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**Protection of Data Contained in Public Registers
under Criminal Law**

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5.1.4. Criminal Law Sciences

GENERAL OVERVIEW OF THE RESEARCH

Relevance of the Research Topic. The scientific and technological advancements in the second half of the 20th century followed by rapid computerisation of the social relations led to a rethinking of the role of information in the structure of the economy and life in general. Currently, information plays a huge role in social relations, is often a condition for the emergence or the main object thereof, and serves as a significant input to the economy. Nor does the legal system stand aside, in which certain information may also be of system-forming significance and directly call into existence specific rights and obligations, including property rights or public political obligations.

Precisely such is the legal nature of the data contained in public registers. In a number of cases provided for in the legislation of the Russian Federation, the presence of an entry in the public register gives rise to and/or certifies the existence of a subjective right, or establishes a subjective obligation. Under Part 2 of Article 8¹ of the Civil Code of the Russian Federation, property rights that require State registration arise, change and terminate since an entry to that effect is made in the state register, unless otherwise specified by law. Consequently, the data contained in some public registers are not just reference information about an economically or politically significant fact (possession of property, performance of certain activities, etc.), but the very cause, or ground, for the existence of such a fact.

Such a regime for information in public registers necessitates proper protection thereof, particularly by means of criminal law – through the criminalisation of individual acts that can have a destructive effect on the integrity of such information. This circumstance is especially obvious now that the integrity of information resources, including public registers, is increasingly threatened amid burgeoning development of telecommunication technology and computerisation of economic processes. The above is confirmed by recent crime

situation statistics from the Ministry of Internal Affairs of the Russian Federation: of the 1966.8 thousand crimes registered in Russia in 2022, 522.1 thousand (26.5%) were committed using information and telecommunication technology or in the field of computer information¹.

The Russian legislator's response to such challenges was the codification of criminal law norms regarding the circulation of information contained in public registers in Articles 170, 170¹, 173¹, 173², Part 3 of Article 185², Articles 243, 243¹, parts 2 and 3 of Article 243², Article 285³ and parts 1 and 3 of Article 330¹ of the Criminal Code of the Russian Federation.

The current legislative trend is for criminal law protection of information in public registers to expand, with the legislator criminalising new forms of adverse interference with public registers. For example, in 2018, tampering with a register of the holders of securities, when done in order to conceal signs of bankruptcy or revocation of a financial or credit organisation's license, was made qualified *corpora delictorum* under Article 170¹ of the Criminal Code of the Russian Federation. In 2022, the rules on criminal liability for crimes against the circulation of the information in the register of foreign agents were considerably reformed, e.g. mention of a new register of foreign agents appeared in the text of Article 330¹ of the Criminal Code of the Russian Federation, and the descriptive parts of the rules in that Article were altered.

The importance of the protection of the information contained in public registers by means of criminal law is also well understood in the scholarly community, as shown by a survey held among Doctors and Candidates of Legal Sciences and teachers without an academic degree. According to the survey returns, most academics agree that the public registers require protection under criminal law, with 63.6% of respondents answering that it was needed, while only 36.4% thinking otherwise.

¹ Brief Description of the Crime Situation in the Russian Federation in January to December 2022 // Ministry of Internal Affairs of the Russian Federation. 20 January 2023 (*in Russian*). URL: <https://мвд.рф/reports/item/35396677/> (accessed on 10 September 2023).

In addition, the rules already existing in the Criminal Code of the Russian Federation must be correctly applied in practice when classifying unlawful behaviour. As regards jurisprudence, there is telling statistics on convictions of crimes that disrupt the circulation of information in public registers.

On the one hand, the number of persons convicted of those crimes is generally on the increase. While in 2020, 1426 persons were convicted under all the articles, in 2021 they numbered 1823 (+27.8% vs. 2020), and in 2022, as many as 2673 persons (+46.6 % vs. 2021). On the other hand, judicial statistics suggests that up to 96.5% of all those convicted of those crimes during the period were found guilty of acts involving entries about the registration of fly-by-night companies, in fictitious persons' names, made in the Unified State Register of Legal Entities (Articles 173¹ and 173² of the Criminal Code of the Russian Federation)². Bogus companies registered in straw persons' names later form the economic and organisational basis for committing other, more serious, economic crimes. This is exactly why information about fictitious founders and managers of legal entities entered in the Unified State Register of Legal Entities, seemingly a minor offence, serves to support the commission of many grave economic crimes such as money laundering and illegal circulation of means of payment, tax evasion, etc.

The above confirms the need to conduct an in-depth review of the rules of the Criminal Code of the Russian Federation concerning the protection of information in public registers, to study the relevant jurisprudence and the social and historical background of the rules' development and formation, and also to consider the topical issues concerning the protection thereof under criminal law, including international experience of legal regulation, approaches to the reconciliation of competing rules, etc.

Degree of Development of the Research Topic. The issue of the protection of the circulation of information contained in public registers has

² Summary statistical information on the state of conviction records in Russia // Judicial Department at the Supreme Court of the Russian Federation (*in Russian*). URL: <http://www.cdep.ru/?id=5> (accessed on 2 May 2023).

been studied to some extent by many researchers – in various perspectives and through the lens of various approaches.

The main contributors to the development of the topic under review, in its various aspects, included R.V. Amelin, I.L. Bachilo, M.P. Bikmurzin, L.A. Bukalerova, A.T. Bulavintsev, M.P. Zhuravlyov, N.G. Ivanov, A.N. Ilyashenko, V.V. Krylov, V.D. Larichev, N.A. Lopashenko, A.N. Lyaskalo, A.G. Nikolskaya, S.L. Nudel, N.I. Pikurov, M.A. Prostoserdov, A.L. Repetskaya, R.A. Sabitov, A.V. Susloparov, Ya.V. Frolovichev, V.V. Khilyuta, I.V. Shishko, A.A. Shutova, P.S. Yani and many others.

Protection of information contained in specific public registers under criminal law was analysed in two dissertations for the degrees of Candidates of Legal Sciences: those by A.S. Gorlov, on *Criminal Law Protection of Relations in the Field of Keeping Unified State Registers* (Krasnodar, 2013) and by M.A. Strukova-Sivoy, on *Criminal Law Protection of the Circulation of Unified State Registers in the Russian Federation* (Moscow, 2013).

