

CONCERNING THE CONCEPT OF CRIMINAL OFFENSE AND ITS TYPES

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Abstract

The article proves the necessity of rethinking one of the dogmas of criminal law - the concept of a criminal offense. A new look at the essence and meaning of this phenomenon and its types is offered with appropriate arguments. The authors propose to change the angle of view on the concept of a criminal offense, transferring it from the public plane to a private one and to consider such an offense mainly as the cause of a private legal conflict between the person who committed the criminal and illegal act and the victim. Such a proposal is primarily due to the expansion of the arsenal of means of criminal-legal response to the commission of a criminal offense compared to the past, when punishment was considered to be almost the only such means. Therefore, the concept of the criminal offense itself must evolve in the same way. Such an approach will contribute to the restoration of a sense of social justice between the parties to the conflict, the saving of human, material and procedural resources when conducting criminal pre-trial/trial proceedings, and, accordingly, will relieve the judicial system, leaving only those conflicts that could not be resolved by extrajudicial methods. It is proposed to revise the content of the concept of a criminal offense, excluding from it such a feature as «guilt», «guilt» and considering it as an optional feature of this phenomenon. According to certain criteria, criminal offenses have been classified, which has not only theoretical, but also practical significance.

Keywords: criminal law; criminal offense; types of criminal offense; criminal liability; application of criminal liability.

1. Introduction

The concept of a criminal offense, which has recently practically displaced the concept of a crime from the criminal law lexicon, is one of the main categories of criminal law, along with such as criminal liability, punishment, etc. Certain aspects of criminal offense research are highlighted in the publications of P. Andrushko, M. Bazhanov, Y. Baulin, P. Berzin, V. Burdin, R. Veresha, Y. Grodetskyi, O. Kruglov, O. Mykytchyk, V. Navrotskyi, M. Panov, I. Sydoruk and other domestic forensic scientists. It should be noted that most of them were committed during the period of dominance in criminal law of only one type of such offense - a crime. There is no comprehensive monographic study of criminal offenses in Ukraine.

The current understanding of the criminal offense is based on the general

theoretical understanding of the offense as the exclusively guilty non-fulfilment of the duty assigned to the subject, the violation of the right of prohibition defined by the norm, which causes damage to certain values or creates a danger of causing it (Skakun, 2001; Goosebumps, 2016). For such understanding the essence of the offense, firstly, a prominent place in its content is given to the fact of violation of the norms of objective law, not the subjective rights of the victim (hereinafter - the victim)², and as a result, the offense is perceived as a conflict between the offender and the law, and not with the victim or his legal representative, recognized as a victim in accordance with the established procedure; secondly, only an act committed in the presence of guilt is considered a crime.

One of the authors of this article put forward a hypothesis regarding the expediency of rethinking the above-mentioned aspects of the essence of a criminal offense. Regarding the first of them, it was proposed to shift the emphasis from the offender's conflict with the law to his conflict with the victim (Dudorov, 2014). In other words, it was emphasized the expediency of focusing attention on the violation of the subjective right and only then on the objective right. At the same time, it was noted that the state usually «appropriates» a criminal conflict without proper grounds and settles it by punishing one of its participants, which has proven to be an insufficiently effective method of regulating criminal-legal relations, since it does not always satisfy the legitimate interests of the participants in such a conflict, and most importantly, it does not contribute to ensuring social peace in society. Regarding the second of the above-mentioned aspects of the understanding of a criminal offense, doubts have been expressed regarding the recognition of an exclusively culpable act as a criminal offense, while the Criminal Code provides for criminal-legal means of responding to the facts of causing damage even in the absence of guilt (Kuts, 2023).

The above-mentioned circumstances and the need for further research into the phenomenon of criminal offense determined the relevance of the proposed article, the purpose of which is to substantiate the author's position regarding the essence, content and types of criminal offense.

Material and Methods

The material and method section of this study includes a rigorous approach to understanding and redefining the concept of a criminal offense. We applied a series of both general and specialized scientific methods to analyze existing definitions, evaluate their limitations, and propose a redefined perspective on criminal offenses. A descriptive method was utilized to clarify parts of the cited legislative provisions and the views of legal scholars, while analytical methods were applied to evaluate existing definitions and identify gaps. Synthesis allowed us to integrate these insights and create a new model that reflects the current needs of criminal law reform.

