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## AUTONOMOUS PROTECTIVE FACILITIES AND CRIMINAL LAW

Inability of the state in the conditions of sharpening of criminogenic situation in a country to provide proclaimed by Constitution of Ukraine inviolability of right of private ownership and inviolability of habitation and other domain induces citizens to look about defence there law enforcement interests by own forces. Thus the ursingle cases of the use of various protective facilities, which automatically work on the defeat of that, who accomplishes the encroachment, that are able to cause serious harm, including death (connecting of electricity to fence, placing traps or explosive devices at an entrance of cottage, arranging of mechanical trap with the purpose of non-admission of illegal pernancy of a car, abandonment of venenate drinks and food stuffs in apartments, access to which without the consent of proprietor is not allowed, etc.). Six weeks subject was deprived who try to own another's property of enter a summer residence house of one inventive engineer, where and got in a cellar-trap the lid of which was closed automatically [1].

The item 55 of Constitution of Ukraine fasters a right to protect the rights and freedoms from violations and illegal encroachments by not forbidden by law facilities. That counter weapons to violations and illegal trenching upon the civil rights of a person must not be forbidden by a law are in an item 19 of Civil Code of Ukraine, 2003,

which regulates such short story, as a self-defence - unjurisdiction form of defence of civil rights, independently carried out by a subject by his own actions (without addressing to the court and other public organs). Thus vainly to find in a current domestic legislation direct prohibition on the use (foremost for defence of right of ownership) of operating autonomically protective facilities, including watchdogs and other animals, in this connection it follows to acknowledge inexact quite often expandable in Mass-Media peremptory assertion about forbiddingness of traps like venenate cognac, leave in the bar of apartment in case of visits of buglers [2].

As an attempt to decide the examined problem at legislative level is possible to consider suggestion of developers of project of Criminal Code, geared-up by the task of Commission of Verkhovna Rada of Ukraine of 12th convocation on questions of law and order and fight against criminality by the collective of authors at the head with V. M. Smitienkom and borne for consideration of Verkhovna Rada of Ukraine a deputy O. B. Matkovskim [3], to plug the norm of such maintenance in the item 47 of project (name of the article is "Needed defence"): "Rules about a necessary defence spread on the cases of application of hardwires or equipment for protecting from an attack for terms, if such facilities or devices did

not create dangers for other persons, which did not take participating in attack". For the sake of justice will remind that before O. B. Sakharov threw out similar suggestions as a coauthor of sign for development criminal - legal doctrine of the former USSR of collective monograph "Criminal law: Experience of theoretical modeling" [4]. Existent Criminal Code of Ukraine, unfortunately, straightly does not regulate the question of legitimacy of damnification as a result of the use of protective facilities, which automatically work on the defeat of that, who accomplishes encroachment (for example, gets to the apartment or on territory), that in an aggregate with absence of the proper elucidations, given by Plenum of Supreme Court of Ukraine, affects a negative rank identicalness and stability of law-enforcement practice.

Yes, for felonious homicide under aggravating circumstances was convicted by the one of district courts of Kyiv the owner of the house, who in a time of the absence, caused by a business trip specially for unwited guests left in a refrigerator in a bottle of vodka a methyl alcohol, as a result of use of which three persons, who illegally penetrated in the house. 5 But as reckless killing was considered by law enforcement authorities of Kiyvsky oblast of action of 73-years-old pensioner, who for saving his car "GAS-21" in a garage, located at summer residence area, set three homemade firearms- crossbows which worked, causing death for an 11-years-old boy and heavy bodily harm to his 8-years-old brother, when teenagers climbed to garage [6]. Also after an item 119 of Criminal Code as reckless killing characterized Berdyarskiy city-district court of the Zaporozhia oblast actions of X., what with the purpose of its defence connected fence of cottage to electricity, what lethally wounded Y. who ignoring warning of owner as the tablets placed on a fence with inscription "Under tension", tried illegally to penetrate on territory of house and grounds of X. [7]. Pays attention on itself that in none of three cases from law-enforcement practice, which can be considered as typical, a question was not put about that, illegally or legitimately operated door

of harm, who being defended, possibly, exceeded the set limits, and appropriate from point of application of item 55 of Constitution of Ukraine of question did not turn out similarly, on what foundation autonomous facilities are utilized by the defenders of the rights it follows to acknowledge forbidden by the law. On our persuasion, society scarcely can arrange situation, when attracting or unbringing in to criminal responsibility of person which utilized that or other autonomous protective mean effectively depends not so much on position of legislator, how from sense of justice of concrete judge and, sometimes, mastery of lawyer, which after the discretion interpret statutory provisions about circumstances, which eliminate criminality of act, and forms of guilt. Helps in such state of affairs and that circumstance, that from the examined topical problem research workers which probed it did not make the unique position.