Individual crimes committed against information in public registers in the context of other related topics were reviewed in several dissertations for the degrees of Candidate of Legal Sciences: those by A.V. Alyokhina, on *Corporate Raiding: Criminal Law and Criminological Aspects* (Nizhny Novgorod, 2013), by A.V. Voyevodkin, on *Protection of Corporate Management Relations by Criminal Law as a Way to Counter Raiding* (Yekaterinburg, 2018), by T.V. Semyonov, on *Criminal Law Prohibitions in the Field of Corporate Relations: Social Causes and Legislative Design* (Moscow, 2016), and by O.V. Yakovleva, on *Criminal Liability for Registration of Illegal Land Deals* (Moscow, 2011) and others.

Also noteworthy are great contributions to the development of the topic made in the context of research into related criminal law and criminology issues. Certain aspects of countering corporate raiding committed by falsifying public registers were discussed in a monograph by I.A. Sokolov and D.A. Dorogin entitled *Criminal Law Mechanism for Countering Illegal Seizure of Legal*

Entities (Raiding) (Moscow, 2017), a monograph by A.Y. Fyodorov entitled *Raiding and Corporate Blackmail: Organisational and Legal Counter-Measures* (Moscow, 2013), and one by V.F. Lapshin entitled *Crimes Against the Interests of Investors* (Moscow, 2014) and in a number of other papers.

More general and abstract problems (such as: the doctrine about individual attributes of a crime, the generic and specific object of crimes in the field of economic activity, competing rules of the Criminal Code of the Russian Federation, etc.) are examined in detail in such papers as: a monograph by L.V. Inogamova–Khegai entitled *Conceptual Foundations of Competition among Criminal Law Norms*” (Moscow, 2015), one by Ye.N. Karabanova entitled *Qualification of Multi-object Crimes* (Moscow, 2020), and a monograph by P.A. Filippov entitled *Crimes Against Normal functioning of Government: Law, Theory, Practice*” (Moscow, 2017), etc.

However, many of the above-mentioned studies have now lost much of their relevance due to the novelisation of the Criminal Code of the Russian Federation, amendments to special laws and regulations, and also due to the formation of new approaches to the classification of such crimes in jurisprudence.

Until now, no comprehensive studies have been published on the topical problems of criminal legal protection of the information in all public registers (both unified State registers and non-unified non-State registers) that is protectable pursuant to the rules of the Criminal Code of the Russian Federation. This dissertation research is thus one of the first attempts in Russian criminal legal science to systematically explore how Russian criminal law protects the public relations regarding public registers – that are information resources containing legally significant information.

The object of the research is the social relations that develop in connection with the protection of the circulation of information contained in public registers under criminal law.

The subject matter of the research is a comprehensive one and includes the following components:

— rules of Russian law governing both the legal protection of information in public registers under criminal law and the registers' legal status, procedures for keeping them, etc.;

— rules of some foreign States' law that provide criminal law protection for the circulation of information contained in public registers;

— jurisprudence records, including acts adopted by the top judicial authorities (the Constitutional Court and Supreme Court of the Russian Federation) and adjudication in specific criminal cases on crimes against the circulation of information contained in public registers;

— doctrinal materials, including scholarly publications, research and practical comments on the rules of law and jurisprudence, dissertation studies and abstracts of these on the protection of the circulation of information in public registers under criminal law, and related topics;

— official statistics containing information about the crime and conviction situation, the number of registers of securities holders, and the registration of legal entities in the Russian Federation;

— individual publications on the topic of the protection of the circulation of information contained in public registers under criminal law and on related topics that were published in the media, on Government agencies' and commercial companies' websites, in Internet encyclopaedias and other Internet sources.

Purpose and Objectives of the Research. The purpose of this dissertation study is to form a systematic and comprehensive scientific understanding of the protection of the circulation of information contained in the public registers existing in the Russian Federation by means of criminal law.

This purpose determined the list of tasks set to achieve it:

— to assess the approaches to understanding a public register through the lens of its legal nature;

— to study the history of development and the social and legal origins of Russian criminal law rules on crimes against the circulation of information contained in public registers;

— to structure the set of crimes against the circulation of information contained in public registers mentioned in the current Criminal Code of the Russian Federation;

— to do a comparative legal study of similar criminal law rules in a number of foreign jurisdictions belonging to different legal systems;

— to describe the objective attributes of crimes against the circulation of information contained in public registers, according to the Criminal Code of the Russian Federation;

— to describe the subjective attributes of crimes against the circulation of information contained in public registers, according to the Criminal Code of the Russian Federation; and

— to study any competing rules both within and between branches of law and to propose amendments to the Criminal Code of the Russian Federation and explanations of the Plenum of the Supreme Court of the Russian Federation.

The methodology and methods of this dissertation research consists in a combination of general scientific and particular research methods.

The general scientific methods of this dissertation research include mainly the following: analysis, analogy, deduction, dialectical method, induction, and specification. We used the general scientific methods to formulate definitions of the proposed terms, analyse the previously proposed definitions, offer reasoning, to ground the applicability of specific proposals, etc.

The particular methods in this dissertation research include the sociological survey method (used to poll academics online) and the statistical method (used mainly to study crime incidence).

In this study we also used purely legal particular methods: formal legal method, comparative legal method, and historical legal method. The formal legal method helped evaluate approaches to understanding the legal nature of a

public register and explore the relevant rules of substantive criminal law and those of regulatory laws and by-laws. We used the comparative legal method to study foreign countries' law rules pertaining to both criminal law and other branches governing the legal status of public registers and procedures for keeping them. The historical legal method was used to study the historical evolution of, and socio–legal causes for the protection of the circulation of public register information under criminal law.

The theoretical basis of this study includes a multitude of scientific, educational and journalistic materials on the subject under scrutiny and related topics, authored by the following researchers: A.V. Alyokhina, M.A. Yefremova, O.Yu. Isayev, I.A. Klepitsky, G.K. Smirnov, B.V. Yatselenko and many others.

