

SELECTION OF CRIME OBJECTS: JUSTIFICATION AND CRITERIA

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Abstract. The current issues of justification and criteria for selecting the objects of a criminal offense are analyzed in the article. From the right choice of mentioned objects depends the correct and timely application of the law on criminal liability in the practice of law enforcement and judicial authorities. The possibility of choosing the object of the crime from the point of view of its social conditionality is investigated. The substantiation and criteria of the object of the crime and the need to enshrine it in law are highlighted. A lot of attention is given to the task of the law, the choice of those criteria that should be in the possible choice of a particular object of crime. The need for such choice is due to the fact that the legal superstructure always corresponds to a certain economic basis, which protects it by Criminal law. To achieving this goal depends on the criminal remedies policy of the state, the need to ensure the protection of public relations. Analyzing that the possibility of the existence of such objects of criminal law protection in the system of legislation on criminal liability, which due to insignificance do not pose a public danger, and therefore should be referred to the legislation on administrative offenses. It is emphasized that when choosing the object of encroachment, the legislator must take into account the victimology, which will serve to improve the legislation on criminal liability.

Keywords: crime, criminal law, norm, insignificance of the act, sanctions, principles, victimology, criminal offense

INTRODUCTION

The choice of the object of a criminal offense has a great scientific and practical importance. The solution of this important problem will make it possible to correctly identify the object of criminal protection, to clarify its social conditionality, to indicate its place in the system of legislation on criminal liability. Examining the presented problem, the legislator will be able to formulate and adopt the rule, which fully indicates the correct choice, justification and criteria of the object of the criminal offense. Legislative consolidation of the object of criminal law protection will allow law enforcement agencies and the court to correctly

apply the relevant rule in the qualification of a criminal offense and in the fight against crime.

The relevance of the research topic is that in domestic legal science the question of the specifics of the choice of objects of criminal law protection has not been sufficiently studied. The lack of such research leads to an imperfect construction of criminal law, their wrong place in the system of legislation on criminal liability and errors in the qualification of socially dangerous acts. The correct choice of the location of the object of a criminal offense will allow to establish its objective and subjective features, to impose a just punishment and to ensure the constitutional rights and freedoms of man and citizen.

The question of choosing the object of a criminal offense, its justification and criteria, remain relevant not only today but also in the distant future. The lack of basic research on this problem indicates its relevance and necessity. The available works of some scientists indicate only involvement in this problem. The greatest contribution to the study of the choice of the object of the crime made Professor M.J. Korzhansky, who was the first among the scientists of the post-Soviet time to make a deep study of this problem.

The purpose and objective of the study is to try to emphasize and highlight the importance of correct, research-based, criteria for selecting the object of a criminal offense. Indicate the importance of the place and role of the object of criminal protection in the system of legislation on criminal liability.

1. CRITERIA AND JUSTIFICATION OF THE CHOICE OF CRIME OBJECTS

The Law of Ukraine on Criminal Liability (Article 1 of the Criminal Code of Ukraine) has the task of legal protection of human and civil rights and freedoms, property, public order and public safety, environment, constitutional order of Ukraine from criminal encroachment, peace and security of mankind, and crime prevention. The main task of the law is the protection of public relations [Vorobey, Korzhansky, and Shchupakovsky 1997, 116–23].

What criteria is (and should be) guided by the legislator in the protection of public relations, choosing the object of criminal protection from the general mass of public relations?

The legal superstructure always corresponds to a certain economic basis, which protects it by criminal law. This is determined mainly by the social and political system of society, its class structure, the level of historical and cultural development. Such conditionality is coming from the tasks of state-building in a democracy, an important task of which is the protection of public relations. Achieving this goal depends primarily on the criminal law policy of the state.

The need to ensure the protection of public relations (material, political and spiritual interests of society, the state and the individual) is emphasized in the

Constitution of Ukraine (Articles 1–19, 21–25, 57–64), laws, state decisions and resolutions.

Depending on the social value of social relations, economic factors and the effectiveness of legal protection, the social conditionality of criminal law protection is determined. In order to choose the object of criminal protection, the legislator must take into account, first of all, objective factors, the main of which are: a) the place, role and social value of certain social relations; b) the prevalence of relevant socially dangerous violations of these public relations; c) the amount and nature of the damage caused by such violations of socially dangerous damage; d) effective available means of protection. To this end, the legislator must determine the regularity of social development, the economic consequences of publication and the application of specific criminal law. An important role in this is played by the substantiation of the possibility, necessity and expediency of application of criminal law in specific cases.

