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CRIMINAL AND LEGAL CHARACTERISTICS AND ITS METHODOLOGICAL ESSENCE

The article defines the notion of the criminal and legal characteristics, discloses its connection with the other sciences. The author classified the criminal and legal characteristics of crimes, outlined and disclosed the contents of the general, generic, specifics and individual criminal and legal characteristics of crimes. The author found out interrelation with the other sciences and methods of scientific cognition. It is defined the criminal and legal characteristics of crimes. The methodical and integrated essence of the criminal and legal characteristics was outlined in terms of studying the criminal and legal characteristics.

Keywords: criminal and legal characteristics; criminal and legal characteristic of crime; crime; corpus delicti; qualification; category.

One of the most urgent problems of the contemporary science describing the criminal law is the problem, covering the criminal and legal characteristics essence and the contents of the latter's elements. It is explained with the fact that on the one hand the criminal and legal characteristics is a widely used notion, through which people strive to research practically all criminal and legal

categories (crime, penalty, criminal and legal influence measures, plurality of crimes, complicity in crime, circumstances excluding the criminal nature of an act, grounds allowing exempt from criminal liability, etc.), and on the other hand – the very criminal and legal characteristics is pending the duly studying, since there are practically no scientific papers specifically devoted to this problem.

In these contents it is possible to refer only to the publications by V. I. Borysov, A. A. Vozniuk, A. A. Myzyka and O. O. Pashchenko, although giving rather general idea of the criminal and legal characteristics and the totality of its elements. However, there is a pending dispute concerning: the nature of the criminal and legal characteristics, significance for the science; circle of the possible elements forming the criminal and legal characteristics; types of criminal and legal characteristics; interrelation of the criminal and legal characteristics with the other scientific characteristics and the other sciences.

Analyzing the field and topics of the contemporary scientific researches devoted to the criminal law, it should be mentioned that most of them, namely those related to the Special Part problems, are directly concerned with the problem of the criminal and legal characteristics. Moreover, the essence of the criminal and legal characteristics notion is undisclosed, while its subject matter, in terms of such scientific researches' structure, is rather versatile. Therefore, there is a need in profound study of the criminal and legal characteristics as it is and the elements.

In the Ukrainian language «characteristics» means a description, defining the essential and inherent peculiarities and features of someone or something [1, p. 24]. Thus, the criminal and legal characteristics in fact constitute a description of the criminal and legal categories and features. However, the description itself may also denote the process of describing (cognition) and already retained existing knowledge. Therefore, the criminal and legal characteristics may be understood in additional meanings, as follows: a) the process; b) the result.

Thus, on one hand describing the features of the criminal and legal categories is a specific process, which actually concerns cognizing a relevant category, which is secured through the use of the general scientific methods and the specific scientific methods.

On the other hand such cognizing process produces its result embodied in the already obtained knowledge on the relevant criminal and legal category. Thus, the criminal and legal characteristics as a result mean already existed and described knowledge on of the criminal and legal category, while the criminal and legal characteristics as a process mean only a process of producing (obtaining) knowledge on of the criminal and legal category, which knowledge will be retained becoming a result.

Analysis of the existing studies in the field of the criminal and legal characteristics (publications by V. I. Borysov, A. A. Vozniuk, A. A. Myzyka and O.O. Paschenko) shows that the criminal and legal characteristics are predominantly traded as a result, i.e., the very knowledge on the criminal and legal characteristics, rather than a process of obtaining such knowledge. That is why we would like to highlight exclusively the aspects of understanding the criminal and legal characteristics as a process of cognizing (obtaining knowledge).

Taken from this perspective the criminal and legal characteristics provide a kind of the scientific cognizing methods' integration. In other words, the process of obtaining and describing the knowledge on the criminal and legal characteristics implies: the first, breakdown of such a category into its elements, the second, studying each such element, finding out their features and defining the essence of the criminal and legal category, in general. Alas, all of the above requires harmonic combination and use of such scientific cognition methods, as: dialectic, analysis, synthesis, deduction, induction, dogmatic, systematic and structural, logical and semantic, historical and legal, comparative and legal, etc.

