

SELECTED ISSUES OF RESPONSIBILITY FOR CRIMINAL OFFENCES AGAINST PROPERTY

Us Olha, Yaroslav Mudryi National Law University
Minchenko Serhii, Scientific Institute of Public Law
Levchenko Yurii, National Academy of Internal Affairs
Vartyletska Inna, National Academy of Internal Affairs
Kurylin Ivan, National Academy of Internal Affairs

ABSTRACT

Description: The purpose of the article is to formulate the actual directions of prevention of violent encroachment on property of citizens in Ukraine. The subject of the study is violent mercenary crimes. The research methodology includes the use of general scientific and special methods of scientific cognition: dialectical, epistemological, logical and semantic, system and structural, formal and legal, normative and dogmatic, monographic, legal modeling methods. Results of the research. On the basis of the analysis of provisions of the Constitution of Ukraine, civil and criminal legislation, practice of their application the actual directions of prevention of violent encroachment on property of citizens in Ukraine are formulated. Practical meaning. Violent encroachments on citizens' property are defined as active actions aimed at illegal seizure of this property by force (robbery combined with violence, robbery, extortion combined with violence), using measures of physical and / or psychological influence. Possession of another's property as part of violent crimes against property is considered as intentional illegal acquisition (process and result) of full control over another's property. Value / originality. It is proved that mercenary and violent attacks on private property of citizens are "perpetual crimes", which along with non-violent violent crimes create the "core" of crime in all countries of the world and are becoming more widespread.

Keywords: Violent Encroachment, Mercenary Crimes, Property, Selfish Motive, Subject Matter.

INTRODUCTION

The political and legal aspect of the rule of law in the area of protection of private property of citizens is one of the most relevant topics of theoretical and practical research nowadays. Historically, the rule of law is the State, in which the exercise of the rights, freedoms, and legitimate interests of an individual and citizen is actually ensured on the basis of existing law, where the State and an individual bear mutual responsibility in accordance with applicable law. The rule of law is the constitutional State. Only with the proclamation of the independence of Ukraine on August 24, 1991, the idea of protecting the property rights of citizens radically changed its direction, as it is based on the principles of legality, justice and humanism, and the legislator first faced the need to develop real and effective mechanisms for its implementation, gradually improving them in regulations. The adoption of the Constitution of Ukraine on June

28, 1996 (Law of Ukraine, 1996) is certainly a historic legal act for the country and society, a manifestation of the high level of democracy achieved during the independence of Ukraine.

The concept of the rule of law in the area of protection of property of citizens is one that is actively developed and studied by both Western and domestic political scientists. Its relevance for Ukraine is further underlined by the fact that Article 1 of the Constitution of Ukraine: “Ukraine is a sovereign and independent, democratic, social, legal State” defines our country as legal one, therefore, the theoretical conceptualization of these political and legal definitions is an urgent problem. Article 41 of the Constitution of Ukraine provides that everyone has the right to own, use and dispose of his or her property, and the results of his or her intellectual and creative activity and no one shall be unlawfully deprived of the right of property, as the right of private property is inviolable.

Thus, the functions of the State on the protection and preservation of property of all forms of ownership can be split into internal and external ones. Since the State interests both in the organization of the production and in the protection and defense of property rights, arising as a result of such production, the common basis for such functions is their economic component (Kusherets, 2013).

MATERIALS AND METHODS

General and special methods of scientific knowledge were used as the methodological basis for the research. In particular, dialectical method helped to examine the problem of offences against property as a separate and distinct issue. Epistemological methods, as well as logical and semantic method were used to clarify the concepts of non-violent mercenary crimes and violent mercenary crimes. The application of system and structural method contributed to the classification of the features of the subject matter of crimes against property. Formal and legal method made it possible to identify the object of crimes against property, the actors of property rights and to clarify the characteristics of selfish motive. Normative and dogmatic method helped to examine legal acts establishing which socially dangerous acts against property are crimes or criminal offenses and which punishments are applied to the perpetrators. Monographic method allowed studying the view of scientists on the issue under consideration. The use of methods of legal modeling and forecasting allowed formulating the relevant conclusions.

The scientific and theoretical basis for the article is the works of domestic and foreign scientists, who have considered the problem under investigation. The normative basis for the research is the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the protocols thereto, the Constitution of Ukraine, Civil Code of Ukraine, Civil Procedure Code of Ukraine, Criminal Code of Ukraine, Criminal Procedure Code of Ukraine, etc.

