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METHODS OF CRIME COMMISSION AND THE FORMS OF THEFT

Annotation

The article considers the problem of determining the method of crime commission in the criminal law in relation to theft. General issues of the method of crime commission are discussed within the frameworks of objective side of the components of crime and the value of this element for determination the form of theft is determined. There is also the analysis of the legal issues of the theft form significance for qualification, and conclusion about deterministic of the theft forms. General, specific and particular methods of committing a theft are distinguished. The author argues that the sole basis for the design of various forms of theft should be only one method that can be caused both by the nature of the criminal objective and by the objectively substantive terms of its implementation. The article is of interest to criminologists in terms of further generalization and typing methods of committing theft.

Key Words: method, theft, forms of theft, crime, fashion crime, method of crime commission, crimes against property.

In view of scientific and practical significance the problem of the method of crime commission has been being a constant subject of scientists' attention for many years of development of criminal law, criminology and criminal justice process.

In criminal law the method of crime commission is usually regarded as a form of criminal activity outside, used by the criminal methods and techniques for the implementation of criminal intent (as determined by the order, the method of the sequence of movements and techniques

used by criminals in the process of committing a crime) [1, p. 172, 2, p. 43, 3, p. 71, 4, p. 9]. Determination of the method of crime commission in science of criminal law is the fundamental basis for other sciences of the criminal cycle, since the concept of *modus operandi* in other sciences is subordinated in relation to criminal law.

As it is known the achievement of criminal purpose in most cases is directly related to the chosen method of committing a crime. The limits of criminal phenomena are real but also relative, since they should be in the framework of the legislative formula. According to this the concept of the method of crime from the viewpoint of criminal law may not coincide with the contents of *modus operandi* from the position of criminology. If the crime (the act) is a specific action, transaction or series of transactions for achievement of criminal purpose, the method shows how a person has committed a socially dangerous act, which methods and tools were applied. The two most common methods of committing crimes are usually singled out in the theory of criminal law - fraud and violence [5, p. 246, 6, p. 36].

In fact the method of crime is a criminal offense characteristic. Therefore, being inextricably linked with the act and forming a part of it, the method of crime influences very often on the extent and nature of public danger of the offense that is included in many crimes as constructive or aggravating characteristic (can be recognized as the fact burdening the punishment). Being an optional feature of the objective side of the crime, *modus operandi* has important criminal-law functions, one of which is the differentiation of criminal liability and punishment.

Sometimes the method of the crime determines the identity of the criminal act, restricting the limits of criminal liability. At the same time, the *modus operandi* does not exist outside the act and is not limited only by the act. It is also determined by the used means and circumstances, under which the crime was committed. These factors often give additional characteristic to *modus operandi*. However, since the manner, place, time and circumstances characterize just an act, they are not separate elements of the objective aspect of crime. An independent evidence of the crime can only be one factor that always has an independent criminal legal importance for the qualification of the crime. Where the *modus operandi* appears as a mandatory feature of crime, there is the criminalization of the method, the fundamental feature of which is a public danger [7, p. 7-8]. Evaluation of the method of crime serves a starting point in the process of qualification of theft.

As any phenomenon theft has the content and the form of its manifestation. Content of the theft represents a set of processes and interactions of different elements, which cause certain changes in the dynamics of theft and appear in harmful consequences. Consequently, the content of theft is not only those processes that occur in it and form it as a separate phenomenon but also those that connect this phenomenon with reality [8, p. 26]. Currently, the legislator defines the content of theft by a set of characteristic factors. Thus, according to Part 1 of the notes to Chapter 24 of the Criminal Code theft is the intentional unlawful uncompensated taking of another person's property or property right for mercenary ends. On the basis of this we can conclude that the essence of theft is reflected in the

goals of this type of criminal activity (encroachment on property).

As it is indicated in this regard in the legal literature, the most important basis of differentiation of criminal liability for theft of property is the mechanism of damage (a certain method of committing a crime as a form of socially dangerous acts). In this regard, the method of crime commission is the most appropriate base of allocation of the form of theft in law and it can be called form-building [7, p. 5-6]. Interpretation of the method of crime commission as a form of encroachment or criminal act has some merit, because the method can serve as a form of criminal behavior [9, p. 15]. In other words, the method of theft, which determines the form of this crime, is the set of methods, techniques and movements that lead to the misappropriation of property.

