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ОБ'ЄКТ КРИМІНАЛЬНОГО ПРАВОПОРУШЕННЯ: СУЧАСНІ ТРАКТУВАННЯ

Анотація. *Боротьба правоохоронних та судових органів сучасної правової держави, а також всього суспільства з проявами злочинності неодмінно пов'язана з необхідністю поглибленого дослідження злочинів (далі – кримінальних правопорушень), їх суті, структури складових системних елементів, форм зовнішнього прояву, що є обов'язковою умовою розробки новітніх ефективних засобів протидії кримінальним правопорушенням. Серед вказаних проблем особливе значення має об'єкт кримінального правопорушення, який суттєво впливає на визначення соціальних властивостей правопорушення, значною мірою обумовлює їх фактичні об'єктивні та суб'єктивні ознаки. Між тим серед науковців немає єдності у трактуванні об'єкта правопорушення. Тому ця проблема є ще недостатньо розробленою. Метою дослідження є науковий аналіз сучасних поглядів на об'єкт кримінального правопорушення та встановлення науково-обґрунтованого змісту і суті цього поняття. Задля досягнення поставленої мети були використані такі методи: діалектичний, історико-правовий, догматичний, компаративний, системно-структурний, юридичної герменевтики. В статті було проаналізовано існуючі наукові підходи (позиції) щодо визначення об'єкта кримінального правопорушення, які були систематизовані та зведені до двох узагальнених груп: 1) онтологічна, до якої віднесені позиції, що визнають об'єкт злочину (кримінального правопорушення) як охоронювані кримінальним законом суспільні відносини у різних модифікаціях; 2) аксіологічна, до якої віднесені трактування об'єкта як цінності та споріднені визначення: благо, та інтереси людини. Автори зробили аргументований висновок, що об'єктом кримінального правопорушення виступають суспільні відносини, що виникають і існують у суспільстві з приводу його соціальних цінностей, які охороняються законом про кримінальну відповідальність*

Ключові слова: *об'єкт (предмет) суспільних відносин, кримінальне правопорушення, цінності, онтологія, аксіологія*

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OBJECT OF CRIMINAL OFFENCE: MODERN INTERPRETATIONS

Abstract. *The struggle of law enforcement and judicial bodies of the modern rule of law, as well as the entire society with the manifestations of crime is necessarily connected with the need for an in-depth study of crimes (hereinafter referred to as criminal offences), their essence, the structure of the constituent system elements, forms of external manifestation, which is a prerequisite for the development of the latest effective means of countering criminal offences. Among these issues, the object of a criminal offence is of particular importance, as it has a significant impact on the determination of the social characteristics of the offence and largely determines its actual objective and subjective characteristics. Meanwhile, there is no unity among scientists in the interpretation of the object of offence. The problem has therefore not yet been sufficiently studied. The purpose of the study is a scientific analysis of modern views on the object of a criminal offence and the establishment of a scientifically based content and essence of this concept. To achieve this goal, the following methods were used: dialectical, historical and legal, dogmatic, comparative, system-structural, legal hermeneutics. The article analysed the existing scientific approaches (positions) regarding the definition of the object of a criminal offence, which were systematised and reduced to two generalised groups: 1) ontological, which includes positions that recognise the object of a crime (criminal offence) as protected by criminal law public relations in various modifications; 2) axiological, which includes the interpretation of the object as values and related definitions: benefits, and individual interests. The authors made a reasoned conclusion that the object of a criminal offence is social relations that arise and exist in society about its social values, which are protected by the law on criminal liability*

Keywords: *object (subject) of public relations, criminal offence, values, ontology, axiology*

INTRODUCTION

The fight against crime requires an in-depth study of crimes (hereinafter referred to as criminal offences), establishing their essence, structure, constituent elements, forms of external manifestation, etc. [1, p. 1-11]. Among these issues, the object of a criminal offence (misconduct or crime) is of particular importance, which significantly affects the social properties of the offence (public danger), largely determines the actual objective and subjective signs [2, p. 166-183]. Meanwhile, there is no unity of views among scientists in the interpretation of the object, and therefore this issue should be recognised as insufficiently studied. The conducted in-depth analysis of the scientific positions expressed in the literature on the definition of the object of a criminal offence made it possible to systematise them into two groups: ontological and axiological, considered their correlation and reasonably formulated their own position.

