

UDC 343.346

doi: <https://doi.org/10.33270/01201152.86>

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## Object of Intentional Damage to Communications Lines (Article 360 of the Criminal Code of Ukraine)

*With regard to absence of thorough researches of objects of intentional damage to communications lines in criminal law theory, the **purpose** of this article is to study the conceptual foundations of such objects' structure and content. Considering the specifics of the topic, goals and outlined objectives, various general scientific, special-scientific and philosophical **methods** were used for an objective study of the subject and for formation of sound conclusions. Among them, in particular, systematic method was used in studying objects of intentional damage to communications lines; dogmatic method – to identify shortcomings and explore the possibilities for improving of structure of objects of the crime stipulated by Art. 360 of the Criminal Code of Ukraine; logical-semantic – in the process of in-depth study of categorical-conceptual apparatus concerning the objects of intentional damage to communications lines. In order to ensure the formation of new proposals (based on already existing in special literature) and with regard to definition of structure of objects of intentional damage to communications lines, a method of generalization was applied. **Scientific novelty.** Certain problems of objects of the crime stipulated by Art. 360 of the Criminal Code of Ukraine have been studied. Unlike the activities of public authorities, local self-government bodies, and associations of citizens, intentional damage of communication lines does not involve the effectuation of organizational, administrative or administrative-economic functions; the purpose of this norm is to protect people when the subject commits a crime, in order to influence management relations. Therefore, the crimes of intentional damage of the communication lines do not coincide in the essence of public relations with other crimes, located in Chapter XV of the Special part of the Criminal Code of Ukraine. Therefore, it is advisable to place the norm about an intentional damage of communication lines in Chapter VI of the Special Part of the Criminal Code of Ukraine. It is argued that the structural elements of the social relations of the generic object of the crime provided for in Art. 360 of the Criminal Code of Ukraine, belong to: 1) participants (individuals and legal entities, society and state); 2) the subject of relations (property as a whole and property relations); 3) social connection (providing participants with these property protection relationships in general and property relations). **Conclusions.** It is argued that necessary to amend the Criminal Code of Ukraine (namely to place the Art. 360 of the Criminal Code of Ukraine in Chapter VI of the Special part «Crimes against property» by supplementing the law on criminal liability with Art. 194-2 of the Criminal Code of Ukraine). It is scientifically proven that the direct object of the crime under Art. 360 of the Criminal Code of Ukraine are public relations that provide protection of property as a whole and property relations. Direct main object of the crime stipulated by the Art. 360 of the Criminal Code of Ukraine is public relations in the sphere of ensuring of private, collective and state proprietary rights (depending on victim); additional obligatory object of the crime under inquiry is public relations providing normal functioning of telecommunication networks and its elements; additional optional object of the crime under inquiry could be public relations ensuring continuous providing telecommunication services, state defensive capacity, normal functioning of emergency response and civil defense services etc.*

**Keywords:** general object; generic object; direct object; classification of objects; damage; communications lines; crime; public relations; criminal legal norm.

### Introduction

The quantity of crimes associated with intentional damage, destruction, theft of communication lines (namely equipment, telecommunication cable lines (electric and optical), cable ducts, towers (masts), supports, aerials, duct banks, house distribution facilities and other stations, line and line cable constructions) has increased in Ukraine during recent years. Disparity of such crimes' consequences and punishment which could be applied to offenders is one of the reasons of this. Stealing of trunk communication lines with the purpose of further sale of stolen cable (made of non-

ferrous metals including copper) happens due to imperfection of legal mechanism of criminal responsibility for such crimes.

Certain cases of telecommunication networks damage display probability of existence of criminal groups that are acting for commercial gain as well as to stop provision of telecommunication services. Usually negative direct and indirect consequences of impossibility to provide telecommunication services for society and state are much more than direct damage caused to economic entities (property owners). Such consequences may become even more

negative due to possibility of causing grievous aftermath in other spheres – up to the people's death and technological disasters.

Criminal responsibility for intentional damage to communication lines is stipulated by Art. 360 of the Criminal Code of Ukraine but due to flaws in the norm's disposition (obsolete provisions of the article, absence of responsibility gradation with regard to the body of crime and its consequences) the letter is rarely administered in practice.

