

On the Crime Object

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ABSTRACT

The relevance of the research of this problem is caused by the theoretical and practical needs of a specific concept of the crime object as one of the corpus delicti signs essentially the determining and defining its object and objective side, thereby - the nature of socially dangerous act. Besides, being a facultative sign of corpus delicti, the object of a crime contains in more than a half of the crime components provided by the Special Part of the Criminal Code of the Russian Federation. The purpose of article consists in research of the most problematic issues of an object of a crime and on the basis of critical understanding of the existing definitions of the search term to offer our own definition of the crime object. The basic methods of research were formal-logical, historical, systemic, structural and comparative - legal methods which have allowed to consider the evolution of the views of legal scholars to the search term and to distinguish the criminal legal concept of crime object from the related concepts and from the Criminal Procedure notion of «the injured person. In article the object of a crime is provided not as a thing of a material world, including only inanimate objects but as more difficult phenomenon, the certain material and (or) intellectual substratum characterizing, and sometimes determines the other elements and features of a crime, illegal impact on which or in connection with which (concerning which) a real threat is caused or a real threat of substantial harm to legally protected public relations (personal benefits) is inflicted. The study results are of practical value for teaching staff, which lead lessons and specialized courses of the criminal law cycle, and also have some importance for law enforcers in the legal assessment of the offense, the qualification of crimes, delimitation of object of a crime from methods and tools of its commission.

KEYWORDS

The crime object, the object of commission of crime, signs of the object and objective side of the offense, corpus delicti

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Introduction

The traditional idea of the object of crime as a thing, an element of the material world, on which the impact is carried out in the course of committing a

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crime (Criminal Law Course, 2002), does not fully comply with the provisions of criminal law and modern scientific ideas about it. In fact, similar definitions of a object of a crime can be met also in other authors' works: "concrete material object"(Korzhan'skiy, 1980) or "material objects of the external world "(Naumov, 2007). In these and some other definitions of the search term is noteworthy the highlighting of the materialization the object of crime as the characteristic of its sign.

Except for the things of the material world the object of the offence also applies "intellectual values, while influencing them the offender violates the social relations protected by Criminal Law" (Criminal Law of the Russian Federation of General and Special Parts, 2013).

Indeed, in most cases of commission of crimes their object are such material things of the world in the form of property, money, property, goods, etc. or intellectual values (computer or insider information, state secrets and etc.). However, the "things of the material world" and "intellectual value" does not cover the entire spectrum of possible crimes items; they should not limit our understanding of it. In fact, it is much broader and includes a specific category of persons and the individual one as well as the civilian population as a whole; flora and fauna, the land as a natural object and the object of property relations, a certain type of activity and some services carried out illegally including; atmosphere, water, energy and etc. It is quite obvious that such a quantitative and qualitative variety of crimes objects creates great difficulties in its definition and classification.

Sometimes the wrong idea about the object of the crime leads to erroneous conclusions and findings. So, in one of textbooks on criminal law it is noted that as the object of a crime is made by the "objectively existing material things", no he is had by such acts as slander (Art. 128.1 of the criminal code of Russian Federation), rape (Art. 131 of the criminal code of Russian Federation), desertion (Art. 338 of the criminal code of Russian Federation) and some other (Criminal law of Russia. Parts the General and Special: Textbook, 2015). Inaccurate in its usage note the idea that "objectively existing material things" can only be a object of a crime has led to a wrong conclusion about lack of a object of a crime, in particular, at slander. In our opinion, the slander contains a crime object. It are obviously false data (an intellectual product, a certain kind of information) discrediting the person which distribution, forms the objective party of this corpus delicti. At the same time object of this crime - the public relations developing concerning realization by the person of the right for advantage, honor and reputation (The comment to the Criminal Code of the Russian Federation, 2015).

The above and similar examples show that the modern doctrine of criminal law requires further theoretical understanding and to identify all the crimes object attributes that can give the most complete picture of it. In particular, questions about the object matter of the offense attribute of an object or the objective side of the crime need to be solved, whether a person can be recognized as the object of crime, whether in full measure a criminal procedure concept of "injured person" corresponds to a human object of crime and whether a classification of the object of the crime is possible and by what criterion it can be done, and so on.

