To the Question of Signs of Objects of Intentional Murder and Intentional Grievoius Physical Harm in Case of Exceeding the Limits of Necessary Defence

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Abstract. *The article deals with the question of determining the features of the object of crimes envisaged by Articles 118 and 124 of the Criminal Code of Ukraine. The focus is on the direct object. The life of third persons can not be the object of the specified.*

Keywords: *excess of the limits of the necessary defense, the state of necessary defense, the direct object of crime, life and health of the person.*

Problem statement

In the course of an investigation into intentional murders committed in excess of the limits of the necessary defense (article 118 of the Criminal Code of Ukraine), an important circumstance to be proved in the criminal proceedings is the state of necessary defense. The results of empirical studies make it possible to state that investigators of the National Police of Ukraine during the investigation of this crime find it difficult to establish the state of necessary defense (89,5%), there is a need to provide forensic recommendations (74,1%). In recent years, the number of intentional murders committed in excess of the limits of necessary defense, which necessitates the use of reaction measures, is significantly increased. Thus, the comparative characteristic of the statistics of the Prosecutor General's Office of Ukraine for the years 2015, 2016, and 2017 shows that, in accordance with the Unified Register of Pre-trial Investigations (REDD), 34, 37 and 113 events were reported on the grounds of the crime provided for in article 118 of the Criminal Code of Ukraine. There were reported suspicions of committing a crime in 33, 37 and 108 cases; with the indictment sent to court 31, 36 and 106 criminal proceedings. During the six months of 2018, 72 cases of criminal proceedings were filed with the YRDD, 64 were reported, and 47 criminal cases were sent to the court [1].

Analysis of recent research and publications. The concepts relevant to determining the main moments of the object of intentional murder and intentional severe bodily injury in case of exceeding the limits of the necessary defense were researched in their works by such scholars as: Yu. Baulin, M. Bazhanov, O. Bodnaruk, H. Borzenkov, O. Dudorov, L. Husar, M. Isaiev, A. Istomin, S. Kelin, V. Kudriavtsev, N. Kuznietsov, O. Kvasha, O. Lupinosova, S. Miliukov, M. Moshenets, V. Osadchyi, A. Piontkovskyi, N. Plysiuk, A. Savchenko, M. Sharhorodskyi, V. Soloviov, N. Tahantsev, N. Yarmyshand other scholars.

The purpose of the article is to analyze the components of crimes envisaged by articles 118 and 124 of the Criminal Code of Ukraine, their objective and subjective features. This

is important because the crime is a legal basis for bringing a person who committed a crime to criminal liability and is the legal basis for the qualification of crimes [2, p. 58].

Presentation of the main research material. The correct solution to the issue of the object of the crime is important not only the theoretical but also the practical significance. The object of the crime is defined as that which the subject of the crime infringes, who is or may be caused by a crime with a certain harm.

Despite the rather high practical value, the more considering the heterogeneity of judicial practice on this issue, the definition of the object of the crimes provided for in articles 118 and 124 of the Criminal Code of Ukraine was not studied in the literature. In particular, in the works of various researchers you can find the following. "In the murder committed in excess of the limits of the necessary defense, the object of the crime is the life of the attacker" [3, p. 101]. The object of the excessive defense is "the rights protected by the rights of the person who committed an attack on public or individual interest" [4, p. 107.].

The notion of the object of a crime, as a social relationship, is enshrined in Article 1 of the Criminal Code of Ukraine. Public relations are quite diverse (socio-political, economic, ideological, etc.) and regulated in society by different norms – norms of law, norms of morality and customs.

O. Naumov proceeds from the fact that the theory of the object of the crime as a social relationship, protected by the criminal law, can not be considered universal, and believes "...possible return to the theory of the object as a legal good ..." [5, p. 78]. This theory, created at the end of the nineteenth century within the classical and sociological schools of criminal law, was supported and developed by M. Tahantic. This point of view is shared by A. Pashkovska, who writes: "...the object of a crime is the socially significant values, interests, and benefits protected by a criminal law, committed by a person who commits an offense and who, as a result of a criminal act, causes or is likely to be caused significant harm" [6, p. 64].

As rightly notes O. Lupinossova, the constructive sign of the concept of the object of the crime is seen at the same time and in the fact that it is violated by a crime, is exposed in the process of its commission, changes as a result of such influence, requires its criminal law protection, is harmful [7 , p. 175].

Some authors consider the object of the crime and the subject itself. "An offense causes or threatens to cause harm not to anything (benefits, norms of law, relations, etc.), but anyone and, therefore, as an object of a crime need to consider not something, but someone" [8, with. 29]. It is alleged "... that the object of any crime, and not only directed against the person, is the people who, in some cases, act as separate individuals, in others – as a kind of a set of individuals who have or do not have the status of a legal entity, in the third – as a society (society)" [8, p. 60].