The legal basis of this study includes a set of Russian and foreign normative legal acts that are in force or no longer valid. Some normative legal acts that had lost force were examined in later publications. For example, acts of early mediaeval Russian law were studied using a collected book entitled '*Tenth to Nineteenth Century Russian Legislation. In nine volumes. Volume 1. Legislation of Ancient Rus*' (Moscow, 1984, *in Russian*). In addition, the legal basis of the dissertation includes departmental acts related to the object and subject matter of the study, adopted by various executive authorities (Ministry of Justice of Russia, Federal Tax Service of Russia, Central Bank of Russia, etc.), as well as judicial acts containing rules for the application of the current law – resolutions of the Constitutional Court of the Russian Federation and decisions of the Plenum of the Supreme Court of the Russian Federation.

The empirical basis of this study is constituted by jurisprudence (over 100 judicial acts, of which 85 were adopted in 2020–2023 in specific criminal cases), statistics from public authorities of the Russian Federation (the Supreme Court of the Russian Federation, the Ministry of Internal Affairs of Russia, and the Federal Tax Service of Russia) and the returns of a sociological survey of 33

teaching staff (Doctors and Candidates of Legal Sciences teaching at universities and teachers without an academic degree).

The scientific novelty of this study results from the fact that it is the first monographic paper containing a systematically comprehensive research of the criminal law protection of the circulation of data contained in public registers existing in the Russian Federation. The dissertation is the first paper to include a law history study of the evolution of the relevant criminal law rules, to analyze for the first time criminal law rules of foreign countries and to propose a new theoretical systematic arrangement of crimes with different generic and specific types objects of crimes. Law-making amendments aimed to resolve cases of competition of rules to the legislation are formulated based on case law and extensive doctrinal material (with a special focus on rules of the Criminal Code of the Russian Federation that compete within the same branch of law and across law branches).

The Following Main Propositions and Findings to Be Defended:

1. Crimes committed against the circulation of information from public registers are culpable socially dangerous acts prohibited by the Criminal Code of the Russian Federation under threat of punishment, whose commission causes harm to the public relations arising from lawful circulation of information contained in the Unified State Register of Real Estate, Unified State Register of Legal Entities, Unified State Register of Cultural Heritage Sites (Historical and Cultural Monuments) of the Peoples of the Russian Federation, register of foreign agents and in all other unified State registers and all registers of securities holders.

2. To set the list of such crimes one of three main approaches may be applied: (1) a broad approach (resulting in a non-exhaustive / open-ended list of crimes mentioned in more than 15 articles of the Criminal Code of the Russian Federation), (2) the optimal approach (resulting in an exhaustive list of crimes mentioned in ten articles of the Code) and (3) a narrow approach (resulting in a system of crimes mentioned in two articles of the Criminal Code of the Russian

Federation). The optimal approach seems to be the most appropriate one, with ‘crimes committed against the circulation of information from public registers’ understood to include the offences mentioned in various sections and Titles of the Criminal Code of the Russian Federation whose main or additional direct object is the social relations that arise from lawful circulation of information from a particular public register, where the particular public register is an element of the *corpus delicti*: Articles 170, 170¹, 173¹, 173², Part 3 of Article 185², Articles 243, 243¹, parts 2 and 3 of Article 243², Article 285³ and parts 1 and 3 of Article 330¹ of the Criminal Code of the Russian Federation.

The categorisation of these crimes showed 47.7% of them to be minor crimes; 28.5%, grave crimes and 23.8%, crimes of medium gravity. No offences against the circulation of information from public registers are now being classified as particularly grave crimes under the Criminal Code of the Russian Federation. On the other hand, the legislator considers economic activity crimes (parts 3 and 5 of Article 170¹ of the Criminal Code of the Russian Federation) and crimes committed against public morality (Part 2 of Article 243 and Part 3 of Article 243² of the Criminal Code of the Russian Federation) and exercise of public authority (parts 2-3 of Article 285³ of the Criminal Code of the Russian Federation) to be grave ones. Such distribution of the crimes under review points to a high social danger of destructive tampering with the information in public registers that are kept in wide-ranging areas of life.

3. The study of the history and social and legal origins of criminal liability in the field of the circulation of information from public registers led us to conclude that prototypes of the relevant criminal law rules have always existed in Russian criminal law and have gone through a centuries-long history of development. For instance, statutes of the feudal period contained norms prohibiting the distortion of public information about real estate owners; later the Council Code of 1649 mentioned several crimes encroaching on the integrity of information about property rights, etc.

The ground for the criminalisation of acts in the rules of the current Criminal Code of the Russian Federation was their social danger. In addition, criminalisation resulted from several factors, including the high incidence of those acts (in total more than 5900 persons were convicted in 2020–2022, and, given their extremely high latency, they may be considered far more widespread); the emergence and development of new social relations after the collapse of the Soviet state institutions in Russia in the 1990s (mainly the revival of private property and the emergence of corporate law); and from the legislator taking into account international experience of regulation based on criminal law.

4. The comparative legal analysis led us to conclude that we currently do not need to adopt foreign experience or adapt it to the Russian criminal law system at the current stage, since the existing norms in the Criminal Code of the Russian Federation sufficiently provide comprehensive criminal legal protection in this field. A study of French, German, British, U.S., Indian and Chinese legislation suggests that the Russian Federation is not the only State that protects the circulation of information in its public registers by means of specific criminal law norms. The above-mentioned foreign countries keep various information resources that are either directly called ‘public registers’ (e.g. the register of companies in the UK, the register of merchants and partnerships in France, etc.), or are of such legal nature (e.g., land registers in Germany). In States whose law belongs to the Continental system (France, Germany and largely the People’s Republic of China), the principal but not necessarily the only source of the relevant norms is the criminal code, while in common law jurisdictions (the UK, USA, and largely India) similar criminal law provisions may be contained in special corporate law statutes (such as the British Companies Act 2006 and the Indian Companies Act 2013) or in compilations that result from consolidation or incorporation of criminal law (such as the Indian Penal Code, 1860 and the United States Federal Code) . The location of the respective rules in the statutory architecture suggests that the generic and specific objects of crimes against the circulation of information from public

registers in foreign countries are predominantly the social relations regarding economic activity, property ownership, and the exercise of public authority.

