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## PECULIARITIES OF OBJECTIVE SIDE OF CERTAIN CRIMES THAT INFRINGE ON A PERSON'S HEALTH

The Constitution of Ukraine ensures the health of an individual from any illegal encroachments. Besides the main Law of our country, the same statements are fixed by the norms of the branch legislation as the Criminal Code of Ukraine (Hereinafter – CC of Ukraine), where the main sense and the procedure of the protection of this rights are reflected.

The theory of the criminal law defines one of the most important features of the objective side of any criminal offence as a socially dangerous act (action or inaction). Defying of this feature of some crimes against the health of an individual causes some discussions among the scientists. So, we have to mentioned the scientists who had some researches about the questions that we discussed in this scientific paper: O.V. Avramenko, A.V. Baylov, I.S. Victorov, A.O. Danylevsky, I.V. Tkachenko, R.R. Tuhbatullin, O.M. Yarchenko, N.M. Yarmysh etc.

Consequently, we had done the analysis of the specialized literature concerning the crimes which infringe the health of an individual we could make a conclusion that all of the types of mentioned injuries (article 121 of CC of Ukraine (Intended grievous bodily injury), article 122 of CC of Ukraine (Intended bodily injury of medium gravity), article 125 of CC of Ukraine (Intended minor bodily injury) and article 128 of CC of Ukraine (Negligent grievous bodily injury or negligent bodily injury of medium gravity)) could be caused by both types of act (the action and inaction).

However, we have to admit, that the analyzed specialized literature concerning defying the objective side of an article 123 (**Intended grievous bodily injury**

**inflicted in condition of extreme emotion**) CC of Ukraine, there is no single approach to define the crime. According to that, some researchers admit that an objective side of an intended grievous bodily injury inflicted **in condition of extreme emotion** could be characterized by the act (in a form of action or inaction)<sup>1</sup>. Some others, comments about this article admit that an objective side is an attempt on a life of another individual<sup>2</sup>. In such case, actions of a perpetrator should be qualified not by the article 123 of CC of Ukraine, but by the article 116 (**Murder committed in condition of extreme emotion**) of CC of Ukraine. A socially dangerous act is a feature of a crime, which is provided by the article 123 of CC of Ukraine, as any act (action or inaction) it could defined by such attributes as: socially dangerous, unlawfulness, particular character, consciousness and willingness<sup>3</sup>. We shouldn't compare terms as consciousness and willingness. Not everything that is conscious is made by the willing of an individual but all that is made with willing is conscious. That is why consciousness and willingness are not the separated features of a socially dangerous act. Willingness is not conceived without consciousness and includes it. So, we have to define consciousness not parallel with willingness but attached to the characteristics of the last one<sup>4</sup>. Though, some scientists equate this terms<sup>5</sup>.

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<sup>1</sup> Авраменко О.В. Стан сильного душевного хвилювання: кримінально-правові та кримінологічні аспекти : автореф. дис. на здобуття наук. ступеня канд. юрид. наук : спец. 12.00.08 «Кримінальне право та кримінологія; кримінально-виконавче право» / О.В. Авраменко. – Львів, 2008. – 19 с.; Тухбатуллин Р.Р. Умышленные преступления против жизни и здоровья, совершенные в состоянии аффекта / Р.Р. Тухбатуллин. – М., 2005. – 217 с.; Пуляева Е.В. Аффект: уголовно-правовая и криминалистическая характеристика / Е.В. Пуляева. – Тамбов, 2007. – 235 с.

<sup>2</sup> Кваліфікація злочинів, підслідних органам внутрішніх справ : [навч. посіб.] / за заг. ред. В.В. Коваленка ; за наук. ред. О.М. Джужі, А.В. Савченка. – К. : Атіка, 2011. – С. 52. – (648 с.).

<sup>3</sup> Байлов А.В. Кримінальна відповідальність за посягання на життя та здоров'я особи, вчинені в стані сильного душевного хвилювання : дис. ... канд. юрид. наук : 12.00.08 / Байлов Антон Володимирович. – Х., 2004. – С. 44. – (200 с.).

