Current Problems of the Penal Law and Criminology. Aktuelle Probleme des Strafrechts und der Kriminologie

Excerpt

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The action as a sign of the objective side of the crime and a form of criminal act

ABSTRACT

The article examines the controversial issues of the content of signs of action as a form of criminal act. The action is a mandatory sign of the objective side of the crime, so the article focuses on the analysis of the relationship of the concepts of 'objective side of the crime' and 'objective side of the corpus delicti'. The authors analyze the significance of the division of the features of the objective side of the crime into mandatory and optional, as well as the legal significance of the features of the objective side of the crime. On the basis of the analysis, the definition of the objective side of the crime in retrospective aspect is formulated, which is important for the improvement of the conceptual apparatus of the science of criminal law.
The act is the main sign of the objective side of the crime. It is defined as a socially dangerous consciously-volitional act of human behavior, limited by space-time limits. The act (active behaviour) is an independent form of criminal act. Authors define its differences from criminal inaction (passive behaviour), explore the classification of physical and informational actions, and analyze their essential characteristics. Special attention is paid to the peculiarities of criminal law evaluation of the committed action.

I. THE CONCEPT AND GENERAL CHARACTERISTICS OF THE OBJECTIVE SIDE OF THE CRIME

External signs of a crime characterize the action of man as a form of demonstration of human behavior in reality, as well as kind of human activity, taking place in time and space. This circumstance, as argued by *Kudryavtsev*,

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allows us to consider the objective side of the crime as the process of socially dangerous and illegal encroachment on legally protected interests. *Kudryavtsev* characterizes the crime as a dynamic process[3].

In later studies of criminal law, the objective side of a crime was defined as an external act of a criminal action occurring in certain conditions of place, time and situation[4], and also made in a certain way, sometimes with the use of tools or other means, which caused harmful consequences in the material compositions[5]. Indicated approaches to the definition of the objective side of the crime as a dynamic process take into account all the circumstances that arise in reality, or sometimes exist only in retrospective aspects, for example, when analyzing the signs of an unfinished crime.

There are no significant differences in the definition of the objective side of the crime in the Belarusian criminal law doctrine. Determining the objective side of the crime *Babi* focuses on the signs of the act in development. He points out that 'the objective side of the crime is an external act of criminal behavior, carried out in a certain form and in certain conditions of the place, time and situation'[6]. The author defines the objective side of the crime as a set of features characterizing the crime in its external manifestation[7]. *Sarkisova* views the objective side as 'a set of features provided by the criminal law that characterize the criminal act in its external manifestation'[8].

In the science of criminal law there is an opinion on the need to separate the terms 'objective side of the crime' and 'objective side of corpus delicti'[9]. These terms should be distinguished, since the former is an external description of a particular phenomenon of reality in the form of criminal encroachment. The second can be described as a system of external signs the same type of crime, established as a legislative construction of criminal law norms. To develop the problem of correlation between the concepts of 'objective side of crime' and 'objective side of the corpus delicti' we should refer to the criminal legal literature. *Gaukhman* indicates that 'the essential typical signs of the external side of a specific type of crime in their generalized terms, distinguished from the countless possible manifestations of the corresponding type of crime committed in reality, act as signs of the objective side of a specific

3 V. N. Kudryavtsev, *Ob'ectivnaya storona prestupleniya* [The objective side of the crime], Moscow 1960, p. 9.

4 G. V. Timejko, *Obshchee uchenie ob ob'ektivnoj storone prestupleniya* [The general doctrine of the objective side of the crime], Rostov-on-Don 1977, p. 6.

5 V. B. Malinin, A. F. Parfenov, *Ob"ektivnaya storona prestupleniya* [Objective side of the crime], St. Petersburg 2004, p. 13.

6 N. A. Babi, *Ugolovnoe pravo Respubliki Belarus'. Obshchaya chast': uchebnik* [The criminal law of the Republic of Belarus. General part: textbook], Minsk 2010, p. 107.