The legislator, choosing the objects of criminal law protection and establishing appropriate prohibitions, must take into account the social conditionality of legal regulation (which requires this rule) and the value of certain social relations. It is also necessary to establish and justify the role and significance of these norms (norms) for the entire system of existing social relations. The protection of the relevant public relations by the means available in the state must not harm other, no less important public relations.

In our opinion, the most valuable and most important in the system of social relations are the relationships that are the main benefits of the person (life, health, sexual integrity, etc.). Without a person, there can be no social relations at all, and therefore, they must be the most protected. Part 2 of Article 11 of the Criminal Code of Ukraine states that an act or omission is not a crime, which although formally contains signs of any act provided by this Code, but due to insignificance does not constitute a public danger, to wit did not cause and could not cause significant damage to a natural or legal person, society or the state. The above-mentioned relations are so important and the public danger of encroachment on them is so great that the provisions of Part 2 of Article 11 of the Criminal Code of Ukraine cannot be applied to them. On the other hand, such crimes as banditry, robbery, murder, etc. cannot be recognized as not socially dangerous on the grounds of insignificance. Regardless of the main object of criminal law protection, these crimes directly or indirectly encroach on human life.

B.S. Nikiforov believed that the criminality of a particular behaviour is determined by the properties of the subject of the offense, the peculiarities of its attitude to the act and the properties of the objective side (mode of action, severity of consequences, etc.). However, the main criteria for the criminality of actions, in the presence of all other preconditions and the severity of the damage caused [Nikiforov 1958, 19–27]. This point of view was supported by prof. M.J. Korzhansky. In general, such a statement needs to be supplemented by an indication of other cases where the criminal act poses a threat of causing serious social harm.

Here we should take into account those actions that create a real danger of changing social relations, as well as all kinds of attempts. One of the main factors determining the need for criminal law protection of certain social relations is the occurrence of inevitable serious consequences, regardless of whether it is defined, the measured socially dangerous damage in a particular case.

Unlike serious and especially serious crimes, in the commission of which, public harm is not amenable to quantitative differentiation, abduction and some other encroachments can make significant changes in the field of objects protected by law. But, at the same time, minor acts do not require such criminal protection as the above-mentioned crimes. Some social relations are characterized by the fact that the damage caused in the field of these relations requires measurement and quantification. Depending on the damage caused, the abduction has several types (significant damage, large size, especially large size – note 2, 3 and 4 to Article 185 of the Criminal Code of Ukraine). The extent of the social damage caused to the object of encroachment is applied to some other encroachments with a similar differentiation.

Protection of public relations under certain conditions can be provided only by Criminal law. Although objective reasons significantly affect the processes. Such reasons include the impossibility of organizing appropriate forms of control in the sphere of public life, the impossibility of restoring the broken relations, severe consequences, and the irreversibility of the socially dangerous damage.

Of course, these are not all socially dangerous changes in social relations, but only the most significant ones. They are precisely of practical importance in that they are the basis for the classification of offenses. If the relevant encroachments do not have such properties, then the fight against them can be ensured by administrative, civil and other measures, excluding criminal law. Such acts are administrative offenses. As we can see, the choice of the object of the crime is a difficult and responsible task of the legislator.

Changing the social economical formation requires a timely response to all processes in the state, including legislation. The practice of applying the law on criminal liability shows that many acts should be decriminalized in general, or translated into the category of administrative offenses. Therefore, the question of changing the legislation on criminal liability is timely.

In many actions, harmful social consequences do not occur immediately and can be remedied by damages or other measures. There are many norms in the legislation on criminal liability, which contain alternative sanctions of deprivation of the right to hold certain positions or engage in certain activities (Articles 205(1), 206(2), 209, 209(1), 210, 211, 212, 212(1), 218(1), 219, 220(1), 222, 222(1), 223(1), 223(2), 224, 227, 229, 232(1), 232(2), 237, etc.) The above-mentioned measure of punishment at compensation of the caused damage, will give the chance not to apply to the person of measures of criminal legal influence. As practice shows, measures of criminal law influence are not always expedient and effective. Conversely, in the presence of only such measures, damage is inflicted that requires protection by

criminal law. In Articles 21–24 of the Constitution of Ukraine enshrines an important constitutional provision that citizens of Ukraine have full social economic, political and personal rights and freedoms, and therefore, deserves special attention to the criminal protection of these freedoms by the law on criminal liability. In comparison with the European legislation on observance of the constitutional rights and freedoms of the person and the citizen, human rights and freedoms in our state are approximately equal. Although in some issues of criminal law protection of property, freedom of marriage, etc., there is a difference.

