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SECURITY AS A LEGAL CATEGORY

5.1.1 – theoretical and historical
legal sciences.

Abstract
of the dissertation for the degree
of Doctor of Law

Annotation

Relevance of the research topic.

The relevance of the topic of the dissertation research is primarily due to the exceptional importance of security, which determines its place in the value system for an individual, society, the state and the entire world community.

Currently, security issues, both on a global scale and in the domestic aspect, are acutely on the agenda. The processes taking place in Russia and the world related to the increasing number of threats in various spheres, as well as their transformation into new threats and challenges, attach particular importance and priority to security issues.

The pandemic of the COVID-19 coronavirus infection that struck humanity, which claimed a huge number of human lives in peacetime, entailed significant changes in the functioning of every state in the world. In order to prevent the spread of a deadly epidemic and ensure the safety of the population in Russia, as in many countries of the world, it was necessary to urgently develop and introduce appropriate legal regimes related to a number of restrictions on constitutional human rights.

The pandemic has demonstrated to the world community that a fundamentally new approach to understanding security issues is needed today. It is obvious that it is unacceptable to consider security as protection only from military, terrorist and other criminal threats today. Practice has shown that at the moment we need a broader approach to understanding security as a multifaceted scientific category.

Law as a universal regulator of public relations has traditionally been the main tool for ensuring security, it is through legal means that one can achieve genuine protection of the individual, society and the state, guaranteeing their sustainable development, while ensuring a balance of their interests.

It would not be an exaggeration to say that Russian law, along with the legal systems of other states of the continental legal family, is historically obliged to

security, since security issues, in fact, have become the main catalyst for the emergence of a "new" law in Europe. The famous French comparative scholar Rene David, speaking about the first steps of the formation of the Romano-German legal family in the XII and XIII centuries, noted that "the new society has again realized the need for law; it began to understand that only law can provide the order and security that the divine plan requires and that are necessary for progress."¹. Professor V. Modderman, who studied the reception of Roman law in medieval Germany, also stressed that the prerequisite for this reception was the inability of German law at that time to ensure security².

Scientific analysis has shown that law and security are organically linked and this relationship manifests itself in the very essence of law. The philosophical level of understanding of security as a legal category entails the need to correlate this category with the legal category of freedom. On the other hand, law can be considered as a universal regulator of public relations and the main tool for ensuring security. After all, it is through legal means that it is possible to achieve genuine protection of the individual, society and the state, guaranteeing their sustainable development, while ensuring a balance of their interests. This provides the basis for a comprehensive scientific study of security as a legal category, as an integral component of law, which implies determining the place of security in the legal matter.

In the theory of law today there are studies of certain theoretical and legal aspects of security, and, as a rule, the object of research is not the abstract scientific category "security", but its various levels, types and subspecies (national security, public security, state security, etc.). Meanwhile, the relevance of the security issues dictates the need to conduct not only a comprehensive fundamental scientific study of the relationship between law and security at the legislative level,

¹ David R. Basic legal systems of modernity / trans. from fr. and vst. V.A. Tumanova. M.: Progress, 1988. p. 53.

² Modderman V. Reception of Roman Law / translated from German by A. Kaminka ; edited by Ord. prof. S.-Petersburg University N.L. Duvernois. SPb. : Tipolit. A.E. Landau, 1888. p. 60.

but also a deep theoretical and historical-legal analysis of the relationship between security and freedom as basic legal categories. The significance and relevance of the dissertation in this regard lies in its methodological potential, since it outlines the scientific directions of security research from the standpoint of legal sciences, designed to become a theoretical and methodological basis for further scientific research in the field of legal security, including in branch legal sciences.

The processes associated with the qualitative transformation of a number of spheres of public life give special relevance to the study of security issues. A striking example is the unprecedented development of digital technologies in all spheres of society. Russian President Vladimir Putin, speaking at the plenary session of the 75th session of the UN General Assembly in 2020, quite rightly noted that "issues of cybersecurity and the use of advanced digital technologies also deserve the most serious discussion at the UN. It is important to hear and perceive people's concerns – how their rights will be protected in the new era: the rights to privacy, property, security." The law cannot keep up with modern trends in the development of society, it must quickly adapt to new realities, to some extent working ahead of the curve. The law should take into account potential security threats, and it should be ready to counteract them with appropriate legal tools.

