

UNDERSTANDING THE OBJECT OF CRIMES AGAINST PROPERTY CONDITIONS OF MARKET RELATIONS

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I. Relevance of research

The problem of object of offences is one of the major issues in the science of criminal law. The reasonable determination of the content of offences, their correct classification and separation from adjacent socially dangerous acts depend on its solution. Issues concerning construction and improvement of the system of offenses regarding property as well as improvement of the system of the Special Part of the Criminal Code of Ukraine, are closely related to solving of this problem.

The Doctrine of Soviet criminal law offered to distinguish between “property relations” as an object of offences against property and “property” as the subject of these offences [1, p. 55], while the concept of “property offences” was declared incorrect and severely criticized. By property in terms of plundering “a set of items, a certain set of material objects of the external world” [2, p. 60-61] was meant, and the property rights, therefore, were actually excluded from the subject of plundering. This doctrinal approach has remained through present, and in fact its provisions have not been contested.

Criminal law differentiated responsibility for offences against property relations based on type of property, the importance given to plundering as a tool against unreasonable and unequal distribution and redistribution of wealth. But at the same time, unanimity of opinions has not been observed in the issue of understanding the value of property protection in criminal law, and there were several concepts of understanding of object of offences against property.

The first concept of object of offences against socialist property offered to consider the right of property as the legal right [2, p. 155]. This conclusion was made based on the fact that property was a complex social phenomenon involving not only economic relations between people regarding material goods, but also legal relationship providing certain behavior between people regarding means of production as well as wears. Offences against socialist property infringe not on the actual social relations, but only on one part - right of property according to which right of possession, use and disposal of socialist property is exercised [3, p. 16; 4, p. 31; 5, p. 24].

Thus, property in legal sense is a superstructural phenomenon, specifically volitional and ideological connections between people, which are the external form of expression of social relations regarding appropriation of material goods, in this case “property” being concretized in the concept of right of property. It should be noted that at present, according to some criminal law experts [6, p. 475] public relations regarding possession, use and disposal of property should be considered the generic object of offences against property. In many cases property in this context is interpreted as property relationship related to possession, use and disposal of material goods by subjects of right of property [7, p. 8-9].

The second concept established that the particular area of social relations of socialist property protected by the law served as the object of offences against property [8, p. 14; 9, p. 30; 10, p. 13; 11, p. 154]. Determining social property relations rather than the right of property and legal property relations as generic object of offences against property was substantiated by the fact that social relations were primary and subjected to offence, while the law and legal relations were secondary and violated “concurrently”. The object of offence is considered to be the substance, which the offence infringes upon - actual social relations protected by the criminal law [12, p. 18; 13, p. 49]. In this case, under the criminal acquisition of property of citizens entrenchment on right of property does not occur while it remains with the victim and does not transfer to offender with the property. Property being out of actual possession of the owner denies him first of all the opportunity to benefit from the lost property and carry out production of material goods by means of the lost property, consume, exchange and dispose of it at his discretion [14, p. 57].

The object of offences against property in this case was considered the property itself, i.e. the attitude of individual (staff) to property item that belonged to him as towards his own. The term “property” often covered the totality of social and production relations, and in this sense property was identical to the economic basis of society [15, p. 6]. Classics of Marxism-Leninism defined property as fundamental, principal economic relations between people in view of or regarding the appropriation of material goods (instruments and means of production). However, at present the property continues to be considered as the direct object of offence (or certain forms of property are specified: private, state, municipal etc.) [16, p. 57; 17, p. 8].

Moreover, at the time it was suggested to consider property relations in the wide sense, as the social relations of production, distribution and exchange of material goods intended for consumption; in some cases as a specific form of property, embodied in goods and materials that had exchange and use value [15].

The third concept by object of offences against property meant property as economic and legal concept involving factual and legal appropriation of property by particular individual or entity that had authority of possession, use and disposal regarding this property, and had the exclusive right to transfer that authority to other persons [18, p. 32-33].

The above concept has absorbed all the previous concepts as well as concepts most common at the present, since property is a two-in-one category (economic and legal). The economic content of property as the object of offence forms appropriation relationship (for the owner) and relationship of practical use of the property (for another owner). Authority of the owner conferred on him by law comprises the legal substance of the property [19, p. 6-8].

Thus, the main approaches to understanding property as the object of offences against the relevant group of criminal offences reduce to the following: a) property – is the economic relationship; b) property – is a legal value, c) property – is the economic relationship and right of property.