Traditionally, the object of the crime is considered in the study section "Object of crime." We believe that no less a crime object should be objected to a comprehensive analysis and study of the section "The objective aspect of the crime" as the crime object as a facultative sign of *corpus delicti*, in the certain situations specified in the criminal law exerts the determining impact not only on object, but also on the objective party of a crime.

Methodological Framework

The methodological basis of this work is represented by the dialectical method of knowledge of social processes and phenomena, the system of studying the object of research character, the relationship and interaction between the crime object with the object and the objective side of the crime, as well as a number of private-scientific methods of knowledge, among which it is necessary to distinguish the formal-logical, historical, system-structural and comparative-legal methods.

Literature Review

Conditionally it can be distinguished three periods of the teaching development on the object of crime: the pre-revolutionary, Soviet and modern.

The pre-revolutionary period is characterized by the fact that the independent doctrine about a object of a crime, *per se*, wasn't. It was considered within object of a crime in works on criminal law of such scientists as (Spasovich, 1863; Kistyakovskiy, 1882; Kolokolov, 1897).

The object of a crime or as it called "object of action" began to be allocated from object of a crime or "object of protection" only at the beginning of the XX century. However, until the mid-twentieth century, the teaching of the object of crime has not received any appreciable development. Only during the Soviet period of development of the criminal legislation, since the beginning of the 50th years of the last century, there were two directions of research of an object of a crime depending on the place taken by it among *corpus delicti* elements. According to scholars such as (Traynin, 1957; Piontkovskiy, 1961; Kurovkin, 1984), the object of the offense refers to the basis of the composition of material elements of the crime. Moreover, it is independent of the object of the crime. At the same time, most experts were of the view that the object of the crime is a sign of the crime object. In this area, different authors as a crime object considered all or individual elements of the structure of the object crime. This view is held (Gertsenzon, 1948; Kudryavtsev, 1951; Helfer, 1969; Glistin, 1979; Korzhanskiy, 1980; Tatsiy, 1988) and a number of others.

The modern period of development of the teaching on the object of crime, conditional counting to which was put by adoption of the Constitution of the Russian Federation (1993) and the Criminal Code of the Russian Federation (1996), marked by a significant reduction in the required attention to the study of the problem. Obviously, in some way affected the active development of this theme in the works of the Soviet period specialists. Basically, their views on the object of crime specialists set out in scientific articles or textbooks. In the latter case - in the section devoted to the study of crime object, thus giving to know that the object of the crime is seen as a sign of the crime object.

However, it should be noted that a number of theses which directly related to the crime subject were carried out in recent years (Vetoshkina, 2001;

Spiridonova, 2002; Vishnyakova, 2003; Bikmurzin, 2005; Yashkov, 2005; Shulga, 2008). Some works that explore individual material objects and products of intellectual activity as a subject of a crime are appeared (Gribunov and Tretyakova, 2013; Govorkova, 2010; Efremova, 2012; Engelhardt, 2014; Avdeev & Avdeeva, 2013); significantly expanded the view of experts about its essence. Many scientists propose to expand the content of the concept of crimes object to include not only material objects in it, but also intangible benefits, products of intellectual activity, the behavior of people and living beings, including humans (Bukalerova, 2007; Gaukhman & Maksimov, 2008; Bezverkhov, 2011; Ulezko, 2013) and others.

Considering the above, it can be concluded that the expansion of the content of the crimes object is the main trend of the modern doctrine of the Russian Criminal Law in this direction.

Results

The conducted research demonstrates that in such crime components as slander, misleading information, failure to provide information to citizens, infringement of copyright, and some others, the subject of crime, as it were, immanent "woven into" the fabric of the crime object. It can be said that the relevant characteristics (properties) of the object crime, regardless of their material or intellectual kind largely dictate the nature, and thus the essence of the crime as a whole, predetermining the object of a criminal assault.