It is impossible not to touch upon the amendments to the Constitution of the Russian Federation made in 2020, which seriously affected the constitutional foundations of the security of the individual, society and the state. In this regard, the theoretical and legal analysis of security as a constitutional and legal category in the light of the amendments is particularly relevant for understanding the concept of further legal regulation of relevant public relations on the basis of constitutional norms.

The special relevance of the dissertation research is emphasized by the approval in July 2021 of the new National Security Strategy of the Russian Federation, which necessitated a deep scientific analysis of the document through the prism of the theoretical and legal foundations of security. Moreover, the

Strategy provides for conducting scientific research in the interests of national defense and state security¹.

The actualization of the approach to security as a legal category is also connected with the international agenda in the context of the development and submission by the Russian Federation in December 2021 of draft documents on ensuring legal guarantees of security by the United States and NATO. The political commitments of the West, made during the unification of Germany, about the non-expansion of NATO to the East were not fulfilled, since there was no legal consolidation of them in the documents. The arguments of the West about the obligation to document obligations are based on legal positivism, which has long gone down in history, formally recognizing only written texts, and have nothing to do with liberal interpretations of law, which are positioned as the property of Western jurisprudence. The study of security as a legal category will allow us to raise the question of the principle of indivisible and equal security as the most important legal principle, regardless of its written consolidation.

These circumstances indicate the exceptional relevance of a comprehensive theoretical and legal study of security as a legal category in order to determine its role and place in legal regulation.

The purpose and objectives of the study.

The purpose of the dissertation research is the scientific substantiation of security as a legal category, its place and role in the system of categories of law, as well as the development of a system of legal means to ensure it.

The stated purpose of the study determined the need for consistent solution of the following tasks:

- to prove that security is a legal category;
- to develop a concept of the correlation of the category "security" with related categories and concepts derived from it;

¹Decree of the President of the Russian Federation dated 02.07.2021 No. 400 "On the National Security Strategy of the Russian Federation" // SPS "ConsultantPlus".

- to systematize the evolution of views on security in its relation to law in the history of the teachings of law and the state and to identify relevant trends and cause-and-effect relationships;
- to substantiate a scientific approach to the system-structural hierarchy of levels, types and other elements of security and its reflection in Russian law;
- to present the author's view on the system of legal means of ensuring security;
- to trace the dynamics of the use of the category "security" and the concepts derived from it in the sources of Russian law and to identify relevant trends and cause-and-effect relationships;
- to identify and investigate the conceptual basis of legal security in the Russian Federation; to develop scientifically sound proposals for its improvement;
- to substantiate the scientific approach to strategic planning as an instrument of the legal policy of the Russian Federation in the field of security, to identify and disclose the relevant functions of strategic planning documents;
- to scientifically substantiate that security is a category of public-law and private-law branches of Russian law and international public law, including identifying and describing specific public-law and private-law means of ensuring security.

The object and subject of the study.

The object of the dissertation research is security as a state of security of the individual, society and the state, provided by a number of both legal and non-legal means.

The subject of the dissertation research is security as a legal category, including the essential, systemic, functional and institutional aspects of the relationship between law and security.

Scientific novelty of the research.

The author for the first time at the dissertation level, security was comprehensively and comprehensively investigated as a legal category. As special scientific mechanisms for solving the tasks set, it is possible to note the

identification and research of legal tools for ensuring security, as well as scientific analysis of the implementation of conceptual ideas about security in the current legislation of Russia.