Among special legal methods, specific sociological research was used to process and extract necessary information regarding criminal offenses as a legal phenomenon. Content analysis and comparative legal methods were instrumental in distinguishing common features in jurists' definitions and aligning them with the evolving perspectives on criminal law. The formal-legal method was applied to analyze legislative structures, examining key provisions within the current criminal code and exploring their adequacy in addressing contemporary issues. This multi-method approach allowed us to provide a structured yet innovative view on the concept of a criminal offense. We have proposed that this concept be viewed not merely as a conflict with the state or a violation of legal prohibitions but as a private legal conflict between the offender and the victim, with a significant emphasis on restoring justice and providing adequate compensation to the victim.

¹ We are not supporters of the use of the term «victim» in criminal law, considering it exclusively procedural.

By examining alternative legal responses and focusing on subjective rights rather than purely objective prohibitions, this research redefines criminal offenses in a way that balances public safety with the legitimate interests of individuals involved in criminal conflicts.

Results and Discussion

In the process of finding an answer to the question about the essence and content of a criminal offense, it turns out that it is a rather complex criminal-legal phenomenon that is difficult to define unambiguously. In educational publications devoted to the main aspects of the theory of criminal law, as well as in most special publications on the topic, a socially dangerous, illegal, culpable act, provided for by the criminal code, committed by the subject of a criminal offense is recognized as a criminal offense (Tatsia et al., 2020; Panov, 2019; Vasiliev et al., 2020; Navrotsky, 2013; Veresha, 2024; Grodetskyi, 2022; Kruglov, 2021; Sydoruk, 2022). Its main features are public danger, criminal illegality of an act, guilt, commission of an act by the subject of a criminal offense. In such a situation, the cases of causing even serious damage in the absence of the subject's fault or due to his/her youth, lack of judgment and some other circumstances are not recognized as criminal offenses. The question arises, does this correspond to the natural and legal principles of the functioning of society? Answers to it within traditional, mostly dogmatic ideas about criminal-legal reality and its regulation, which has received the name «criminal-legal regulation» are to be sought in vain. However, sometimes there are slightly different definitions of a criminal offense. O. Mykytchyk (2023) offers a definition that differs from the previous ones and in some respects corresponds to the ideas about the criminal offense of the authors of this article. He claims that a criminal offense can be defined as a type of antisocial illegal behavior that is directed against the interests of society, that is, universal human values, and is expressed in actions that cause significant harm to a person in the system of social relations, for which the criminal law provides punishment. As we can see, this definition does not indicate the sign of guilt and the subject of a criminal offense in its legal sense, reflected in the article 18 of the Criminal Code of Ukraine (2024), that is, he does not consider them mandatory signs of a criminal offense.

We are also convinced that, from the point of view of natural law, it does not matter to the victim whether, with or without fault, significant damage has been caused to their legitimate interests, for example, property has been destroyed or damaged, life has been endangered, bodily harm has been caused, etc. The main thing for them is to receive compensation for the damage caused and to satisfy their sense of justice. By the way, this is what the victim wants, but also the public. Perhaps it is precisely because of the latter cases of innocent harm that they fell into the sphere of criminal law regulation. Compensation for property or other physical damage alone is successfully achieved not by criminal law, but, by the way, civil law. But in order to satisfy the public sense of justice, more powerful socio-legal «levers» are needed, which are criminal-legal means of response. At the same time, it is important to choose and apply them correctly. Domestic anti-criminal legislation provides such means of response, and not only for guilty, but also for innocent violations of the rights of the victims.

The current inclusion of guilt among the mandatory elements of a criminal offense, among other things, is explained by the existing until recently tradition of equating all means of criminal legal response with criminal responsibility in the form of punishment, which can really be applied only to a person who acted in the presence of guilt in the committed act. However, awareness of the fact that criminal responsibility is not the only means of criminal legal response, that the law also provides for other means, allows us to assume that a criminal offense is not only culpably causing significant damage to the legitimate interests of the victim, but also causing such damage in the absence of fault.

Based on the achievements of world and domestic humanitarian thought, Ukrainian criminal law theory takes the first steps in the direction of naturalization of criminal law, that is, bringing its norms into line with the norms of natural law (Kostenko, 2008), global bioethics and modern humanitarian standards (Trynova, 2019). Important aspects of this process are the distribution of criminal offenses, and, accordingly, of offenders, into potential and actual recognition as a criminal offense not only of a crime and a misdemeanor, but also of other cases of causing significant harm provided for by the criminal law, including in the absence of the subject's fault. In addition, it should be noted that the concepts of potential and actual criminal responsibility have long been known to criminal law doctrine and practice (Baulin, 2004). It is quite permissible to talk about potential and real other criminal legal means of response. But all of them are derived from potential and actual criminal offenses

Taking into account the above, we offer the following definition of a criminal offense. This is an act provided for by the Criminal Code of Ukraine, which creates a conflict due to one of its participants causing significant damage to another or creating a danger of such damage, the legal means of solving which is the application of criminal responsibility or other criminal legal means of response.