A large group of specialists not only in the sciences of the criminal cycle, but also legal theorists, philosophers, representatives of legal logic, etc. was engaged in the development of the issue of the object of a criminal offence (crime) both at the general theoretical and pragmatic-applied levels. Among them, special attention should be paid to the works of S.S. Alekseev [3], V.N. Vinokurov [4], V.K. Glistin [5], Yu.A. Demidov [6], A.G. Zdravomyslov [7], E.I. Kairzhanov [8], N.I. Korzhansky [9], P.S. Matyshevsky [10], B.S. Nikiforov [11], V.Ya. Tatsiy [12], E.V. Fesenko [13], E.A. Frolov [14], T.D. Lysko [15], L.S. Yavich [16], O.G. Danilyan [17], A.P. Dzeban [17] and other scientists.

The content of the discussion on modern interpretations of the object of a criminal offence (misconduct or crime) indicates that there are a significant number of opposite views in the literature about the same object of knowledge – the object of a criminal offence (misconduct, crime). Thus, a fairly common and dominant position is that the object of a criminal offence (criminal misconduct or crime) is the social relations protected by criminal law against criminal infringements. In various interpretations, this approach is the basis for justifying the essence and socio-legal significance of an object, as well as its social properties and public danger. At the same time, the interpretation of an object as a good or social value or the interests of a person to whom a criminal offence causes or threatens to cause significant harm has become widespread and recognised. The authors of each of these points of view consider them as having the properties of fundamental and independent theories or concepts that differ significantly from others and reveal to a greater or lesser extent the content and essence of the object.

However, despite the differences in these scientific positions, all of them can generally be systematised and reduced to two generalised groups. The first group is ontological and includes positions that recognise the object of a criminal offence (misconduct or crime) as social relations protected by criminal law in various modifications. The second group is axiological and includes the interpretation of an object as a value and related definitions: benefits and interests of a person. However, these groups of positions defining the object of the criminal offence are not diametrically opposed and therefore can not be considered as having nothing in common and uniting them, because it is well known – ontological (phenomena of reality) can not be considered and known completely without analysis of the axiological (value) factor. It is necessary to consider these groups of scientific positions separately in order to establish the features by which these groups of positions differ and by which they are similar to each other or even coincidence in their individual features (attributes).

The essence of the first (ontological) group of scientific positions is that the object of a criminal offence is defined as social relations (in their various modifications) to which the offence causes significant harm or puts them at risk of causing such harm. Social relations are not a static unit, since they are always in a dynamic development with changes that occur in society due to various factors, and above all, scientific and technological progress.

The second (axiological) group of scientific positions on the definition of the object of a criminal offence defines it as “value” or related categories of “benefit”, “interest”. These categories are closely related to each other and are logically found in intersection relations. But the most extensive of them is the category of “value”, which is widely used in philosophical, sociological and legal literature to determine the social, economic and cultural significance of certain phenomena or objects of reality. This is a specific social purpose of objects of real reality, in which their positive or negative significance for people and society (welfare, good, evil, beautiful or ugly) is revealed, which constitute the essence of objects and phenomena of social life.

The purpose of the study is to analyse modern scientific approaches to the interpretation of the object of a criminal offence and establish the actual content of this extremely important concept for the science of criminal law. The aim of the research is to develop the authors' own reasoned position on the concept and content of the object of criminal offence based on contemporary scientific knowledge, using general scientific methods of cognition of social and legal reality.

1. MATERIALS AND METHODS

To fulfil the research objectives and achieve this goal, the authors in the course of their work relied on general scientific and special methods of scientific knowledge used in legal science [18, p. 170-183]. Dialectical method is a system of rules (requirements) formulated on the basis of knowledge of the regularities of the studied areas of reality. The main principles of the dialectical method of cognition are the following: the principle of reflection and comprehensiveness, the principle of activity, the unity of induction and deduction, as the basis of the principle of convergence from the individual to the general and vice versa, the principle of interrelation of qualitative and quantitative characteristics, the principle of determinism, the principle of historicism, the principle of contradiction, the principle of dialectical negation, the principle of convergence from the abstract to the concrete, the principle of unity of historical and logical, the principle of unity of analysis and synthesis. This method made it possible to find the content and correlation of such system-forming categories as social relations, benefit and value, which are widely used in the study of the object of an offence. The legal-historical method of research is a fundamental tool for learning about public phenomena and actions. Its essence is to study all phenomena and processes in the dynamic development, formation and in connection with specific stages of the history of society. This allows to gain knowledge about events, phenomena, legislative resolutions, and legal practices that existed in different periods of the human community's life, and draw appropriate theoretical conclusions. An important technique of the historical method is a scientific (imaginary) reconstruction of past events in order to form the most complete picture of them in the specifics

