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PECULIARITIES OF CONTENT OF INTENT ELEMENT IN THE COMPONENTS OF CRIME PROVIDED BY ARTICLE 182 OF THE CRIMINAL CODE OF UKRAINE «VIOLATION OF PRIVACY»

Key words: *privacy right, formally defined crime, mental element of crime, guilt, intent element, consequences.*

Articulation of the problem. Mental element of crime should be considered its binding element characterizing mental activity of the perpetrator and reflecting internal mental processes that connect all the elements (components) of the crime and, in fact, determine commission of the specific socially dangerous act.

Guilt, motive and purpose form the body of mental element of crime. This position meets the legal definition of guilt. Guilt is one, although mandatory component of the mental element of crime, the motive and purpose in most bodies of crime play an optional role. It should be noted that the disposition of Article 182 «Violation of Privacy» of the Criminal Code of Ukraine states no direct indication of the guilt form, which stipulates the importance of studying this characteristic in the given components of crime.

Actual researches analysis. Works of such scientists as R. Veresha, A. F. Zielinski, M. J. Korzhansky, V. Kudryavtsev, P. S. Matyshevskyy, V. Stashys, V. Y. Tacia, M. I. Havronyuk are dedicated to the issue of characteristics of the components of mental element and its importance in the process of qualification of crimes. These authors consider the meaning of mental element to be mental attitude of a person either to the criminal action and its consequences, or to all essential elements of offense — object, including the victim and target, characteristics of the objective side of the crime etc.

In legal literature, there is unanimous opinion that offense, according to the disposition of Article 182 of the Criminal Code of Ukraine, is only perpetrated intentionally [1, p. 274, 282; 2, p. 80]. This position is confirmed by other researchers, who say that it is impossible to carry out this crime inadvertently [3, p. 147–148; 4, p. 108]. It appears that committed negligent breach of privacy, for example, by an official, has to be qualified in the presence of circumstances provided by the Articles 367, 425 of the Criminal Code of Ukraine. In certain cases that do not reach the appropriate degree of danger to the public, qualification provided by the Art. 212-5 of Administrative Code of Ukraine is possible.

Certain authors rightly point out that the lack of direct reference to the form of guilt in the law necessitates interpretation of the text of the law [5, p. 80; 6, p. 236–237].

Question about the content of intent element in formally defined crimes raised ample polemic among scientists [7, p. 80; 8, pp. 62–69; 9, pp. 223–232]. It

is important to emphasize that the components of crime provided in the disposition of Part 1 of Article 182 of the Criminal Code of Ukraine, partially in Part 2 of Article 182 of the Criminal Code of Ukraine is defined as formal.

Therefore, **the purpose** of the article is to consider the issues of designing intentional form of guilt in formally defined crimes, particularly studying content of the intent element in the offence provided by the Article 182 of the Criminal Code of Ukraine «Violation of Privacy».

Statement of basic materials. It is generally accepted both in legal science and judicial practice that formally defined crimes can only be committed with direct intent [10, 127-132; 11, p. 368].

We agree with this position and come to the conclusion that crime which components are provided in the disposition of Part 1 of Article 182 of the Criminal Code of Ukraine and Part 2 of Article 182 of the Criminal Code of Ukraine (regarding repetition) can be committed only with direct intent.

Regarding the content of direct intent in the components of crime provided in the disposition of Article 182 of the Criminal Code of Ukraine, the following can be said.

Intellectual point of the intent on actual action side covers subject's understanding of:

1) the fact of information confidentiality — existence of some confidential information about a person, which contain person's secret of private or family life and understanding existence of certain legal relationship regulated by law about non-disclosure of such information;

2) existence of victim, whose specified confidential information is concerned to;

3) illegal collection, storage, use, destruction, distribution or modification of confidential information about a person without his/her consent or violating the order of treatment of such information, prescribed by law, i. e. inadmissibility of committing such acts with this information without legal grounds.

Intellectual point of the intent on understanding social content (value) of actions specified in the disposition of Part 1 of Article 182 of the Criminal Code of Ukraine is understanding that committing any of them, perpetrator realizes that he violates statutory procedure for handling confidential information about a person, aggresses constitutional right of victim's privacy, of protection of personal or family secrets, which causes or creates a real possibility of harm to the person, resulting in illegal collection, storage, use, destruction, distribution, change of confidential information about a person. Typically, subject's awareness of social danger of his actions is clear, as evidenced by the factual circumstances of the case. If person is doesn't realize the factual side of the unlawful action and its socially dangerous nature, it may indicate mental incompetence or absence of intent to commit the crime.

