

THE FUNCTION OF SUCH CHARACTERISTIC OF THE OBJECTIVE ELEMENT OF A CRIME AS THE PLACE OF A CRIME

V.G. Moroz

*candidate of the criminal law and procedure department
National Academy of Management HEI*

Problem formulation. Identification of the function of the place of a crime has an essential role for the theory of Criminal law and law enforcement practice. Therefore, this problem requires a proper research.

The analysis of the recent studies and publications. The issues related with the function of such characteristic of the objective element of a crime as the place of a crime, to some extent, has been researched by such scientists as M.I. Panov, Y.V. Borisov, M.I. Havronyuk, V.K. Matviichuk, V.K. Grischuk, V.I. Borisov et al. Yet, the comprehensive and systematic research of this problem has not been done.

The objective of this article is to investigate the function of such characteristic of the objective element of a crime as the place of a crime.

The main results of the study. It should be noted, that the characteristics of the objective element of a crime vary depending on their nature (these are the characteristics of the content and circumstances of a crime) [1, p. 65]. The characteristics of the content of a crime include: a socially dangerous conduct (a socially dangerous behavior); socially dangerous consequences, causation, the method of committing a crime, ways and instruments of committing a crime, sources of committing a crime. The characteristics of the circumstances of a crime include: the place, the time and the background of a crime [1, p. 65].

Legal literature contains the idea of the dependent nature of certain characteristics of the objective element of a crime, namely, ways and instruments of committing a crime (which are, obviously, indicate a socially dangerous conduct – behavior) [1, p. 64]. At the same time, some experts consider the place and the time of a crime to be the features of the background of a crime [1, p. 64]. It should be noted, that it is necessary for the characteristic of the objective element of a crime to correspond to the concept of “characteristic of corpus delicti”, which, in result, may transform the dependent characteristic of a socially dangerous conduct into an independent characteristic of the objective element of a crime [1, p. 64].

In terms of this study, attention should be drawn to the fact that the functions of the place of a crime should not be underrated. The provisions regarding the place of a crime as the characteristic of the objective element of a certain crime, its relation with the elements of a certain crime and the grounds for criminalization allows to determine the functions of the place of a crime and, subsequently, to identify its significance for a criminal liability.

The place of a crime is an independent and compulsory feature in the structure of a criminal conduct of corpus delicti of some crimes. In many cases it determines factual and social characteristics of socially dangerous acts, which are

defined as criminal and punishable. If the place of a crime is specified in a law or clearly follows from its content, it becomes a compulsory characteristic of *corpus delicti* and necessary condition of a criminal liability.

In that case, in order to raise a question of bringing a criminal charge against a person, it should be proved, *inter alia*, that criminal conduct or omission has been performed by this person in that exact place, which directly specified in the law or follows from its content. Conversely, the absence of such place, being a mandatory feature of a *corpus delicti*, excludes a criminal liability of a person. The legal basis of such decision is that the conduct of a person lacks one of the characteristics of the objective element of a crime as a ground for a criminal liability, therefore, there are no such grounds at all. Thus, one of the functions of the place of a crime is that, along with the other characteristics of a crime, it serves as a condition of a criminal liability.

The place of a crime indicates specific features and properties of a certain crime and, in some cases, significantly affect the character and the degree of the social dangerousness of a crime. It clarifies, specifies a socially dangerous act or omission, helps to find out the objective and subjective elements of a crime. Hence, determining the place of a crime is important for a qualification of crimes, proper application of Criminal law and, eventually, imposing a punishment which would commensurate the offence. Therefore, the place of a crime is a circumstance that has to be proved in criminal proceedings (Clause 1 Part 1 Article 91 of Criminal Procedure Code of Ukraine) [2; 3, p. 239; 4, p. 241]. The place of a crime limits an act or omission, that is determined as a crime, states its limits and, thus, functions as a restriction of the limits of a criminal liability. In other words, the resolving of an important question of whether the certain action or omission is referred to the sphere of criminal and punishable depends on the place of a crime. In that way, *corpus delicti* of an illegal placement of a person in a mental institution (Article 151 of Criminal Code of Ukraine) would be determined in the actions of a person only when such person (victim) has been permanently placed to a psychiatric facility (this, as we already mentioned, can be a psychoneurological, narcological or other specialized institutions, centers, branches, etc., of all forms of property, involved in the provision of psychiatric care) [5]. In other words, when the place of a crime has been determined. Illegal placement of a person in any other medical facility not specified by the law (Article 151 of Criminal Code of Ukraine) cannot form the appropriate *corpus delicti* and lead to a criminal liability.

Being a compulsory characteristic of *corpus delicti* and limiting the criminal liability, the place of a crime, in some cases, allows differentiating the types of a responsibility as well. For instance, if an illegal hunting is committed in the absence of the elements of a crime under the Article 248 of Criminal Code of Ukraine, such person, under certain conditions, is subject to administrative liability. That is the function of differentiation of the types of a liability.