<sup>4</sup> Ярмиш Н.М. Дія як ознака об'єктивної сторони злочину (проблеми психологічної характеристики) / Н. М. Ярмиш. – Х. : Основа, 1999. – С. 15 – 16. – (84 с.).

<sup>5</sup> Курс советского уголовного права. Часть общая : [в 5 т.]. – Т. 1. – Л. : Изд-во Ленинград. ун-та, 1968. – С. 320. – (646 с.).

Also, there is a thought that the objective side of the criminal offence can be characterized only as an action<sup>6</sup>, because in other side that mentioned in the article 123 CC of Ukraine, it is impossible to commit such a criminal offence an inaction way<sup>7</sup>. The affect is commonly described with impulsive actions, which naturally consist of many physical actions, which are reflected with a stereotypical beats inflicting, usually by arms and legs to the different parts of a body of a victim and sometimes strangulation<sup>8</sup>. O.M. Popov admits that sometimes crimes in affect could be committed with inaction too. It's not hard to imagine a situation in course for illegal behavior of a victim the guilty gets in condition of extreme emotion one and he doesn't execute the right action he had too. For instance, an electrician, who is near the control panel power grid gets from a foreman, who works on a line, an instruction to turn off the power as fast as he can in an insulting form. Instead of implementation of a guideline, the electrician, being in a state of a heat of a passion, disappears from a workplace and left the power on, with no care about treating of consequences of his actions. At that moment, the foreman touches a contact line and dies<sup>9</sup>. However, above-mentioned example couldn't be classified by this article. Inaction of the electrician we have to qualify under the features of part 2 of the article 272 (violation of safety rules related to high-risk operations) of CC of Ukraine. However, if we defined the subjective side of this criminal offence we could qualify the electrician actions as an attempt for a murder.

Some of the Ukrainian scientists who analyze such mentioned problems are supported this position. In context that socially dangerous act as a necessary

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<sup>6</sup> Кримінальний кодекс України: [наук.-практ. комент.] / Ю.В. Баулін, В.І. Борисов, С.Б. Гавриш та ін.; За заг. ред. В.В. Сташиса, В.Я. Тація. — К.: Ін Юре, 2003. — С. 384 – (1196 с.); Кваліфікація злочинів, підслідних органам внутрішніх справ : [навч. посіб.] / за заг. ред. В.В. Коваленка ; за наук. ред. О.М. Джужі, А.В. Савченка. — К. : Атіка, 2011. — С. 52. — (648 с.).

<sup>7</sup> Науково-практичний коментар Кримінального кодексу України / за ред. М.І. Мельника, М.І. Хавронюка. — 9-те вид. переробл. та допов. — К. : Юрид. думка, 2012. — С. 310 – 311. — (1316 с.).

<sup>8</sup> Ткаченко В.И. Ответственность за умышленные преступления против жизни и здоровья, совершенные в состоянии аффекта / В.И. Ткаченко. — М., 1979. — С. 4. — (244 с.)

<sup>9</sup> Попов А.Н. Преступление против личности при смягчающих обстоятельствах / А.Н. Попов. — СПб. : Юрид. центр Пресс, 2001. — С. 79, 80. — (485 с.).

feature of an objective side of criminal offence, which is mentioned in article 123 CC of Ukraine and could be reflected only in a way of actions, which have a physical approach<sup>10</sup>. The investigation of the criminal cases according to the article 123 CC of Ukraine. Gives as the reason to establish that we couldn't find any instances where an objective side of criminal offence was reflected as inaction.

The article 124 (**intentional infliction of serious bodily injury in excess of self-defense or in excess of measures necessary to arrest the offender**) of CC of Ukraine according to the objective side is characterized: 1) as actions which are directed on grievous bodily injury; 2) the consequence is a grievous bodily injury; 3) causal connection between mentioned actions and consequence; 4) certain condition of committing a crime<sup>11</sup>. The crime, which is considered, could be committed only in the actions way. The article 124 of CC of Ukraine shouldn't be used in cases of intended grievous bodily injury with a help of preventive measures. In such cases, victims are not in a condition of self-defense and do not commit actions which are directed to arrest of a person who committed a crime. However, couldn't extend the borders of a self-defense and necessary measures of apprehending the criminal<sup>12</sup>. So we had done the characteristic of criminal verdicts, according to this article and made the conclusion that in all cases crimes were committed only by actions.