Problems of criminal responsibility for intentional damage to communication lines, electric power industry objects, housing and utility objects in Ukraine have been studied by native and foreign researchers (R. Aseikin, O. Bilash, I. Hazdaika-Vasylyshyn, V. Horgunov, O. Dyachkin, O. Kotovenko, S. Myroniuk, S. Neznaiko, B. Odainyk, A. Sakun, V. Samokysh, A. Semeniuk-Prybaten, N. Serbyna et al. It is hardly possible to overestimate the value of work performed and contribution to science of criminal law, both to the scientific school in general and its individual representatives in particular (Panko, 2014, p. 294). Despite these works' certain scientific and practical value a number of questions associated with body of crime's elements stipulated by Art. 360 of the Criminal Code of Ukraine has been left debatable, and some of them – insufficiently or even not explored at all and question of this crime's objects definition among others.

Despite of multi-faceted fundamental premises un criminal law doctrine researchers are still going back to its study and discussion (Babanina, 2018, p. 133).

Despite the considerable work of the aforementioned scholars, there is still no substantial development in the theory of criminal law regarding of objects of intentional damage to communications lines in criminal law theory. (Beshukova, 2016; Chirkov, 2009, p. 36; Tarusina, 2014, p. 314-324; Trofimov, 2013, p. 1770).

### **The purpose**

Criminal legislation requires a thorough and system monitoring as well as a comprehensive study of its improvement (Babanina, 2018, p. 163). Criminal legal regulation of social relations is the subject of research of specialists in various fields of knowledge (Ogus, 1994; Freudenthal, 1960, p. 125-126; Summers, Schwarzenegger, Ege, & Young, 2014; Grin, 2018; Belonosov, 2018, p. 27-34), however requires thorough researches of objects of intentional damage to communications lines, the purpose of this article is to study the conceptual foundations of such objects' structure and content.

According to the purpose, the following task must be solved: study of the conceptual foundations of the object of intentional damage to communication lines. Define its structure, elements and content.

### **Presentation of the main material**

In criminal law, the generic object of crime is traditionally understood as a certain group of identical or homogeneous in their socio-political and economic nature social relations that may be affected by crimes of a certain kind (crimes envisaged by a certain section of the Special Part of the Criminal Code of Ukraine), so they should be protected by a set of interrelated criminal rules. On the basis of the generic object the legislator divides the criminal law norms into specific sections of the Special part of the Criminal Code of Ukraine.

The development of this system was predetermined by a number of theoretical and practical issues. The practical application of these norms, the theoretical understanding of certain crime warehouses, the awareness of their interconnection and peculiarities depend on their successful placement (Stashys, & Tatsii, 2009, p. 287). Therefore, special attention should be paid to the question of the place of one or another norm in the system of the Special part of the Criminal Code of Ukraine.

Placing of the norm for intentionally damaging of the communication lines in section XV of the Special Part of the Criminal Code of Ukraine «Crimes against authority of state authorities, local self-governments, associations of citizens and crimes against journalists» raises a number of questions about the possibility of causing significant damage to the authority of state authorities, local self-government bodies, associations of citizens, etc. through such damage.

In essence, intentional damage to communication lines is a form of intentional destruction or damage to property. In the doctrine of criminal law, there are three priority positions to determine the generic object of crimes against property:

1) encroachment on property relations, which as an economic category is a relationship between people about material goods, in which some people treat material goods as their own and others as to others;

2) encroachment on property and on property relations in general (Nail, 1996, p. 9);

3) encroachment on property rights. The latter position was supported by P. Matyshevsky, noting that by means of legal norms covered by the concept of property rights, material benefits are not only fixed for certain entities, but also regulate the

procedure of acquisition and termination of property rights, the possession, use and disposal of property, as well as the protection of the rights and legitimate interests of the owner. Property crime encroaches on the actual property right under which ownership, use and disposal of property is exercised or otherwise on the property right in its subjective sense (Matyshevskiy, 1996, p. 12).