The place, being one of the indicators of the dangerousness and harmfulness of a criminal conduct, shows the degree of the social threat of a crime in general. Therefore, it is essential for the differentiation of a criminal liability. For example, if theft is committed according to the elements of a crime under Part 1 Article 185 of

Criminal Code of Ukraine, a person may be punished by a fine from fifty to one hundred tax-free minimum incomes or community service for a term of eighty to two hundred forty hours, or correctional labor for a term up to two years, or arrest for a term up to six months, or imprisonment for a term up to three years. By contrast, theft accompanied with unlawful breaking into a residence or any other premises or shelter is punished by imprisonment for a term of three to six years. In the aforementioned case, the place of a crime increases social dangerousness of the offence compared with the basic corpus delicti and, therefore, it becomes a qualifying circumstance, which leads to a more severe punishment.

The place of a crime individualizes a socially dangerous offence, clarifies it, adds a qualitative determination, indicates those characteristics and features which distinguish one offence from the other (for instance, a criminal offence from an administrative law delict), or one crime from the other. *That creates an important dividing function – the place of a crime.* Finding out the characteristics, which differentiate one crime from the other, or a crime from the similar administrative law delict, is essential for a proper qualification of crimes. V. M. Kudryavtsev argues, that in order to correctly qualify a crime, the one should clearly perceive the dividing lines between it and related crimes (and, in our opinion, also the dividing lines between the crime and similar administrative law delict) [6, p. 145]. In fact, differentiation of crimes is a flip side of qualification [6, p. 145].

Twenty eight offenses differ in the place of a crime. The place of a crime allows to distinguish the offences depending on their objective element primarily in cases, when they jeopardize the same object. For instance, differentiation of an illegal hunting, where it caused a substantial damage, from an illegal hunting in national parks or any territories and sites of natural conservation. While the first criminal offence is criminalized with such a characteristic of the objective element of a crime as substantial damage (consequence), the second – with the place of a crime.

The place of a crime clarifies, details, specifies a socially dangerous act or omission, which are defined as a criminal offence. For example, conducting blasting operations in breach of fish and water wildlife conservation regulations may be considered a crime only if it is committed in a fishery water facilities. On this basis, the important clarifying function of the way of committing a crime is discovered. The aforementioned function appears both in the law-making and law enforcement practice.

The place of a crime belongs to special (additional) characteristics, which are used by the legislator, while formulating norms of criminal law, to point out the peculiarities, specifics of a certain crime. The inclusion of the place of a crime into the norm of Criminal Code of Ukraine allows to generally describe only one circumstance (characteristic) of a socially dangerous conduct, to optimally reflect the crime in a law. In this way, in the norms of Criminal Code of Ukraine, which set a criminal liability for illegal hunting (Article 248 of Criminal Code of Ukraine), where it caused a substantial damage, and an illegal hunting in national parks or any territories and sites of natural conservation, i.e. by stating the place of a crime, where the single types of criminal conduct are stipulated.

The place of a crime being an obligatory characteristic of *corpus delicti*, allows to specify the offence in law and clearly defines its limits. In this way, legislator ensures accurate and precise description of the offence in law by adding the place of a crime into a disposition of an article of the Special Part of Criminal Code of Ukraine.

Criminal law of Ukraine has a tendency to formulate *corpus delicti* of crimes precisely. That is a necessary condition for a correct qualification of crimes, determination of a character and a degree of a social dangerousness, upholding the rule of law during the enforcement of Criminal law norms. The legislator always has to try to describe the characteristics of the offence clearly. A.A. Piontkovskii noted, that enhancement of the law on criminal liability depends on the providing of an accurate determination of the characteristics of offences [7, p. 125]. Due to a vague gist, the absence of specific characteristics (in particular, the place of a crime) which could be used to determine the limits of a crime and its special features, the norms may be interpreted variously and, therefore, get a different scope of application [8, p. 49; 9, p. 87]. While designing the norms of the current Criminal Code of Ukraine on the criminal offences against environment, the legislator partially waived overly general, vague descriptions of the characteristics thereof, which appeared in the previous codes. He has made an attempt to formulate the characteristics of the aforementioned crimes clearly and precisely, particularly, by specifying the place of a crime. By this means, the legislator managed to avoid creating overly general *corpus delicti* with unclear characteristics, practical use of which could lead to a potential false interpretation and application of such law.

The function. The clarifying function of the place of a crime in a lawmaking process is reflected in a fact, that depending on the place of a crime, legislator in some cases adds qualifying circumstances and special norms. In that way, the place of a crime has an essential effect on differentiating crimes depending on a social dangerousness thereof.

Thus, incorporating the place of a crime into the norms of Criminal Code of Ukraine as a compulsory characteristic of a crime is one of the legislative techniques for specifying the Criminal law and providing accuracy and clarity thereof.