In an article 130 of CC of Ukraine (**Infection with HIV or any other incurable contagious disease**) the objective side of a part 1 is characterized as a conscious subjecting of another individual in a danger of being infected with HIV

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<sup>10</sup> Байлов А.В. Кримінальна відповідальність за посягання на життя та здоров'я особи, вчинені в стані сильного душевного хвилювання : дис. ... канд. юрид. наук : 12.00.08 / Байлов Антон Володимирович. – Х., 2004. – С. 48. – (200 с.).

<sup>11</sup> Кримінальний кодекс України: [наук.-практ. комент.] / Ю.В. Баулін, В.І. Борисов, С.Б. Гавриш та ін.; За заг. ред. В.В. Сташиса, В.Я. Тація. — К.: Ін Юре, 2003. — С. 386 – 387– (1196 с.); Кваліфікація злочинів, підслідних органам внутрішніх справ : [навч. посіб.] / за заг. ред. В.В. Коваленка ; за наук. ред. О.М. Джужі, А.В. Савченка. – К. : Атіка, 2011. – С. 53 – (648 с.); Науково-практичний коментар Кримінального кодексу України / за ред. М.І. Мельника, М.І. Хавронюка. – 9-те вид. переробл. та допов. – К. : Юрид. думка, 2012. – С. 312. – (1316 с.).

<sup>12</sup> Кримінальний кодекс України: [наук.-практ. комент.] / Ю.В. Баулін, В.І. Борисов, С.Б. Гавриш та ін.; За заг. ред. В.В. Сташиса, В.Я. Тація. — К.: Ін Юре, 2003. — С. 387. – (1196 с.).

or any other incurable contagious disease, which is extremely dangerous for a life of an individual. So, there is no equal position among researchers. Some of them said this crime could commit only with actions (active behavior) of infected individual<sup>13</sup>. Others are convinced that the danger of being infected could be caused either action or inaction<sup>14</sup>. The third ones to find out these questions refer to the content of obligations, which could be put on an infected individual, and violation of which could be reflected in action or inaction<sup>15</sup>.

Creation the dangerous situation where a human could be infected with HIV or any other incurable contagious disease which is dangerous for a life of an individual could be reflected in actions which create a danger of infection for an individual. It is such actions which in specific conditions could cause an infection of other individual and in not infecting of an individual can be just in case of accidental circumstances or measures made by a victim<sup>16</sup>. We suppose that the objective side of part 1 of the article 130 of CC of Ukraine could be committing either actions or inactions. It follows from that the individual who is infected with HIV or other incurable infectious disease, according to the Law of Ukraine "about prevention of Acquired Immune Deficiency Syndrome (AIDS) and social protection" where notified about he/she has followed with rules of conduct. E.V. Korniyenko thinks if he/she didn't follow of these rules it would be the criminal

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<sup>13</sup> Сташис В.В. Личность под охраной уголовного закона / В.В. Сташис, М.И.Бажанов. – Симферополь : Таврида, 1996. – С. 126. – (235 с.); Коржанський М.Й. Кваліфікація злочинів / М.Й. Коржанський. – К. : Юрінком Інтер, 1998. – С. 149. – (416 с.); Курс уголовного права. Особенная часть : [учеб. для вузов] / Г.Н. Борзенков, В.И. Зубкова, Н.Ф. Кузнецова и др. ; под ред. Г.Н. Борзенкова, В.С. Комисарова. Т. 3. – М. : Зерцало-М, 2002. – С. 195 – 196. – (468 с.).

<sup>14</sup> Викторов И.С. Уголовная правовая ответственность за распространение венерических заболеваний / И.С. Викторов. – Саратов : Саратов. ун-т, 1980. – С. 50; Борисов В.И. Преступления против жизни и здоровья: вопросы квалификации / В.И. Борисов, В. Н. Куц. – Х. : Консум, 1995. – С. 59. – (110 с.).

