LIUDMYLA MOSTEPANIUK
D. in Law, Associate Professor,
Associate Professor of the Department of Criminal Law
of the National Academy of Internal Affairs
ORCID ID 0000-0003-2894-0654

OBJECT OF CRIMINAL OFFENCES UNDER CHAPTER XV OF THE SPECIAL PART OF THE CRIMINAL CODE OF UKRAINE: ISSUES OF DEFINITION

The article analyses the issue of determining the generic object of criminal offences for which liability is provided in Chapter XV of the Special Part of the Criminal Code of Ukraine, "Criminal Offences against the Authority of State Authorities, Local Self-Government Bodies, Citizens' Associations and Criminal Offences against Journalists."

The author proves there is uncertainty in the correlation between the concepts of "authority of state authorities, local self-government bodies and citizens' associations" and "managerial activity". The author suggests that it is necessary to rename Chapter XV of the Special Part of the Criminal Code of Ukraine as "Criminal offences against the authority of state authorities, local self-government bodies, citizens' associations, criminal offences against journalists and the order of public administration".

Keywords: criminal offences against the authority of state authorities, local self-government bodies, and citizens' associations; criminal offences against journalists; generic object of criminal offences; authority; management procedure

Statement of the problem. The Criminal Code of Ukraine (from now on - the CC) contains a group of provisions aimed at protecting the authority of state authorities, local self-government bodies and associations of citizens, the inviolability of representatives of these entities, their lawful activities, protection of the professional activities of journalists, as well as their close relatives, property and other legitimate interests (Section XV of the Special Part of the CC). However, the mere existence of such norms does not guarantee their effective application in the practical work of the relevant authorities. This is due to mistakes in legislative technique, manifested in using different terms to denote the same concepts and the presence of significant inaccuracies that impede the standard implementation of the norms at the law enforcement level.

Recent research and publications analysis. The problematic issues of criminal liability for criminal offences against the authority of public authorities, local self-government bodies, citizens' associations and against journalists have been studied by such scholars as V. P. Belenok, A. A. Vozniuk, A. S. Gabuda, I. M. Zalialova, O. O. Kirbyatiev, V. G. Kondratov, V. V. Kuznetsov, V. O. Navrotskyi, V. I. Osadchyi, M. V. Syiploki, A. V. Savchenko, M. I. Khavroniuk, O. F. Shtanko.

The article aims to determine the peculiarities of the generic object of criminal offences for which liability is provided in Chapter XV of the Special Part of the Criminal Code.

Summary of the primary material. The generic object of criminal offences against the authority of state authorities, local self-government bodies, and citizens' associations, liability for which is provided for in Chapter XV of the Special Part of the Criminal Code of Ukraine (hereinafter - CC), as the title of the Chapter suggests, is the authority of state authorities, local self-government bodies and citizens' associations. However, in reality, the issue of determining the generic object of these acts is controversial.
The researcher M. Korzhanskyi identifies the generic object of these criminal offences with the title of the section of the previous (Criminal Code of 1960) law, which was called "Crimes against the order of governance". Accordingly, the scientist considers the generic object of these criminal offences to be governance [1, p. 398].

The scholar V. I. Osadchyli supports this position, noting that the generic object of these acts is not the authority of state authorities, local self-government bodies and associations of citizens but the management procedure. The researcher notes that by committing the crimes referred to in Chapter XV of the Special Part of the Criminal Code, the subject seeks to influence the performance of official or public duties by certain persons or to violate another procedure established in the state for the functioning of state bodies or public organisations. That is, in the case of such acts, management relations - the normatively defined procedure for the functioning of authorities, enterprises, institutions, organisations, and public activities of citizens as types of management activities, which should be recognised as a generic object - are consistently violated or threatened [2, p. 47].

At the same time, V. V. Kuznetsov, A. V. Savchenko and O. F. Shtanko consider the generic object of these criminal offences to be public relations in the field of public administration, i.e. the order of management, while noting that their structural element is the authority of public authorities, local self-government bodies and associations of citizens [3, p. 504].

The scholar O. O. Kirbyatiev defines social relations that ensure the authority and regular operation of public authorities, local self-government bodies and associations of citizens, as well as protection of the professional activity of journalists as the generic object of these criminal offences, liability for which is provided for in Chapter XV of the Special Part of the Criminal Code [4, p. 179].