The given definition is a kind of theoretical model that includes both potential and actual criminal offenses. Everything depends on how to understand the term «application» in it, because it reflects both the process and the corresponding result. In the first case, we have a definition of a potential criminal offense, and in the second, when certain criminal legal means have already been applied to the offender by a court decision, a real criminal offense arises.

Our proposed definition, firstly, shifts the emphasis from the offender's conflict with the law to his conflict with the victim, thus focusing attention on the interests of the victim, not the state; secondly, it allows cases of causing significant damage in the absence of the subject's fault to be classified as criminal offenses provided for by the Criminal Code; thirdly, it emphasizes that there is not only criminal responsibility, but also other criminal-legal means of response to resolve this conflict; fourth, certifies the presence of potential and actual criminal offenses.

The specified understanding of a criminal offense and its division into potential and real allows to single out the following mandatory signs that make up the content of the first of them: 1) the person's commission of a socially dangerous act; 2) the specified actions causing significant damage or creating a real danger of such damage; 3) the occurrence of a conflict between the subject of a criminal offense or his legal representative and the victim due to this; 4) determination of the criminal offense by the relevant provisions of the Criminal Code; 5) the presence in the law of material and legal means of responding to the commission of an act, which at the same time are means of resolving such a conflict, and itself – of criminal liability or other criminal legal means.

The content of the second type of criminal offense, real, in addition to the above, includes one more mandatory feature - the presence of a conviction or other procedural decision of the court that has acquired legal force on the recognition of the corresponding act as a criminal offense. This feature can be called procedural.

Like any other phenomenon of objective reality, a criminal offense has forms of its existence, which makes it possible to further divide them into appropriate types according to another criterion. Until recently, the problem of dividing criminal offenses into types did not exist, since crime was recognized as their only form. All other harmful acts provided by the criminal law were not considered as criminal offenses mainly because of the existing general theoretical approach to solving this problem.

In fact, in view of the above-defined signs of a criminal offense that correspond to the current criminal legislation, criminal offenses should be considered not only crimes and criminal misdemeanors, as defined in Art. 11 of the Criminal Code, but also the so-

called excesses of minors and those without judgment, as well as harmful actions that do not «deserve» criminal liability, due to which the legislator excludes the possibility of its application (case) or allows to refuse its application (so-called exemption from criminal liability).

The legislative definition of the last method of responding to the commission of a criminal offense as «exemption» from responsibility cannot be recognized as correct, as it does not accurately reflect the essence and content of such a response. To be freed, obviously, is possible only from what has already come. In the situation under consideration, responsibility has not yet accrued, so there is nothing to dismiss yet. The means of criminal legal response, named in the law as exemption from criminal liability, is actually a refusal from its application (Kuts, 2023).

The above also draws attention to the fact that there are doubts about the expediency of classifying an act, to which the state responds by refusing to apply criminal liability, to the number of crimes or criminal misdemeanors. However, the vast majority of criminologists are convinced of the opposite, while forgetting that in such a situation there is no such mandatory sign of a crime or a misdemeanor as the conviction of the subject by a final court verdict. Therefore, when the application of criminal liability is refused, the crime or misdemeanor is transformed into another form of criminal offense, which can claim its independent type, which is not yet distinguished and independently investigated by the criminal law doctrine.

In theory and practice, the essence of an unfinished criminal act provided for by the Special Part of the Criminal Code, in respect of which there was a voluntary refusal to bring it to an end, is not defined equally in theory and practice. Some consider such an act to be an unfinished crime or a misdemeanor, and non-responsibility for its commission is an exemption from criminal liability (Baulin, 2004). Others believe that such an act is not a criminal offense at all, and therefore criminal liability for its commission is excluded (Matyshevskiy, 2001).

We propose a third position, which consists in recognizing such an act as an independent type of criminal offense, different from a crime or a criminal misdemeanor. First, in a real pending criminal offense, there is no such mandatory feature of the crime or misdemeanor as the conviction of the subject by a final judgment of the court. Secondly, the legislative definition of the criminal consequences of such an act (Part 2 of Article 17 of the Criminal Code) suggests that it does not require exemption from responsibility, but something else. Therefore, there are reasons to recognize such an act as a separate type of criminal offense. The form of response to it should be the exclusion of criminal responsibility.

