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ВАЖЛИВІ ПРОБЛЕМИ КРИМІНАЛЬНО-ПРАВОВОЇ ОХОРОНИ ВЛАСНОСТІ В УКРАЇНІ І ДЕЯКИХ ЗАРУБІЖНИХ КРАЇНАХ

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IMPORTANT PROBLEMS OF CRIMINAL LAW PROTECTION OF PROPERTY IN UKRAINE AND SOME FOREIGN COUNTRIES

Formulation of the problem. Globalization of law is defined as “the worldwide progression of transnational legal structures and discourses along the dimensions of extensity, intensity, velocity and impact”. On the same context, the term of global law means “the setting up of the Institute acknowledges the impact of law across national boundaries and the need to deepen inquiry into comparative approaches to law and legal study.” Global law means also that “the law and its practice in a global environment”, or “a multicultural, multinational, and multidisciplinary legal phenomenon finding its roots in international and comparative law and emerging through the international legal practice that was prompted by the globalization of the world economy” [1].

What is “property?” The term is extraordinarily difficult to define. One of America’s foremost property law scholars even asserts that “[t]he question is unanswerable.” The problem arises because the legal meaning of “property” is quite different from the common meaning of the term. The ordinary person defines property as things, while the attorney views property as rights. Most people share an understanding that property means: “things that are owned by persons.” For example, consider the book you are now reading. The book is a “thing.” And if you acquired the book by purchase or gift, you presumably consider it to be “owned” by you. If not, it is probably “owned” by someone else. Under this common usage, the book is “property.” In general, the law defines property as rights among people that concern things. In other words, property consists of a package of legally recognized rights held by one person in relationship to others with respect to something or other object [2].

As said, the — originally factual — notion of possession (factual means possession seen as factual power over a thing), developed into a more complex

notion by accepting the idea that you can possess for another and that you can possess through others. In the classical Roman law and Germanic tradition (including the Anglo-Saxon tradition), the concept of possession starts from the factual (*corpus* or *factum possidendi*) element (a person who possesses for another is also called possessor).

In the modern roman tradition, rather the element of *animus possidendi* (for whom one possesses) is stressed. But all this is rather a question of terminology than of basic differences as to the legal consequences and protection of possession. The modern terminology rather leans again towards the romanistic, but the more far-reaching effects of possession in the germanistic tradition have been adopted, esp. in French and Belgian law. The French (and Belgian) civil code does not follow Savigny's terminology systematically, but it has been interpreted in this way later on (under the influence of Savigny) [3].

In terms of action in the Criminal Code of Ukraine in the new edition from 2001 is still much disputed, conflicting and controversial issues in the science of criminal law and their practical application. In particular, the ongoing debate regarding the form and content of criminal law protection of property in Ukraine and some countries.

Analysis of recent research and publications. The study is based on works of V. Alexandrov, P. Andrushko, N. Bazhanov, P. Levin, G. Tymeyko, E. Rokh, M. Radmanesh and others.

The aim of the article analyze some problems of criminal law protection of property in Ukraine and some foreign countries.

The main results of the study. There are a lot of crimes against property in Criminal Code of Ukraine and other states. All types of criminal offences against property are found in Chapter VI of Criminal Code of Ukraine. Criminal law of Ukraine distinguishes these crimes: theft, robbery, extortion, stealing of power networks, cable communications lines, and related equipment by dismantling or otherwise and others [4].

In Articles 185–198 of the Criminal Code of Ukraine provides accountability for crimes against property of various types. Among the crimes of this system can identify a group of crimes that are committed intentionally by a person convicted of unlawful inversion of another's property for their own benefit or for the benefit of another person. The differences between these crimes are mainly due to different ways of committing a specific crime.

In the United States, the term property crime typically refers to the criminal offenses of burglary, larceny, fraud, embezzlement, forgery, motor vehicle theft, and arson (Inciardi 1998). Other less known property crimes include pick pocketing, counterfeiting, and shoplifting (a type of larceny). Since the range of activities included— in the property crime definition is vast, the term should be viewed as a representation of offenses that describe material-based criminality in society. In other words, the focus is on crimes against property, not persons [5].