5. Under Russian criminal law, the crimes against the circulation of information from public registers are multi-object ones. Each *corpus delicti* has its main direct object, defined in accordance with the location of the rule in the structure of the Criminal Code of the Russian Federation, and may also have an additional direct object, namely the social relations that arise from the lawful circulation of information contained in the respective public register. Given the codified nature of Russian criminal law and the heterogeneity of the social relations arising from the circulation of information from each individual public register, we can conclude that we currently cannot and need not combine all the rules on crimes against circulation of information from public registers in a single chapter of the Criminal Code of the Russian Federation (which was also confirmed by our survey).

6. Due to the blanket nature of the rules of the Criminal Code of the Russian Federation under review, the attributes of the objective side of each crime are interpreted with reference to rules of regulatory law (special regulatory legislation, by-laws and departmental acts, etc.). In the objective side of a crime, a public register can be an optional attribute. In particular, where the Unified State Register of Legal Entities is tampered with (Part 1 of Article 170¹ of the Criminal Code of the Russian Federation), that public register is the target of the crime, and where a legal entity is illegally formed (Article 173¹ of the Criminal Code of the Russian Federation), the same public register shapes the socially dangerous consequences of the crime (since false information, entered in the Unified State Register of Legal Entities as a result of the crime committed, causes harm to the social relations arising from lawful circulation of the information in the Unified State Register of Legal Entities).

7. The subject of crimes committed against information from public registers may be a general or special one (depending on the specific *corpus delicti*). Possible special subjects of those crimes are: an official (Article 170,

285³ of the Criminal Code of the Russian Federation), an employee of a commercial registrar company (Part 3 of Article 185² of the Criminal Code of the Russian Federation), or a person recognised as a foreign agent (Article 330¹ of the Criminal Code of the Russian Federation). The mental elements of almost all those crimes feature intentional guilt, and only in a few crimes that encroach on the circulation of information from the Unified State Register of Cultural Heritage Objects (Historical and Cultural monuments) of the Peoples of the Russian Federation is negligent guilt possible. In a number of crimes, the goals and motives that guided the subject are of constitutive significance (e.g. selfish or other personal interest in distorting information from the Unified State Register of Real Estate – under Article 170 of the Criminal Code of the Russian Federation).

8. To reconcile the competing rules within the same branch of law (Articles 170 and 285³ of the Criminal Code of the Russian Federation; Articles 170¹ and 159 of the Criminal Code of the Russian Federation) and between branches (Part 1 of Article 170¹ of the Criminal Code of the Russian Federation and Parts 4 and 5 of Article 14²⁵ Code on Administrative Offenses of the Russian Federation) we have developed proposals concerning amendments and additions to the Criminal Code of the Russian Federation and Resolution No. 48 of the Plenum of the Supreme Court of the Russian Federation ‘On Judicial Practice in Cases of Fraud, Misappropriation and Embezzlement’ dated 30 November 2017:

— Part 1 of Article 170¹ of the Criminal Code of the Russian Federation should be amended to read:

‘1. Submission of documents containing knowingly false information about the founders of / participants in a legal entity, about the size and nominal value of their interest in the authorised capital of a business company, about the registered owners of inscribed securities, about the quantity, par value and category of inscribed securities, about encumbrances on a security or interest, about the person who manages a security or interest being transferred by

inheritance, about the head of the permanent executive body of a legal entity or another person entitled to act on behalf of the legal entity without power of attorney, to the body that effects State registration of legal entities and individual entrepreneurs, or to the organisation that records rights to securities, with a view to acquiring title to someone else's property, –’;

— Part 1 of Article 285³ of the Criminal Code of the Russian Federation should be amended to provide for an exception with reference to Article 170 of the Criminal Code of the Russian Federation:

‘1. Intentional entry by an official of knowingly false information into one of the unified State registers provided for by the legislation of the Russian Federation, as well as deliberate destruction or falsification of documents on whose basis an entry or change was made in the said unified State registers, where mandatory storage of these documents is required by the legislation of the Russian Federation, if these actions carry no signs of crimes provided for in Article 170 of this Code, –’;

— the Resolution No. 48 of the Plenum of the Supreme Court of the Russian Federation ‘On Judicial Practice in Cases of Fraud, Misappropriation and Embezzlement’ dated 30 November 2017 should be amended to include a Clause 7.1:

‘7.1. Theft of someone else's property by a person or acquisition of title thereto by deception or abuse of trust, committed through falsification of the unified State register of legal entities, register of securities owners, or the depository securities transfer system, shall require additional classification under Article 170¹ of the Criminal Code of the Russian Federation.’

9. To bring the provisions of the Criminal Code of the Russian Federation into conformity with the provisions of the Federal Law No. 218–FZ ‘On State Registration of Real Estate’ dated 13 July 2015, Para, 1 of Article 170 of the Criminal Code of the Russian Federation should be amended to read:

‘Registration of knowingly illegal transactions with real estate, deliberate distortion of information in the Unified State Register of Real Estate, as well as

understatement of the cadastral value of real estate properties, if these acts were committed out of vested or other personal interest by an official using their official position –’.

The theoretical significance of this study results from the fact that it is one of the first papers to contain a comprehensive analysis of the institution of the protection of public registers under criminal law. The findings set out in this dissertation can, firstly, serve as a theoretical basis for further reform of the Criminal Code of the Russian Federation, as well as normative legal acts belonging to other branches of law, referred to by the blanket provisions of the Criminal Code of the Russian Federation. Secondly, the findings of this study can become the basis for further research, not only on the criminal law protection of public registers, but also on other problematic issues of criminal law (multi-object crimes, inter-branch links of criminal law, computerisation and digitalisation of criminal law institutions, etc.).

The practical significance of this study results from the fact that the findings of this dissertation research can be a guide for preliminary investigation authorities, as well as for courts and other participants in criminal procedure relations. The practical application of the findings can significantly improve the quality and accuracy of the classification of crimes against the circulation of information contained in public registers. Besides this, this dissertation research can serve educational purposes, and its results can be used in teaching courses in Criminal Law, Economic Crimes, Classification of Crimes and others, both in training students at institutions of higher learning and in additional professional education and professional re-training of legal practitioners.

The validity and reliability of the findings are ensured by the applicable methodology and by their theoretical, normative and empirical basis. The general scientific and special legal methods comprehensively used in conducting the research enabled our analysis of the theoretical, normative legal and empirical materials to yield results that helped solve the tasks set and achieve the goal of the research.