Taking into account said, the authors of the offered publication have for an object through the realizable walkthrough of existing criminal - legal doctrine approaches to come into the notice of legal association to the problem of criminal - legal estimation of damnification law enforcement interests as a result of the use of autonomous protective facilities and necessity of its decision in legislative and enforcement aspects.

Foremost we'll determine with terminology. In law literature for defence of right of ownership and other blessings objects, which is caused harm to that, who commits encroachment, are reflected variously (technical facilities, protective, preventive or preventive devices, mechanisms or adaptations, etc.). In the context of this research we are not interested in ordinary locks, bolts, grates, metallic doors, protective facilities which over during encroachment are brought in an action directly or remotely by a man, and similarly alarm devices (for example, light or voice signalling) and "chemical traps", which only help to disrobe that, who committed encroachment, or unscrew the last, not causing harm which needs criminal - legal estimation. N. R. Laschuk proved convincingly, that for denotation of objects,

intended for defence of property or other values, which, operating without any participation of man, cause harm that, who commits encroachment and drives such objects the conduct to the action, it costs to use summarizing term "facilities of necessary defence, which operate (work) automatically". A research worker goes out from that: 1) this term will allow to overcome not only the proper devices (adaptations, mechanisms) but also animals, and also liquids or food stuffs, with poison or other matters which have a negative influence on the organism of man; 2) use of adjectives "mechanical", "technical", the "automatic" narrows the circle of self-acting objects unjustified; 3) concept "facilities of necessary defence" are more successful comparing to adjectives-synonyms "protective", "defence", "preventive", which are utilized for description of operating equipment on autonomously, adaptations, mechanisms, and weapons [8].

Perceiving reasoning of N.R. Laschuk, will mark at the same time, that part of research workers in general does not acknowledge a necessary defence of right of ownership and other rights by autonomous protective facilities and denies as such legitimacy of their use or binds such legitimacy to the different from a necessary defence circumstances.

Yes, casting aside legitimacy of application for the guard of property of devices, which operate mechanically and put in a danger life and health of any man which can to them touch, Y. I. Sluckiy wrote in due time, that already the fact of placing of such devices makes public danger [9]. On this occasion V. O. Navrockiy marks suitable, that "exactly placing of protective devices does not yet mean a damnification ... harm is caused by them exactly then, when encroaching will enter in a protected area and will do encroachment" [10]. In general reasoning's about the forbiddingness of use of autonomous protective facilities for the guard of private property ignore an usualness and prevalence of practice of similar guard of different objects of public domain and, as given out, quite often have the original source morally ramshackle pictures of principle difference of social-

istic criminal right from a bourgeois criminal right, which allegedly takes care in the first turn interests of private proprietor. Remembered in this aspect, with what conviction in soviet law literature wrote about the court of review of France, which yet in 1902 acknowledged legitimate the actions of owner of pond which with the purpose of putting an end the thefts of fish set an automatically operating mechanism and by such method caused one of thieves heavy corporal harm [11]. But for the last decades our attitude toward such phenomenon, as a property, changed cardinaly, by confirmation what the constitutional level of fixing of right of private ownership serves.