7 N. A. Babi, *Ugolovnoe pravo…* [Criminal law…], p. 130.

8 E. A. Sarkisova, *Ugolovnoe pravo. Obshchaya chast': ucheb. posobie* [Criminal law. General part: Study manual], Minsk 2005, p. 130.

9 M. I. Kovalev, *Ob'ektivnaya storona sostava prestupleniya. Ugolovnoe pravo. Obshchaya chast': uchebnik* [Objective side of the crime. Criminal law. General part: The textbook], Minsk 2008, p. 224.

corpus delicti'[10]. *Kudryavtsev* says that at the stage of a single specific crime, the concept of 'objective side of the crime' is wider than 'objective side of the corpus delicti', since it includes not only those features that are common to all crimes of this type, but also individual features peculiar only to this case. At all subsequent stages of abstraction (type, kind, general concept of crime) the concepts of the objective side of the corpus delicti and the composition theoretically and practically coincide. Therefore, in these cases it is justified to use the identical values of the terms 'objective side of the corpus delicti' and 'the objective side of the crime,' as both concept include respectively the same characteristics (specific, generic, general signs of crime)[11].

The objective side of the crime as an act is an element of the actual basis of criminal liability. In retrospective aspect it represents **a set of the signs characterizing a crime in its external manifestation and having criminal and legal value**.

The composition of crimes differs from each other by a set of features, including the objective side. But one of the features of the objective side is mandatory for all crimes without exception. This sign is a 'socially dangerous act', since without such act, in principle, it is impossible to commit a crime. It is this sign that is traditionally recognized as the main one, with all the rest being optional. Article 11 of the Criminal Code of the Republic of Belarus defines a crime as a socially dangerous act (action or inaction), characterized by the signs stipulated in the Criminal Code of the Republic of Belarus, prohibited and punishable. From the outside, a specific act of human behavior is always expressed in a socially dangerous act. Thoughts, feelings, views, beliefs that have not found realisation in a specific behavioral act, cannot create objective conditions for bringing a person to criminal liability for it. This is a specific act of human behavior, an act that creates an obligatory mandatory element of the actual basis of criminal liability. Therefore, the objective side of the crime is considered to be the 'foundation' of criminal responsibility.

A specific crime as a phenomenon of reality is always committed in a particular place, time, situation, using certain methods, methods of impact o protected object. *Kudryavtsev* notes that 'the essential characteristics of the criminal action (or inaction) are the manner, place, time and situation of the crime. However, they are not independent elements of the objective side, as they only characterize the act (action or inaction) of the offender. The objective side of the crime includes not only place, time and situation of committing the crime, but also along with the action (inaction), the outside side of the socially dangerous action (inaction), performed in a certain way, in these conditions, place, time and environment'. Then, describing the act of a person as a stage in the process of criminal encroachment, the author points out that other stages include the causal relationship between the act and the criminal results and

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[10] L. D. Gaukhman, *Kvalifikaciya prestuplenij: zakon, teoriya, praktika* [Qualification of crimes: Law, theory, practice], Moscow 2003, p. 86–87.

[11] V. N. Kudryavtsev, *Ob'ectivnaya…* [The objective…], p. 45–46.

the criminal consequence[12]. In the literature there are discussions about the need to identify various features as independent features of the objective side. This indicates the ambiguity of approaches to their allocation as independent features and its' differentiation[13]. The set of objective features for specific offences may be different, as well as the ways in which they are described in the criminal law. It follows from this that the division of features into basic and optional is applicable only in the description of the general concept of 'objective side of the corpus delicti'. In the case of a specific corpus delicti described in an Article of the Criminal Code, all the features described in the Law are necessary to be found in a real act of person; the absence of at least one of it entails the absence of the corpus delicti as whole.

Signs of the objective side of a crime as an abstract scientific category are fixed in the criminal law as signs of the objective side of the concrete corpus delicti and represent standard characteristics of all crimes of this type that are necessary for recognition of any concrete act as criminal.

