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MAIN FEATURES OF OBJECTIVE ASPECT OF CRIMES IN SPHERE OF LAND MATTERS OFFENCE

The criminal liability for crimes in sphere of land matters foreseen by the number of articles of the Criminal Code of Ukraine: unauthorized acquisition of land plot and unauthorized building (article 197-1); foulness or spoilage of lands (article 239); criminal conversion of ground coating (uppermost layer) of lands (article 239-1); criminal conversion of water fund lands in especially big amount (article 239-2); violation of rules of earth resources security (article 240); violation of rules of water security (article 242).

The actions of officials under commission of crimes connected with illegal transfer of ownership to a land plots as of share, forest, water fund etc., to other individual person are classified according to the standards of articles of Special part of the Criminal Code of Ukraine: misfeasance or official misconduct (article 364), official negligence (article 367), receipt of offer, promise or getting of improper advantage by official person (article 368), improper influence (369-2).

A great number of criminal standards, that is infused with commission of crimes in area of land matters points at the importance of protection of abovementioned relations for the state.

The objective aspect is critical for an open verdict, because it can not be admitted as a crime that, what has not any external expression, correspondingly a components of any crime include the external characteristics of act, as also the external characteristics leave marks in material world, what allows relatively exact a reconstruction of crime pattern and proof a fact of its realization [1, p. 50]. Thus, without an objective aspect or its components crime won't be or won't be finished. The objective aspect, that a legislator most often describes in a disposition of article of a criminal law, for successful practice of human rights authorities, must clearly determine: wherein is a crime, in which manner it was performed and what consequences were involved, under which conditions of place, time, situation it happened, with a help of which facilities and instruments it was committed.

Let's try to characterize the most specific characteristics of the objective aspect of the investigated articles of the Criminal code of Ukraine.

Art. 197-1 CC of Ukraine – unauthorized seizure of a land plot always belongs to the active actions, the crime is committed in the form of a willful act is directed to usage of a land plot, that certainly is not a property for guilty person and a subject has no rights to it. Therefore, the right way to consider some researchers, can be classified as an unauthorized deforcement of a land plot the omission of person, which does not vacate a rented land plot, seized for social needs etc. [2, p. 10].

The objective aspect of formal crime components: foulness or spoilage of lands (article 239); criminal seizure of ground coating (uppermost layer) of lands (article 239-1); criminal seizure of water fund lands in especially big amount (article 239-2) are characterized by both omission, and active actions, that take place in a certain time, at a certain place, namely take place in case of nonfulfillment completely or in a part of requirements provided by the rules established in accordance with legislation on the condition, that a person was obliged to accomplish them according to these rules and had under these particular conditions a real opportunity for it [3, p. 408, 413, 417].

From the objective aspect a crime of violation of the earth resources security (article 240) can be demonstrated in one of two: 1) violation of established rules of conservation of earth resources, if it created a danger to life, human health or environment; 2) illegal extraction of mineral resources, except of generally used. The violation of established rules of earth resources security can be performed by action or omission. The extraction of mineral resources is foreseen of actions that consist in extraction of mineral resources in every way (pumping, building of mines, excavating plants etc.). The illegality of extraction, that is a mandatory requirement for consideration of actions as criminal, means that extraction of mineral resources is performed without a proper permit – act of patented mining claim provision or with departure from conditions, specified therein. The crime will take place in that case, when a permit is falsified or overdue. [3, p. 419].

The objective aspect of crime in sphere of guidance on water security (article 242) is characterized by the set of three elements: 1) act – violation of the guidance on water conservation in the form of action or omission; 2) consequences in the form of surface-water or ground-water contamination and aquifers, sources of drinking, medicinal water or changes of their natural characteristics, or depletion of water sources, that created a danger to life, human health or environment; 3) causal connection between act and its consequences [3, p. 426].

The objective aspect of investigated crimes in the sphere of official activities is characterized by the fact, that some of them (art.art. 364, 367, 369-2) can be committed both by action and omission, when in art.art. 366, 368 – only by active behavior, actions. The mandatory characteristic of these crimes are the existence of direct connection between an act of person and its official activities, because they are always ensured by official or professional position of the subject and are committed contrary to the interests of service.

In p. 1 art. 366, art. 368 of CC was determined a responsibility for a crime with formal components, which were finished from the moment of an execution of act, independent of occurrence of socially dangerous consequences. The crimes with material comission in the articles 364, p.2 art. 366, 367 of CC are finished from the start of the consequences, mentioned in theses articles in the form of substantial damage. The substantial damage and heavy

consequences can be incriminated to a guilty person only in existence of a causal connection between his act (action or omission) and ensuing of mentioned consequences [4].

In all the cases a determination of the subject of crime in sphere of official activity, when it concerns on an area of land matters, we must clearly determine in credentials of exactly what official person was to make one or another decision, as also those, exactly which of decisions, that were made, and prepared documents entailed a retirement of a land plot from the state property, communal property or property of other person, what means given an opportunity to finish a criminal act.

Thus, it becomes clear, that during qualification of one or another crime an investigator, detective should clearly determine an objective aspect of a criminal punishable act, all its components, for exclusion of error during classification of crime that entails in future absolution of a guilty person in court.

List of references

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