This is the exact point treated as a connection of the criminal and legal characteristics with the other sciences. The mentioned sciences, inter alia include not the law sciences alone, but also philosophy, logics, philology, directly connected to the criminal and legal characteristics, since the methods of such sciences are the methods of scientific cognition applied to breaking down and describing the elements (features) of any criminal and legal category. Moreover, the criminal and legal characteristics of specific categories (amenability, features of the subjective party, subject, instruments of crime, etc.) are indivisibly connected with applying the methods and knowledge of the other sciences, including: social science, medicine, psychology, psychiatry, mathematics, physics, computer science,

biology, zoology, etc. For example, the criminal and legal characteristics of illegal hunting requires the use of knowledge in zoology; the criminal and legal characteristics of unauthorized interference into the operation of the computer systems (computer), automated systems, computer networks or electric communication network requires the use of knowledge in computer science, etc.

Furthermore, the criminal and legal characteristics are directly connected with the legal sciences. Namely, the theory and history of the state and law, since describing the features of the criminal and legal characteristics implies the use of the comparative and legal method and the historical method. Moreover, an important element of the criminal and legal characteristics applied to certain categories is knowledge in the field of the other legal sciences, namely: the constitutional law, the civil and procedure law, the family law, the commercial law and procedure, the labor law, the land law, the environmental law, the administrative law, the informational and financial law, the administrative activities and administrative process. Thus, the criminal and legal characteristics of breaching the voting secrecy requires the knowledge in the field of the constitutional and administrative law; the criminal and legal characteristics of stock market abuse requires the knowledge in the field of the civil, commercial, financial and administrative law.

Moreover, the criminal and legal characteristics of a crime, in our opinion, are an integral ground (material basis) for the other characteristics, as related to the crime (criminological, criminalist, operational and search). It is explained with the fact that without describing a crime as the criminal and legal category the other types of describing the same are impossible. Furthermore, the criminal and legal characteristics of a crime constitute a basis of the facts to be proven.

Although the term «criminal and legal characteristics» is used in numerous theses and monographic research papers, this category has not been clearly defined so far in the criminal law science, and therefore it is understood ambiguously, outlining the elements with different contents. The individual aspects of this problem were analyzed by V. I. Borysov, and O. O. Pashchenko in the scientific article «Certain Aspects Characterizing the Essence of the Criminal and Legal Characteristics Applied to Crimes» [2, p. 180–190], as well as A. A. Muzyka in the abstracts of the conference «Crime

Qualification» Category», adjacent categories in the light of formulating the thesis researches' topics» [3, p. 161–163].

According to H. A. Matusovskiy, the notion of the crimes' criminal and legal characteristics, although being not clearly shaped, naturally coincides with the system of the legal characteristics, each of which constitutes a totality of the defined regulatory and other features (traces), a part of which has no direct influence on an action qualification, although playing an important role in detecting and solving the crimes (the criminalist significant features). He believes that the criminal and legal characteristics of certain crimes' types, constitutes, on one hand, a regulatory description of a certain action in the relevant rule (rules) of the criminal laws, and on the other hand – generalizing the practice of applying this rule. An important role in forming the criminal and legal characteristics is played by the theory of the criminal law, the scientific and practical comments, doctrine based construing of the regulations and the practical application thereof [4, p. 47].