Evaluation of the Findings. This dissertation was prepared in 2020–2023 during the author’s postgraduate studies under the Academic Postgraduate Programme at the School of Criminal Law, Legal Process and Criminalistics (known as the School of Justice Systems and Criminal Law before 2023) of the Faculty of Law of the Higher School of Economics National Research University (HSE NRU), where it was discussed and reviewed.

The main theoretical findings of the study were presented in four articles that were published in journals included in the List of Peer-reviewed Scientific Publications by the Higher Attestation Commission, of which three appeared in journals on the Additional List of Journals (List D) that the HSE NRU takes into account in assessing publication activity.

The author used his research materials in reports delivered at the Second Saratov Youth Legal Forum on *Legal Science and Law Enforcement: Young Researchers’ Perspective* (Saratov, 21–22 April 2022, report’s title: “The Concept of White-Collar Crime and Digitalization of Society”), the International Research and Practical Conference on *Legal Responsibility for Information-Related Offences: Theoretical and Practical Issues* (St. Petersburg, 21 October 2021, report’s title: “Criminal Liability for Information Crimes in the Field of Economic Activity: Issues of Theory”), 17th International Research and Practical Conference of Young Researchers on *Contemporary Issues of Legal Science* (Chelyabinsk, 22–23 April 2021, report’s title: “Is Registration of Illegal Real Estate Transactions an Economic Crime?”), Second All–Russian Research and Practical Conference on *Digitalisation of Market Relations: Economic and Legal Issues* (Moscow, 25 March 2021, report’s title: “Criminal Falsification of Public Registers in the Context of Digitalisation of the Economy”), International Research and Practical Conference on *Criminal Law: Development strategy in the 21st Century* (Moscow, 21–22 January 2021, report’s title: “Raiding Takeover: Criminal Law Issues and Solutions”), Republican Research and Theoretical Conference on *Belarusian Law in Time and Space* (Minsk, 10 December 2020, report’s title: “Crimes in the Sphere of Economic Activity

under the Criminal Law of Russia: Problems of Legislative Technology”), and the International Research and Practical Conference on *Penal System at the Present Stage and Its Development Prospects* (Ryazan, 18–19 November 2020, report’s title: “On the Issue of the Grounds for Criminalising Falsification of State Registers”).

In conducting the dissertation research, the author completed two full-time scientific internships at foreign academic organisations: one, three months long, at The Dickson Poon School of Law at King 's College London (UK) and another two-month internship at the Jindal Global Law School (Sonipat, India). The internships enabled the author to considerably enrich the comparative law component of his dissertation research and facilitated a more thorough and in-depth study of the fundamental concepts of criminal law.

The structure of this dissertation is determined by the object, subject matter, purpose and tasks of the research. The dissertation consists of an introduction, two chapters consisting of seven paragraphs, a conclusion, a list of sources and literature used and five appendices.

MAIN CONTENT OF THE DISSERTATION

The introduction to this dissertation substantiates the relevance of the research, describes the degree of scientific development of the topic, indicates the objectives of the research, sets the research tasks, specifies the research object, subject matter and applicable methods, sets out the propositions to be defended and demonstrates their scientific novelty, shows the theoretical and practical significance of the dissertation, and also contains information about the evaluation of the research findings (publication of articles on the research topic, reports delivered at conferences and the author’s participation in research internships in foreign countries).

The first chapter, *Crimes Against the Circulation of Information Contained in Public Registers as per the Criminal Code of the Russian*

Federation and Certain Foreign Countries' Legislation, consists of four sections.

The first section entitled *Public Register: Concept, Legal Nature and Main Types*, analyses the legal nature of the public register, explores the main approaches to understanding this phenomenon and formulates the author's definition for it.

We found the word "register" to be used in various contexts in the Criminal Code of the Russian Federation and contained in a variety of terms ('Unified State Register of Legal Entities', 'register of securities owners', 'unified State registers', etc.). However, neither criminal legislation nor other normative legal acts contain a single collective notion that would encompass all the public registers existing in the Russian Federation and containing information protectable under criminal law.

This led us to conclude that there is a variety of approaches to defining and describing the nature of public registers both in normative legal acts and in doctrine. To solve the conceptual problem, we studied the routine definitions of the words 'registry', 'public' and others, examined the current legal definitions enshrined in the regulatory norms of law now in force, analysed the doctrinal definitions proposed by scholars and then suggested the author's definition of a public registry, with its attributes and legal nature described.

In particular, we established that the legal definitions of certain public registers protected under criminal law are enshrined in the rules of the Civil Code of the Russian Federation, Federal Law No. 129-FZ 'On State Registration of Legal Entities and Individual Entrepreneurs' dated 08 August 2001 (contains the definition of the Unified State Register of Legal Entities), Federal Law No. 218-FZ 'On State Registration of Real Estate' dated 13 July 2015 (contains the definition of the Unified State Register of Real Estate), Federal Law No. 39-FZ 'On the Securities Market' dated 22 April 1996 (contains the definition of the register of owners of securities) and in other normative legal acts of various legal strength.

We gave particular attention to doctrinal approaches to defining public registers and analysed their definitions given in papers by R.V. Amelin, I.L. Bachilo, L.V. Filatova, S.E. Channov, Ye.V. Chikurova and other researchers. Doctrinal definitions were comprehensively assessed in terms of their content and applicability in this dissertation research.

We ultimately found that each public register containing information protectable under the Criminal Code of the Russian Federation features a constant set of characteristics:

- 1) contains important information that is of particular value and significance (as it establishes certain rights and obligations, i.e. influences legal relations and the subjects participating in them);
- 2) as a general rule, it is / must be open to an unlimited number of persons;
- 3) has an information nature, i.e. it is always an information resource, a set of data structured in a certain way;
- 4) the procedure for keeping it and for the circulation of the information it contains is regulated in normative legal acts or in local acts;
- 5) is not always a unified and/or State one, since there are non–State public registers and non–unified public registers (either meaning registers of securities holders).

Based on the analysis, the author came to the conclusion that a public register is, as a general rule, an information resource open to an unlimited number of persons which contains legally significant information that can influence the rights and obligations of subjects and which is kept by public authorities or private organisations in a predetermined and regulated manner.