It is debatable whether the facts of causing significant harm or creating a corresponding danger in the state of the so-called incident, as well as minors or incompetents, are considered criminal offenses. In the absence of the slightest doubt that such facts cannot be recognized as a crime or a criminal misdemeanor, it is appropriate to consider them as a separate type of criminal offense, as they have all the necessary features of the latter.

The division of criminal offenses into types, like any other classification of phenomena, can be considered justified only if it is carried out according to some single criterion. So, above, we divided offenses into potential and real ones according to such a criterion as the absence or presence of the fact of committing an illegal act and the criminal-legal reaction to it. In the presence or absence of guilt at the time of their commission, criminal offenses are divided into «guilty» and «innocent», and the first of them, according to the form of guilt, into intentional and careless.

The division of criminal offenses into types according to such a criterion as the form of criminal-legal response to their commission is of theoretical interest and practical importance. According to the specified criterion, all criminal offenses are divided into two types: 1) those that entail criminal liability; 2) those that entail the application of

other criminal legal means. In turn, each of these types can be divided into subtypes (types) depending on either the forms of criminal liability (the first type) or the forms of other criminal legal means (the second type).

The current Criminal Code of Ukraine includes crimes and misdemeanors among first-degree criminal offenses (those that attract criminal liability), and the latter since 2018.

The second type of criminal offenses (those that involve the use of other criminal legal means) mainly represent the following cases: 1) committing acts provided for by the Special Part of the Criminal Code of Ukraine by unconvinced or minors; 2) committing acts provided for by the Special Part of the Criminal Code of Ukraine in the state of a so-called incident; 3) committing the acts provided for by the Special Part of the Criminal Code of Ukraine under circumstances that require or allow the so-called exemption from criminal liability, but in fact - the refusal of its application; 4) voluntary cessation of preparations or attempts to commit acts provided for by the Special Part of the Criminal Code of Ukraine.

The proposed classification is primarily cognitive. It simplifies the process of learning about this part of criminal law reality, as it provides a more complete picture of the object of knowledge. Such a classification is not devoid of practical meaning, including criminal law significance. Attribution of the offense to one or another type determines the expediency and possibility/impossibility of applying the appropriate form of criminal legal response to its subject. In this regard, we note that the domestic legislator made a regrettable mistake by establishing criminal liability as a criminal legal means of responding to criminal misdemeanors and also in the form of punishment. Under such circumstances, the meaning of distinguishing a criminal misdemeanor is completely lost. Indeed, if the punishment is a consequence of both the crime and the misdemeanor, why separate them. The separation of a misdemeanor in national law will appear as rational only if the means of response to it is not liability, but other criminal legal means in the form of criminal penalties, which we have repeatedly informed the relevant expert environment (Trynova & Kuts, 2019; Kuts, 2022). Unfortunately, the latter does not respond to our calls, as evidenced, in particular, by the draft of the new Criminal Code of Ukraine (2024), which proposes to maintain criminal liability for committing a criminal misdemeanor.

5. Conclusions

In light of the evolving perspective on criminal offenses, this article emphasizes the necessity of reframing criminal offense concepts, shifting from a state-centric to a victim-centric approach. Traditional views have long prioritized the violation of public order and state norms, treating criminal offenses as conflicts between an offender and the law. However, this perspective often overlooks the individual victim's subjective rights, leading to limited effectiveness in ensuring justice and social harmony. By viewing a criminal offense primarily as a private conflict, it acknowledges the victim's interests and their need for redress, which may extend beyond traditional punitive measures to restorative ones, enhancing the victim's sense of justice.

Furthermore, the traditional reliance on «guilt» as a defining characteristic of a criminal offense is questioned. Modern criminal law increasingly recognizes situations where significant harm may be caused even without direct fault. This shift enables criminal law to address a wider range of harmful actions, expanding the scope of legal responses beyond mere punishment. This perspective aligns with a broader humanitarian approach, integrating principles from natural law and global bioethical standards, which view criminal offenses as diverse in nature—ranging from culpable to non-culpable harms.

The proposed above understanding of the essence and content of a criminal offense as well as its types is a kind of model that includes both potential and actual

criminal offenses, which can be used in the theoretical knowledge of this phenomenon, its legislative consolidation and practical application.

In conclusion, redefining criminal offenses through the lens of conflict between individuals, rather than exclusively between the offender and the state, aligns criminal justice more closely with the needs of society and its victims. This paradigm shift advocates for an adaptive criminal law that balances justice, resource efficiency, and societal harmony by employing a diverse toolkit of legal responses, thereby enriching the criminal justice system and enhancing its capacity to resolve conflicts constructively.

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