In our opinion, such an understanding of the object of the crime contradicts and the position of the legislator, and does not meet the main requirement of the concept of the object of the crime – to determine why it is caused or may be caused by harm as a result of a criminal encroachment. This interpretation, as it were, changes the notion of object and object of crime, mixing here with the category of the victim.

N. Tahanets defined the object of a criminal act as a "commandment or norm of law, which found its expression in the scope of subjective rights protected by this norm of the interest of life" [9, p. 178]. It was noted that the norm of law in its vital manifestation, which directly encroaches on the perpetrator, represents two points: either it protects well-known interests that exist in the state as though independently; or she protects them only as a manifestation of the rights of the individual. In this regard, the object was meant by law-protecting interest [9, p. 144].

"...The general object of the crime is not a permanent system of social relations (which is given once and for all), but a mobile (changing) system, which depends on the criminal law (for example, in connection with the criminalization and decriminalization of socially dangerous acts, all system ... of public relations, which forms the general object of criminal law protection)" [10, p. 14].

The object of the crime is defined as that which the subject of the crime perpetrates,

and why the crime is or may be caused by a certain harm. Along with the object of the crime should be allocated and the object of the crime, which acts as an optional feature of the crime. The subject of the crime should be considered any things of the material world, with certain properties of which the criminal law links the presence in the actions of a person of a specific composition of the crime. The subject of crime as an independent sign of crime is always associated with the object. It is the object and object of the crime in aggregate form an independent element of the crime. However, unlike the object of a crime, which is a mandatory feature of a crime, an object is an optional feature.

The subject is different from the object and the fact that it is not always harmed. If the damage caused to the object is always social in nature, then the object of the crime as a result of a socially dangerous attack, first of all, causes physical damage, which, in turn, causes a certain negative social change in the object.

A. Piontkovskyi did not see any fundamental difference between the object and the subject of the crime. "If it's just a renaming of a direct object to an object of an attack, then essentially nothing changes, because the direct object is the object to which it affects. Therefore, to identify the subject as something directly affected by the perpetrator (property, human health, etc.), and, leaving this subject in the doctrine of the object, do not call it an object – it means merely unjustifiably to change the previously established and more correct terminology" [11, p. 119]. Adhering to the idea that any crime directly or indirectly impinges on social relations, A. Piontkovskyi did not object to the allocation of the general, generic and direct object of the crime. He considered it permissible to give public relations the role of only the general and generic object of the crime, but only not that which is usually designated as direct. Since in the concept of this author the direct object is the object of influence that can be perceived (property, health, etc.), it turns out that the proposed A. Piontkovskyi's decision did not substantially substantiate the question, but denied the thesis of social relations as the object of a crime.

In this concept, there is no reason at all to distinguish between the object and the direct object of the crime. The commission of a crime in it agrees with the act of direct influence not on itself the social relations, but on the fact that, according to the author, one can directly perceive (property, health, freedom, etc.).

First of all, it should be noted that causing a deliberate murder or deliberate severe bodily injury in case of exceeding the limits of the necessary defense by its nature and socio-legal nature are the privileged crimes.

particular attention deserves the provision that the crime, stipulated by Article 118 of the Criminal Code of Ukraine, refers to a crime of minor gravity. The sanction of this article in comparison with other sanctions of articles of Section II of the CCU, which provides for the responsibility for the murder, provides corrective labor for up to two years, restraint of liberty for a term up to three years or imprisonment for a term up to two years. This sanction is even less than the sanction of article 119 "Murder through negligence", according to which a murder committed through negligence is punishable by restraint of liberty for a term of three to five years, or imprisonment for the same term.

That is, in fact, the legislator provides for a case in which a person, having committed "intentional murder" in excess of the limits of the necessary defense, is less responsible than the person who committed the "murder through negligence". This, of course, requires a certain correction of such a situation by the legislator. When determining the sanctions of the articles of this section of the Criminal Code of Ukraine, the legislator should approach this in a comprehensive and systematic manner, taking into account, in particular, the social danger of each crime foreseen by him and the fact that today Article 119 of the Criminal Code of Ukraine is the only one that provides for responsibility for murder through negligence.