Form is the outward expression of the contents of something. Under the form of specific offenses is understood the outline, delineation of its main features in the article of the criminal law, in its disposition. In other words, if the content of crime is a set of objective and subjective factors, the form of the *corpus delicti* is the delineation of these traits under the rubric of a particular article of criminal law [10, p. 52]. The form indicates the modes of existence and expression of theft. Having a common content, theft, as an objective reality, manifests in various modifications and structural formations. Therefore, the most formative methods of theft assume the diversity of techniques and methods of misappropriation of one's property.

In the doctrine of criminal law a form of theft is considered to be: a) legally significant methods (modes) through which the property is confiscated [11, p. 302]; b) a set of techniques

and methods, which are the result of property confiscation [12, p. 233], c) typical (which differ from each other), the most common methods of committing a theft as it is defined in the criminal law [13, p. 40] d) methods, specific methods of committing of socially dangerous actions [14, p. 92].

According to this premise the vast majority of criminologists, not without reasons, believe that the responsibility for theft is differentiated depending on the manner, in which it was committed (method is a form or sign of action) [15, p. 48, 1916, p. 35]. In this regard, the establishment of the exact characteristics of each form of theft is a prerequisite for the proper qualification of the crime because the method of misappropriation of people's property characterizes the degree of public danger.

The selection in special articles of the criminal law of theft a number of forms makes it possible to determine in the Criminal Code of the specific features of each of these forms and thus eliminates the arbitrary extension of the concept of theft, as occurred, for example, in the 20 th and 40 th years of the twentieth century. Thus, the early Soviet penal law established liability for the specific theft of socialist property (without interpretation of the term "theft") with noting the subject of crime, place and mode of committed crime: theft of loads during their transport; looting of goods and materials provided by public authorities for execution of government contracts, committed by the leaders of these enterprises; theft by fraud, etc. [17, p. 178-180].

In accordance with the Decree of the Presidium of the Supreme Soviet of the USSR on June 4, 1947 "On criminal liability for theft of state and public property" only three specific

forms of stealing were defined: theft, misappropriation, embezzlement - other forms of theft were covered by the words "and other thefts". As a result the theft at that time often included theft, committed by fraud, cheat in measuring and shortweighting, Production of poor quality goods, creation of pseudo-cooperative organization, unauthorized hay mowing on land outside the use of state organizations, or farms, the appropriation of found property, etc. [18, p. 64, 1919, p.61-63]. This situation greatly complicated the enforcement notion of theft and did not allow to reveal the essence of the phenomenon.

Later in the science of criminal law there were argues about the question what kind of specific crimes can be included in the category of theft (for example, could extortion be a theft). In accordance with the Criminal Code of the BSSR of 1960 (as well as the RSFSR Criminal Code, Criminal Code of Ukraine) the forms of theft were burglary, robbery, misappropriation, embezzlement, theft by malpractice, fraud. Each of these forms of theft, depending on the method, was characterized by varying degrees of danger for society, that is, in principle, takes place today. As it was rightly noted in this regard by A.Boitsov, the number of available forms of theft is a question of history, legal traditions, doctrinal preference and influence of many other factors [11, p.310].

Currently, the Belarusian lawmakers indicate in what methods theft can be committed directly in the definition of theft through the fol-

lowing wording: «... by theft, robbery, extortion, fraud, abuse of office, misappropriation, embezzlement or computer usage».¹

In this regard, the importance of method of committing theft and indication of forms of theft consists in the fact that it promotes a more specific and comprehensive study of the mechanism, causes and conditions which are conducive to their occurrence, differentiation of different type of actions, methods and means of misappropriation of another person's property, forming for each form of theft specific aggravating circumstances [12, p. 235, 20, p. 90]. With pointing out the forms of theft there is also differentiation and individualization of criminal responsibility for different kinds of criminal behavior by theft according to the degree of public danger.