of time and space. As a result, an information basis is created for conclusions about certain historical patterns (patterns in the origin and development of a particular object), which is already the subject of history. Using this method, the authors of the article traced the origin, development and transformation of the ideas of forensic scientists regarding one of the main elements of a criminal offense - its object in relation and relationship with other mandatory elements: the objective side, the subject, the subjective side. The formal-logical (dogmatic) method has a universal character and makes it possible to determine the compliance of the construction of criminal law norms with the laws and rules of formal logic. Logical techniques are directly related to legal sciences, because the knowledge of concepts and categories of jurisprudence is carried out through an appropriate thought process, in which logical methods, as separate techniques of human thinking, should always be used in the study of criminal law phenomena, despite the use of other scientific methods in the research process.

Through the use of the formal-logical (dogmatic) method, the content of a number of concepts (definitions) constituting the content of the doctrine of criminal offence in general and its object in particular was revealed. The comparative-legal (comparative) method became the basis for comparing two main and different conceptual approaches to the interpretation of the essence and content of the object of a criminal offence (crime). The method of system-structural analysis is carried out in order to study the statistical characteristics of the system by identifying subsystems and elements of different levels in it and determining the relationships and connection between them. The objects of research of system-structural analysis are various variants formed in the process of decomposition of a system of structures. The system-structural method of analysing the phenomena of reality was used to analyse the content of social relations as an integral, internally determined system object with a corresponding complex structure and the relationships between its mandatory (unchangeable) elements. The method of legal hermeneutics, along with the semantic method, was applied to provide optimal methods for presenting author's positions using language and sign units in accordance with the subject of research.

These methods were used in unity and interrelation with ontological and axiological approaches, which contributed to the completeness of scientific research and the validity of the formulated recommendations and conclusions.

2. RESULTS AND DISCUSSION

Representatives of the so-called ontological group (the doctrine of being, of essence) [19, p. 458] consider social relations as objectively existing and relatively stable various connections that arise and exist between social groups, classes, nations, peoples, states, as well as within them in the process of their economic, social, political and cultural life. They determine the characteristics of the relevant society, its qualitative characteristics and social essence [20, p. 143-149] the structural component of public relations always appears in the form of three mandatory elements: 1) subjects (carriers) of public relations; 2) the subject or phenomenon (material or ideal), about or due to which these relations arise, function and change; 3) social connection in a dynamic or static form between subjects with correlating mutual rights and obligations in relation to the subject as an element of the content of public relations. Dynamic connection is expressed in the corresponding activities of participants (subjects) of public relations. Static communication is characterised by a relatively stable position of subjects among themselves and in relation to the subject of the relationship. However, it is always the result of a preliminary, dynamic connection [17, p. 24-33; 21, p. 457-473]. And, if the first form of communication is always active behaviour of subjects of public relations, then the second is realised in passive behaviour, the content of which is manifested in preserving (providing) the opportunity to exercise rights and obligations in relation to the relevant subject of relations. Moreover, the structure of social relations is not just the sum of its constituent parts, but a system of interrelated and interacting elements that are in organic unity. Therefore, causing harm in the commission of a criminal offence to at least one of its elements means causing harm to public relations (object) as a whole [22, p. 27-60].

