.

*Translated by I. Baskakova*