According to A.A. Muzyka, the review of the relevant synopses to the Candidate of Science (PhD) theses shows that the authors have different ideas of the essence of the criminal and legal characteristics applied to a crime, i.e., they disclose the research object subject to their own creative preferences (individual aptitudes). They do not attempt to cognize the notion «criminal and legal characteristics of a crime» and give a definition thereto. And that is why the synopses to the theses, which declared research object is «criminal and legal characteristics of a certain crime», one may found (along with the elements of crime analysis), the following sections (subsections): historical, international legal aspects, comparative and legal aspects; system of crimes; criminal and legal counteraction; release from criminal liability (as a promising field of the criminal laws development); segregation from the adjacent encroachment and qualifying as a totality of crimes; preventing criminal offences. In fact, it goes for the entire range of the criminal and legal and certain segment of the criminological problems [3, p. 162]. It is evident that some of the said criminal and legal categories constitute the elements of the criminal and legal characteristics of crimes.

An important role in researching the criminal and legal characteristics is played by the method of classifying, which implies splitting this notion into groups in terms common features and properties.

Development of any classification requires defining the criteria of the same. According to A. A. Vozniuk, the criminal and legal characteristics should be classified the subject to the object the wide range of which predetermines breakdown thereof into the crime characteristics, crime subject, amenability, guilt, repetition, and totality, and recidivism, circumstances excluding the criminal nature of an act, penalty and the other categories of the criminal law. Thus, to the extent of the criminal and legal characteristics it is possible to analyze practically any criminal and legal category [5, p. 65].

The crime characteristics are the most significant aspect for the science. It is suggested to breakdown the crime characteristics similarly to the commonly known classification of the crime objects – i.e., horizontally and vertically.

Therefore, in terms of the functioning levels the following types of the crime criminal and legal characteristic may be outlined: 1) general (applicable to all the crimes); 2) generic (normally, to the extent of the Special Part conditions of the Criminal Code); 3) specific (the criminal and legal characteristics applicable to the exact type of crime, e.g. the crime described in article 255 of the Criminal Code of Ukraine); 4) individual (criminal and legal characteristics of an actually committed crime) [5, p. 65].

The general criminal and legal characteristic of a crime is a legal pattern applied to characterize any crime of essence for developing the criminal and legal characteristic of certain crimes.

The generic criminal and legal characteristics of crimes contain details of the crimes encroach a homogenous group of the public relations, for example, its characteristics of crimes against property, against environment, against public safety, against justice.

The specific criminal and legal characteristics of a crime cover inherent features typical for a certain type of crime. Such features are described in the articles of the Special Part of the Criminal Code of Ukraine and apply to a certain crime only. Some crimes may have qualifying features and especially qualifying features of crimes, the other ones – the special types of release from criminal liability and circumstances excluding the criminal nature of an act.

The individual criminal and legal characteristic of a crime is of the greatest importance for justice, since it contains the features of a crime peculiar to a certain crime event.

The criminal and legal characteristics of a crime denote a system of features used to qualify the crimes and covering segregation. Such features may include, first of all, the notion of a crime and its public danger. Moreover, the greatest number of the criminal and legal characteristics features is expressed in the corpus delicti structure. Among the feature of the crime object there should be outlined the public relations encroached by the crime, the subject of crime and the victim. However, as apart of the crime object it is necessary mention the generic and immediate object (and, where necessary, to differentiate the same into the immediate principal and the auxiliary one – the auxiliary one mandatory or optional). Characterizing the objective aspect of the corpus delicti one should as certain its mandatory and optional features and determines what kind of crime it is in terms of the objective aspect's structure – abridged, formal or material. When finding out the subjective aspect one should pay attention to the form of guilt inherent to the crime (malice, negligence or mixed (complex, double) form), and, where necessary to the goal and the reason of committing a crime. Analyzing an object of crime requires identifying a person, the latter's age and amenability, as well as auxiliary features – features of the crime special subject, namely the citizenship, office, occupation (profession), certain activities, military status, conviction, health condition, the family and other relations.