Problems of understanding the property have not been exhausted given the adoption of the new criminal legislation. Most researchers continue to consider property as an object of criminal protection. However, there are new conceptions

based on the idea of substitution of offences against property for property crimes intended to cover a wider range of unlawful acts, but understanding of property crimes today is not homogeneous as well.

II. The synthesis of approaches to definition of the objects of property crime

Domestic legislators traditionally refer such offence as causing damage to property by false pretences or breach of trust to the range of offences against property (Article 192 of the Criminal Code). The generic object of offenses specified in Chapter VI of the Special part of the Criminal Code of Ukraine, is the property, i.e. social relations regarding the property that legally appear in the form of authority of possession, use and disposal of this property which belongs to the owner, and the duty of other persons (not owners) to refer to this authority as granted and not to preclude it. Thus, property relations are inherently tangible relationship, although the latter go beyond the property. As O.I. Boitsov notes, generic object of offences against property is the political one since it includes two types of social relations regarding possession, use and disposal of physical objects: 1) property relations in their direct interpretation arising between property owner and not owners who are obliged to refrain from interfering in property sphere of the owner; 2) other material relations that arise between a person who is not the owner, but has limited material rights to property, and all other persons who are obliged to refrain from violations of property sphere of the legal owner by criminally prohibited means [20, p. 64]. But the policy of generic object of offences against property does not mean that it includes such property relationship in which one person can request the other person to transfer property or perform any other acts that have a material nature and occur on the basis of concluded agreements regarding transfer or use of this property. The current Civil Code of Ukraine clearly differentiates civil rules regulating property relations (depending on the nature of this relationship) and divides them in two books: “The right of property and other rights in things” (Third Book) and “Law of Obligations” (Fifth Book).

Causing damage to property by false pretences or breach of trust lies in that the offender is enriched by unlawful retention of the property that should have come into the property or possession of the victim and thus replenish his property fund. This act can be expressed objectively in evading payments or incomplete payment of fees for the use of the apartment, other utilities, evasion or incomplete payment of transportation, hotel, entertainment and other services, as well as non-payment of certain amounts for the work performed for offender etc. Under current conditions (especially in conditions of hyperinflation) objective side of components of this offence can consist in acquisition of other people’s financial resources by false pretences (for example, a person claiming to be the representative of a commercial firm enters into a product supply agreement and receives funds as an advance payment), which are then transferred to bank accounts and after receiving interest are returned to the counterparty with apologies and false explanations about the reasons for default of obligations towards the mentioned counterparty. In other cases, the offender simply does not fulfill the conditions of the contract, at the same time deliberately delaying the return of funds that were transferred to the counterparty

under the contract as an advance payment. Thus, the dishonest party using other people's financial resources and converting income from their use, gets profits, denying the owner of the property this opportunity and causing him damage in the form of lost profits.

Thus, the direct object of this offence is relations of obligation rather than property relations. This, in turn, gives the reason to state that activity under the Article 192 of the Criminal Code of Ukraine, by nature is offence in the sphere of economic activity. It is not coincidence that in 1972 the Plenum of the Supreme Court of the former USSR specified in its resolution "On judicial practice in cases of plunder of state and public property" that causing property damage to the state as a result of evasion of taxes or other mandatory payments should be qualified as causing property damage by false pretences or breach of trust. The modern criminal literature considers the Article 192 of the Criminal Code as a general rule with respect to special rules under the Articles 207, 212, 212-1, 222 of the Criminal Code, which subject to the rules for resolving conflicts of rival criminal rules, take priority over it [21, p. 118]. It is noted that the Article 192 of the Criminal Code remains in support for those situations which are not specifically provided for by the law [20, p. 728]. It should be emphasized that the number of such situations has been gradually reduced. Thus, the Act of May, 31, 2005 amended the Criminal Code of Ukraine by the Article 1881 "Stealing of electrical or thermal power through its unauthorized use". Although the disposition of the Article 1881 refers to stealing of electric or thermal power, this act has nothing in common with offences against property in the absence of physical sign of the object of offence. This rule is also special with respect to the Article 192 of the Criminal Code, and its direct object is the relations of obligation.

At the first glance it may seem indeed that location of the Article 192 of the Criminal Code is not of fundamental importance, since the foundation of the economy of any country is formed by property and system of management. These components are closely related. The first component mediates statics of property relations, securing for itself the legal ability to possess and operate property as well as dispose of it regardless of others, while the second component mediates dynamics of property relations and regulates the movement of property in economic circulation.