If the relevant features stipulated in the criminal law does not have the object of the crime, which carried out the impact or over which (for which) you may experience the social relations under the criminal law, then, accordingly, there is no transgression of the object. In all such cases, the subject of crime advocates structural features characterizing the object of a criminal assault.

For example, the crime, responsibility for the commission of which is provided by art. 243 of the Criminal Code, will only take place if destroyed or damaged object of cultural heritage (monuments of history and culture) of the peoples of the Russian Federation, included in the state register of cultural heritage (historical and cultural monuments) of the Russian Federation, the revealed object of cultural heritage, natural complex, the object taken under state protection or cultural value.

In this case all listed objects of cultural heritage (historical and cultural monuments) included in the corresponding unified state register, the revealed object of cultural heritage, a natural complex, the object taken under protection of the state or cultural value act as alternative and obligatory objects of this corpus delicti.

The absence of these signs listed items in the disposition of the criminal law, preclude the presence of the object of crime and the criminal nature of the act deprives the species. It is fair to say that in this case on the object of crime depends, to be or not to be the object of the crime. For items of such crimes it would be correctly to recognize not just their constructive role, and the determining (Gribunov and Tretyakova, 2013) value.

In particular, it is necessary to refer socially dangerous acts to these crimes which connected with: the criminal trafficking in narcotics, psychotropic substances or their analogs, precursors, and also a turn of the plants containing drugs or psychotropic substances, or their parts containing drugs or psychotropic

substances (the Art-s 228-228.4 of the Criminal Code of the RF); illicit trafficking of potent or toxic substances for the purpose of sales (Art. 234 of the Criminal Code.); the illicit traffic of potentially dangerous new psychoactive substances, the circulation of which is prohibited in the Russian Federation (Art. 234.1 of the Criminal Code.); the counterfeit, substandard and unregistered medicines, medical products and trafficking in counterfeit dietary supplements (Art. 238.1 of the Criminal Code), as well as some other crimes.

The analysis shows that "materialization" of a crime object is a characteristic feature of the overwhelming majority of its definitions. However, it should be noted that it is not the only feature that determines the form of its expression, its, so to speak, a formal entity. The subject of the crime may be a product of purely intellectual content. The Criminal Code contains more than a dozen such crimes.

For example, the spread of false information about a person or information about the private life of persons, constituting his personal or family secret, without his consent (Articles 128.1 and 137 of the Criminal Code); the copyright infringement (Art. 146 of the Criminal Code), the creation of malicious computer programs (Art. 273 of the Criminal Code), the disclosure of state secrets (Art. 283 of the Criminal Code), the confidentiality of adoption (adoption) (art. 155 of the Criminal Code), public calls to terrorist activity or public justification of terrorism (Art. 205.2 of the Criminal Code) and others.

The subject of these crimes is extremely intelligent activities of certain persons who may acquire material form as the corresponding malware placed on an electronic medium (floppy disk, optical and hard drive, USB flash drive), and may remain, as it were, a "thing in itself", in consciousness of its creator, but rather actively used by him unlawfully. The same thing can be said about public calls to terrorist activity or public justification of terrorism, which can be reflected, for example, in promotional leaflets or transmitted orally.

Thus, not in all cases the subject of a crime represents a material substratum or a thing. In this plan fairly statements that "in modern conditions materiality as a physical sign of a subject of a crime has lost the value" (Vinokurov, 2011).

Definition of a subject of a crime only in the form of a thing of a material world is represented wrong and from that point of view that it doesn't include and according to the contents can't include living beings including the person. If to assume as a basis a popular belief in a crime subject as things of a material world, then as from the etymological point of view the word "thing" excludes any living beings (he is interpreted as "the inanimate object belonging to a personal estate ... or the subject of the physical world and able to be someone's property" and in this case, any living creatures including man, cannot be considered as offenses subject.