The scientific novelty of the dissertation lies in the fact that on the basis of the conducted research, for the first time in legal science, the author of the work:

- the status of security as a legal category in its relation to the legal category of freedom is scientifically substantiated;

- the author's concept of the correlation of the category "security" with the concepts derived from it is presented, including the reflection of such a correlation in the current legislation of the Russian Federation;

- systematized views on freedom, security and law in their relationship at different stages of the development of political and legal doctrines and identified relevant trends and cause-and-effect relationships;

- a scientific approach to the system-structural hierarchy of levels, types and other elements of security and its reflection in Russian law is substantiated;

- the author's view on the system of legal means of ensuring security is presented;

- the dynamics of the use of the category "security" and the concepts derived from it in the sources of Russian law are shown, on the basis of which the corresponding trends and cause-and-effect relationships are revealed;

- the conceptual framework of legal security in the Russian Federation has been defined, as a result of which research scientifically sound proposals for its improvement have been developed;

- based on the scientific approach, it is proved that strategic planning is one of the instruments of the legal policy of the Russian Federation in the field of security, and also the corresponding functions of strategic planning documents are defined;

- the scientific substantiation is presented that security, being a category of public and private law branches of Russian law and international public law, has

the appropriate means of ensuring it, identified and described in the dissertation research.

The scientific results obtained by the author are fundamentally different from the results of scientific research carried out earlier by other authors.

The following provisions with scientific novelty are submitted for protection:

1. Safety is a complex scientific category containing aspects related to various fields of knowledge.

The concept of "national security", generally accepted in science and practice, is derived from the scientific category of "security", characterizing one of the levels of the latter. Only "security" is that constant, the scientific category underlying all other concepts that concretize it in relation to various spheres.

A scientific analysis of the provisions of the current Russian legislation allowed us to conclude that the identification of the category "security" and the concept of "national security" by the legislator in the Federal Law "On Security" is a theoretical error.

2. At the same time, security is a legal category, a reflection of legal reality and one of the most important elements of the content of law, an inalienable and obligatory property of law, one of the parties to its essence. The need of the subjects of legal relations for security is their vital interest, which is reflected in the coordinated will when establishing legal norms. Thus, security is the goal and value of law, which determines the agreed will of the participants of legal relations expressed in it.

The law determines the measure of freedom, including for the security of participants in the relevant legal relations. Security requirements give an important impetus to the restriction of freedom through law, prescribing certain behavior to subjects. Thus, the right appears not only as a measure of freedom, but also as a measure of security.

The close relationship between security and freedom as basic legal categories allows us to assert that security organically fits into the system of legal categories and has the necessary intersystem connections and relationships.

3. The historical evolution of views on security in its relation to law in the history of the teachings on law and the state is as follows:

1) the ideas of ancient thinkers about security evolved in the context of views on the laws of the development of nature and society;

2) medieval notions of security were closely connected with religion (with Christianity in the West, with Islam in the East);

3) the era of Modern times with its inherent rationalism has given rise to a number of significant concepts of the relationship between law and security, among which: a) ensuring security is the main goal of the state and law; b) the natural human right to security; c) the relationship of security, the rule of law and the rule of law, etc.;

4) in recent history, so-called security concepts (schools) have begun to spread in Europe and the Americas, each of which constructs a security system in its own way; the main provisions of these schools can also be interpreted from legal positions; critical security studies in the traditions of the Paris school have a special role in the context of security research as a legal category according to which security is perceived as a tool to support freedom, which is implemented through the rule of law and underlies human rights and freedoms.

4. The proposed elements of the system-structural characteristics of security can become a doctrinal basis for scientific research and for the construction of a regulatory security system. So, in particular:

1) the scientific understanding of the security object has been clarified through the category of "interest"; vital interests are the main characteristic of the security object, reflecting its properties to be protected; the revealed relationship of interests and security objects has led to the exceptional importance of the principle of balancing the interests of the individual, society and the state both in theory and in practice;

2) the influence of the form of the state on the priority objects of state security has been revealed; in particular, in federations, to a greater extent than in unitary states, one of the objects of state security are issues of regional security and territorial integrity.

5. The law ensures the security of an object with the help of a set of special means inherent only to it. In this case, security is proposed to be considered as an object or an element of the object of various legal relations; as the purpose and purpose of legal regimes; as a subjective right to security and self-defense; in close intertwining with legal responsibility in general and positive legal responsibility in particular (responsibility for security); as an essential element of legal culture and aimed at improving its the level of legal education.

6. Starting from the XVIII century, the term "security" begins to occur in the sources of Russian law. In normative acts, security appeared as one of the main goals of law, determining the essence of its protective norms.

In the legislation of the Russian Empire in the XVIII–XIX centuries, a wide range of types and levels of security gradually formed.