Meanwhile, today a number of scholars put forward the thesis according to which the basis for dividing the theft into forms has a few reasons (and not only one method of committing a crime), and the science of criminal law does not have an adequate classification of the forms of theft according to any other base (the base of such a typology of forms of theft may lie the method of committing theft and subject of criminal encroachment) [21, p. 426-230, 22, p. 19-21]. Therefore, the form of theft can not only be confined to one method of committing a crime [23, p. 129]. This division does not correspond both to psycho-physiological relationship of these concepts and the content and functional interdependence in the general philosophical sense

1. It must be noted that Russian and Ukrainian legislations don't have definitions of methods of theft commission in the Criminal Code, the solution of this question remains for scientists. Though, Russian criminalists point out the following forms of theft: burglary, fraud, misappropriation, embezzlement, robbery. Ukrainian lawmakers relate to the theft burglary, robbery, extortion, fraud, misappropriation, embezzlement, misappropriation of property by malversation.

of the notions “form”, “content”, “method” and does not reflect the full diversity of socio-legal reality of theft control [24, p. 227].

L.Kruglikov notes that in the theory of criminal law the method is considered as one element of the objective side of crime, but as such it is included in the contents of crime, it is closer to the content than to the form, since the content is understood as «a set of elements, processes and material bonds forming this phenomenon». Hence the method of crime commission mustn't come to the form of encroachment, as well as the form mustn't come to the method [9, p. 16] because the method does not appear as a form of criminal act but as a structural feature that determines the proper form of manifestation of this act and crime in general [25, p. 9].

Investigation of the mechanism of criminal encroachment on property relations leads V.Plokhova to the conclusion that as a result of their commission the owner or another owner of the property is deprived of certain material values and guilty person is of illegally enriched by it. Consequently, the public danger of theft should be determined, above all, by the value of property. The factors that contribute to the possibility of increasing that amount must be indicated at the criminalization of the mode of action [24, p. 225].

Nevertheless, the method of theft, which determines the form of this crime and consists in the set of methods, techniques and movements that lead to the misappropriation of another property, forms an integral part of the objective of the overall composition of theft. Thus, the Belarusian legislator, defining the general concept of theft, specifically indicate its generic (general, primary) mode of action (or inaction) - *misap-*

ropriation of another property. Specific methods of committing theft (burglary, robbery, extortion, etc.) have their own specific features and describe their own special method for misappropriation of people's property (each of which serves as the main dominant over the other), they are found in various articles of criminal law (Articles 205-212 of the Criminal Code of RB). The specified private methods of theft, acting as aggravating circumstances are concretized in the same articles of the Criminal Code within the specific offenses.

Indeed, the structure of the objective side of theft is quite complicated and it is not limited by misappropriation of property. We should also take into account that each particular theft is committed more to their particular method, reflected in the differentiation of forms of theft.

Consequently, speaking about the mode of action in the commission of theft, from the position of the current legislator, we can distinguish the *general* (core) method of theft - misappropriation (withdrawal, isolation), *specific* (concrete) methods of theft (robbery, extortion, fraud, abuse of office, misappropriation, embezzlement, use of computers), *private* methods of theft (with entry into the dwelling, unauthorized access to computer information, etc.). In this formulation, all private and specific methods of committing theft must meet the basic (general) method of committing theft and its characteristic features.

We believe that differentiation of the responsibility for committing theft should be done according to the method of criminal assault. Differentiation on the subject of encroachment both with the method cannot be the basis for appropriate forms of theft, because hallmark of theft

should be an indication of its subject - the property as a physical thing. In this plane the one and only basis for the formation of various forms of theft should serve only one method that can be caused both by the nature of criminal goal and by the objectively substantive terms of its implementation.

Therefore, the proper qualification of thefts, which include its own specific method

of crime as the main feature, is possible under the following conditions: a) the establishment of compliance of the method of socially dangerous act with general and specific features of the method described in articles 205-212 of the Criminal Code of RB); b) determination of the subjective relation to the person not only to the criminal act but also to the method it was committed, provided in the specific article of the criminal law.

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