The system of crimes against life A special part of the Criminal Code of Ukraine is a set of criminal law that establishes the list and legal features of acts dangerous to the individual, society and state and have a direct object of encroachment on human life. Deprivation of human life is thus recognized as an objective basis of criminal responsibility. Section II of the Criminal Code of Ukraine "Crimes against life

and health" includes the following crimes that directly encroach on life: murder (articles 115, 116, 117, 118 of the Criminal Code of Ukraine); infliction of death by negligence (article 119 of the Criminal Code of Ukraine); bringing suicide (article 120 of the Criminal Code of Ukraine).

In view of the above, it should be noted that the object of the crime envisaged by article 118 of the Criminal Code of Ukraine is the recognition of human life. It should also be noted that the right to life in modern Ukrainian legislation is considered as an element of the general civil capacity of an individual arising from a person from the moment of his birth (article 252 of the Civil Code of Ukraine). Article 6 of the Law of Ukraine "On the Protection of Childhood" states that "every child has the right to life from the moment of its determination as a live-birth and viable according to the criteria of the World Health Organization" [12, p. 20]. Life can be characterized as higher non-material good, which arises from the moment of separation of a viable child from the mother's body and continues throughout the period of functioning of the brain.

Consequently, in contrast to other crimes against life, the direct object of the crime under consideration (article 118 of the Criminal Code of Ukraine) is the life not of everyone, but only of those who encroached upon the rights and interests of other persons protected by law. At the same time, the criminal law protects the person of the attacker only in the case that those who are defending allowed to exceed the limits of the necessary defense, which was expressed in the deprivation of life of the attacker. In the light of the provisions of the current wording of article 36 of the Criminal Code of Ukraine, only the life and health of the assailant, whose attack was not accompanied by the use of violence dangerous to the life of the defending person, or other persons, can act as the object of exceeding the limits of the necessary defense.

Agree with A. Istomin, who emphasized that the murder of man – is not only the deprivation of his life as a biological being, but at the same time and the destruction of the totality of social relations that make up its essence [13, p. 111]. The immediate object of the analyzed crime is the life of a person who committed a socially dangerous attack prohibited by a criminal law. In this regard, in our view, a false one is the point of view of S. Tasakov, according to which the object of this crime is the human right to life [14, p. 16]. Not right, but human life ends after a criminal encroachment.

The conditions in which the attacker is deprived of life can't be compared with those in which a simple or qualified assassination takes place. Some authors believe that the first victim becomes a protected person, and she, while protecting her rights, hurts another person. Such a position, according to the remarkable remark of Professor V. Kvashis, on the scale of values determined by the fact that the right to physical integrity of the attacker "compromised" and to some extent derived from under criminal law [15, p. 134]. In turn, the right to cause harm to the offender can't be considered "not right" on the grounds that, in its essence, "it is directed not against social values, but on the contrary – acts as a means of protecting them".

Thus, the legal status of the attacker, who turned out to be the object of defensive action, is double. On the one hand, his life, health, will, property and other interests in certain cases fall out of the protection of the criminal law, and the reason for this is the commission of a socially dangerous encroachment. On the other hand, the life and health of the attacker are subject to criminal law protection, if the person who is defending, as a result of violation of the established rules of exercising the right to the necessary defense goes beyond the allowed protection, in connection with which his defensive actions acquire the character of an unlawful socially dangerous attack.

The object of intentional murder when exceeding the limits of the necessary defense can only be relations with the protection of the life of the attacker, and not relations with the protection of other rights and interests that belong to him.

The object of this deliberate murder can't be the lives of third parties. It can't be considered as a deliberate murder in excess of the boundaries of necessary defense in the defense against a socially dangerous assault on the attacker, but to another person who is mistaken for the attacker, for example, a citizen standing next to the latter and not taking part in the attack. In this case, the crimes stipulated

by article 118 of the Criminal Code are absent. Such a murder should be qualified as a careless murder, even if it represented an excess of defense, provided that similar damage was done to the attacker. The rules of the necessary defense to such actions may only be applied if the defender's defect is apologetic, that is, the victim has committed any act that was mistaken for the attack, and because of the situation, the defendant was not knew and could not know that this person was not involved in the attack.

We can't, in the framework of this study, draw attention to the fact that article 118 of the Criminal Code of Ukraine contains one more case of legal protection – a deliberate murder in case of exceeding the measures necessary for the apprehension of the offender. It should be noted that the problem of the application of this norm does not lose its relevance since the adoption of the current Criminal Code of Ukraine.

The legislator equated in one article of the Criminal Code of Ukraine the significance of two different circumstances that exclude the crime of an act, since the detention of a person who committed a crime is quite independent and difficult to apply the circumstance that excludes the crime of an act along with the necessary defense. Part 1 of article 38 of the Criminal Code of Ukraine states that the criminal actions of the victim and other persons not directly after the commission of an attack aimed at apprehending the perpetrator of crime and its delivery to the relevant authorities are not recognized if it was not allowed to exceed the measures necessary for the detention of such a person.