Therefore, offences against property and offences in the sphere of economic activity, despite the substantial differences can be combined into one section of the Criminal Code. Besides the point, such practice is quite common. For example, section VIII of the Criminal Code of the Russian Federation "Economic crimes" contains three chapters: Crimes against property (Chapter 21); Crimes in the sphere of economic activity (Chapter 22); Crimes against the interests of service in commercial organizations (Chapter 23).

Causing damage to property by false pretences or breach of trust is regarded as offence against property (the Article 165). Although the direct object of this act is the relations of obligation rather than property relations, it does not go beyond the generic object – economic sphere, remaining its component. However, is this approach able to solve the problems set up in this article? We believe not. The direct object of offence, above all, must match the subsume, which is provided for

by the law or determined at the doctrinal level. We can not fail to agree with O.I. Boitsov, who notes that property relations of binding nature go beyond the object of offences against property to an extent that division of section VIII of the Criminal Code of the Russian Federation into the chapters loses any sense [20, p. 62].

As a matter of fact in case of identifying relations of property and obligation relations within the broader concept - the sphere of economy or even going back to the historical name "property offences", the problem of inconsistency between the direct object of offence being analyzed and its subsumee can be solved. But such an act will result in a number of other problems. Firstly, it will be contrary to the civil law, and it is commonly known that this law rather than the law on criminal responsibility regulates the mentioned relations and secondly, it will make differentiation of offences against property and offences in the sphere of economic activity impossible, both between themselves as well as with related offences. Thus, for example, changing a digital denomination of banknote and issuing of such banknote constitutes a fraud rather than counterfeiting, since the damage in this case is caused to property relations. Relations that ensure the normal functioning of the financial and credit system (part of the generic object of offences in the sphere of economic activity), are not reasonably affected since such level of counterfeit makes its circulation impossible.

III. Conclusion

Thus today the topical issues placed on the agenda are related to appropriateness of the criminal legal protection of offences against property as a system, social and political life, which does not correspond to day-to-day realities, the level of development of social and economic relations etc., as confirmed by the following key provisions:

– "the right of property" in the objective sense is a significant part of the legal rules that are included in material law which is the sub-branch of the civil law [22, p. 99];

– of these items most offences contained in the chapter of the Criminal Code "Offences against property" do not come under the civil concept of right of property;

– today there is no integrated approach to criminal legal protection of property rights and interests [23, p. 54-55] (the range of property rights and interests protected by criminal law are not limited to right of property); in fact, the chapter of the Criminal Code "Crimes against property" protects not only right of property but also other material rights, property interests and, in some cases, the order of acquisition of rights to property;

– definition of the concept of plundering and its types does not correspond to the modern criminal law, since the subject of offence can be not only the property item, but also the limited material rights, property rights, a person can achieve the goal of getting property benefits through non-payment of services, backlog of work etc., i.e. the object of property offences (offences against property) should be extended.

Thus, based on the above stated, it is possible to make an assumption that the basis of criminal legal protection should be formed by property relations with certain participants, content and subject of offence against property.