<sup>15</sup> Сидоренко Э. Заражение ВИЧ-инфекцией: вопросы уголовно-правовой оценки / Э. Сидоренко // Уголовное право. – 2007. – № 1. – С. 55–59.

<sup>16</sup> Кримінальний кодекс України: [наук.-практ. комент.] / Ю.В. Баулін, В.І. Борисов, С.Б. Гавриш та ін.; За заг. ред. В.В. Сташиса, В.Я. Тація. — К.: Ін Юре, 2003. — С. 394 – 395. – (1196 с.).

inaction, which causes of criminal responsibility according to the article 130 of CC of Ukraine<sup>17</sup>.

Part 2 of the article 130 of CC of Ukraine provides the responsibility for infecting of other person with HIV or other incurable infectious disease which are dangerous for a life of an individual, who knew that he/she was a carrier of the virus<sup>18</sup>. This crime belongs to formal criminal offences and determined completed from the moment of committing action (inaction)<sup>19</sup>.

Therefore, the external expression of a crime, which is provided in article 130 CC of Ukraine, is committing an action, which causes for other individual in a danger to being infected of HIV or other incurable infectious disease, which could had dangerous consequences for a life of an individual. That is why, crime, provided by the article 130 of CC of Ukraine could be caused by inaction too.

The objective side of a crime, provided by the article 133 of CC of Ukraine (**Infection with a venereal disease**) can be characterized as an act, which is pointed on infection of an individual with a venereal disease, the fact of infection and causal link between the offense and the criminal consequence (socially dangerous) as a result of infection. Although, in parts 2 and 3 of an article 133 of CC of Ukraine legislator uses the term “acts” and actually, we have the same thoughts with authors<sup>20</sup> that crimes can be committed either actions or inactions<sup>21</sup>. According to the above-mentioned, by the analysis of an objective side of some crimes against the health of an individual, investigating of specialized literature

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<sup>17</sup> Корнієнко Є.В. Кримінально-правова характеристика зараження вірусом імунодефіциту людини чи іншої невиліковної інфекційної хвороби : дис. ... канд. юрид. наук : 12.00.08 / Корнієнко Євгенія Вікторівна. – К., 2013. – С. 80 – 81. – (249 с.).

<sup>18</sup> Кримінальний кодекс України: [наук.-практ. комент.] / Ю.В. Баулін, В.І. Борисов, С.Б. Гавриш та ін.; За заг. ред. В.В. Сташиса, В.Я. Тація. — К.: Ін Юре, 2003. — С. 394 – 395. – (1196 с.).

<sup>19</sup> Кримінальне право. Особлива частина : [підруч.] / за ред. О.О. Дудорова, Є.О. Письменського. – [2-ге вид.]. – К. : Дакор, 2013. – С. 82. – (786 с.).

<sup>20</sup> Данилевский А.О. Кримінальна відповідальність за вчинення злочинів проти життя та здоров'я особи: проблеми кваліфікації та відмежування від суміжних складів злочинів : [наук.-практ. посіб.] / А.О. Данилевский, Г.Є. Болдарь. – Луганськ : РВВ ЛДУВС ім. Е.Ю. Дідоренка, 2011. – С. 86, 47 – 48. – (152 с.).

<sup>21</sup> Кримінальне право. Особлива частина : [підруч.] / за ред. О.О. Дудорова, Є.О. Письменського. – [2-ге вид.]. – К. : Дакор, 2013. – С. 84. – (786 с.).

and court decisions in criminal cases these kinds of crimes; we have to make some conclusions. Therefore, we think that article 123 (Intended grievous bodily injury inflicted in the heat of passion) and article 124(Intended grievous bodily injury inflicted in excess of necessary defense or in excess of measures necessary to apprehend an offender) can be committed only by the actions as evidenced by the analyzed criminal cases, but article 130 (Infection with HIV or any other incurable contagious disease) and 133 (Infection with a venereal disease) of CC of Ukraine both by action and inaction.