Further there is a need to define the qualifying and especially qualifying features of crimes and the incentive regulations of the Special Part conditions of the Criminal Code – the special types of release from criminal liability and circumstances excluding the criminal nature of an act, as provided for in the articles of the Special Part conditions of the Criminal Code of Ukraine. An important role in the criminal and legal characteristics of a crime is played by ascertaining the crimes gravity degree, which is important in terms of: 1) crimes qualifying: determining the validity extent of the law on criminal liability as regards the crimes committed beyond Ukraine by foreign nationals and persons without citizenship permanently residing in Ukraine (article 8 of the Criminal Code); 2) determining the validity extent of the criminal liability for preparing the crimes (part 2, article 14 of the Criminal Code); 3) defining the notion of a crime committed by a criminal organization (part 4, article 28 of the Criminal Code); 4) determining the validity extent of the liable person

who was on a special mission aimed at preventing or solving criminal activities of an organized group or a criminal organization (part 2, article 43 of the Criminal Code); 5) establishing the grounds for applying the incentive regulations: establishing the grounds for release from criminal liability (Articles 45 to 49 of the Criminal Code); 6) establishing the grounds for release from sentence and serving the same (part 4, Article 74, Articles 79 to 83, 97, 105 to 107 of the Criminal Code); 7) establishing the grounds for criminal liability for specific crimes (namely those provided for in articles 255, 372, 383, 384, 396 of the Criminal Code); 8) applying certain kinds of penalty (Article 54, part 2 of Article 59, Article 64, Article 102 of the Criminal Code); 9) sentence awarding (Articles 70 to 71 of the Criminal Code); 10) establishing the timelines for quashing a conviction (articles 89 and 108 of the Criminal Code); 11) defining the type of the criminal enforcement institution in which a person should service a sentence, etc.

There should be a conflict between several articles one should find out the features under which one crime differs from the other or from an administrative offence.

The criminal and legal characteristics of a crime, is of a great essence in the system of counteracting to criminality. Thus, where the criminological characteristics are aimed at preventing the crimes, the criminalist characteristics are aimed at the crime investigations; the operational and search characteristics are aimed at the crimes detection, finding out the persons who committed the crimes, than the criminal and legal characteristics is a material basis of the specified characteristics types, since the same contain the legal characteristics of a crime, detected, investigated and prevented. The legal notion of the latter allows thinking out what is the essence of crime, what it encroaches, where it is committed, what instruments are used, what it results in, who may be its subject, etc. Such data is predominantly derived from the criminal and legal characteristics of a crime. The other types of characteristics in the field of counteracting to the criminality introduce their elements based on the components of the criminal and legal characteristic of crimes.

Thus, the criminal and legal characteristics are not just a description of the features and elements of the criminal and legal categories, but also a process of complex scientific cognition,

allowing elaboration (obtaining) the knowledge on the criminal and legal category. It should be perceived in a somewhat broader context, being not limited to the description as a result of the knowledge retaining. The criminal and legal characteristics provides a kind of decomposition of a criminal and legal category into the portions (features) and the scientific description of such portions (features), being indivisibly connected both with the legal and the other sciences. Moreover, the investigated category constitutes a basis form the other characteristics as related to the crime, and therefore there is seen a connection with the criminology, criminal process, criminalistics, operational and search activities.

The core task of the criminal and legal characteristics of a crime is securing the correct qualification of a socially dangerous action. But the criminal and legal characteristics is needed for comprehensive studying of a crime, improving the grounds of criminal liability for committing the same, as well as for correct construing the features of the corpus delicti, sentence awarding, applying the incentive of criminal and legal standards, etc.

The criminal and legal characteristics should be classified according to the object with its breakdown into the crime characteristics, if there is a crime subject, amenability, feeling of guilt, repetition, totality, recidivism, circumstances excluding the criminal nature of an act, penalty, etc. Furthermore, in terms of the functioning levels the following types of the crime criminal and legal characteristic may be outlined: 1) general (applicable to all the crimes); 2) generic (the crimes characteristics to the extent of the Special Part conditions of the Criminal Code); 3) specific (the criminal and legal characteristics applicable to the exact type of crimes); 4) individual (the criminal and legal characteristics applicable to an actually committed crime).

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