Meanwhile, a similar view about the subject of the crime is not consistent with the actual situation and a number of criminal law provisions. So, it is hardly possible to argue about the fact that the subject of social relations provided such crimes as "Cruelty to animals" (Art. 245 of the Criminal Code), "Violation of the rules of fisheries protection" (Art. 257 of the Criminal Code), "Illegal hunting" (Art. 258 of the Criminal Code), are living beings. Therefore, it would be too narrow and incorrect in essence determine the subject of the crime only as a thing of the material world.

In our opinion, the word "thing" should be replaced by "substrate" - "what is the basis of what some phenomena, states," since the subject of the offense constitutes a material or intellectual basis of the crime, first of all, defining its object. An example of the fact that the subject of the crime, in many cases is the main stem, to some extent, the very essence of a criminal assault, defining its object and, thus, the nature of all crimes can serve up a lot of crime, in particular, the compositions of defamation (Art. 128.1 of the Criminal Code) and disclosure of state secrets (Art. 283 of the Criminal Code). In this and in another case, the subject of the crime is certain data (information) - a product of intellectual labor.

But the disclosure of false information about a specific person and the disclosure of state secrets significantly alter the objects of these crimes, affect the nature and degree of public danger to a large extent that a criminal procedure point of view expressed in the attribution of slander to the so-called private prosecution and disclosure state secrets - to the public prosecution cases with all ensuing legal consequences.

It must be recognized that in the elements of a crime, where the crime object acts as a constructive, and sometimes determines its sign, it is the basis of the object of the crime, and sometimes its objective side. Moreover, it can be both animate and inanimate. This approach provides an opportunity to recognize living beings not subject but the object of social relations that are formed on the illegal influence on them or in connection with them (about it).

In terms of the above merit the question of whether the subject under consideration by the crime of the subject an individual, a person. In our view, the answer should certainly be positive, unless, of course, if we do not determine the subject of the offense solely as a thing of the material world. It is this untrue stereotype promoted and led to the fact that in the crimes against the person it is not customary to distinguish the subject of crimes. But without it, in fact, impossible to do in crimes against the person, where there is a physical effect on the human body at the assault on his life, health, freedom, sexual inviolability or sexual freedom.

In these situations, instead of the criminal law concept of "subject of a crime" it is decided to apply the criminal procedure "injured person", that is the person to whom by the crime suffered physical, material or moral damage (Art. 42 Code of Criminal Procedure). In our opinion, such a substitution is not quite correct, although, admittedly, the word "victim" is widely used in the criminal law.

The fact is that is not always the content of the term "injured person" in its criminal law and criminal procedure have the same meanings. Thus in the murder of a direct impact is carried out on the killed man's body, which, in essence, is the subject of the crime, its immediate victim, but from the standpoint of criminal procedure regulations and enforcement practices as a victim recognized one of the close relatives of the killed. If theft or embezzlement the subject is a property on which there is a direct impact, that is a stolen or appropriation property, and the victims are persons who caused the relevant damage.

Criminal law generally uses the term "victim" in the narrow sense of the word, as a crime victim or victim (Yani, 1995) the person on whose legally protected goods and interests - life, health, honor, dignity, business reputation,

social, political, property and other rights and freedoms was directed a crime. Obviously, in this case it can only talk about the so-called direct victim of a crime. In the broad sense of the word "victim of crime" or the mediated victim are all those persons who are entitled to represent the interests of the direct victim, for example, killed or kidnapped juvenile person.

Use of the term "victim of crime" in the criminal law seems preferable to us than the "injured person". First of all, because it reflects more accurately the essence of the crime problem in relation to the subject of the person (natural or legal) to whom the crime substantial harm was caused directly. In addition, in connection with the active development of Victimology – a criminology section, studying the behavior of the victim, it can be considered an established criminological term. In addition, this term is widely used in international legal documents.

An example is the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly Resolution of the number 40/34 of 29 November 1985, and the Guidelines on Justice in matters involving child victims and witnesses of crime, Convention on the compensation of victims of violent crimes, the Framework decision of 15 March 2001 on the standing of victims in criminal proceedings and others.