Ponyatovskaya believes that the elements of an act, consequences and causation have the main criminal and legal significance and are the material that forms the various body of the crime (formally defined crime, materially defined crime, inchoate crime and the endangering actions). Thus, according to the author, they can also be called constructive signs, i.e. signs used by the legislator in the construction of specific offences[14]. For the correct criminal-legal assessment of what has been done, it should be borne in mind that the disposition of the article of the special part of the Criminal Code reflects the signs of a completed crime committed by a person acting as an executor. This is important for distinguishing between actions (inaction) of various accomplices, as well as for resolving the issue of whether there are signs of an unfinished crime in the act.

II. GENERAL DESCRIPTION OF THE ACT AS A SIGN OF THE OBJECTIVE SIDE OF THE CRIME

A socially dangerous act is the core of criminal encroachment, without which the crime is impossible. It is a socially dangerous act that is an obligatory sign of the objective side of the crime. The act is an act of human behavior in the system of social relations existing in the outside world.

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[12] V. N. Kudryavtsev, *Ob'ectivnaya…* [The objective…], p. 10–11.

[13] A. I. Boicov, *Dejstvie ugolovnogo zakona vo vremeni i prostranstve* [Action of the criminal law in time and space], Sankt-Petersburg 1995, p. 5; V. B. Malinin, A. F. Parfenov, *Ob'ectivnaya storona…* [The objective side…], p. 8–12; N. I. Panov, *Sposob soversheniya prestupleniya i ugolovnaya otvetstvennost'* [The method of commiting a crime and the criminal liability], Kharkov 1982, p. 20ff.

[14] T. G. Ponyatovskaya, *Chast 6. Ob'ectivnaya storona prestyplenia* [Chapter 6. The Objective Side of the Crime], [in:] I. Rarog (ed.), V. S. Komissarov, N. A. Lopashenko, A. V. Naumov et al., *Criminal law of Russia. General Part*, Moscow 2009, p. 96.

An act is a specific act of human conduct limited in time and space. The way of thinking, or the way of life, is not the subject of criminal law assessment. The establishment of the time-space boundaries of a particular act is important for its proper qualification and may be associated with certain difficulties due to the complex nature of human behaviour, since a criminal act may consist not of one, but of a number of acts of body movements or abstention from their commission. In addition, when committing a crime, a person may use technical means, the forces of nature and even the guilty or not-guilty acts of others. In the criminal law literature it is proposed to include such action in the concept of act[15]. *Tyazhkova* points out that the use of the forces of laws of nature, the actions of mechanisms, etc. is a kind of way of human influence on the outside world, and the way is not separated from the action as a form of content. The author believes that as long as the forces and patterns used are subject to and controlled by the person, it is possible to talk about criminal action in the criminal law sense[16]. The same opinion has *Gruntov*, indicating that the criminal legal action is complex and it also covers those external forces and patterns that are not only set in motion by its action, but are also consciously directed by the subject of the crime in the process of its activity[17].

There is also a contrary view in the criminal legal doctrine. It describes that the notion of human action should not include the operation of the technical means or other means used by it[18]. Indeed, it is impossible to mix the notion of an act as one of the characteristics of the objective side of a crime with the crime as a whole, which includes not only all objective but also subjective features of a crime. In particular, the causal link between the act and the ensuing consequences, which is an independent sign of the objective side of the crime, should not be recognized as a sign of the objective side of the crime. However, the technical means and mechanisms used, the forces of nature as well as the acts of third parties can characterize the way, tools, means of committing the crime, which determine the form, as well as the main characteristics of the committed socially dangerous act.