RESULTS AND DISCUSSION

Opryshko and Shulzhenko (2003) note that the task of the State is to ensure the complete functioning of all forms of ownership as a component of the economic function of the State. However, Kopieichykov (2006) allocates the protection and defense of all forms of ownership in

a separate independent function, which relates to the internal functions of the State. The above demonstrates that the views of scholars on the economic function of the State, which is unconditionally projected in the area of property relations, are different.

The implementation of the functions of the State in the area of protection of the property rights of citizens in Ukraine is performed through the application of the established rules in the substantive and procedural legislation of Ukraine. For example, Art. 15 of the Civil Code of Ukraine (Law of Ukraine, 2003) states that every person has the right to protection of his or her civil rights in case of its violation, non-recognition or challenge, as well as the right to protection of their interests. This principle is also enshrined in Art. 3 of the Civil Procedure Code of Ukraine (Law of Ukraine, 2004), which declares that every person has the right in the manner prescribed by this Code, to apply to court to protect their violated, unrecognized or disputed rights, freedoms or interests.

The Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine have a similar conceptual approach. The Criminal Code of Ukraine provides for criminal liability for criminal offenses, enshrined in Section 6 of the Special Part "*Criminal Offenses against Property*". Par. 9, Part 1, Art. 7 of the Criminal Procedure Code (Law of Ukraine, 2012) establish general principles of criminal proceedings, one of which is the inviolability of property rights.

The problem of protection of property rights has become even more relevant after the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Council of Europe, 1950) and its basic protocols on July 17, 1997. The main purpose of Art. 1 of Protocol No. 1 to the Convention is to prevent the arbitrary occupation of property, confiscation, expropriation and other violations of the principle of the unhindered use of one's property, which Governments of States frequently resort to or are inclined to resort to in practice. This article proclaims: "*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one may be deprived of his or her property except in the interests of society and under the conditions provided by law or general principles of international law*".

The problem of protecting the right to property of Ukrainian citizens is becoming quite topical in view of the large number of decisions of the European Court of Human Rights. There is a special Law "*On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights*" in Ukraine, which determines the procedure for the implementation and consideration of the Convention and ECHR practice by courts and other law enforcement agencies (Soroka, 2013).

The bodies of judicial constitutional review of some foreign countries (in particular, Austria, Italy, Poland, France, Germany, etc.) successfully apply the provisions of the ECHR, and in some cases – the decisions of the ECHR (Arnold et al., 2013).

The right to property is the basis for the realization of the whole complex of human rights and freedoms; it is protected by law. Criminal offenses against property are unified under Section 6 of the Criminal Code of Ukraine, which includes 16 criminal offenses. This section establishes which socially dangerous acts against property are crimes or criminal offenses and which punishments are applied to the perpetrators. This category of criminal offenses belongs to the type of "*mercenary crimes*", which is based on "*selfish motive*" – the desire to meet material needs, to obtain property by criminal means. These crimes and criminal offenses are

distinguished by the methods of criminal encroachment, which allows dividing them into two groups: non-violent mercenary crimes and violent mercenary crimes. Some crimes remain outside the designated groups related; these are crimes related to the destruction of property, the motives and modalities of which may differ (Buzalo et al., 2007).

Some forms of criminal offenses against property, such as robbery, burglary, extortion, threat of destruction of property, may be committed with violence that does not endanger the life or health of the victim, or with the threat of such violence, or with violence, dangerous to the life or health of the person who was attacked, or with the threat of such violence.

Dal's Dictionary interprets "*violence*" as coercion, slavery, need, rape, something insulting, illegal and arbitrary. Criminal law and criminology consider physical violence as an independent way of committing an offense. In criminal law, the concept of violence is invariably associated with the actual socially dangerous unlawful use of physical force against another person, his or her will in order to inflict physical suffering, bodily harm or deprivation of life.

The actors of property rights are individuals (citizens of Ukraine, foreigners, stateless persons), legal entities (business associations, trade unions, public, religious associations, etc.), the state. Their equality before the law and ensuring the protection of their rights by the State is provided by Art. 13 of the Constitution of Ukraine.

The legislation in force distinguishes between the entities exercising the right of ownership: a) the right of ownership of the Ukrainian people; b) State ownership; c) the right of communal property; d) the right of communal property (including enterprises, public organizations and other associations of citizens); e) the right of private property, including the right of joint property of spouses, family members, persons leading farm households; e) property rights of other States, their legal entities, joint ventures and international organizations.