The second section, *Historical Development and Socio–Legal Origins of the Russian Criminal Law Rules on Crimes Against the Circulation of Information Contained in Public Registers*, describes the historical evolution of the rules of Russian criminal law that establish liability for various forms of illegal behaviour that harms the normal circulation of the information in public

registers, as well as the grounds and conditions for the criminalisation of relevant acts in contemporary criminal law of the Russian Federation.

Examined first were the historical and legal issues of criminal law protection of public registers of title to real estate. We found relevant rules on liability for distortion of public information about title to real estate to have always existed in Russian criminal law. Similar rules are found in the sources of criminal law of the early Middle Ages (*Russkaya Pravda*, judicial charters, and others), in the Council Code of 1649, and then in normative legal acts of the Russian Empire (particularly in the Code on Criminal and Correctional Punishments of 1845), in the criminal legislation of the RSFSR period; and, finally, such rules are enshrined in the current Criminal Code of the Russian Federation. Some rules (e.g. Article 170 of the Criminal Code of the Russian Federation) have been in force since the adoption of the current Code, which confirms the proposition that the protection of public information about title to real estate under criminal law has had a long and continuous history of development.

Then we analysed the evolution of the protection of information in public registers of legal entities under criminal law. One of the main conclusions of the analysis is that the existence of the respective criminal law rules was conditional on the recognition and legal regulation of the institution of legal entity and was brought about by a spread of corporate raiding – wide enough to lead the legislator to recognise it as a socially dangerous phenomenon. Since the Russian Federation switched to a full-fledged capitalist market economy as late as the 1990s, both the regulation of the procedure for registering legal entities, which implies keeping a public register, and corporate raiding are historically novel phenomena for the Russian legal system. Due to those circumstances, rules on crimes that encroach on information from public registers of legal entities have existed in Russian criminal law for a relatively short time – since the 2000s.

Special attention is paid to the issue of social and legal well-foundedness of the criminalisation of acts that cause harm to the circulation of information

contained in various public registers. We established that the appearance of relevant rules that protect information in public registers in the Criminal Code of the Russian Federation (Articles 170, 170¹, 173¹ of the Criminal Code of the Russian Federation and others) had actually depended on certain formally legal and socio–historical prerequisites. Their adoption resulted from increasing awareness of the public danger of the acts to be prohibited (i.e., public danger is the ground for the criminalisation of such acts), and from a number of accompanying conditions: the prevalence of such acts, the emergence new forms of market relations in Russia in the 1990s, and also from the adoption of international legal regulation experience by the Russian legislator.

The third section, entitled *Crimes Against the Circulation of Information from Public Registers under the Criminal Code of the Russian Federation: Main Approaches to Systematisation*, describes possible approaches to identifying and grouping the crimes under study in the Criminal Code of the Russian Federation.

We identified the following problem: since the legislator does not single out the crimes under scrutiny in the content of the Criminal Code of the Russian Federation, researchers naturally face the task of defining their list and trying to structure it on the basis of a specific criterion. This section of the dissertation largely focuses on the search for such a criterion and attempts to find a systematic pattern in the list of criminal law norms.

We point out that modern researchers use different approaches to systematising crimes against the circulation of information from public registers and related criminal acts. While some studies use the general philosophical term ‘system’ (A.V. Voyevodkin, T.V. Semyonov, M.A. Strukova-Sivoy and others), other authors discuss a list / set of crimes (A.S. Gorlov, A.N. Ilyashenko and others). We analyse the various approaches critically and formulate an intermediate conclusion: it seems impossible to use the concept of “system” in respect of the acts under consideration in the absence of all the required attributes of that category, so it is more appropriate to speak about a list/set of crimes.

Three main approaches to listing (systematising) crimes committed against the circulation of information from public registers have been proposed: a narrow (strictly formal) approach, an optimal (formal) approach, and a broad (substantive) approach.

Under the narrow (strictly formal) approach, only those crimes are identified that target the public register (Articles 170¹ and 285³ of the Criminal Code of the Russian Federation), i.e. where the register represents the target of the crime, i.e. represents the direct object in the *corpus delicti*. However, the dissertationist questions the applicability of this approach for two main reasons that exclude clear-cut systematisation: lack of a well-developed holistic concept, in criminal law science, of the relationship between the immediate object and target in the *corpus delicti*; and the existence of untargeted crimes in the Criminal Code of the Russian Federation. The presence of those methodological problems currently precludes mainstreaming the narrow (strictly formal) approach to systematisation. The use of this approach would significantly shorten the list of relevant crimes and undermine the integrity of this dissertation research.

Under the optimal (formal) approach, the list (that may be termed ‘system’) of crimes against the circulation of information from public registers includes those mentioned in the following provisions of the Criminal Code of the Russian Federation: Article 170, 170¹, 173¹ and 173², Part 3 of Article 185², Article 243 and 243¹, parts 2 and 3 of Article 243², Article 285³ and parts 1 and 3 of Article 330¹ of the Criminal Code of the Russian Federation. The criterion for including a crime on the list is that social relations arising from the circulation of information from a specific public register act as the main or additional direct object in the *corpus delicti*.

Under the broad (substantive) approach, the list of crimes is not a *numerus clausulus* but is an open-ended one and includes all the crimes identified under the optimal (formal) approach as well as ‘satellite’ crimes mentioned in Articles 170² and 185, parts 1–2 of Article 185², Article 185⁴ and other articles of the

Criminal Code of the Russian Federation and others. The content of the list under this approach will be determined subjectively by the researcher.

We justify our choice in favour of following the optimal (formal) approach as the most acceptable one. We formulate the conclusion that crimes against the circulation of information from public registers under the Criminal Code of the Russian Federation include those, mentioned in various sections and Titles of the Criminal Code of the Russian Federation, whose main or additional direct object is the social relations that arise from lawful circulation of information contained in public registers (Unified State Register of Real Estate, Unified State Register of Legal Entities, register of cultural heritage sites, register of foreign agents, as well as all other unified State registers and all registers of securities holders) and protectable under criminal law – i.e. the offences prohibited by Articles 170, 170¹, 173¹, 173², Part 3 of Article 185², Articles 243 and 243¹, parts 2 and 3 of Article 243², Article 285³ and parts 1 and 3 of Article 330¹ of the Criminal Code of the Russian Federation.