Deliberate damage of communication lines is in section XV of the Special Part of the Criminal Code of Ukraine «Crimes against authority of state authorities, local self-government bodies, associations of citizens and crimes against journalists». Based on the title of this section, it can be affirmed that the authority of these bodies is always harmed or threatened to cause harm. However, by analyzing the components of other crimes, contained in Chapter XV of the Special Part of the Criminal Code of Ukraine, it can be affirmed that the authority of the above bodies is not always (in the case of intent to harm him) put at threat with causing harm in such crimes.

Thus, V. Kuznetsov, V. Osadchy, A. Savchenko and O. Shtanko believe that the generic object of crimes, against the authority of state authorities, local self-government bodies, citizens' associations and crimes against journalists is an order of government and local self-government. At the same time, the unlawful encroachment is directed to the procedure established by law for the functioning of state bodies or public organizations. In such a case, the relations of management are harmed, which should be recognized as a generic object (Osadchy, 2004). Therefore, the contingency of the «intentional damage to communication lines» rule to Section XV of the Special Part of the Criminal Code of Ukraine is controversial.

A. Dyachkin notes that the generic object of Art. 360 of the Criminal Code of Ukraine is public safety. Specifically, it proposes to attribute the norm of «intentional damage to communication lines» to section IX of the Special part of the Criminal Code of Ukraine «Crimes against public safety» (Dyachkin, 2009, p. 34). However, we cannot agree with this position because public safety, according to V. Tykhai is a safety of life, health of individuals and other vital values against threats; a set of social relationships that provide and guarantee the safe living conditions of individuals and society; the safety of individuals and society against unlawful attacks by criminal organizations, terrorist groups or organizations; the safety of persons in the handling of firearms, firearms, explosives and ammunition; the safety of people in the use of subjects and objects of high risk, etc. (Tykhai, 2010, p. 94).

Public safety as a generic object of crimes of section IX of the Special Part of the Criminal Code of Ukraine should be understood as public relations aimed at protecting the person, society and the state from unlawful attacks by criminal and terrorist organizations, ensuring safety during the handling of firearms and explosives, explosives and ammunition, subjects and objects of high risk, as well as subjects and objects that do not pose a high risk but which pose a threat to an indefinite circle of people.

However, I. Chub analyzed the norm of «deliberate destruction of communication lines» taking into account the Law of Ukraine of 18.11 adopted. 2003 No. 1280-IV «On telecommunications» concluded that the concept of «telecommunication line» was changed to «telecommunications», and the subject of crime became broader. Therefore, according to the scientist, such an encroachment impedes the functioning of telecommunications networks and the provision of telecommunication services. On this basis, the scientist states that the stated crime is homogeneous with those enshrined in Section XVI of the Special Part of the Criminal Code of Ukraine «Crimes in the Use of Electronic Computers (Computer), Systems and Computer Networks and Telecommunication Networks», but encroach on different generic objects (Chub, 2012, p. 274-275).

In our opinion, an intentional damage of communication lines is inherently a kind of deliberate destruction or damage to property. Therefore, it is absolutely that a generic object is a property right.

Having analyzed the generic object of sections VI, IX and XV of the Special part of the Criminal Code of Ukraine, we come to the conclusion that the generic object of the crime under Art. 360 of the Criminal Code of Ukraine are public relations that secure ownership. Unlike the activities of public authorities, local self-government bodies, and associations of citizens, intentional damage of communication lines does not involve the effectuation of organizational, administrative or administrative-economic functions, the purpose of which is to protect people when the subject commits a crime, in order to influence management relations. Therefore, the crimes of intentional damage of the communication lines do not coincide in the essence of public relations with other crimes, located in section XV of the Special part of the Criminal Code of Ukraine. Therefore, it is advisable to place a provision for intentional damage of communication lines in the VI section of the Special Part of the Criminal Code of Ukraine.

Therefore, the foresaid makes it necessary to amend the Criminal Code of Ukraine regarding the

placement of Art. 360 of the Criminal Code of Ukraine in section VI of the Special part «Crimes against property», by supplementing the law on criminal liability Art. 194-2 of the Criminal Code of Ukraine.

*Specific object* is the sub-group of public relations within the generic object which in turn consist of homogeneous or homologous public relations being encroached (or could be encroached) during the crime commitment.

Specific object, from the perspective of M. Korzhanskyi is the object being encroached by the crime of certain type (homicide, theft). O. Kyrychenko defines specific object as the sub-group of common weal which are similar to each other, consist a more broad group of homogeneous values and demand criminal legal protection.