Family object of criminal offences under Section 6 of the Special Part of the Criminal Code of Ukraine is the right of ownership, the content of which is the possession, use and disposal of their property (material goods). Here follows the term "*property crimes*". Property is the subject matter of the vast majority of criminal offenses against property. The targets of violent crimes or the crimes threat of its use (violent robbery, robbery, extortion, threat of destruction of property) are also life, health, mental or physical integrity of a person.

That is, the generalizing subject matter of this type of criminal offenses is private, collective or State property. Property as a subject matter of the crime has certain features: 1) legal features – the right to property belongs to a certain owner or person, to whom it is legally entrusted, is in its possession or under its protection; 2) economic features – property should represent a certain material value, have a certain value. This feature is sometimes called social, because it means that a man's work is invested in property. The value of the property is precisely the same as the labour; 3) physical features – these are objects, things that can be removed, appropriated, consumed, damaged, destroyed, etc. (Antsyferov, 2014).

Selfish motive in committing violent criminal offenses against property is the desire of the perpetrator to illegally use someone else's property for his (her) own benefit or to obtain the benefit of property without the benefit of another person's property.

Property means objects of the material world that have nominal and consumer value. For example, movable property includes: national and foreign currency, monetary metals, radio equipment, foodstuffs, means of production, manufactured products, etc. Immovable property

includes land plots, as well as objects located on the land plot, which cannot be moved without impairment and change in purpose (Art. 181 of the Civil Code of Ukraine). Such property must be in private, communal or State ownership. It must be alien to the claimant. In the theory and practice of law enforcement there is a provision according to which extortion may not be limited to property held by the victim at the moment of extortion, but also the property that is in the actual possession of the perpetrator.

The right to property may be transmitted in respect of other objects, not just immovable property. For example, renunciation of the victim's share of the inheritance, destruction of the debt receipt, etc.

Thus, the right to property is to obtain the possibility for the extortionist to use, own and dispose of the property as a result of the victim's actions. For example, a perpetrator received money or a certain thing in debt, received it for safekeeping, etc. Unwilling to return such property to the owner, he (she) may require the victim to renounce claims for its return. This is the specificity of the subject matter of extortion of objects in other encroachments on property. Extortion may also be applied to objects, which the victim does not yet possess, but expects to possess.

In this regard, the opinion of Luzhetska (2014) deserves special attention. She believes that the right to property as a subject matter of criminal encroachment under Art. 189 of the Criminal Code of Ukraine may occur when the expropriation of property requires the execution of certain actions. This is most often the case when the property is immovable. For example, selling or donating a house, an apartment is only possible with a notarial certificate of such an agreement. In practice, there are cases when extortionists coerced victims to file such transactions without actually paying the value of real estate.

In accordance with Art. 2 of the Resolution of the Plenum of the Supreme Court of Ukraine (2009), "*On Judicial Practice in Cases of Crimes against Property*" the subject matter of encroachment on private property of citizens is property that has a certain value and is alien to the perpetrator: things (movable and immovable), cash, metals, securities, etc., as well as the right to property and property actions, electricity and heat, as well as property owned by citizens: houses, apartments, household items, productive and working livestock, plantings on the land plot, means of production, manufactured products, vehicles, cash, shares, other securities, as well as other property for consumer and industrial purposes. This property may belong to one or several persons, provided that it is in their common joint or shared ownership and if their association is not a legal entity.

The amount of property seized by the perpetrator as a result of the relevant crime is determined only by the value of this property, which is expressed in monetary terms. The value of stolen property is determined by the retail (purchase) prices that existed at the time of the crime, and the amount of compensation for damage caused by the crime at appropriate prices in criminal proceedings before the court. In the absence of such property prices, its value can be determined by conducting an appropriate examination, namely – by conducting a commercial examination. However, as the practice shows, the district prosecutor's office, which supervises the observance of the law during a pre-trial investigation by a certain district police department, instructs certain police investigative unit (investigator) to be guided by value of stolen property at retail (purchase) prices that exist during the pre-trial investigation, and not those that existed at

the time of the crime, because in some cases it could be quite a while from the registration of criminal offences to the bringing of the guilty person before the criminal court, and the size of stolen property affects not only for the correct qualification of criminal offenses against property, but on subsequent indictment as well.

Mercenary and violent attacks on private property of citizens are “*perpetual crimes*”, which along with non-violent violent crimes create the “*core*” of crime in all countries of the world and are becoming more widespread (Aleksandrov et al., 2002).