REFERENCES

1. *Rozenberh D.N.* O ponyatyy ymushchestvennykh prestuplenyy v sovetskom uholovnom prave (ob'ekt y predmet posyahatel'stva) // Uchenye zapysky Khar'kovskoho yurydycheskoho ynstytuta. Vyp. 3. Khar'kov, 1948. – S. 55.
2. *Nykyforov B.S.* Bor'ba s moshennycheskymy posyahatel'stvamy na sotsyalystycheskuyu y lychnuyu sobstvennost' po sovet-skomu uholovnomu pravu. M., 1952. – S. 60–61.
3. *Matyshevskyy P.S.* Uholovno-pravovaya okhrana sotsyalystycheskoy sobstvennosti v Ukraynskoy SSR. Kyev, 1972. – S. 16.
4. *Sevryukov A.P.* Khyshchenye ymushchestva: krymynolohycheskye y uholovno-pravovye aspekty. M., 2004. – S. 31.
5. *Solodovnykov S.A.* Prestupnye posyahatel'stva na sobstvennost'. M., 2005. – S. 24.
6. Nauchno-praktycheskyy kommentaryy Uholovnoho kodeksa Ukrayny / pod red. N.Y. Mel'nyka, N.Y. Khavronyuka. Kyev, 2002. – S. 475.
7. *Kudashev Sh.A.* Problemy dyfferentsyatsyy uholovnoy otvetstvennosti za khyshchenyya chuzhoho ymushchestva (v zakone y sudebnoy praktyke): avtoref. dys. ... kand. yuryd. nauk. M., 2007. – S. 8–9.
8. *Syrota S.Y.* Prestuplenyya protyv sotsyalystycheskoy sobstvennosti y bor'ba s nymy. Voronezh, 1968. – S. 14.
9. *Kryher H.A.* Kvalyfykatsyya khyshchenyy sotsyalystycheskoho ymushchestva. M., 1974. – S. 30.
10. *Tenchov E.S.* Problema sobstvennosti v uholovnom prave // Vestnyk Yvanovskoho hosudarstvennoho unyversyteta. 2000. # 4. – S. 13.
11. Uholovnoe pravo Ukrayny: Osobennaya chast' / pod red. M.Y. Bazhanova, V.V. Stashysa, V.Ya. Tatsyya. Kyev, 2003. – S. 154.
12. *Haukhman L.D., Maksymov S.V.* Otvetstvennost' za prestuplenyya protyv sobstvennosti. M., 1997. – S. 18.
13. *Ysmahylov R.* Ob'ekt y predmet krazhy // Zakonnost'. 2001. # 9. – S. 49.
14. *Salaev H.A.* Problemy uholovnoy otvetstvennosti za vymohatel'stvo y puty ykh reshenyya. Mynsk, 2005. – S. 57.
15. *Vladymyrov V.A., Lyapunov Yu.Y.* Otvetstvennost' za korystnye posyahatel'stva na sotsyalystycheskuyu sobstvennost'. M., 1986. – S. 6.
16. *Larychev V.D., Spyrin H.M.* Kommercheskoe moshennychestvo v Rossyy. Sposoby sovershenyya. Metody zashchyty. M., 2001. – S. 57.
17. Vyyavlenye y raskrutye moshennychestva. SPb., 2000. – S. 8.
18. *Lopashenko N.A.* Prestuplenyya protyv sobstvennosti: teoretyko-prykladnoe yssledovanye. M., 2005. – S. 32–33.
19. *Vyshnyakova N.V.* Ob'ekt y predmet prestuplenyy protyv sobstvennosti: avtoref. dys. ... kand. yuryd. nauk. Omsk, 2003. – S. 6–8.
20. *Boytsov A.Y.* Prestuplenyya protyv sobstvennosti. – SPb.: Yurydycheskyy tsentr Press, 2002.

21. *Kyrychko V.M.* Zlochyny u sferi hospodars'koyi diyal'nosti za kryminal'nym kodeksom Ukrainy ta v sudoviy praktytsi: naukovo-praktychnyy komentar / za zah. red. V.Ya. Tatiya. – Kh.: Pravo, 2010.

22. *Plokhova V.Y.* Nenasyl'stvennyye prestuplenyya protyv sobstvennosti: kryminolohycheskaya y pravovaya obosnovannost'. SPb., 2003.

23. *Klepyskiy Y.A.* Systema khozyaystvennykh prestuplenyy. – M., 2005. – S. 54–55.

Дорохіна Ю. Розуміння об'єкта злочинів проти умов власності ринкових відносин

У статті проаналізована проблема об'єкта злочинів, та вказується, що зазначена проблематика – одна з основних у науці кримінального права. Акцентується увага на тому, що від вирішення цього питання залежить обґрунтоване визначення суті злочинів, їх правильна класифікація і відмежування від суміжних суспільно-небезпечних діянь.

Ключові слова: об'єкт злочину, власність, майно.

Дорохіна Ю. Понимания объекта преступлений против условий собственности рыночных отношений

В статье анализируется проблема объекта преступлений, и отмечается, что указанная проблематика – одна из основных в науке уголовного права. Акцентируется внимание на том, что от решения этого вопроса зависит обоснованное определение сущности преступлений, их правильная классификация и отграничение от смежных общественно опасных деяний.

Ключевые слова: объект преступления, собственность, имущество.

Dorokhina I. Understanding the object of crimes against property conditions of market relations

The article covers the main approaches to understanding the property as an object of crimes against the relevant group of criminal offences and specifies that they comprise the following: a) property – is the economic relationship; b) property – is a legal value; c) property – is the economic relationship and right of property.

Keywords: object, property, ownership, right of property, property item, concepts, criminal legal protection, property relations.

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