

Mazepa Svitlana, Senior Teacher
of the Department of Branch
Jurisprudence Sciences of
Kremenchuk Mykhailo
Ostrohradskyi National
University, PhD in Law

SOME PROBLEMS OF CRIMINAL LIABILITY FOR VEHICLE'S MISAPPROPRIATIONS. UKRAINIAN AND GERMAN EXPERIENCE

A lot of vehicles thefts happen all over the world every day. By the way, European car theft capital is Berlin, however there is the same problem in Kyiv and Ukraine as a whole.

Here we are going to analyze Ukrainian and German criminal legislation. So, in German Criminal Code is article) 248b about unlawful taking of a motor-vehicle or bicycle. It says that whosoever uses a motor-vehicle or a bicycle against the will of the person authorized to use it shall be liable to imprisonment not exceeding three years or a fine unless the act is subject to a more severe penalty under other provisions. This offense relates to crimes against property and regarded as theft. The aggravating circumstances are contained in the same chapter, articles 243, 244, 244a. Among them there are: for the purpose of the commission of the offence breaks into or enters a building, official or business premises or another enclosed space or intrudes by using a false key or other tool not typically used for gaining access or hides in the room; steals property which is especially protected by a sealed container or other protective equipment; steals on a commercial basis; steals property which is dedicated to religious worship or used for religious veneration from a church or other building or space used for the practice of religion; steals property of significance for science, art or history or for technical development which is located in a generally accessible collection or is publicly exhibited; steals by exploiting the helplessness of another person, an accident or a common danger;

steals a firearm for the acquisition of which a license is required under the Weapons Act, a machine gun, a submachine gun, a fully or semi-automatic rifle; or a military weapon containing an explosive within the meaning of the Weapons of War (Control) Act or an explosive; carrying weapons; aggravated gang theft.

The liability for vehicle's theft with aggravating circumstance is imprisonment from one to ten years. Besides, there is no difference in this motor-vehicle or a bicycle [1].

The Criminal Code of Ukraine also contains the article 289 "Unlawful appropriation of a vehicle". There are the same aggravating circumstances, such as: actions committed by a group of persons upon their prior conspiracy, or repeated, or accompanied with violence dangerous to the victim's life or health, or with threats of such violence, or committed upon entering into a residence or any other shelter, or where they caused a significant pecuniary damage to the victim; committed by an organized group or accompanied with violence dangerous to the victim's life or health, or threats of such violence, or if they caused heavy property damage.

The liability for the unlawful appropriation of a vehicle with aggravating circumstance is imprisonment from five to twelve years with expropriation. However, p. 4 of the article has discharge from criminal liability. A person shall be discharged from criminal liability, if that person committed for the first time any actions provided for by this Article (except in cases of unlawful appropriation of a vehicle accompanied with violence against the victim or any threats of such violence) and voluntarily reported it to law enforcement authorities, returned the vehicle to its owner and fully repaired the inflicted losses [2; c. 646]. So, according to p. 4 art. 289 of Criminal Code of Ukraine, driver can say that he did not intend to steal the vehicle, only to have fun. Then he has to pay for fuel and will avoid any punishment. German criminal law provides for criminal liability even for riding a bicycle without the purpose of appropriation.

At presents Ukrainian scientists argue about practicability of this encouraging rule. We agree with V.Kuznetsov that this discharge

from criminal liability is necessary to liquidate since this is a kind of permission to unlawful appropriation of a vehicle [3; с. 79]. Instead of this circumstances from p. 4 art. 289 can be qualified as circumstances mitigating punishment (for example as surrender, sincere repentance or actively assistance in detecting the offense and voluntary compensation of losses or repairing of damages).

List of references:

1. URL:

https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/criminal_code_germany_en_1.pdf.

2. Науково-практичний коментар Кримінального кодексу України / Д.С. Азаров, В.К. Гришук, А.В. Савченко (та ін); за заг. ред. О.М. Джужі, А.В. Савченка, В.В. Чернея. К.: Юрінком Інтер, 2016. 1064 с.

3. Кузнецов В.В. Кримінальна відповідальність за крадіжки: Монографія. К.: вид. Паливода А.В., 2005. 158 с.