The detention of a person who committed a crime as a circumstance precluding the crime of an act is determined by the current CC of Ukraine too widely. Thereby, criminal acts of not only the victim but also other persons aimed at apprehending the person who committed the crime and bringing it to the appropriate authorities immediately after the assault is not recognized. This provision is intended to ensure the rights and freedoms of the person who has been attacked and serves as a guarantee of their restoration through further administration of justice.

From the disposition of article 118 of the Criminal Code of Ukraine it follows that deprivation of life of the offender during his detention, if the necessary measures for this measure were not exceeded, may be legitimate. However, scientists rightly point out that article 38 needs to be amended to eliminate this possibility. The argument is that the person who committed the crime can't even be deprived of life under the court's decision, since the death penalty in the Criminal Code of Ukraine does not exist. Moreover, it is impossible to allow death in the custody of a perpetrator to be brought to the appropriate authorities. However, for the time being, the law still allows it (of course, subject to the conditions laid down in article 38 of the Criminal Code of Ukraine). In the scientific literature there is a point of view that the deprivation of a person's life in connection with her detention is always in excess of the measures necessary for this detention, according to article 118 of the Criminal Code of Ukraine. Unfortunately, this is not really the case. Indeed, in the disposition refers not to "murder while apprehending the offender", but about the murder in excess of the measures necessary for detention. One can only hope that the legislature will correct the situation over time and formulate the article in such a way that there is no doubt that the law does not allow deprivation of life of a person in the situation under consideration [16, p. 59].

If for citizens the defense is a subjective right, then for the employees of the internal affairs bodies the protection of the interests of the state, society, as well as the interests of citizens is a duty of duty. The right to necessary defense in accordance with article 36 of the Criminal Code of Ukraine, police officers possess on an equal footing with all, without exception, citizens. The actions of citizens, police officers, servicemen and other persons performing official duties aimed at preventing a socially dangerous attack, while complying with the requirements of the law, do not include the crime. Only if the conditions of the lawfulness of the necessary defense are not met, a person who has been protected from a socially dangerous attack, is subject to prosecution.

In addition, the basis for the detention of a person is "the commission of a crime". This is a purely formal reason for the detention of a person, since the commission of any socially dangerous

attack is not yet grounds for the use of violence against the person who committed it. A person performing detention actions must be convinced of the crime committed and realize that the delinquent is delayed, and not the other person. Confidence must be based on the evidence of the crime and the person who committed it. In the event that the victim is conscientiously mistaken in relation to the crime of the perpetrator or the offender, the question must be decided on the rules of the imaginary defense.

However, in our opinion, the person who is detained in the law as a criminal is not entirely correct. A person is found guilty of committing a crime and can't be subjected to criminal punishment until her guilt is proved in a lawful manner and established by a conviction of a court (article 1, article 62 of the Constitution of Ukraine).

According to the object of the crime, stipulated by article 118 of the Criminal Code of Ukraine, is the life of the perpetrator, and in Article 124 of the Criminal Code of Ukraine, the health of such a person.

The object of the crime, which involves responsibility for causing severe bodily harm in excess of the limits of the necessary defense, should be understood as an attack on the health of the attacker. Harm to health is caused by the forced, suddenly arising threat to life and health of a person who has recently attacked, and now is protected. It should be understood that the increased public danger of crimes against life is due to the fact that they commit irreversible consequences that are not subject to any compensation or reparation. So, for example, when a property crime is committed – the damage can be relatively easily recovered.

Conclusions

Summarizing the above said, it should be noted that the object of the crime envisaged by article 118 of the Criminal Code of Ukraine is the life not of every person, but only of those who encroached upon the rights and interests of other persons protected by law. In the context of this, it should be noted that it can't be considered as a deliberate killing or deliberate infliction of grave bodily harm in excess of the limits of the necessary defense in the protection against socially dangerous encroachment of death or serious bodily harm not to the attacker, and to another person who was mistaken for the attacker, for example , a person who stands next to the latter and does not participate in the attack, in other words, has nothing to do with socially dangerous actions. In this case, there is no crime in accordance with articles 118 and 124 of the Criminal Code of Ukraine. When speaking about such a murder, it is important to note that it should be qualified as a careless murder, even if it is an excess of defense, provided that the attacker is similarly harmed. The rules of the necessary defense to such actions may only be applied if the defender's defect is apologetic, that is, the victim has committed any act that was mistaken for the attack, and because of the situation, the defendant was not knew and could not know that this person was not involved in the attack.

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