The Model Penal Code is not law, but a proposed model, which states can use in developing or revising their statutory codes. The Model Penal Code was published as a "Proposed Official Draft» by the American Law Institute in 1962,

after having undergone thirteen previous revisions and represented the culmination of efforts that had been ongoing since the ALI's inception.

In New York, in the Penal Law reflect property offenses. These offenses span the spectrum according to type of force used, property taken, offender, level of mens rea, etc. The additional articles related to property offenses are: larceny (including extortion), offenses involving computers, welfare fraud, Robbery, other offenses related to theft, forgery and related offenses, offenses involving false written statements, insurance fraud, criminal diversion of prescription medications and prescriptions, frauds on creditors and other frauds [6, p. 26].

Larceny is defined in Article 155 in the Penal Law. Until 1942, New York defined larceny in terms of common law theft: larceny by trespassory taking, trick, embezzlement, or false pretenses. After 1942, the Legislature no longer required that prosecutors prove an underlying theory of larceny (i.e., by trespassory taking, trick embezzlement, or false pretenses).

The Legislature eliminated these distinctions and instead only required the burden to prove the larceny itself regardless of the underlying common law offense.

Criminal law of USA knows burglary. Burglary – often just called breaking and entering – is a crime related to theft. It typically involves someone breaking into a house with intent to commit a crime. To carry out a burglary is to burgle (British English) or burglarize (US English). In Canada, burglary is labeled as “Breaking and Entering” under section 348 of the Criminal Code and is a hybrid offence. The provision of Breaking and Entering consists of “breaking or entering” into or out of a place and either intends to or actually commits an indictable offence.

The state of Massachusetts is somewhat unique in that it does not formally use the term «burglary;» instead, the acts of breaking and entering and any theft that occurs coincident with such entry are treated as separate offenses, with the former being officially denoted «breaking and entering in the nighttime (or daytime, as applicable) with intent to commit a felony (or misdemeanor, as applicable),» and the latter «(grand or petit) larceny from a building,» if any property was indeed stolen. Thus if the perpetrator's intended act after entering the burglarized premises was not a felony, the result can be two different misdemeanor charges rather than a felony count [7].

The Criminal Code of the Republic of Poland responsible for the infringement of the property is set in chapter XXXV, entitled “Crimes against property”[8]. Criminal Code of 1997 defines the term “property benefits”, “property of considerable value” and “property of great value” in the glossary provided by law (Art. 115 §§ 4,5 and 6 of the Criminal Code).

The current Criminal Code of Poland used the term “movable thing.” In the criminal law literature, however, it emphasized that the evaluation of a thing as moving in the criminal law should be based on its physical properties [9].

One of the aims of criminal law is the protection of property. The protection comes in different ways and one of this is through the offence of stealing. The law therefore makes it an offence for you to take a property belonging to another person without the person's consent given freely. The offence of stealing is one that is frowned at in all parts of the world, including Nigeria and constitutes an offence in

all jurisdictions. Apart from being a crime, stealing is an act that is viewed as morally wrong. Thus, both the Criminal Code (CC) and the Penal Code (PC) criminalizes the act of stealing [10].

In the Romanian Criminal Code (1968) The Special Part, the offences against patrimony are to be found in Title III, entitled “Crimes against Patrimony”, structured as follows: Articles: 208-the offence of theft, 209-the offence of aggravated theft, 210-the punishment of theft on complaint, 211-the offence of robbery, 212-the offence of piracy, 213-the offence of embezzlement, 214-the offence of fraudulent management, 215-the offence of fraud, 216-the offence of misappropriation of found property, 217-the offence of destruction, 218-the offence of aggravated destruction, 219-the offence of negligent destruction, 220-the offence of disturbance of possession, 221-the offence of concealment.

The notion of “patrimony” is broader than the notion of “property”, including not only the property, but also all the rights and obligations of economic value [11, p. 39].

In terms of criminal law, “patrimony” term has a different meaning as in civil law. In terms of civil law, the patrimony means all rights and duties of an individual that can have an economical value, that can be measured in money or in other words, all current and future rights and duties of a person [12].