CONCLUSION

Crimes against property are socially dangerous and illegal acts that violate the right to property, cause property damage to an individual, community or State and are usually committed for selfish motives. Crimes against property are one of the most common and dangerous groups of crimes because they encroach on one of the most valuable social benefits – property rights. Protection of property rights is of particular social importance, as economic freedom of property is the basis for political, national and religious freedoms. The normal functioning of property relations ensures the stability of the entire economic system, increasing the welfare of the people.

The origin and direct object of these crimes is the social property relations regulated by law, first of all, the relations concerning the possession, use and disposal of property. Additional necessary direct objects of crimes committed with the use of violence or threat of its use (violent robbery, robbery, extortion, threat of destruction of property) may be the health, life, mental or physical integrity of a person. In case of destruction or damage of property, additional optional direct objects are public order, public safety, and environment.

Thus, violent encroachments on the property of citizens are active actions aimed at illegal seizure of this property by force (robbery combined with violence, robbery, extortion combined with violence), using measures of physical and / or psychological influence. In this case violence means intentional, unlawful application or use of physical force aimed at causing harm to another person against his (her) will or intentional, unlawful psychological influence on a person aimed at causing him (her) harm. Taking possession of other people’s property as a violent crime against property is considered as intentional illegal acquisition (process and result) of full control over another’s property.

REFERENCES

- Aleksandrov, Yu., Hel, A., & Semakov, H. (2002). *Criminology: A course of lectures*. Kyiv: MAUP.
- Antsyferov, O. (2014). Criminal and legal characteristics of crimes against property committed in the area of the anti-terrorist operation. *Bulletin of Kharkiv National University of Internal Affairs*, 3(2), 24–29.
- Arnold, R., Banashak, B., & Vdovichenko, S. (2013). *Human and civil rights and freedoms in Ukraine*. Kyiv: Yurinkom Inter.
- Buzalo, P., Denysov S., & Kyrychenko, O. (2007). *Criminology: Textbook*. Kyiv: Center for Educational Literature.
- Council of Europe. (1950). *Convention for the protection of human rights and fundamental freedoms, as amended by protocols no. 11 and 14 of November 04*. Retrieved from https://www.eods.eu/library/CoE_European%20Convention%20for%20the%20Protection%20of%20Human%20Rights%20and%20Fundamental%20Freedoms_1950_EN.pdf
- Kopieichykov, V., & Kolodii, A. (2006). *Jurisprudence: Textbook*. Kyiv: Yurinkom Inter.

- Kusherets, D. (2013). The role of the State and the features of its functions in the area of protection of property rights. *Entrepreneurship, Economy and Law*, 12(1), 55–58.
- Law of Ukraine. (1996). *Constitution of June 28, 1996 no. 254k/96-VR*. Retrieved June 06, 2021 from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Tex>
- Law of Ukraine. (2001). *Criminal Code of April 05, 2001 no. 2341-III*. Retrieved June 06, 2021 from <http://zakon.rada.gov.ua/laws/show/2341-14>
- Law of Ukraine. (2003). *Civil Code of January 16, 2003 no. 435-IV*. Retrieved June 06, 2021 from <https://zakon.rada.gov.ua/laws/show/435-15#Text>
- Law of Ukraine. (2004). *Civil Procedure Code of March 18, 2004 no. 1618-IV*. Retrieved June 06, 2021 from <https://zakon.rada.gov.ua/laws/show/1618-15#Text>
- Law of Ukraine. (2012). *Criminal Procedure Code of April 13, 2012 no. 4651-VI*. Retrieved June 06, 2021 from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>
- Luzhetska, O. (2014). The subject matter of criminal encroachment in the system of forensic characteristics of extortion. *Scientific Bulletin of the National University of the State Tax Service of Ukraine (Economics, Law)*, 2(1), 202–207.
- Opryshko, V., & Shulzhenko, F. (2003). *Jurisprudence: Textbook*. Kyiv: KNEU.
- Resolution of the Plenum of the Supreme Court of Ukraine. (2009). On judicial practice in cases of crimes against property no. 10 of November 06, 2009. *Bulletin of the Supreme Court of Ukraine*, 12(2), 1-9.
- Soroka, O. (2013). The significance of the convention for the protection of human rights and fundamental freedoms and the case law of the European Court of human rights for the criminal law of Ukraine. *Entrepreneurship, Economy and Law*, 2(1), 22–26.