By a traditional argument against acceptance of the use of autonomous protective facilities by good behaviour in general and the variety of necessary defence in particular is a that obvious fact, that as a result of their acting can suffer not only persons which indeed commit trenching upon protected objects but also extraneous (third, law-abiding) people which by chance found oneself in the area of action of protective facilities. However it can happen at the different variants of necessary defence, that, certainly, is not examined as an occasion to put under a doubt validity of existence of this criminal - legal institute as whole. That, how to characterize perfect in parallel instances, explained Plenum of Supreme Court of Ukraine in item 3 of the decision from April, 26 2002 № 1 "About judicial practice in matters about a necessary defence": "If at a necessary defence by chance harm is caused to the not participating to the attack person, responsibility can come depending on consequences for a damnification by inadvertence". Entering with authors, who consider that the necessity of guard of objects by autonomous protective facilities in no way conforms to authenticity of infliction of bodily harms and even death not only forwards but also casual persons, V. V. Orekhov declares fully justly, that law-abiding citizens do not break doors, does not blow off locks and does not beat glass in windows with the purpose of penetration in stranger habitation, domestic buildings and garages, for the feasant of crimes [12]. That at

the normal terms of cohabitation placing of autonomous protective facilities does not create a danger for persons, not participating to publicly dangerous encroachments. If harm is caused for such persons, the perfect must be characterized (depending on the circumstances of concrete business and taking into account psychical attitude toward publicly hazard effects) as an intentional or careless crime or considered as an incident.

Sometimes it becomes firmly established in law literature, that placing of protective devices only then can be acknowledged legitimate and considered after general rules about a necessary defence, when these devices after the character were directed not on a damnification, but on the reflection of attack and defence of law enforcement interests [13].

Consider the expounded point of view artificial and such which is not based on the requirements of penal law. From fixed in part 1 item 36 of operating Criminal Code of Ukraine of determination of necessary defence (it also touches part 1 item 13 of Criminal Code of RSFSR in 1960, and also item 37 KK of Russian Federation in 1996) swims out, that carried out with the purpose of defence of law enforcement interests a necessary defence can not consist in other, than in a damnification to that, who commits dangerous encroachment. Otherwise speaking, protecting from such encroachment, not connected with a damnification (physical, property and others like that), is not acknowledged a necessary defence in the criminal - legal value of this concept. Protective facilities which work autonomically are appointed to protect law enforcement interests just by a damnification, and in this aspect of their use fully "written" into legislative determination of necessary defence. Will notice and that harm caused by autonomous protective facilities, scarcely differs from harm, which actually a person, who, for example, illegally penetrates on stranger lot land and injured a prickly wire on a fence, draws itself, by the beaten glass placed near it or as a result of falling in the disguised ditch. Insisting on of principle admission and (at certain terms) legitimacy of the use of

autonomous protective facilities, S. V. Parkhomenko reasons above what an ordinary door lock differs from a door lock with an explosive device. Provided to be only that in first case, who commits a criminal trespass on a property, disappears, remaining living and unharmed, and in the second - he halts a crime on the stage of attempt (whether preparation) with a damnification to his health or death [14].

Clearly, that as a result of the use of autonomous protective facilities, which are not able to define the unconcern of encroachment and striking force of which, by general rule, is hardly adjusting, harm which does not answer the unconcern of encroachment or situation of defence obviously can be caused. However much this circumstance is, so to say, inplane exceeding of limits of necessary defence (part 3 of item 36 of Criminal Code) does not interfere with distribution of general rules about a necessary defence on the cases of the use of protective facilities which work autonomically. Other business, that marked facilities, so to say, in an ideal must be utilized for a distraction or stopping of socially dangerous encroachments with such calculation, that was eliminated over wetting of necessary defence.

T. V. Kondrashova acknowledges the premature defence of use of the personal movable and immovable chattels of various protective devices (like trap, set one of heroes of movie "Beware of the Car") proprietors and casts aside similarity of such situations with realization of necessary defence by a preliminary geared-up weapon. Absence in the moment of trenching upon the property threat of application of violence is ascertained, as devices are marked intended for protecting of property from secret stealing [15].

Given out, that in reasoning's an author groundlessly does not distinguish such terms of legitimacy of necessary defence, as a presence of encroachment and impermissibility of exceeding of limits of necessary defence. Part 2 of item 37 of Criminal Code of Russian Federation, regulating legitimacy of necessary prohibition in the case of protecting from socially dangerous encroach-

ment, not connected with violence, dangerous for life of person, or threat of application of such violence, assumes possibility of realization of act of necessary defence and against such trenching upon a property, as a theft. Besides, autonomous protective facilities, though intended mostly for counteraction thefts, "can be utilized for protecting from other encroachments - robberies, illegal pernamcy of transport vehicles, bodily harms, murders ... the object of defence can be, above all things, life and health, sexual freedom, honour and dignity, and also property of a victim. All of these blessings can be on the defence and with the use of protective applications" [16]. The point of view of A. M. Rishelyuka, which considers a necessary defence as an action of that, who, learned about scheduled attack against him, relatives or other persons, sets or drives to the "battle" state a protective device which works in the moment of encroachment against a forward. Interestingly, that placing of protective devices, able to inflict heavy harm or deprive life, in other cases (in default of the real threat of encroachment) a research worker does not acknowledge a necessary defence through obvious prematurity of such behaviour [17].