On the other hand, A. S. Gabuda notes that this section groups acts that encroach on the authority of state authorities, local self-government bodies and associations of citizens, and the order of governance [5, p. 9].

According to V. G. Kondratov, the generic object of this group of criminal offences is a particular group of social relations formed in the field of protection of authority and everyday activities of public authorities, local self-government bodies, associations of citizens, any other enterprises, institutions, organisations, authorised individuals based on performing administrative, administrative and organisational and economic functions. At the same time, "normal activity" should be considered the performance by an enterprise, institution, organisation, or an authorised individual of the duties assigned to them by the charter or relevant provisions [6, p. 114].

Supporting the opinion previously expressed in the literature, we should note the lack of unanimity in determining the generic object of criminal offences under Chapter XV of the Special Part of the CC [7, p. 18]. Therefore, given the above, it is proposed that the generic object of these acts should be recognised as those social relations that ensure the authority and everyday activities of public authorities, local self-government bodies and associations of citizens regulated by law, and relations that protect the professional activities of journalists.

In explaining the meaning of the concept of "authority", it should be noted that it has taken an essential place in the legal lexicon, since in publicistic literature, mass media, speeches of state or public figures, it often refers to the authority of the government, its institutions or representatives, laws and other regulatory legal acts, which always means recognition of their importance and the need to comply with them. Hence, the activities of the executive branch of any direction, including those that manage state and public affairs, are only possible with voluntary and conscious compliance with legal norms by citizens and the implementation of administrative decisions. Establishing this fact is precisely what testifies to their recognition and authority, which is a form of exercise of power.

The Great Explanatory Dictionary of the Modern Ukrainian Language states that authority is a universally recognised meaning, influence, and respectability (of a person, organisation, team, theory, etc.) [8, p. 6].

As I. M. Zalyalova points out, authority can be viewed as a concept of ethics, a particular type of social relations based on the generally recognised influence of any person or organisation in various spheres of life or the ability of a person or their group to influence others. Authority in the broadest sense is the ability of a person or groups to influence the behaviour of a social association or an individual citizen in various spheres of public life through informal or non-violent influence, which is possible with the use of experience, talent, knowledge, position, high moral qualities, personal example, patronage [7, p. 21].
The content of the concept of "authority" as a generic object of criminal offences under Chapter XV of the Special Part of the CC has not been analysed in detail. V. I. Osadchyi considers authority to be a phenomenon that develops in the course of activities of state bodies or public organisations, which is secondary to the procedure of functioning of authorities, enterprises, institutions, organisations, and public activities of citizens [2, p. 47]. I. M. Zalyalova believes that "authority of the authorities" is an objective category because by creating power structures, the people assume the obligation to obey the authorities' decisions. Therefore, it is correct to note that authority is an obligatory element of power and one of the necessary conditions for exercising power [7, p. 22]. The authority of power is its external attribute, which consists of the power and ability of the authorities to oblige. The essence of authority is manifested in the fact that the state and its bodies are authorised not to ask but to demand, not to persuade, but to coerce and prohibit while maintaining the possibility, necessity and inevitability of coercion in the future [9, p. 363].

Among the main features of authority in the legal literature is legitimacy, which is the main feature of the authority of state authorities, local self-government bodies and citizens' associations. Legitimacy should be understood as the recognition by all subjects of the legitimacy of power, its basis on legal principles that make power suitable for governing society and acceptable to those who are governed; compliance of structures and processes of formation and functioning of power with the requirements of legislation, recognition of the right of those in power to regulate the norms of behaviour of other people [10, p. 6]. This feature is implemented in the provisions of Art. 68 of the Constitution of Ukraine: every one is obliged to strictly observe the Constitution of Ukraine and the laws of Ukraine, not to infringe on the rights and freedoms, honour and dignity of other people [11].

This is the most potent form of legitimation of power-its legal justification. Accordingly, other legal acts contain provisions on the need for individuals and legal entities to respect state institutions, government representatives, and their decisions directly. Thus, the formal authority of state authority representatives is established through legal acts.