The New Criminal Code of Romania identifies and incriminates several new criminal offenses, answering to a certain extent, the requirements of constantly evolving social needs and values. The following points highlight the main new criminal offences regulated by the New Criminal Code: Crimes against property: breach of trust by defrauding creditors (art. 239); insurance fraud (art. 245); diversion of public tenders (art. 246); financial exploitation of a vulnerable person (art. 247); carrying out financial transactions in a fraudulent manner (art. 250); accepting financial transactions in a fraudulent manner (art. 251) [13].

In Australia, offences relating to property are some of the most complex criminal offences, in large part due to the complex forms and uses of property itself. The common law offence of larceny, which has retained its basic structure since the 1200s, has long been considered by many to have fundamental problems of application to modern circumstances, and these problems were considered so fundamental that in 1968, England and Wales replaced the common law offence with a statutory offence of theft. This revision now forms the basis of property offences in five Australian jurisdictions: the Commonwealth, Victoria, the Australian Capital Territory, South Australia and the Northern Territory [14].

Summary. Thus, an analysis of the criminal legislation of foreign states suggests that the subject of crimes against property recognized not only things in the material sense, but the benefits are not of a material nature: rights, services (utilities, telephone, television, mail, transport and restaurant services and entertainment) documents, information, intellectual property, law requirements and other intangible assets, and the like.

As rightly point modern Polish scientists and current Criminal Code of Poland is not without drawbacks. So, in order to trace the complete system of criminal legal protection of property, it should be noted that some of the crimes

encroaching on property and specified in Chapter XXXV of the Criminal Code, can be attributed to other chapters of the Criminal Code. It is, for example, Art. 290 of the Criminal Code of Poland, which provides for criminal liability for theft as the implementation of cutting down trees in the forest for the purpose of assignment.

Thus, in USA property crime is the illegal taking or damaging of property, including cash and personal belongings. Examples include burglary, theft, robbery, and vandalism. In many instances, the offender acts furtively, and the victim is often not present when the crime occurs. Larceny is the theft or attempted theft of property or cash without using force or illegal entry. An alternate label for this crime is «theft». It is a property crime. Personal larceny is purse snatching and pocket picking. Personal larceny involves the theft or attempted theft of property or cash directly from the victim by stealth but without force or threat of force. It is both a property crime and a personal crime. Robbery is the taking of property or cash directly from a person by force or threat of force. Robbery is both a property crime and a violent crime. Burglary is the unlawful or forcible entry or attempted entry of a structure with the intent to commit an offense therein. This crime usually, but not always, involves theft. It is a property crime. Vandalism is the willful or malicious destroying, defacing, or damaging of property without the consent of the owner.

As a special phenomenon, study of foreign experience has encouraged the flexibility and freedom of movement of people, money and information, ideas and knowledge; it also led, with the help of legal translation, to a decline of the geographical boundaries and achieved desires in resorting to legal or judicial systems of certain countries. For each country to address the shortcomings of its legislation is important to use foreign experience. Thus, a comparative analysis of property crimes can show the presence of some controversy and help for development of logical legal structures of crimes against property.

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Соловійова А.М. Важливі проблеми кримінально-правової охорони власності в Україні і деяких зарубіжних країнах

У статті аналізуються важливі проблеми кримінально-правової охорони власності в Україні та деяких зарубіжних країнах. Досліджуються різні підходи зарубіжних вчених і практиків до вирішення проблем кримінально-правової охорони власності та місце запозичення зарубіжного досвіду при вирішенні таких проблем.

Ключові слова: кримінальне право, злочини проти власності, крадіжка, грабіж.

Соловьева А.Н. Важные проблемы уголовно-правовой охраны собственности в Украине и некоторых зарубежных странах

В статье анализируются важные проблемы уголовно-правовой охраны собственности в Украине и некоторых зарубежных странах. Исследуются различные подходы зарубежных ученых и практиков к решению проблем уголовно-правовой охраны собственности и место заимствования зарубежного опыта при решении таких проблем.

Ключевые слова: уголовное право, преступления против собственности, кража, грабеж.

Soloviova A. important problems of criminal law protection of property in Ukraine and some foreign countries

The article analyzes some of problems of criminal legal protection of property in Ukraine and some foreign countries. In the article investigate different approaches of foreign scholars and practitioners to address the problems of criminal legal protection of property and place the borrowing of foreign experience in solving such problems.

Keywords: Criminal law; Crimes against property; Theft; Robbery.

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