The time limits of the act are the limits of the committing of one or a number of body movements of a person in the event of the commission of an act. In case of inaction, these are the limits of non-performance of the obligation imposed on the person from the moment of its allocation by the person to the

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[15] N. E. Durmanov, *Ponyatie prestupleniya* [The concept of crime], Moscow 1948, p. 54; M. I. Kovalev, *Prichinnaya svyaz' v sovetskom ugolovnom prave* [The causal connection in Soviet criminal law], Moscow 1958, p. 42–43; A. I. Rarog, *Rossiyskoe ygolovnoe pravo. Chast 1. Obschaya chat* [Russian Criminal Law. Vol. 1. General Part], Moscow 2001, p. 124.

[16] N. F. Kuznetsova, [in:] N. F. Kuznetsova, I. M. Tikovoi (eds.), *Kurs ugolovnogo prava. Obshchaya chast': V. 5 t. T. 1: Uchenie o prestuplenii: uchebnik dlya vuzov* [A course of criminal law. The general part. V. 1: The doctrine about a crime: The textbook for high schools], Moscow 1999, p. 222.

[17] N. A. Babi, *Ugolovnoe pravo. Obshchaya chast': Uchebnik* [The criminal law. The general part: Textbook], Meganewton 2002, p. 102.

[18] V. N. Kudryavtsev, *Ob'ectivnaya…* [The objective…], p. 78; V. N. Kudryavtsev, A. V. Naumov, *Kyrs Rossiyskogo ygolovnogo prava* [Course of Russian Criminal Law. General Part], Moscow 2001, p. 179.

moment of occurrence of the grounds for termination of its implementation. Within these time limits, it is possible to apply various technical means, forces of nature, the behavior of third parties, through which a particular act can be committed.

As noted in the criminal legal literature, the fact that in the process of committing an act the subject uses technical means, production processes, properties of objects, forces of nature, etc., and sometimes involves other people who are not subject to criminal liability, or animals, indicates the complex nature of the criminal act[19]. The complexity of a criminal act can be manifested itself in the fact that it can consist not of one but of several acts of behavior, or one act, but act extended in time. The complicated legislative structure of individual crimes allows us to single out complex (single) crimes. In this context, *Lobanova* notes that 'the complexity of a single (single) crime may be associated with a complicated characterization of features relating not only to the act, but also to other properties or elements of the crime. In those cases when it comes to complicating the act, we do not mean difficulties in one act of criminal behavior, but the combination of several such acts in one crime or its alternative'[20].

When committing a continuing crime, the act committed by a person lasts continuously for a certain period of time (for example, illegal possession of narcotic drugs; parents evasion of child maintenance). The beginning of the commission of a continuing crime will be the moment when the act acquires the signs of public danger and wrongfulness. The end time of its commission means the termination of a criminal act by the person who conducts it (for example, destruction of narcotic drugs), terminated by a third party (for example, the detection and seizure of drugs during a search) or the time of the falling away of the conditions that create the duty to act (e.g. child reaches the age of majority, terminating the obligation of its content).

In some cases, the legislator, when describing the objective side of the crime, indicates several alternative acts, the commission of each of which is sufficient to recognize the crime as finished. Commission of several of the alternative acts listed in the law does not influence on qualification of the committed crime, and can be considered by court during choosing of a type and a measure of criminal and legal impact. For example, Article 291 of the Criminal Code of the Republic of Belarus establishes liability for the seizure or detention of a person as a hostage. For the presence of signs of a completed crime, just any of the alternative actions is enough. Moreover, in the event that a person has sequentially taken and held a hostage, the qualification of the act will not change, and the actions committed will be assessed as a single crime.

The objective side of certain crimes may consist of two or more acts, which only in their unity form the signs of a single completed crime. For example,

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[19] L. V. Lobanova, *Aktyalnue problemu ygolovnogo prava: lekcii dlia magistrantov. Chast 2* [Current problems of criminal law: Lectures for undergraduates the faculty of law schools. Vol. 2], Volgograd 2013, p. 114.

[20] L. V. Lobanova, *Aktyalnue problemu…* [Current problems…], p. 114.