True, if to be already oriented on elucidation of Plenum of Supreme Court of Ukraine about the origin of the state of necessary defence and in the case of creation of the real threat of damnification (part 2 mentioned decision of Plenum, April, 26 2002 № 1), it follows not to distinguish obvious and non-obvious prematurity of defence, and to do a synonymous conclusion about a presence or absence socially dangerous encroachment as one of terms of legitimacy of necessary defence. Except it, a laying-on in basis of determination of reality of threat of encroachment of subjective perception of that, who is defended, forces to say, that, as a rule, persons preliminary set autonomous protective facilities not just in case, but because for diverse reasons rather afraid for a maintenance the property and other blessings and wish them to protect own forces. From the point of view the penal estimation of done it is unimportant, whether a person,

who set an autonomous protective mean which worked, knew when actually look place socially dangerous encroachment. At the same time we consider principle circumstance, that A. M. Rishelyuk does not cast aside possibility of accepting of using of the necessary defence and of absence of person who protects law enforcement interests by such method.

In opinion of P. P. Andrushka, damnification as a result of action of different technical devices and other facilities of defence, which are set or used by the proprietors of habitation or other domain for prevention of illegal penetration to him (for example, arranging and disguise of pit on lot land, abandonment at a house watchdog), it follows to examine as good behaviour, but not after rules about a necessary defence, but as realization of the right. The last is an original general circumstance in relation to concrete circumstances which eliminate criminality of act, - necessary defence, detention of criminal, etc. A research worker grounds his position that at necessary defence harm is caused a person who commits socially dangerous encroachment, and in the cases of the use of facilities of defence of action committed for suppression future, possible encroachment which can not be [18]. Presumably, it costs to specify, that a necessary defence is acknowledge actions, predefined by the necessity of not only stopping but also distraction of encroachment (item 15 of Criminal Code in 1960, item 36 of Criminal Code in 2001).

N. O. Lopashenko reasons a similar rank, who does not see in cases of early placing of protective devices, capable of mischief to the possible criminal, timeliness of defence as one of terms of legitimacy of necessary defence. Researcher is sure of that to the necessary defence it is impossible to prepare preliminary, this state arises up suddenly - in initial moment of realization socially dangerous encroachment. As defence can not be preceded to the act of encroachment, damnification to the person as a result of action of protective devices must be characterized depending on concrete circumstances as intentional or reckless crime [19].

Y. V. Baulin legitimacy of application of different technical devices and other facilities of defence, which operate in the moment of encroachment without participation of man, by general rule binds not to the necessary defence, but with other circumstances which eliminate criminality of act (in particular, with realization of right of defence of property, by an official duty performance). A research worker marks that at a necessary defence who is defended, must personally estimate the public unconcern of concrete encroachment and necessity of defence and, in accordance with it, begin his own actions for a distraction or stopping of encroachment, and similarly to compare the caused harm with the unconcern of encroachment and situation of defence. All of these terms absent at acting of mechanical, electric and other nocifensors and weapons on without participation of person who is protecting. Y. V. Baulin acknowledges that assertionous requirement of the personal contact of whom who is defended with a forward straight in a penal law not indicated, however, on persuasion of scientist, this requirement swims out from essence of necessary defence as action, immediately carried out in reply to doing encroachment. Together with that, is marked, that, if a person utilizes similar devices in the moment of socially dangerous encroachment, the penal estimation of its actions must be carried out on the basis of item 36 of Criminal Code [20]. Reproduces position of Y. V. Baulina in that part, that, who is defended, must personally make sure in the presence of foundation for a necessary defence, E. O. Baranova, who application of technical mechanisms and adaptations, capable of mischief to the potential offender, at no terms does not acknowledge necessary defence [21].