In this case, analyzing of intellectual moment in violation of privacy it is necessary to study the ratio between awareness of the socially dangerous character of the act and its illegality. Herewith some scientists identify the awareness of illegality unlawfulness of the act with awareness of its social danger [12, s. 296,

300]; others — recognize the awareness of illegality as the element of intent [13, p. 81]; others — oppose this interpretation [14, p. 128].

R. V. Veresha, N. A. Hutorova, A. A. Muzyka believe that understanding criminal illegality of the act of should not be confused with understanding of social danger of the crime [15, p. 186; 6, p. 246, 250–251; 16, p. 91]. Other scientists, namely V. O. Navrotskyi, P. L. Fris support the position that contents of the intent element covers the wrongfulness of the act, because ignorance of the law is no excuse [17, p. 277–279; 18, pp. 123–124].

Position of scientists who see the awareness of the illegality of the offense as a mandatory feature of awareness of social danger of the act, and therefore — indispensable intellectual basis of intent, seems to us more correct, but it requires clarification. The awareness of illegality is not awareness of characteristics of specific legal norm that requires guilty person to know «criminal law in detail» [17, p. 277–279], i. e. knowledge of legal qualification of the action (name or article number of the Criminal Code), knowledge of the type and amount of punishment prescribed for its commitment etc. [13, p. 82]. Therefore, for the presence of intent person's understanding (awareness) that appropriate criminal act is illegal *in general* is sufficient.

The difficulty of analyzing subjective side of the offense according to the disposition in Article 182 of the Criminal Code of Ukraine is complicated by the fact that it has a blanket disposition. We share considerations with A. O. Danylevskiyi that awareness of unlawfulness of the act is an integral part of the intellectual moment of intent of the crime with blanket dispositions [11, p. 370].

Consequently, summarizing the above, we reach the conclusion that violating the privacy right, the subject must be aware of:

1) social danger of the act on the legally protected values, i. e. legal relations that develop in the implementation of human rights of their privacy and are aimed at protecting and ensuring the constitutional right of personal and family privacy, including the specific subject of the crime and the victim and mandatory signs of the objective side;

2) understanding of the wrongfulness of one's actions in general without awareness of qualification, type and amount of punishment for their commission. Subject's awareness of these points is obligatory.

It seems that this opinion on the subject's awareness of the wrongfulness of his/her actions is essential for the application of Article 182 of the Criminal Code of Ukraine. It is expected the need to establish subject's understanding of absence lack of any rights of access to the contents of confidential personal information and understanding of illegality of his actions regarding the collection, storage, use, destruction, distribution, change of confidential information about a person without consent or violating the procedure provided by law.

Issue of the prediction of socially dangerous consequences, as a sign of guilt in formally defined crimes remains controversial. According to some researchers — prediction of socially dangerous consequences in the formal components of crime is not a mandatory feature of guilt, because legislator doesn't list effects of

these crimes as an essential characteristic of their components, therefore guilt is determined only on the basis of establishing person's attitude to the socially dangerous act [19, p. 4–6].

We share considerations of R. V. Veresha that legislative formula of guilt in formally defined crimes is constrainedly artificially reduced by ignoring predictions moment, and the moment of desire is transferred from consequences to the action, therefore, content of direct intent is considered to be subject's awareness of social danger of the action or inaction and the desire to commit it [7, p. 144].

Thus, we believe that despite absence of consequences as a mandatory element of crime, stated in the disposition of Part 1 Article 182 of Criminal Code, person's attitude to them, namely — their predictions, appears to be indispensable intellectual basis of the content of direct intent, has to be established and means that the person is aware that its action (actions) will inevitably cause or may cause harm to the rights and legitimate interests of the victim in the field of inviolability of private life. Herewith, consequences has to be understood as negative changes in the object of this crime, expressed in violating the rights of another person's privacy as a direct result of subject's illegal actions on confidential information containing victim's personal or family secrets.