During the years of Soviet power, the concept of "state security" gradually became the main one for the legal system. Despite the fact that the concept of "public security" was found, for example, in Soviet criminal legislation, the priority of state security in all sectors of public life was obvious.

In the 1990s, for the first time in the national history of law, a branch of security legislation appeared, which was based on new fundamental theoretical principles, including, first of all, the identification of three main security objects: the individual, society and the state.

7. The model of legal provision of security in Russia fixed in the current Federal Law "On Security" is characterized by a number of shortcomings, manifested in the absence of a system of special powers of public authorities (including the constant analysis of security threats), which would be supported by the establishment of legal responsibility.

In the Russian legislation on security, it is necessary to consolidate a scientifically based model of ensuring security, which would be based on the relevant powers, rights, obligations, legal responsibility, financing, coordination of the relevant bodies. The basis for the creation of such a model is proposed to take a model of combating corruption or coordinating law enforcement agencies to combat crime.

It is necessary to provide for a systematic and comprehensive application of a risk-based approach in the field of security, which will fully implement the fixed principle of priority of preventive measures (including ridding the implementation of this principle from the existing precedent approach), as well as increase the effectiveness of forecasting, identifying and neutralizing security threats.

8. Contrary to the popular opinion in science that strategic planning documents are purely political in nature and do not have regulations, it was concluded that they can be considered sources of Russian law, which, however, play an auxiliary (compared to the norms of the law) role in law enforcement in general and judicial practice in particular.

Strategic planning documents perform the following functions in the field of security: consolidate the conceptual and categorical apparatus; identify existing and potential challenges and threats for certain types of security, thereby creating the basis for law enforcement activities aimed at preventing them; outline a system for ensuring a particular type of security, form the basis for coordination of relevant state bodies and agencies local self-government, their interaction with civil society institutions; they set tasks for law-making and law enforcement activities; define the foundations of the state's foreign policy.

9. Security as a legal category is reflected not only in security legislation, but also in all branches of law without exception, and especially in public law branches.

The specifics of public legal means of ensuring security are manifested in the relevant branches of law. For example, public law branches are characterized by such legal means as the recognition of security as a constitutional value,

including the designation of an appropriate balance of interests of the individual, society and the state in ensuring it (constitutional law); the establishment of legal responsibility for security offenses (criminal law, administrative law); the use of special administrative and legal regimes (administrative law); ensuring security by judicial protection of rights, etc. Public international law, taking into account its specifics, is characterized by its own legal means of ensuring security (the procedure for the peaceful settlement of international disputes, contractual international legal regulation of security issues, etc.).

10. Security is not only a public legal, but also a private legal category.

Ensuring security by the norms of private law is a fundamentally new and promising direction in legal science and legal practice. The norms of private law create a new tool for legal security, which complements the existing public law mechanisms. Such tools include, for example, ensuring security on the basis of civil law contracts, providing private legal means of personal security as an intangible good, including judicial protection, ensuring property security by civil law means, etc.

Theoretical and practical significance of the study.

The theoretical significance of the dissertation research is justified by the following:

- the provisions that make a conceptually justified contribution to the expansion of ideas about security as a legal category are proved;
- formulated doctrinal provisions on the system-structural understanding of security and its reflection in Russian law;
- the regularities of the evolution of the idea of security as a legal category in the history of the teachings of law and the state are substantiated;
- the place of the category "security" in the theory of law and its relation to other legal categories is determined;
- the author's view on the scientific system of legal tools for ensuring security is presented;

– the implementation of conceptual ideas about security in the Russian security legislation (in historical and modern aspects) has been identified and disclosed, as well as scientifically based proposals for its improvement have been proposed;

– the modernization of the approach to security as a category of public and private law has been carried out in relation to the relevant branches of Russian law, as well as international public law, including the identification of public and private legal means of ensuring security.

The results obtained by the applicant can be used in further legal research, both theoretical and legal, and industry.

The practical significance of the dissertation research is expressed in the fact that its results can be used in law-making, law enforcement practice, in teaching students in the specialty 40.05.01 "Legal provision of national security", in teaching academic disciplines "Theory of State and law", "Constitutional law", "Administrative law", "Criminal law", "Civil law", as well as special courses on security issues, and in the preparation of relevant educational and methodological literature.