The guarantee of protection of rights and freedoms in the state is the inviolability of the person (Article 29 of the Constitution of Ukraine), housing (Article 30 of the Constitution of Ukraine), protection of privacy, secrecy of correspondence, telephone conversations and telegraph messages (Article 31 of the Constitution of Ukraine) protection of honour, dignity and personal freedom (Articles 21–22 of the Constitution of Ukraine). To ensure these constitutional rights, it is necessary to strengthen their criminal law protection [Korzhanovsky 2004, 45–47]. Not only does the set of goods protected by law affected the degree of protection, but also the object of protection of each of them.

2. EUROPEAN APPROACHES TO THE SELECTION OF CRIMINAL PROTECTION OBJECTS

In some European countries, the subjective rights of citizens are more fully protected than in Ukraine. For example, Bulgarian law contains 18 types of encroachments on the interests of the family and young children, while the Criminal Code of Ukraine contains ten types of such encroachments. The sphere of personal security of citizens in European countries is significantly expanded when a person is in immediate danger, which threatens his life or health.

These laws of European countries more fully than domestic law protect the inviolability of the home, the secrecy of correspondence, and some other constitutional rights of citizens. Bulgarian criminal law, in addition to unlawful deprivation of liberty (Article 142 of the Bulgarian Criminal Code) provides for criminal liability for any coercion to commit or not to commit any acts against the will of a person (Article 143 of the Criminal Code). Liability for coercing the use of violence or threat of harm to certain behaviour is provided by the legislation of the Republic of Poland (Article 167 of the Criminal Code). The absence of such a rule in domestic law leads to the fact that in practice some cases of socially dangerous violence or coercion to commit certain actions do not constitute a crime.

The sphere of protection of personal safety of citizens is significantly expanded by the norms of the legislation of European countries, which provide for criminal liability for endangering the life or health of a person.

The important value for the choice of object prevalence of violations of certain social relations in specific socio-economic formations and historical conditions is important for the choice of objects of criminal law protection. The constant

violation of such relations indicates the inadequacy of the means of their protection and the need for more effective measures. Or, conversely, the practice of application of statutory measures to protect certain social relations indicates their unfoundedness and inexpediency. According to judicial and investigative practice, many crimes in the field of economic activity should be classified as administrative offenses.

The choice of the object of criminal protection, in general, is determined primarily by the public danger of encroaching on specific social relations. Public danger is the most significant and main feature inherent only in a criminal offense. All other offenses of public relations can be considered only socially harmful. Public danger and social harm have different legal nature, and therefore differ not only in terms. For example, physical pain is harmful to health, and penetrating an injury to the abdomen or chest is dangerous, and so on. Such changes in its natural functioning that violate the conditions of its existence are dangerous for a certain system of social relations. Harmful can be considered only those changes that do not violate the conditions of the system, but only create temporary or local obstacles to it. Thus, socially dangerous violations can lead to the destruction and liquidation of the system, and harmful violations do not threaten such consequences. The above gives grounds to assert that danger and harmfulness are not only not identical concepts, but also different in essence. A crime is an act that is dangerous for the interests of society, the individual and the state, because it violates the conditions of its existence. This explains the need to protect society from dangerous encroachments by criminal law. At the same time, criminal law measures should be applied only for socially dangerous offenses.

The legislator's knowledge of the laws of social development and evaluative-volitional opinion about the social value of specific social relations has important meaning for the choice of objects of criminal law protection. When issuing a criminal law norm on the protection of certain social relations, the legislator must take into account, first of all, objective factors, the real living conditions of society. Legislation should be based primarily on the knowledge accumulated by experts in various fields of science, the generalization of public opinion, expectations and needs.

The comparative importance and social value of social relations, as well as the necessity and expediency of their criminal protection in society is determined by the interests of society as a whole. An equally important factor in choosing the object of criminal protection is the level of legal awareness of citizens and the ethical foundations of society. For the life of the object of criminal law protection, an important circumstance is the legal awareness of the majority of members of society, including law enforcement officers and the court. Of particular importance here acquires the legal awareness of citizens. They must be convinced of the necessity of such a law and of the justice of the punishment for committing the crime specified in it.