According to Ye. Fesenko specific object is a mixture of values encroached by certain group of crimes and being a part of values defined as generic object by the lawmaker (and consequently stipulated by the relevant chapter of the Specific Part of the Criminal Code of Ukraine). This researcher suggests designating such specific objects within chapters of the Specific Part of the Criminal Code of Ukraine by the chapters' titles (providing their existence in the criminal legislation of Ukraine). Such models of criminal codes' composition are conferred in some foreign countries. Moreover, based on the analysis of leading European countries' legislation, such concept of composition (with regard to generic and specific object) is being suggested by M. Khavroniuk. According to the latter, it is necessary to define essence of the specific object (by distinguishing sub-chapters within chapters of the Specific Part of the Criminal Code of Ukraine) to ascertain the encroachment's purposefulness onto relevant public relations (Khavroniuk, 2007). By his view, such approach in creating the Criminal Code of Ukraine, allows to define more precisely the group of public relations being encroached, which in turn makes the process of qualification of crime more truly.

Let's analyze the structure of public relations for more consistent understanding of specific object. To the structure of public relations fall:

- 1) participants;
- 2) target;
- 3) social bond (content).

Participants of public relations being the specific object of the crime stipulated by the Art. 360 of the Criminal Code of Ukraine, are owners of objects and equipment of telecommunications networks as well as users of telecommunications services. Such definition is based on provisions of disposition of the

Art. 360 of the Criminal Code of Ukraine and on provisions of the Law of Ukraine «On telecommunications». Taking the abovementioned into consideration, it could be argued that private persons, legal persons, society and state are also to be included to the list of participants.

Target is the next element of public relations. Target of public relations is value and weal regarding those public relations is emerged. Namely this element is been influenced during the crime commitment and been damaged in this way. In the case of communication lines damage a detriment is caused via criminal influence onto objects and equipment of telecommunications networks. In such a way property at all and namely property relations are encroached.

Social bond (content) is one more element of public relations. Social bond (content) of public relations with regard to provision of criminal legal protection of communication lines proprietary rights lies in the fact that participants of these relations are secure the property protection and та proprietary rights of effects which form the telecommunications networks.

In this regard it is possible to state that structural elements of public relations which consist the specific object of the crime stipulated by the Art. 360 of the Criminal Code of Ukraine are as follows:

- 1) participants (private persons, legal persons, society and state);
- 2) target of relations (property at all and property relations);
- 3) social bond (provision of property at all and property relations protection by these relations' participants).

Direct object is the next object in the «vertical» classification. Some researchers are consider it as certain public relations which are actually damaged by the crime and due to this are put under protection of norms of the Criminal Code of Ukraine by the lawmaker (Botiakova, 2020, p. 266).

Definition of direct object of the crime stipulated by the Art. 360 of the Criminal Code of Ukraine has significant importance for defining character and extent of social danger of the crime committed and to its rightful qualification.

On the level of direct object of crime main and additional objects are designated; the latter in its turn is divided into additional obligatory and additional optional.

Direct main object is a group of public relations which are encroached by the crime or directly put under threat of criminal encroachment. As to direct main object of the crime stipulated by the Art. 360 of the Criminal Code of Ukraine, O. Dyachkin defines it as safety of communications objects functioning (as

part of public safety). He points out that communications objects functioning is necessary to serve the interests and satisfy the needs of society and citizens, that's why criminal legal protection of communications objects ensures safety of indefinite quantity of persons and legally protected interests (Diachkin, 2009, p. 9, p. 86).

I. Hazdaika-Vasylyshyn considers public relations of communications objects exploitation as a direct main object of the crime stipulated by the Art. 360 of the Criminal Code of Ukraine. Meanwhile O. Dudorov and H. Boldar define direct main object of intentional damage to communication lines as certain procedure of providing of information exchange by means of telecommunications.