The no less ponderable and convincing are seemed the arguments of supporters of scientific position in obedience to which using of autonomous protective facilities for certain terms however must be examined as a needed defence. In reply to reproach about absence in the cases of the use of protective facilities, operating in autonomous behaviour, direct contact of that, who

is defended, with a person which commits socially dangerous encroachment, usually specified on that a criminal law does not require the personal presence of that, who will realize a right on a necessary defence, during a damnification to the forward. At the order of finishing telling of presence of encroachment as condition of legitimacy of necessary defence is about that actions, directed on protecting from encroachment, must be estimated in the moment of their feasibility, that in the moment of damnification to that, who encroaches on protected blessing, but not on the moment of placing of autonomous protective mean, when encroachment absents actually. It is considered in this connection, that the act of necessary defence is carried out not then, when a protective mean is set, but in the moment of acting of last on the defeat of person which commits encroachment. Marked, that law-enforcement practice which denies a presence socially dangerous encroachment and which considers the effective use of autonomous protective facilities as ordinary (intentional or careless) crime against a person withstands, willy-nilly creates the guarantees of legal inviolability for that, who commits illegal encroachment. Despite the requirements of moral, persons who commits trenching upon law enforcement interests transform for victims, and law-abiding citizens - for criminals. It also becomes firmly established, that a law does not forbid to prepare preliminary to the necessary defence against the expected encroachment, and that is why a defence can not be examined as premature, if harm by autonomous protective facilities caused during socially dangerous encroachment (for example, when a person gets to stranger habitation for the commission of crime) [22].

Placing of automatic device for defence of property, which operates on a defeat of encroaching, it follows to consider preparation to the necessary defence, and such which took place, it needs to be acknowledged from the moment of damnification, when a device worked. It turns attention that in law-enforcement practice ignores the crime (even exceeding of limits of necessary defence) of holding of watchdogs and other ani-

mals with the purpose of defence of habitation or other apartment, which in absence of owners operate similarly uncontrolledly, can cause considerable harm and which are led owners yet then, when there is not socially dangerous encroachment. So in this situation is "preparation for necessary defence" [23]. So, it is considered that as at physical absence of person which is defended, at place of encroachment the requirement of can be observed part 1 item of 36 Criminal Code of Ukraine in relation to infliction to that, who encroaches, harm which in this situation is necessary and sufficient for an immediate distraction or stopping of encroachment.

Above-mentioned position and its ground is not new for law science. For example, well known pre-revolution criminal lawyer M. S. Tagancev, reasoning above that, whether can in the acquittal allude to the right for a defence person, who for the guard of property downs dogs or utilizes traps, crossbow or other devices, wrote, that, as harm is caused in the moment of encroachment, such damnification and will be the act of defence against a concrete, really existent, attack. Unimportant in these cases that, who is defended, did not have a direct collision with a forward, even was not at the place of attack. Any person can be defended in fact, shouting from the pistol charged a long ago. It is interesting, that before the settled of analysable conduct researches associated not with a necessary defence, but with realization of private right. Clarification was done at the same time, that the offered solution of question can not cause objections only on condition that suffering is a person which in actual fact committed encroachment on protected property [24].

The Ukrainian scientist E. Y. Nemirovskiy considered that in that case, when defence and used preliminary, taking into account the danger of attack in the future measures (crossbows, beaten glass on-the-spot stone fence and others like that) operate in the moment of illegal encroachment, caused by them not surplus harm proves to be correct by a defence. If harm, by chance, is caused whoever, who doesn't committed encroachment, is possible responsibility for careless crime

- on condition that a person which arranged defence adaptation did not take measures for warning of similar cases [25]. In a scientifically-practical comment to the item devoted to necessary defence item 19 of Criminal Code of Ukrainian Soviet Socialist Republic dated 1922 M. M. Pashe-Ozerskiy wrote, that different adaptations and mechanisms which settle down for protecting of property from thieves (nails, beaten glass, wire fence, filled on a fence, etc.) were engulfed the concepts of necessary defence, true, only then, when they were obvious for everyone [26]. Obviously, that warning in relation to legitimacy the uses of autonomous protective facilities, selected E. Y. Nemirovsky and M. M. Pashe-Ozerskiy, is rather similar with the words of modern researchers, who examining the use of the noted facilities within the limits of penal institute of necessary defence, mark a laying-on on that, who is defended.