Validity and reliability of the research results.

The degree of validity and reliability of the dissertation research is determined by the generalization of a wide range of relevant scientific sources, including a large number of foreign works reflecting global trends in the development of social sciences, Russian and foreign normative material, as well as materials of judicial practice, statistical and analytical data, the use of widely known methods of scientific cognition, compliance with the rules of scientific ethics.

The solutions proposed by the author of the dissertation are reasoned and evaluated in comparison with other known solutions.

Approbation of the results of the study.

The results of the dissertation research were tested in the order of discussion and approval at a meeting of the Department of Legal Support of National Security

of the M.M. Speransky Law Faculty of the Institute of Law and National Security of the Russian Academy of National Economy and Public Administration under the President of the Russian Federation.

The results of the dissertation research were presented in the author's reports at scientific conferences and round tables and seminars of various levels, including:

– foreign scientific events:

I, II, III, IV, V International Scientific and Practical Conferences "Poland-Russia": "Neighborhood Relations: Current State and Prospects" (October 9-10, 2014); "Russian Security Policy: Conclusions for Poland" (October 22, 2015); "Perception of modern challenges, crises and international conflicts" (October 20-21, 2016); "Integration or Disintegration of the Modern international environment" (November 10-11, 2017); "Poland-Russia: Security, Society, Economy" (October 25-26, 2018) – Siedlce, Poland, University of Natural Sciences and Humanities in Siedlce; International conference: "Society. Person. Security – 2015" (April 24, 2015, Riga, Latvia, SBS); "Society. Person. Security – 2017" (April 27-29, 2015, Riga, Latvia, Riga Stradins University, SBS); "Society. Person. Security – 2018" (April 27-28, 2018, Riga, Latvia, Riga Stradins University, SBS); International scientific and practical conferences "Science. Right. Stability" (April 23, 2014, April 25-26, 2018, April 25, 2019, Riga, Latvia, Baltic International Academy); IV, VI, VII, VIII International Scientific and Practical Conferences "Transformation processes in the field of law, regional economy and economic policy: current economic, political and legal problems" (December 11, 2015, December 8-9, 2017, December 7, 2018, December 13, 2019, Riga, Latvia, Baltic International Academy); International Scientific Conference "The Principle of Justice and Trade Law" (May 29, 2015, Bialystok, Poland, University of Bialystok); 18th International Scientific Conference "RISK MANAGEMENT – interdisciplinary approach" (October 21, 2020, Siedlce (Poland), University of Natural Sciences and Humanities in Siedlce).

- scientific events held in Russia:

4th International Scientific and Practical Conference dedicated to the 100th anniversary of S.A. Yesenin Ryazan State University "Law and Politics: Theoretical and practical problems" (October 28-29, 2015, Ryazan, S.A. Yesenin Russian State University); International Scientific and Practical Conference "Organizational and legal regulation of life safety in the modern world" (May 18-19, 2016, St. Petersburg, St. Petersburg University of the Ministry of Emergency Situations of Russia); All-Russian Scientific and Practical conference with international participation "The first civil readings in memory of Professor V.A. Rybakov" (October 24-25, 2017, Ryazan, Academy of the Federal Penitentiary Service of Russia); All-Russian round table "Russian legislation in the field of fighting fires and other natural disasters: History and modernity: To the 1000th anniversary of the Russian Truth" (October 31, 2017, St. Petersburg, St. Petersburg University of the Ministry of Emergency Situations of Russia); All-Russian Scientific and Practical Conference "Problems of the status of modern Russia: historical and legal aspect" (April 5-6, 2018, Ufa, BASHGU); International Scientific conference dedicated to the 300th anniversary of the Russian police "Russian Police: three centuries of service to the Fatherland" (April 23-25, 2018, St. Petersburg, St. Petersburg University of the Ministry of Internal Affairs of Russia); XX International Scientific and Practical Forum "Legal Technology: Risks in lawmaking, legal realization, legal science: technology of formation and functioning of the system" (September 27-28, 2018, Nizhny Novgorod, Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia); Interdepartmental Scientific and Practical Conference "Model Legislation of the CSTO member states and CIS member states as a tool for ensuring security and countering new challenges and threats" (November 16, 2018, SIC FSB of Russia); International Scientific and Practical Conference "Second Prokopiev Readings: the Constitution and Social Progress" (December 6-7, 2018 Kaliningrad, I. Kant BFU); International Scientific and Practical Conference "Personal Security in the Era of Change: Interdisciplinary analysis" (April 24, 2019, Perm, Kama Social Institute); International Scientific and Practical Conference "Derzhavin Readings" (October