The fourth section, entitled *Crimes against the Circulation of Information from Public Registers as per Criminal Legislation of Foreign Countries*, contains a comparative law study of foreign experience protection of the circulation of information contained in public registers by means of criminal law.

We point to the issue of understudied foreign experience of protection under criminal law in this area. Some Russian researchers (V.N. Dodonov, V.I. Zubkova, Ye.V. Chuprova and others) have studied foreign criminal law, including rules on certain economic and managerial crimes, but the rules of criminal law that protect the information in public registers were never examined specifically before.

We review, in a sequence, criminal law rules of six foreign jurisdictions belonging to different legal systems: France, Germany, the UK, the USA, India, and China. Proceeding from the fundamental differences among the foreign

countries' legal systems, we found that relevant norms may be contained in a wide variety of sources (codes, laws, etc.).

In France, provisions on crimes against the circulation of information from the register of merchants and partnerships are included in the French Commercial Code of 2000, while information from the register containing descriptions of items acquired or held for sale or exchange is protected by the provisions of the French Criminal Code of 1992. Criminal codes are the main sources of rules in Germany and China as well. In the UK, on the contrary, in the absence of branch-specific codes, criminal law rules are enshrined in laws (statutes). For example, Article 1112 of the Companies Act 2006 makes it a criminal offence to falsify a register of companies. A similar approach by the legislator can be traced in the USA and India (given that the Indian Penal Code of 1860 is not a codified source of law).

The analysis of those States' legal rules allowed us to conclude that it is inappropriate to adopt foreign experience of legal regulation into Russian criminal law, which is reflected in the propositions advanced for defence.

The second chapter, entitled *Criminal Law Characteristics of Crimes against the Circulation of Information Contained in Public Registers, and Some Crime Classification Issues*, includes three sections.

The first section entitled *Objective Attributes of Crimes Against the Circulation of Information from Public Registers*, examines the object element of the criminal acts under study and also describes the objective signs of all the *corpora delictorum* from the list of crimes as structured under the optimal (formal) approach.

We point out that the problem of defining the object of crimes against the circulation of information contained in public registers is compounded by the fact that not all of the ten articles of the Criminal Code of the Russian Federation under review are located in the same Title of the Code and share no generic and/or specific object. In addition to economic activity crimes, the list contains three Articles describing crimes against public health and morality, one

misdeemeanour in office and one crime against the normal functioning of government.

After analysing the positions of G.A. Yesakov, O.Y. Isayev, Ye.N. Karabanova, I.A. Klepitsky and other researchers, the dissertationist concluded that the crimes under study may share the same additional direct object (constituted by the social relations that arise from the lawful circulation of information from an individual public register).

The objective signs of the *corpora delictorum* were described in the following sequence:

1) the objective signs of crimes committed in respect of information in the Unified State Register of Real Estate (Articles 170 and 285³ of the Criminal Code of the Russian Federation);

2) the objective signs of crimes committed in respect of information in the Unified State Register of Legal Entities (Part 1 of Article 170¹, Articles 173¹, 173² and 285³ of the Criminal Code of the Russian Federation);

3) the objective signs of crimes committed in respect of information in registers of securities owners (Article 170¹ and Part 3 of Article 185² of the Criminal Code of the Russian Federation);

4) the objective signs of crimes committed in respect of information in the Unified State Register of Cultural Heritage Sites (Historical and Cultural Monuments) of the Peoples of the Russian Federation (Article 243, 243¹, Parts 2 and 3 of Article 243², and Article 285³ of the Criminal Code of the Russian Federation);

5) the objective signs of crimes committed in respect of information in the register of foreign agents (parts 1 and 3 of Article 330¹ and Article 285³ of the Criminal Code of the Russian Federation); and

6) the objective signs of false information being knowingly entered in unified State registers (Article 285³ of the Criminal Code of the Russian Federation), particularly when done in respect of information in the Unified State Register of Real Estate, Unified State Register of Legal Entities, the

register of cultural heritage sites and the register of foreign agents as unified State registers.

The analysis of the objective attributes of each individual *corpus delicti* was specific in that a significant volume of special rules of regulatory law (the rules of the Civil Code of the Russian Federation and of special laws and by-laws regulating the regulations and procedure for circulation of public register information) had to be reviewed. Also examined was jurisprudence in specific criminal cases involving crimes committed against the circulation of information in public registers, and the practical aspects of the classification of crimes by preliminary investigation authorities and courts were demonstrated and other practical and theoretical problems were highlighted.

The second section of this chapter, entitled *Subjective Attributes of Crimes Against the Circulation of Information from Public Registers*, focuses on the subject and the mental elements of crimes against the circulation of information from public registers.

Examined first was the issue of special subject in relation to the *corpora delictorum* under consideration. We found that a special subject is present in the following *corpora delictorum*: distortion of information in the Unified State Register of Real Estate (Article 170 of the Criminal Code of the Russian Federation), where the subject is an official; entering false information in the register of securities owners (Part 3 of Article 185² of the Criminal Code of the Russian Federation), where the subject is a person whose office duties include activities related to recording title to securities; entering information known to be false into unified State registers (Article 285³ of the Criminal Code of the Russian Federation), where the subject is an official; evasion of obligations to submit documents required for inclusion in the register of foreign agents (Part 1 of Article 330¹ of the Criminal Code of the Russian Federation), where the subject is a person required to submit documents pursuant to the legislation on foreign agents; failure to fulfil the obligation established by the legislation of the Russian Federation to submit to the authority the documents required for

inclusion in the register of foreign agents (Part 3 of Article 330¹ of the Criminal Code of the Russian Federation), where the subject is a person who purposefully collects information about the military and military technology related activities of the Russian Federation .

Examined in parallel with that were general theoretical problems of the crime subject doctrine that were important for conducting the dissertation research (for example, the problem of defining the official in modern Russian criminal law, the problem of so-called false misdemeanour in office, indirect infliction of harm via a figurehead, etc.).