Will point and civil argument in be half of acceptance of the use of autonomous protective facilities by the variety (by the special case) of necessary defence. The question is what in civil legal literature a necessary defence is examined as a display of self-defence of civil laws is regulated a criminal legislation from illegal encroachments, which in same time includes for itself establishment of obstacles a proprietor for avoidance of groundless penetration of other persons in a dwelling-house, production building or on lot land, damnification to the health or will flash persons, the what illegal trench upon civil laws (for example, destroy property of physical persons), etc [27].

After S. V. Borodin L. A. Ostapenko suggests to differentiate the penal estimation of infliction of death as a result of action of fail-safes depending on that, set they in public places or to places which are not public (for example, basements, sheds, apartments people). Marked, that for correct qualification of actions of person which utilized a protective device, it is necessary to find out the package of questions: how much did applied mean was dangerous for life or health of man; what person exactly protected by it, how

behaved to the caused consequences, etc. In opinion of author, in the cases of the use of fail-safes in places, which are not public, the careless exceeding of limits of necessary defence which does not pull criminal responsibility is more frequent [28].

If to take into account the value of concept "public" (that accessible for all by the possibility of the use) [29], it is enough problematic to imagine a situation in which person with the purpose of defence, say, set ownership rights autonomous mean exactly in a public place, though to eliminate such off-type situation fully, but certainly we can't except this. Seems doubtful and thesis about the careless exceeding of limits of necessary defence, as a person which with the purpose of defence of law enforcement interests utilizes a that or other autonomous protective mean, taking into account his properties if does not wish an offensive publicly of hazard effects in the total to the acting mean, at least assumes their offensive. So, Plenum of Supreme Court of Ukraine acknowledged that with indirect intention operated convict by Kharkov regional court after an item 94 of Criminal Code in 1960 X. who with the purpose of defence of flower-garden from thefts set fence from a steel wire and connected it to the electric system, and as a result Y. was mortally trauma [30].

From said swims out, that not always the use of autonomous protective facilities (even if to examine such cases from the point of view statutory provisions about a necessary defence) must be acknowledged good behaviour. In fact a defence is needed as a circumstance which eliminates criminality of act foresees the observance of certain terms of legitimacy, among which, is a purpose of defence of law enforcement interests and impermissibility of exceeding of limits of necessary defence. The use of autonomous protective facilities will be considered an ordinary intentional crime, if it is done with other purpose (for example, from revenge to that, who committed encroachments before) and at the same time will eliminate criminal responsibility, if harm is caused for this reason, who commits socially

dangerous encroachment, during realization the last and here caused harm must not be in obvious disparity with the unconcern of encroachment. A problem, as S. F. Milyukov speaks out suitable, consists exactly in accordance of character and volume of harm, caused to a forward, to the public danger of perfect by him acts [31]. Settling this problem, V. O. Navrockiy marks that infliction of harm protective devices will be legitimate then, when the same harm would be inflicted while the "personal" distraction or stopping socially dangerous encroachment" [32]. In other words is caused encroaching, and at the effective use of autonomous protective facilities the penal estimation of damnification must be founded including on legislative determination of exceeding of limits of necessary defence (part 3 of item 36 of Criminal Code) with the "rubber" (estimational) formulation fastened in him about obvious disparity of the caused harm of unconcern of encroachment or situation of defence. Taking into account that protective facilities which operate autonomically are mainly intended for defence of property, N. R. Laschuk marks that within the limits of necessary defence there will "be infliction a person, who carries out encroachment, bodily harms, imprisonment, elimination or damage of property" [33]. As general guideline this utterance seems suitable. And if, for example, we can discuss about legitimacy of intentional infliction of heavy bodily harm at protecting of property by secret theft, referring including on the hierarchy of values and approval of the proper penal prohibitions, intentional infliction of death in such situation as a result of acting of autonomous protective mean is needed, to our opinion, to acknowledge as a crime - exceeding of limits of necessary defence (an item of 118 Criminal Code). In fact, as justly registers in legal literature, impermissible to compare the value of human life and property of any value [34]. By the way, this question similarly decides in the modern penal doctrine of the USA. In the ground of impermissibility of application of deadly force for defence of property in the order of realization of necessary defence the separate American legisla-

tors assert that a maintenance of life of man is for society more important, than defence of property [35]. Together with that obviously, that taking into account positions, fastened in item 36 of Criminal Code of Ukraine, can be acknowledged legitimate infliction of death to that, who commits the violent trenching upon a property.