Taking into consideration complexity of definition of direct main object of the crime stipulated by the Art. 360 of the Criminal Code of Ukraine, it is reasonable to designate a certain type of public relations being protected by this criminal legal norm. According to the Law of Ukraine «On telecommunications» dated from November 18<sup>th</sup>, 2003 Reg. No. 1280-IV telecommunications network is a complex of technical means of telecommunications and buildings intended for routing, commutation, transmission and / or receiving of various signs, signals, written text, images and sounds or messages via radio, wire, optical or other electromagnetical systems between end user equipment (On telecommunications, 2003). With regard to the fact that these means and buildings are certain persons' (private or legal) or state's property this norm protects public relations in the field of ensuring of private, collective and state proprietary rights (depending on victim). On this ground direct main object of the crime stipulated by the Art. 360 of the Criminal Code of Ukraine is public relations in the sphere of ensuring of private, collective and state proprietary rights (depending on victim).

By contrast, the encroachment on the additional direct object is committed not always in line with main direct object. In turn additional direct object, as it was already stated, is divided into turn, into additional obligatory and additional optional.

Additional obligatory object is public relations which are always being encroached by the crime. With regard to the essence of the crime under inquiry (its purposefulness onto objects and equipment of telecommunication networks by damaging it and influence on normal functioning of this equipment, objects or telecommunication networks itself in this way) public relations providing normal functioning of telecommunication networks and its elements are the additional obligatory object of it.

Beside this, in accordance with part 2 of Art. 27 of the Law of Ukraine «On telecommunications» the

latter are an inherent part of production and social infrastructure of Ukraine; their purpose is to satisfy the needs of private and legal persons, bodies of state power in telecommunication services. According to § 9 of part 1 of Art. 39 of the mentioned Law telecommunication operators are obliged to provide telecommunication services on a first-priority basis to the units of Ministry of Defense of Ukraine, Security Service of Ukraine, State Bureau of Investigations, National Anti-Corruption Bureau of Ukraine, Foreign Intelligence Service of Ukraine, State Service of Special Communications and Information Protection of Ukraine, Ministry of Internal Affairs of Ukraine, National Police of Ukraine, central body of executive power which administrates state tax policy, central body of executive power which administrates state customs policy, central bodies of executive power which provide formation and administration of state policy in the spheres of emergency responses, fire and technogenic safety, state borders protection ("Zakon Ukrainy", 2003).

Encroachments against objects and equipment of telecommunication networks that results in interruption of providing telecommunication services to the abovementioned bodies of power and establishments may cause grievous consequences namely defensive capacity weakening, breakdowns in emergency response services («101», «102», «103», «104»), breakdowns of functioning of customs units, bodies and units of civil defense communications system.

Additional optional object is public relations, that could be (or could be not) encroached by the crime. In such a case the absence of encroachment against additional optional object is not precluded the absence of the body of crime. Therefore, additional optional object of the crime under inquiry could be public relations ensuring continuous proving telecommunication services, state defensive capacity, normal functioning of emergency response and civil defense services etc.

### **Scientific novelty**

Certain problems of objects of the crime stipulated by Art. 360 of the Criminal Code of Ukraine have been studied. Unlike the activities of public authorities, local self-government bodies, and associations of citizens, intentional damage of communication lines does not involve the effectuation of organizational, administrative or administrative-economic functions; the purpose of this norm is to protect people when the subject commits a crime, in order to influence management relations.

Therefore, the crimes of intentional damage of the communication lines do not coincide in the

essence of public relations with other crimes, located in Chapter XV of the Special part of the Criminal Code of Ukraine. Therefore, it is advisable to place the norm about an intentional damage of communication lines in Chapter VI of the Special Part of the Criminal Code of Ukraine.

It is argued that the structural elements of the social relations of the generic object of the crime provided for in Art. 360 of the Criminal Code of Ukraine, belong to:

- 1) participants (individuals and legal entities, society and state);
- 2) the subject of relations (property as a whole and property relations);
- 3) social connection (providing participants with these property protection relationships in general and property relations).

### Conclusions

It is argued that necessary to amend the Criminal Code of Ukraine (namely to place the Art. 360 of the Criminal Code of Ukraine in

Chapter VI of the Special part «Crimes against property» by supplementing the law on criminal liability with Art. 194-2 of the Criminal Code of Ukraine). It is scientifically proven that the direct object of the crime under Art. 360 of the Criminal Code of Ukraine are public relations that provide protection of property as a whole and property relations. Direct main object of the crime stipulated by the Art. 360 of the Criminal Code of Ukraine is public relations in the sphere of ensuring of private, collective and state proprietary rights (depending on victim); additional obligatory object of the crime under inquiry is public relations providing normal functioning of telecommunication networks and its elements; additional optional object of the crime under inquiry could be public relations ensuring continuous providing telecommunication services, state defensive capacity, normal functioning of emergency response and civil defense services etc.