In the law enforcement practice specifying significance of the place of a crime is reflected in a necessity to determine the place of a crime in every criminal proceeding, regardless of whether it is a compulsory or optional characteristic of *corpus delicti* of the offence. In each case, discovering the place of a crime ensures a concretizing of a socially dangerous conduct (act or omission), contributes to clarifying of a socially dangerous consequences and the other objective and subjective characteristics of the *corpus delicti* of the offence.

Finally, the place of a crime serves as one of the criteria of the criminalization of the socially dangerous act. The decision of the legislator to criminalize, i.e. to define certain actions as criminal and punishable, requires considering a number of socio-legal and psychological factors. However, social dangerousness of a crime, being a material characteristic thereof, also gets a certain value. It is the social dangerousness of a certain action or omission causes the raising of a question of recognition of such conduct as a crime and imposing the appropriate punishment.

Clearly, the place of a crime significantly affects the character and a degree of a social dangerousness of the conduct and, thus, along with the other characteristics, it is considered while deciding on the criminalization of such conduct.

Particularly, the place of a crime is important in determining the scope (limits) of criminalization, i.e. in setting the range of conducts which are covered by the criminal law prohibition. In that case, the conduct leads to a criminal liability simply because it is committed in a particular place.

The conclusions. Based on the aforementioned the following functions of the place of a crime have been determined:

- one of the functions of the place of a crime is that, along with the other characteristics of an offence, it serves as a condition for a criminal liability;
- the second function of the place of a crime in criminal proceedings is proving;
- the third function of the place of a crime is restriction of the limits of a criminal liability;
- the fourth function of the place of a crime is to differentiate the types of a liability;
- the fifth function of the place of a crime is to differentiate the types of a criminal liability;
- the sixth function of the place of a crime is to individualize of a socially dangerous conduct;
- the seventh function of the place of a crime is to distinguish between criminal offence and any other similar delict;
- the eighth function of the place of a crime is to distinguish between related crimes.

LIST OF REFERENCE

1. *Blagov E.V.* General part of criminal law in 20 lectures: [course of lectures] / E.V. Blagov. – M.: Yurlyt inform, 2012 – 344 p.
2. Criminal Procedure Code of Ukraine of 13.04.2012 № 4651-VI // Vidomosti Verkhovnoyi Rady of 08.03.2013 № 9-10. – P.88.
3. *Lukashkina T.V.* The proving / T. V. Lukashkina // Criminal Procedure Code of Ukraine: Scientific and practical commentary / Res. ed.: S. V. Kivalov, S. M. Mishchenko, V. Y. Zakharchenko. – H.: Odyssey, 2013. – P. 237-240.
4. *Shumilo M.E.* Evidence and proving / M. E. Shumilo // Criminal Procedure Code of Ukraine / Gen. eds. Professors V. G. Goncharenko, V. T. Nora, M. E. Shumilo. – K.: Justinian, 2012 – P. 223 – 281.
5. Criminal Code of Ukraine of April 5, 2001 // Vidomosti Verkhovnoyi Rady. – 2001. – № 25-26. – p. 131.
6. *Kudryavtsev V.N.* General theory of the qualification of crimes / V.N. Kudryavtsev. – M.: Yurid. lit., 1972 – 352 p.
7. *Piontkovskij A.A.* The doctrine of the crime / AA Piontkovskii. – M.: gosjurizdat, 1961 – 666 p.
8. *Brainin Y.M.* Criminal liability and its basis in Soviet criminal law / Y.M. Brainin. – M.: jurid. Lit., 1963 – 275 p.

9. Frister Helmut. Criminal Law of Germany. General part – Strafrecht Allgemeiner Teil: transl. from German / Helmut Frister. – 5th ed. – М.: Infotropik Media, 2013 – 272 p.

Moroz V.G. The function of such characteristic of the objective element of a crime as the place of a crime

The article investigates such a feature as the place of a crime, which describes the circumstances of a committed crime. A special attention is paid to the fact, that the functions of the place of a crime should not be underrated. On the basis of the research the author reveals the functions of the place of a crime.

Keywords: *the place of a crime, committing a crime, a characteristic of a crime, functions of the place of a crime.*

Мороз В.Г. Функція такої ознаки об'єктивної сторони злочину, як місце злочину

У статті досліджується така особливість, як місце злочину, яка описує обставини вчиненого злочину. Особливу увагу звернуто на те, що функції місця злочину не можна недооцінювати. На основі дослідження автор виявляє функції місця злочину.

Ключові слова: *місце злочину, вчинення злочину, характеристика злочину, функції місця злочину.*

Мороз В.Г. Функція такого признака объективной стороны преступления, как место преступления

В статье исследуется такая особенность, как место преступления, которая описывает обстоятельства совершенного преступления. Особое внимание обратит на то, что функции места преступления нельзя недооценивать. На основе исследования автор выявляет функции места преступления.

Ключевые слова: *место преступления, совершение преступления, характеристика преступления, функции места преступления.*

Стаття надійшла до редакції 20.05.2014.