Exploring the subject of a crime, it should be noted its functional heterogeneity. It can be a sign that characterizes the object and the objective side of the crime. The matter is that at impact on a subject of a crime, at it's, so to speak, static character, it is a sign of object of a crime, one may say, acts as traditionally accepted idea of a crime subject. To a certain extent is a crime subject in own or true meaning of this word. For example, it takes place at plunder, damage or destruction of a subject of a crime. When the subject of a crime has certain dynamics attached to it (manufacturing, production, transfer, distribution, transportation, transfer, etc.), and even a means of committing a crime, in this case about it would be right to say both about the subject of the crime the essence of which is not identical to the subject of crime.

This is due to the fact that the object of the commission of the crime is a sign of the objective side of the offense. Examples are the subjects of bribery and commercial bribery, that "in addition with money, securities, other assets, may be illegal provision of property-related services and the provision of property rights" (the Resolution of the Plenum of the Supreme Court of Justice of 9 July 2013 number 24 (in Ed. by 03/12/2013 number 33) "On judicial practice in cases of bribery and others corruption crimes" (paragraph 9) // SPS Consultant Plus). Thus, under the unlawful provision of property-related services is defined as "the provision of an official as a bribe of any property benefit, including liberation from property liabilities (for example, a loan with a low interest rate for the use of them free or at a reduced cost of providing travel packages, repair of apartments, the construction of villas, transfer of assets, in particular vehicles, for its temporary use, forgiveness of a debt or performance of obligations before other persons) »

In such crimes compositions such as the illegal manufacture of weapons, including modifications, or repair of firearms, its basic parts (with the exception of firearms restricted lesions), as well as the illegal manufacture of ammunition (Art. 223 of the Criminal Code of the RF.); illegal acquisition, storage, transportation, manufacturing, processing of narcotic drugs, psychotropic

substances or their analogues, as well as the illegal acquisition, storage, transportation of plants containing narcotic drugs or psychotropic substances, or their parts containing narcotic drugs or psychotropic substances (Art. 228 of the Criminal Code), as well as their illegal production, sale or transfer (Art. 228.1 of the Criminal Code), first of all, we should speak about the subject of the offense.

At the same time, we must bear in mind that in some cases covered by criminal law, the subject of the commission of the crime as a sign of the objective side of the crime can serve as the subject of the crime and as a sign of its object at the same time. The latter, i.e. the object of the crime, as it is known, is the main criterion for the crime of belonging to a particular race (mind). This example is the best evidence of this. Production of weapons is in one case, and production of drugs is in the other one. The process of manufacturing of both significantly different from each other and the specific subjects of the crime involving the use and application of specific methods, skills and techniques of their manufacturing is certainly a sign of the objective side of the offense. At the same time, the specificity of the manufacture objects with a focus on these items of socially dangerous acts, and not the process of their production, in fact, are the determining factors of the objects of these crimes.

In this case the subject of a crime is the sign of his object significantly defining essence of the last. In the first case at production of the weapon - the object is public safety; in the second in production of drugs is a health of the population.

In view of the above, we can formulate the definition of the search term. In our view, the object of the crime - is material and (or) the intellectual substrate that includes both the victim of the crime of an individual, characterizing, and sometimes determines some elements (signs) of the crime, the illegal action on which or for which (according to, about which) is caused a real threat of substantial harm to legally protected public relations (personal benefits).

Discussions

Studying of criminal and legal literature allows stating noticeable limitation, and on some issues, even lack of the special researches devoted to complex research of problems of a subject of a crime taking into account modern provisions of the criminal legislation and requirements of law-enforcement practice. The unified, the most acceptable definition of the subject of crimes which would reflect their characteristic feature is not developed. Still controversial is the question of the autonomy of the subject of crime as a symptom of crime in general or of its belonging to the attribute defining the object or objective aspect of the crime. Researches of such kinds of a subject of a crime as property benefit, rendering the types of service provided by the criminal law, different types of energy resources and raw materials (electric, thermal, atomic energy, oil, gas, etc.) are very limited in criminal and legal literature.