17-19, 2019, Kazan, KFU); International Scientific and Practical Conference: "25 years of the Civil Code of the Russian Federation: traditions and innovations of private law development" (November 29-30, 2019, Tambov, TSU named after G.R. Derzhavin); II All-Russian Scientific Conference "Systematization of legislation in the focus of historical and legal science (to the 470th anniversary of the adoption of the Judicial Code of 1550)" (May 13, 2020, Moscow, IZiSP under the Government of the Russian Federation); XX International Scientific and Practical Conference "Law and Information: Issues of Theory and Practice" (December 4, 2020, St. Petersburg, B.N. Yeltsin Presidential Library); International Conference "First Conference on Sustainable Development: Industrial Future of Territories (IFT 2020)" (September 28-29, 2020, Yekaterinburg, USUE); II International Scientific and Practical Conference "In search of Social truth", November 30, 2020, Irkutsk, ISU); All-Russian Scientific and Practical Conference "Human Rights in the Dialogue of state Power and Civil Society", December 10, 2020, Ufa, BASHGU); V National Conference with international participation "National and regional security features: Challenges and Solutions" (December 18-19, 2020, Arkhangelsk, SAFU); XXIII International Scientific and Practical course "Legal Engineering: Law-making expertise (doctrine, practice, technique)" (September 22-25, 2021, Nizhny Novgorod, Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia).

A significant part of the dissertation research was carried out with state support in the form of a grant from the Russian Foundation for Basic Research for the implementation of an individual research project (project No. 17-03-00767 "Security as a legal category", 2017-2018).

The author is a member of the Expert Council of the Defense and Security Committee of the Federation Council of the Federal Assembly of the Russian Federation. Certain results of the dissertation formed the basis of expert opinions on security bills, which were subsequently used in legislative activity.

The obtained results of the dissertation were also used in the legislative activity of the CIS. In 2019-2021, the author participated in the work of the

Permanent Commission of the Interparliamentary Assembly of the Commonwealth of Independent States on Defense and Security issues as an invited expert and keynote speaker at meetings on the adoption of the model law "On National Security". The results of the study are reflected in the draft model law "On National Security" for the CIS countries developed by the author.

Based on the dissertation material, in September 2019, the author developed and delivered lectures at the University of Natural Sciences and Humanities in Siedlce (Poland) on the European academic mobility program "Erasmus+".

The results of the dissertation research were also tested in teaching activities during lectures and practical classes in the academic disciplines "Legal provision of economic security" and "Regulatory and legal foundations of regional security" for students studying in the specialty 40.05.01 "Legal provision of national security" at the Faculty of Law named after M.M. Speransky Institute of Law and National Security The Russian Academy of National Economy and Public Administration under the President of the Russian Federation.

The main results of the dissertation research are reflected in 75 scientific publications of the author.

The structure of the study.

The structure of the dissertation is determined by its purpose and objectives, as well as the logic of structuring and presentation of the material. The dissertation consists of an introduction, four chapters, including 20 paragraphs, conclusions and recommendations, and a list of sources and literature used.

The first two chapters of the dissertation, comprising eleven paragraphs, are devoted to the general theory of security research as a legal category. The conclusions made in these chapters contribute to the general theory of law and can, accordingly, be applied to any State and law. The subsequent chapters of the work (3 and 4), comprising nine paragraphs, analyze the historical and modern development of Russian law and international law, as well as the strategic directions of their evolution. Thus, the general theoretical conclusions made in the previous chapters are projected onto the Russian legal system, which in turn made

it possible to identify problems and come up with specific recommendations for improving the current Russian legislation.

Thanks to this structure, the dissertation is logically divided into relatively equal theoretical and practical parts, which is justified by the methodological approach adopted by the author.