For a more in-depth clarification of the content of public relations as an object of a criminal offence the science of criminal law has developed a classification of objects, which is based on the ratio of the philosophical categories "general", "special" and "individual". On this basis, objects are divided into: a) general; B) generic; C) direct. The direct object, in addition, is arguably divided into direct main and direct additional objects, and the direct additional, in turn, into additional mandatory and additional optional. The developed classifications provide an opportunity to specify the object that is essential for its in-depth study, establishing the nature and degree of harm caused to legally protected public relations and, accordingly, correctly and with the necessary completeness assess and establish the nature and degree of public danger of the committed criminal-illegal act, which is the basis for solving extremely important problems of criminalisation and penalisation of socially dangerous acts in legislative activity. This classification is

of great importance for the construction of criminal law norms and the systematisation and classification of criminal offences. In particular, the basis for classifying the norms of the special part of Criminal Law is the generic object of criminal offences, and the systematisation of norms within the sections of the special part is carried out by the direct object [23, p. 124-140].

Thus, the interpretation of the object of a criminal offence as public relations protected by criminal law from socially dangerous encroachments provides an opportunity to establish its content and structure, the nature of the harm that a criminal-illegal act causes to these relations, ultimately - to a person (individual or legal), society, the state and thus determine the social danger of this offence. In turn, the analysis of the public danger of an act makes it possible to draw a conclusion about its orientation to a particular group of public relations, show their relationship, identify the mechanism of causing harm to the object, and thus reveal the essence and content of a criminal offence not only as a criminal-legal, but also as a socio-legal category [24, p. 131-140]. At the same time, it should be noted that the definition of the object of a criminal offence as public relations still has a rather abstract character, does not contain its specific characteristics and definitions from the point of view of an axiological (value) approach: what is the existence and functioning of public relations; does not provide a complete picture of the nature and essence of the harm caused to public relations, and therefore the content, nature and degree of public danger of criminal offences, especially at the level of individual criminal offences, including those that encroach on life, health, human honour and dignity [25, p. 2895-2902].

Scientists who are on the axiological position (the doctrine of value) [19, p. 763], when interpreting the object of a criminal offence, believe that social relations are too abstract a category and can not always be considered as an object. External values act as immanent properties of objects or phenomena, and are inherent in them (objects, phenomena) not only by nature and not only due to the structure of the object itself, but mainly because they are included in different spheres of human social existence, that is, different spheres of social relations. Values for a person serve as an object of their interests, in their consciousness they play the role of everyday guidelines in subject and social activities, designations of their various practical attitudes to surrounding objects and phenomena of reality. Both in terms of content and volume, the category of "value" largely determines the related categories of "benefit" and "interest".

Considering the benefit as an object of a criminal offence, scientists in general theoretical terms connect this concept to denote a positive value that has a material or non-material character and is able to meet the needs of subjects of public relations: people, society, and the state. Benefit is a metaphysical understanding of the value that expresses the state of fulfilled existence as the goal of human aspirations. In general, the concept of "benefit" is the most general, positive universality for denoting positive value, as well as certain objects, phenomena, entities that meet the needs, interests, goals and aspirations of people [19, p. 55].

Need is a state caused by dissatisfaction with the desires and requirements of the subject necessary for one's life, and is aimed at eliminating this dissatisfaction [19, p. 518-519]. The need can arise and exist in various spheres of human life: biological (food), social (self-expression through work, speeches at rallies [26, p. 3-24]), spiritual (love, friendship), etc. The richer, more diverse, more developed the life of a society, the richer, more diverse, more developed are the needs for certain values and benefits of its participants. Money, gold, and other means of payment as values and goods can meet the needs of people only in cases where there is an objective possibility for the latter to use them for their actual purpose, which is possible only in the system of certain relations [27, p. 13-19]. Therefore, benefit becomes a value for people only if this value meets the needs within the existing social relations.

Benefit as a value is not only a qualitative indicator, it is also characterised by a quantitative indicator. Thus, the category of "security", as a state of protection of public relations from various threats of causing harm to the individual, society, the state, and in some cases, even humanity, is undoubtedly a value and certainly benefit. However, national security, production security, nuclear or radiation safety differ from each other precisely in quantitative indicators. This quantitative indicator directly depends on the attitude of subjects of public relations to the benefit (value), which is the subject of relevant public relations and can be considered not by itself, but only in a set of mandatory structural elements of these relations.