We should agree with the definition of authority as a way of social organisation in which the symbols of the state and the rights of those in power are recognised as mandatory for regulating the norms of behaviour of other persons and ensuring their implementation [7, p. 23]. The authority of public authorities is primarily determined by a system of self-governing associations, sovereign individuals and civil society independent of the state.

The researcher V. Navrotskyi, revealing the content of the management procedure, notes that management is usually understood as the activity of public authorities to implement the requirements of laws and by-laws. Management activities involve power relations and require subordination and unconditional compliance by subordinates with legal instructions and orders of management bodies. Order is a correct and well-established state or arrangement of something, a state in which everything goes as it should, safely, when no wrong actions are taken [12, p. 574]. Public administration is a conscious, purposeful, orderly influence through the relevant state structures on social, political, and economic processes, considering objective laws and trends to achieve the most optimal functioning and development of this system and the goals set [13, p. 222-223]. Thus, the management procedure is the activity of public administration bodies and the state apparatus.

The scientific literature lacks unanimity not only in the definition of the concept of "authority of state authorities, local self-government bodies and citizens' associations" but also in how it relates to the concept of "administrative activity."

Due to the absence of an unambiguous understanding of the generic object of criminal offences against the authority of state authorities, local self-government bodies, and associations of citizens, liability for which is provided for in Chapter XV of the Special Part of the CC, the scientific literature continues to discuss the renaming of this chapter of the CC. Before adopting the current CC in 2001, the current section with the same name was called "Crimes against the Order of Governance". The change of the name caused discussions about its correctness. It gave rise to discussions about the correlation between the concepts of "administrative activity", "management order", "authority of state authorities, local self-government bodies, and associations of citizens".

Even before the adoption of the current CC in 2001 during the discussion of the draft CC submitted by the Cabinet of Ministers to the Verkhovna Rada of Ukraine, there were opinions that this draft contained not one but
two sections, which concentrated the rules providing for liability for crimes against the governance order: it is about section XIV "Crimes in the field of protection of state secrets, inviolability of state borders, ensuring conscription and mobilisation" and section XV "Crimes against the authority of state authorities, local self-government bodies and associations of citizens" [6, p. 110]. In this regard, S. D. Shapchenko noted that by such actions, the management procedure as an integral object of criminal law protection under this draft loses the status of a single generic object of a particular group of crimes. This approach seems not entirely justified because the title of Section XV in its content does not cover the content of the individual provisions included in it: on liability for damage to communication lines, on liability for theft or damage to documents, stamps, seals" [14, p. 639].

The position expressed by A. S. Gabuda regarding the reflection by the current title of Chapter XV of the Special Part of the CC of only a group of criminal offences against the authority of public authorities, local self-government bodies and citizens' associations confirmed the voiced opinion. In his opinion, there are no grounds to support the views of the criminal law theory on naming Chapter XV of the Special Part of the CC as "criminal offences against the order of governance" since this title also refers to only one group of unlawful acts. The researcher suggested that the title of Chapter XV should be expanded and read as follows: "Crimes against the authority of state authorities, local self-government bodies, associations of citizens, against the order of public administration" [5, p. 9-10]. Given the changes in the legislation that have taken place since the above proposal was made, it would be worthwhile to talk about the revised title of the analysed section, namely: "Criminal offences against the authority of public authorities, local self-government bodies, associations of citizens, criminal offences against journalists and the order of public administration"

Conclusions and Prospects for Further Research. Given the analysis of the literature reviewed, the concept of "authority" is broader in content than "management procedure" since the authority of power structurally includes several features, including the everyday activities of public administration bodies. The concept of authority also recognizes the rights of these bodies as holders of power to regulate norms of behaviour and ensure their implementation. This thesis will eliminate the gaps regarding the lack of correlation between the concepts of "authority of state authorities, local self-government bodies and associations of citizens" and "governance" and confirms the correctness and completeness of the title of Chapter XV of the Special Part of the CC in the current version.

We believe that further scientific research in the context of determining the object of criminal offences in Chapter XV of the Special Part of the CC is a promising area of research, taking into account the well-founded positions of practitioners of the National Police of Ukraine and borrowing the positive experience of foreign countries in terms of unification of the terms "authority", "public administration", "management procedure", which will contribute to the improvement of the norms and provisions of the current CC.

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