Considered next were the specific features of the mental elements of crimes against the circulation of information from public registers. We formulated the conclusion that the crimes whose commission involves harm to the circulation of information in the Unified State Register of Real Estate (Articles 170 and 285³ of the Criminal Code of the Russian Federation), the Unified State Register of Legal Entities (Articles 170¹, 173¹, 173², and 285³ of the Criminal Code of the Russian Federation), the register of foreign agents (Articles 330¹ and 285³ of the Criminal Code of the Russian Federation), registers of securities owners (Article 170¹ and Part 3 of Article 185² of the Criminal Code of the Russian Federation) and unified state registers (Article 285³ of the Criminal Code of the Russian Federation) are committed with direct intent. A negligent form of guilt (along with an intentional form of guilt) is only possible in crimes whose commission causes harm to the circulation of information in the register of cultural heritage sites (Articles 243 and 243¹ and Parts 2 and 3 of Article 243² of the Criminal Code of the Russian Federation).

The third section, entitled *The Issue of Competing Rules: Intra-Branch Competition of Rules of the Criminal Code of the Russian Federation and Competition of Rules Between Branches of Law*, analyses the problems of both intra-branch competition among rules of the Criminal Code of the Russian Federation, and competition between Criminal Code rules and those of administrative and tort law.

Studied in the context of intra-branch competition of rules were two cases of competition: that between Articles 170 and 285³ and between Articles 170¹ and 159 of the Criminal Code of the Russian Federation. In analysing the issue of inter-branch competition, we examined competition between Part 1 of Article 170¹ of the Criminal Code of the Russian Federation and Parts 4 and 5 of Article 14²⁵ of the Code on Administrative Offences of the Russian Federation.

Proceeding from interpretation of the competing norms, an inquiry into jurisprudence, and analysis of the doctrinal positions of various researchers who dealt with those problems (A.N. Lyaskalo, G.K. Smirnov, P.S. Yani and others), we formulated conclusions and proposed amendments to the Criminal Code of the Russian Federation and to the resolution No. 48 of the Plenum of the Supreme Court of the Russian Federation ‘On Judicial Practice in Cases of Fraud, Misappropriation and Embezzlement’ dated 30 November 2017. The proposals were set out in the eighth proposition submitted for defence.

Thus, in order to eliminate intra-branch competition between Articles 170 and 285³ of the Criminal Code of the Russian Federation, the federal legislator should make an exception in Article 285³ with reference to Article 170. Intra-branch competition between Article 159 and Part 1 of Article 170¹ of the Criminal Code of the Russian Federation may be eliminated similarly to how the same competition situation is resolved between Articles 159 and Article 327 of the Criminal Code of the Russian Federation, – via clarifications by the Plenum of the Supreme Court of the Russian Federation. And re-wording Part 1 of Article 170¹ of the Criminal Code of the Russian Federation to completely exclude criminal liability for simple falsification of the Unified State Register of Legal Entities, if committed without intention to acquire title to someone else’s property, can solve the problem of competition between that rule and Parts 4 and 5 of Article 14²⁵ Code of Administrative Offenses of the Russian Federation.

The **conclusion** of the dissertation sums up the results of the research done, sets out its general findings and outlines the prospects for further research into the protection of the circulation of information contained in public registers

by means of criminal law. In particular, the dissertationist concludes that studying the protection of the circulation of information from public registers under criminal law in the context of digitalisation as an all-encompassing process of this day seems a relevant vector for future research.

The appendices to this dissertation, on more than 20 pages, reflect in more detail the empirical basis of the research; demonstrate, in a generalised form, international approaches to the protection of information from public registers under criminal law; and specify other findings of the research. In particular, the appendices contain the questionnaire and returns of a sociological survey of Doctors and Candidates of Legal Sciences and teachers without an academic degree. A separate appendix contains the results of the analysis of 85 judicial acts (sentences, rulings and resolutions) adopted in 2020–2023 in specific criminal cases of crimes committed against the circulation of information from public registers.

PUBLICATIONS ON THE TOPIC OF THE RESEARCH

Publication in journals included into the HSE list (list D):

1. Grigorev P.A. Falsifying the Register of Companies under the Criminal Law of Russia, UK, and USA: a Comparative Study // *Russian Journal of Criminal Law*. 2022. No. 19. P. 110–116 (*in Russian*).
2. Grigorev P.A. Falsification of the Unified State Register of Legal Entities: a Crime or Administrative Offence? // *Legislation*. 2023. No. 8. P. 63–68 (*in Russian*).
3. Grigorev P.A. Socially-Legal Conditionality of Criminal Law Prohibitions in the Field of State Registration of Civil Rights // *Theoretical and Applied Law*. 2023. No. 1. P. 60–68 (*in Russian*).

Publications in collections of research papers of conferences:

4. Grigorev P.A. Crimes in the Sphere of Economic Activity under the Criminal Law of Russia: Problems of Legislative Technology // State and Law in time and space: Collection of Abstracts of Reports of Participants in the Republican Research and Practical Conference with International Participation of Undergraduate, Graduate and Postgraduate Students / compiled by I.P. Mankiewicz et al.; EE BSEU. Minsk.: BSEU, 2020. P.103–105 (*in Russian*).

5. Grigorev P.A. Criminal Falsification of Public Registers in the Context of Digitalisation of the Economy // Digitalisation of Market Relations: Issues of Economics and law: Collection of Research Papers of the Second All-Russian Research and Practical Conference / ed. by B.V. Yatsenko. Moscow: Prospekt, 2021. P. 65–72 (*in Russian*).

6. Grigorev P.A. Criminal Liability for Information Crimes in the Field of Economic Activity: Issues of Theory // Collection of Materials of the International Research and Practical Conference on “Legal Responsibility for Offences in the Information Sphere: Issues of Theory and Practice” (St. Petersburg, 21 October 2021). St. Petersburg: Asterion, 2022. P. 147–155 (*in Russian*).

7. Grigorev P.A. On the Issue of the Grounds for Criminalising Falsification of State Registers // Problems of Criminal Liability and Punishment: Proceedings of the International Research and Practical conference Dedicated to the Memory of Professors V.A. Yeleonsky and N.A. Ogurtsov (Ryazan, November 1–8, 2020) / ed. by V.F. Lapshin. Ryazan: Academy of the Federal Penitentiary Service of Russia, 2021. P. 25–32. (*in Russian*).

8. Grigorev P.A. Raiding Takeover: Criminal Law Issues and Solutions // Criminal law: Development Strategy in the 21st Century: Proceedings of the 17th International Research and Practical Conference. M.: RG-Press, 2021. P. 536–540 (*in Russian*).