At the same time, it must be stressed that if in previous years the subject of a crime considered only as an indication of its object by most experts (Piontkovskiy, 1961; Kurinov, 1984), or the objective side of the crime (Glistin, 1979; Korzhansky, 1980; Tatsiy, 1988), the tendency to expansion of volume of concept of a subject of a crime is noted now (Bukalerova, 2007; Gaukhman & Maksimov, 2008; Bezverkhov 2011; Ulezko 2013).

Such approach to research of maintenance of a subject of a crime imposes us as it gives the chance to look much more widely at that substrate on the basis of the criminal phenomenon, which, in fact, determines the objective evidence of the crime, and not only in some of its elements - the object or objective side. For example, if in plunder of firearms the last is the crime subject, first of all, characterizing the object of a crime, then at production of the same weapon, a crime subject is a sign of the objective side as in this case the subject of a crime is a product of the process, the mechanism of its creation, and it is also external manifestation of socially dangerous act, in other words, the objective side of the considered crime the end result of which is to obtain the desired object - weapons.

In the latter case, the subject of the crime and at the same time serves as an indication of the object of crime, since it directly affects the specific form protected by criminal legislation of public relations, and through the object affects on the qualification of the crime. Thus, the production of weapons is a crime against public security, responsible for the commission of which is provided by art. 223 of the Criminal Code and, accordingly, it are placed in chapter 24 of the Criminal Code as the illicit manufacture of narcotic drugs, psychotropic substances or their analogues (Article 228 of the Criminal Code.) - A crime against public health, contained in Chapter 25 of the Criminal Code.

Analysis of criminal law shows that crime objects can be as having physical form substrates, and not having it (Articles 178, 252 of the Criminal Code), reified information and information that is not fixed in a tangible medium (Articles 138, 155, 185.6, 310 of the Criminal Code). In the modern information age the products of intellectual activity are of great importance as a crime subject. It is they, rather than their physical media, are the subject of such crimes as "Violation of copyright and related rights" (Art. 146 of the Criminal Code), "Breach of inventive and patent rights" (Art. 147 of the Criminal Code), a number of crimes committed in the sphere of computer information (Articles 272-274 of the Criminal Code) and etc. Moreover, presently, considering a certain use of electronic money - bitcoins, they may be recognized as the subject of fraudulent banking transactions carried out through the use of modern computer technology.

Thus, the analysis of the criminal law literature allowed concluding that the complex and comprehensive study of the subject of crime as one of the important features of a crime have been neglected. Often still, especially in the academic literature, the subject of the crime is defined as a thing of the material world, as an object of direct exposure to infringement upon the appropriate public relations or personal benefits, protected by criminal law. At the same time, the theoretical analysis of literature and criminal law indicate that the true chosen research technique allows much broader introduce the subject of crime, not limiting its role only by a sign of the object of the crime and not added to it only material things of the world.

Conclusion

It is recognized that the criminal law and the modern doctrinal views on the subject of crime corresponds to its wider interpretation, which includes, along with the material, and its intellectual substrate, as well as a victim of crime,

illegal influence on that either (about which) is caused a real threat of causing substantial harm to legally protected public relations (personal benefits).

In the course of research there were new questions and problems which are need in decision. It is necessary to continue researches on identification of the place and a role of a subject of a crime among elements and signs of corpus delicti, taking into account modern requirements of law-enforcement practice and the criminal legislation, re-evaluate the features and properties of the object crime, especially in considering of a crime subject as an indication of the objective side of a socially dangerous act.

Recommendations

Materials of this article can be useful as basic data to the experts investigating problems of a subject of a crime and corpus delicti in general. To a certain extent they may be used to improve existing criminal law and law enforcement.

The research materials can be demanded in the educational process: in the writing of textbooks, carrying out a lecture and practical training on appropriate sections of the General and Special parts of criminal law, carrying out special courses among bachelors and masters, and also specialists of law-enforcement system, passing professional retraining.

Disclosure statement

No potential conflict of interest was reported by the authors.

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