Some objects, phenomena of objective reality, which are the subject of social relations can sometimes play a variety of value roles and act as a benefit (value) or as a negative phenomenon (as an anti-value), which depends on what qualities they possess and to the system of which social relations belong as elements of the structure of the latter, for example, weapons, explosives, narcotic drugs, pornographic products, etc. Therefore, along with the category "benefit" ("value", "good"), there is a paired antonymic category "evil", which means negative value (anti-value, anti-benefit) in respect of which there are corresponding social relations characterised by the presence of static connections between the subjects of these relations, which constitute their need and interest. The commission of active criminal-illegal actions in relation to these and other objects

that have negative (harmful) properties and violation of their legal regime (status) always means causing harm to the interests of subjects of social existence and the object of criminal legal protection as a whole.

So from the above, it follows that the definition of the object of a criminal offence using only categories [28, p. 142-154] “value” and “benefit”, even “interest” has an incomplete and in many ways, according to the authors of this article, narrowed (limited) character, since values and benefits, as well as interests, the content basis of which are the corresponding values, always show their inherent qualities not by themselves, but only in the conditions of social reality, which is determined primarily by the system of certain social relations. The limitation of this position also lies in the fact that it excludes the possibility of further concretisation of the object [29, p. 313-335] by classifying it and dividing it into general, generic, direct and other, more detailed (and more specific) objects and therefore does not provide a further and in-depth study of the object of a criminal offence, which is unacceptable from both scientific and pragmatic (law enforcement) points of view. It is believed that values, benefits, as well as interests as phenomena of social-legal reality, in connection with which criminal offences are committed, are in public organic relations and unity with public relations – the object of criminal encroachment. Thus, E.K. Kairzhanov, defining interest as an important element of public relations, came to the conclusion that public relations and interest are interrelated as philosophical categories “essence” and “phenomenon” and therefore interest acts as a concrete expression of public relations [8, p. 51, 56-57]. E.A. Frolov argued that benefit and interest act as the “core” in the structure of public relations [14, p. 111]. Thus, as follows from the previously stated, social values, benefits and interests make up the content of the subject of public relations. It is on their account or on their basis that social ties are formed between the subjects of these relations, that is, they act as elements of the content of social relations and perform the functions of their subject.

This decision corresponds to the social nature of public relations, which, as an object of criminal legal protection, actually arise and exist (function) in relation to social values, benefits, and interests. S.S. Alekseev reasonably argued on this occasion that “... each phenomenon in society is revealed as social only when it is considered in the form of social relations” [3, p. 85]. In our case, the social connection between the subjects of social existence in relation to the subject of social relations as their mandatory element arises and exists in relation to the subject of these relations, which can act in the form of social value, material or ideal benefit, or the social interest of the subjects of these social relations.

CONCLUSIONS

Based on the conducted research, the object of a criminal offence can be defined as follows: these are public relations protected by the law on criminal liability, which arise and function in society regarding social values, material and non-material benefits and interests of subjects of public relations, which are encroached upon by criminal offences and cause them significant harm or pose a threat of causing such harm.

The object of a criminal offence, for the purpose of concretisation, for a deeper clarification of its essence and meaning, authors propose to divide according to the scope of the concept (based on the logical operation of “classification”) into types: general (the totality of all public relations protected from criminal-illegal encroachments by the norms of criminal legislation), generic (a certain circle (group) of identical or homogeneous in its social essence social relations, which are protected by a single complex (group) of interrelated criminal law) and direct (part of the generic object is a specific public relation protected by a certain to which harm is directly caused by a criminal offence or a threat of causing it is created), and direct can be divided into the main direct (a specific public attitude that the criminal offence encroaches on, and which is primarily placed under the protection of the relevant criminal law norm) and an additional direct object (public relation that complements the main object and to which harm is caused or a threat of causing it is created in connection with an attack on the main direct object), and the latter – to an additional-mandatory (public relations to which, when a criminal offence is committed, always (as a matter of law) harm if caused or a threat of causing it is created in connection with an infringement of the main object) and an additional-optional object (public relations, which in the commission of a certain criminal offense may be violated along with the main object, but may not be violated).

The analysis of the designated objects of criminal offences, as well as clarification using an axiological approach of the content of social values, benefits and interests as objects of public relations, on which a criminal-illegal encroachment is carried out, provides an opportunity in each specific case to establish the nature, content, scope and social significance of harm and, thus, to a large extent to identify the nature and essence of the public danger of a criminal offence and its legal properties: criminal illegality, criminal punishability, guilt.

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