Taking into account marked, we can not consent with Y. M. Tkachevsky, who acknowledges neither a necessary defence nor exceeding of its limits, such actions, as establishment of traps in cars, abandonment of poison in food stuffs for stopping of theft from an apartment, establishment of crossbow, in a garden for the guard of apples, etc [36]. Research worker demonstrates at least an inconsistency in the judgements, declares (in our view, grounded) in fact, that protective devices and mechanisms, and also animals can be utilized with such calculation, that exceeding of limits of necessary defence was eliminated, when harm is caused to encroaching obviously does not answer character and degree of public unconcern of encroachment.

At determination of legitimacy of damnification as a result of acting of autonomous protective facilities can not be useful part 5 of item 36 of Criminal Code of Ukraine in obedience to which is not exceeding of limits of necessary defence regardless of weight of the caused harm of application of any facilities or objects including for the distraction of the illegal violent intruding in habitation or other apartment. The legislative pointing means on violent encroachment, that person against the actions of which well-regulated part 5 of item of 36 Criminal Code defence, gets to habitation or other apartment (shed, garage, office, domestic or production setting) with application of physical violence or threat of his application. Essence of autonomous protective mean which operates without participation of man eliminates as such possibility of application of psychical violence in relation to a person who carries out the act of necessary defence by such method, being not in this case in place socially dangerous encroachment.

We are convinced, that concerning the penal problem considered in this article must speak out not only Plenum of Supreme Court of Ukraine but also legislator. Position of those researchers, which speak out for the direct legislative fixing of right for persons (obviously, in the order of realization of right on a necessary defence) to utilize protective facilities which operate automatically, impresses us, as about the limits of good behaviour, that from exteriority reminds a crime, citizens must know directly from the text of Criminal Code, but not from different literary sources in which given him contradictory interpretation. It is necessary, that the proper penal norm fastened terms the observance of which will testify to legitimacy of the use of autonomous protective facilities and to which it is needed to take informing of potential offenders (and not only them) about the existent danger of damnification.

On the face of it, the offered norm must contain and such condition of legitimacy of the use of autonomous protective facilities, as an exception (at least at defence of property) of possibility of infliction to encroaching death (as variant heavy bodily harm). A condition is however marked S. V. Parkhomenko speaks out justly, capable to reduce to the zero the idea of legalization of defence in autonomous regime [37]. In fact, realization of norm about a defence in absence of that, who is defended, at place of socially dangerous encroachment possible only in the context of all normative material about a necessary defence, including, as marked already, position about exceeding of limits of necessary defence.

Another condition, which in the case of fixing of it in Criminal Code of Ukraine will not allow to legalize the variety (method) of necessary defence, connected with the use of autonomous protective facilities, is a requirement that these facilities must not create the danger of damnification for those, whoever commits socially dangerous encroachments. In actual fact such danger for law-abiding persons will exist always, concerning what we will point two situations. In

the case of pursuit of criminal or stopping of crime which threatens life of inhabitants, and also at a natural diaster and other extraordinary circumstances to the workers of militia in accordance with the item 11 of Law of Ukraine from December, 20 dated 1990 "About the militia" days are settled without difficulty at any time to enter on lot lands, in the housings and other apartments of citizens, that objects which can be guarded by autonomous protective facilities. From these facilities can suffer and workers of under abnormal condition repair brigades and some other persons which with the purpose of liquidation of failure carry out an unauthorized (without the receipt of consent of user) division to habitation and other domain of person in an order, to foreseen item 17 of Law of Ukraine June, 24 dated 2004 "About housing and communal services". Thus, the norm of Criminal Code, sacred to the legitimate use of autonomous protective facilities as variety of necessary defence, must contain pointing on that facilities do not create the danger of damnification participating to encroachment persons, not in general, but usually (in an ordinary situation).

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