As practice shows, many laws on criminal liability do not correspond to the legal consciousness of the majority of members of society, they practically do not

act, do not fulfill their social role for which they were adopted. Such laws have no general warning effect, i.e. they are socially dead [Vorobey, Korzhansky, and Shchupakovsky 1997, 116–23]. These include Articles 174–184, 210, 213, 236–241, 297, 338, 339 of the Criminal Code of Ukraine. With a more in-depth and meticulous analysis of criminal law to the above articles, much more can be added.

The application of the law on criminal liability, which does not correspond to the legal consciousness of society, is harmful, because it cannot fulfill its social task: to ensure the protection of relevant public relations. The preventive effect of such a rule is so insignificant that it is often called “dead.”

When choosing the object of criminal protection, it is equally important to take into account the ethical beliefs of society, its moral principles and principles. Analyzing the domestic criminal law literature, we can see that the issues of ethical foundations of the law on criminal liability, the relationship of moral norms with legal norms are at a fairly low level of research. This state of affairs has a negative impact on the rule-making process, as it does not allow the full expression of moral norms in the law and provide prospects for the development of legislation on criminal liability.

A necessary condition for the emergence of new legal norms is the ethical basis, and the ethical content of the rule of law, part of its general content. Therefore, when choosing the object of criminal law protection, it is necessary to take into account the ethical basis of the future norm and express in these norms the ethical ideals of society. Any normative act must be based on the requirement of fairness [Demkov 1996, 10–12]. Contradictions caused by the dialectic of public life between the norms of criminal liability legislation and the norms of morality (morality) must be resolved by changing the relevant legal norms.

Today, the legislation on criminal liability, in some cases, does not fully establish and implement the principles of public morality. This applies to the rules that protect life, health, honour and dignity and some other relationships. Ethical and moral foundations of criminal liability legislation are an important and relevant topic today, which requires in-depth study. Therefore, we will limit ourselves to general remarks on this important and necessary issue.

The above social relations are characterized by some features as equivalent objects of criminal law protection, regardless of the psycho-physiological state of the subject of relations, his social status and other features. Life, health, honour, dignity and other inalienable personal goods of a person belong to specific individuals, and are not just members of society. Each individual is ethically, morally, materially, and socially connected with a large number of other members of society by thousands of “threads.” Such relations have a public assessment. Some relationships are considered highly moral, ethical, friendly, personal, family, and others are immoral. But even high moral ties can be broken by murder, betrayal, insult, and so on. There is a great ethical distance between similar acts committed by a stranger and a close person. They are divided mainly by the special properties of the relationship – friendship, intimacy, kinship, and so on. Ethical principles

of society are most clearly manifested in relations with relatives: father, mother, daughter, son, grandson, brother, sister. Preserving the foundations of social morality, constantly educating, developing the ethical principles of people's lives are important tasks of society and the state. Article 3 of the Constitution of Ukraine guarantees the protection of equality and human dignity and defines it as an important state task.

Domestic criminal liability legislation does not adequately take into account ethical principles. The analysis of the legislation shows the possibilities of its further improvement. The law does not distinguish as an aggravating act the murder of a relative (father, mother, etc.), as well as other crimes against loved ones (rape, bodily harm, etc.). Here it is obvious that preference should be given to the ethical principles of society as the most valuable public good.

CONCLUSIONS

The legislation of European countries provides more severe criminal liability for the murder of the above persons. The destruction of morality will inevitably lead to more serious consequences than, for example, the harm caused by justice in individual cases of concealment of a crime. From what has been said, it is clear that for crimes against relatives, criminal liability should be strengthened, and for concealment of crimes by relatives, it should be excluded [Vorobey, Korzhansky, and Shchupakovsky 1997, 116–23]. Again, the legislation of European countries contains provisions on the exemption from criminal liability of relatives and friends for concealing crimes.

There are views of scientists that when choosing the objects of criminal law protection, the legislator must also take into account the possibility of such protection. To make a decision on the protection of the object of encroachment by criminal law, the legislator must take into account the victimology. The discussion on the problem of victimology showed its important practical significance [Tulyakov 2001, 24–26]. The conclusions of such a discussion deserve attention, and the proposed proposals can be used in the rule-making process in the selection of objects of criminal law protection and in the construction of specific criminal law. This will improve the legislation when choosing the object of criminal protection.

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