To establish direct intent stating only intellectual signs of guilt is not enough, it requires the presence of volitional moment of guilt, which is formulated by the legislator in the criminal legal formula as «the desire of incurrance of socially dangerous consequences.» According to the traditional approach volitional sign of direct intent consists in the desire of incurrance of socially dangerous consequences concerning material crimes and the desire to commit socially dangerous act itself — concerning formal crimes. Within this approach establishing mental attitude to the socially dangerous consequences in formally defined crimes is needless because attitude to the consequences doesn't arise and can't be arose [20, p. 190–191].

Failure to include in the essential characteristics of the objective aspect of socially dangerous consequences naturally moves volitional element (desire) to the socially dangerous action itself. With this approach, it should be considered that the volitional moment of direct intent committing a violation of privacy as a formally defined crime consists in the desire of the perpetrator with his own purposeful activity to commit any socially dangerous act, which is provided in the disposition of Article 182 of the Criminal Code of Ukraine. Collecting, maintaining, using, destroying, spreading, changing confidential information about a person, guilty person must be aware of the illegality of these actions and wish their occurrence, because it is impossible to do any of these actions, treating it with indifference, without desire, proving the impossibility of committing this offense with indirect intent.

Committing actions, specified in the disposition of Article 182 of the Criminal Code of Ukraine, this desire is aimed at a specific subject, namely confidential information about individual, the content of which is personal or family secret. Therefore, this entails the desire of the perpetrator to commit illegal

actions on confidential information, i. e. collect, store, use, destroy, extend or modify sensitive information about a person without his or her consent or failure to comply with legislation handling such information. In this context Y. I. Demyanenko rightly notes that the volitional aspect of guilty person's actions from the beginning to the end of implementation of criminal intent is characterized by purposeful desire, concentration of willpower on achievement of the set goal [4, p. 128–129].

Assuming that the person committing the violation of privacy foresees socially dangerous consequences, then the willful attitude to the anticipated effects is their desire. This assertion is based on the fact that the volitional feature of direct intent forms person's attitude to the same conditions that are part of the intellectual content of guilt.

According to this approach *volitional moment* of direct intent in the commission of acts, provided in the disposition of Part 1 Article 182 of the Criminal Code of Ukraine consists in the fact that the person wishes occurrence of socially dangerous consequences in the form causing (opportunity) or inevitability of damage to the rights and legitimate interests of the victim in the field of inviolability of private life, which is a direct result of the illegal actions of the subject with sensitive information that contains personal or family secrets of the victim. This means that these consequences are the goal of the subject, focusing his efforts on them, he seeks to achieve them.

Disposition of Part 2 Article 182 of the Criminal Code of Ukraine provides materially defined crime, because in the law (in the text of Part 2 Article 182 of the Criminal Code of Ukraine) there is a direct indication of the consequences. Yet in this case the problem of determining the content of intent element, its volitional and intellectual moment does not arise, because the person's intent covers the occurrence of consequences. Although some issues may arise with intent level.

In our opinion, regarding the components of «Violation of Privacy» crime, if such actions caused substantial harm to legally protected rights, freedoms and interests of individuals (Part 2 Article 182 of the Criminal Code of Ukraine), given act may be committed as wither direct, or with indirect intent. Person may not want, but obviously assume that the act will lead to such effect and, moreover, a person may not want, but obviously assume that these effects will be substantial. However, given the fact that it is not the type of intent, but its form that influences the qualification of crime, the proposal to supplement the title of the article and its disposition with a prescript to the intentional guilt appears plausible and doesn't lose relevance.

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Summary

Thus, conducted on the basis of analyzing the Ukrainian legislation and the theory of criminal law, the research of the signs of content of intent element in the «Violation of Privacy» allowed reaching the following conclusions.

As part of the violation of privacy, guilt in the form of intent is a mandatory feature, which would be appropriate to directly refer to in the title and the disposition of Part 1 and Part 2 Article 182 of the Criminal Code of Ukraine.

The subjective aspect of this crime is characterized by guilt in the form of direct intent — in formally defined crimes (Part 1, Part 2 (repetition) as well as indirect — in materially defined crimes — Part 2 (consequences).

It is noted that realization of unlawfulness of the action is an integral part of the intellectual moment of the given components of crime. Arguments were made that, despite the lack of consequences as a mandatory element of components of crime, provided in the disposition of Part 1 Article 182 of the Criminal Code, person's attitude to them, namely their prediction, is a mandatory intellectual basis of direct intent.