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Стаття надійшла до редколегії 01.04.2020

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## Об'єкт умисного пошкодження ліній зв'язку (стаття 360 Кримінального кодексу України)

Через відсутність у теорії кримінального права ґрунтовних розробок щодо об'єкта умисного пошкодження ліній зв'язку **метою** статті є дослідження концептуальних засад його структури та змісту. З огляду на специфіку теми, мети й окреслені завдання дослідження, було використано загальнонаукові, спеціально-наукові та філософські **методи**, що забезпечили об'єктивне дослідження предмета й формування ґрунтовних висновків. Серед них, зокрема, системний, який застосовано під час вивчення об'єкта умисного пошкодження ліній зв'язку як єдиного цілісного явища, що охоплює окремі складові; догматичний – з метою виявлення недоліків і вивчення можливостей удосконалення структури об'єкта злочину, передбаченого ст. 360 Кримінального кодексу України; логіко-семантичний – для поглибленого вивчення категоріально-понятійного апарату щодо структури об'єкта умисного пошкодження ліній зв'язку. Метод узагальнення використано, щоб на підставі висловлених у спеціальній літературі поглядів учених сформулювати пропозиції стосовно визначення об'єкта умисного пошкодження ліній зв'язку. **Наукова новизна.** У статті розглянуто питання щодо визначення об'єкта злочину, передбаченого ст. 360 Кримінального кодексу України. Обґрунтовано, що родовим об'єктом досліджуваного злочину є суспільні відносини, які забезпечують право власності. На відміну від діяльності органів державної влади, органів місцевого самоврядування та об'єднань громадян, умисне пошкодження ліній зв'язку не передбачає здійснення організаційно-розпорядчих або адміністративно-господарських функцій, метою яких є захист

осіб, коли суб'єкт учиняє злочин, аби вплинути на відносини управління. Доведено, що злочини щодо умисного пошкодження ліній зв'язку не збігаються за сутністю суспільних відносин з іншими злочинами, що містяться в розділі XV Особливої частини Кримінального кодексу України. Тож доцільно розмістити норму щодо умисного пошкодження ліній зв'язку в VI розділі Особливої частини цього Кодексу «Злочини проти власності». Аргументовано, що до структурних елементів суспільних відносин видового об'єкта злочину, передбаченого ст. 360 Кримінального кодексу України, належать: 1) учасники (фізичні та юридичні особи, суспільство й держава); 2) предмет відносин (власність загалом і відносини власності); 3) соціальний зв'язок (забезпечення учасниками цих відносин охорони власності загалом і відносин власності). **Висновки.** Викладене вище зумовлює необхідність внесення змін до Кримінального кодексу України щодо розміщення ст. 360 в розділі VI Особливої частини «Злочини проти власності» шляхом доповнення закону про кримінальну відповідальність ст. 194-2. Видовим об'єктом злочину, передбаченого ст. 360 Кримінального кодексу України, є суспільні відносини, що забезпечують охорону власності загалом і відносини власності. Науково доведено, що основним безпосереднім об'єктом злочину, передбаченого ст. 360 КК України, є суспільні відносини у сфері забезпечення права приватної або колективної чи державної власності (залежно від потерпілого); додатковим обов'язковим об'єктом досліджуваного злочину є суспільні відносини, що забезпечують нормальну роботу телекомунікаційних мереж чи їхніх елементів; додатковим факультативним об'єктом зазначеного злочину можуть бути суспільні відносини, що забезпечують безперебійне надання телекомунікаційних послуг, обороноздатність держави, нормальну роботу екстрених служб і служб цивільного захисту.

**Ключові слова:** родовий об'єкт; видовий об'єкт; безпосередній об'єкт; класифікація об'єктів; пошкодження; лінії зв'язку; злочин; суспільні відносини; кримінально-правова норма.