Article 214 of the Criminal Code of the republic of Belarus establishes liability for hijacking of a vehicle or a small water vessel (joyriding). The signs of the objective side of this crime consist of two independent steps: 1) unlawful acquisition of a vehicle or small watercraft; 2) a trip on it. Such crime will be recognized as completed only when the trip is made.

A variety of crimes with two or more acts are composite crimes, the objective side of which also consists of the mandatory commission of two or more acts. In the case of an isolated criminal legal evaluation they may represent a separate individual crime. Quite often, one of the acts in the commission of a composite crime characterizes the way of committing a crime. For example, the mandatory features of the objective side of the robbery (Article 207 of Criminal Code of Republic of Belarus) is the use of violence, life-threatening or health-threatening, or the threat of such violence and acts, for the purpose of taking possession of property.

In criminal law scholars distinguish social and psychological characteristics of the act. Social features are determined by the fact that every act is committed in society and has either a positive or negative impact on processes and phenomena of public interest. An act that encroaches on public relations protected by law and its participants, that may cause significant harm, poses a public danger and is therefore recognized as a crime. Danger to the public and its wrongfulness are the most important social effects of criminal acts[21]. Defining the signs of minor significance of the act which is not posing public danger, the legislator in Part 4 of Article 11 of the Criminal Code of Republic of Belarus specifies that it is an act that did not cause harm and in its content and orientation could not cause substantial harm to the interests protected by criminal law.

In accordance with the opposite view in the criminal legal literature, an act in itself cannot be socially dangerous or socially harmful. Only crime in general can be socially dangerous[22]. Parrying the specified provision, it is rightly noted, that a public danger of a crime is caused by a combination of its objective and subjective signs. Social danger of the crime and public danger of the actions or inactions do not coincide, and therefore are relatively independent concepts[23]. *Kudryavtsev* rightly points out that that social the danger and its degree determine the severity of possible consequences, the likelihood of their occurrence and the prevalence of actions of this kind. The author emphasizes the concept of social danger of a particular criminal act as a private manifestation of the general public danger of acts of this kind[24]. He argues that the danger of a particular act is that it may cause substantial harm to public relations protected by law in the circumstances. The danger

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[21] V. N. Kudryavtsev, *Ob'ektivnaya*… [The objective side…], p. 68.

[22] V. B. Malinin, [in:] V. B. Malinin, A. F. Parfenov, *Ob'ektivnaya storona*… [The objective side…], p. 39.

[23] J. E. Pudovochkin, *Uchenie o sostave prestupleniya. Uchebnoe posobie* [The doctrine of corpus delicti. Study guide], Moscow 2009, p. 74.

[24] V. N. Kudryavtsev, *Ob'ectivnaya*… [The objective…], p. 100.

of a particular action (inaction), as noted by the author, should be assessed in relation to the time of its commission, i.e. at the time when the harmful consequences have not yet occurred. A 'retrospective' assessment of the danger of an act in which it is assumed that it subsequently caused harmful effects is a fairly common mistake[25]. For example, public risk is characterized by the violation of traffic rules by exceeding the permitted driving speed in driving a vehicle while intoxicated.

The legal property of the act in the form of criminal wrongfulness should be distinguished from its social characteristic, but some scholars recognize criminal wrongfulness as an independent sign of the act[26]. Criminal wrongfulness is a legal expression of public danger and guilt of an act recognized as criminal. Criminal wrongfulness is an obligatory sign of a crime, not of an act as a sign of an objective side. 'It seems that dialectics and psychology quite rigidly determine the laws of the objective and subjective in nature and society. Firstly, objective — for criminal law, this is the commission of objectively socially dangerous acts; then subjective — their legislative assessment as crimes'[27].

The external (physical) and internal (mental) sides of the act form an inseparable unity. It is for this reason that the awareness and wilful nature of the act form its necessary features and represent its psychological characteristics[28]. In the literature there is a point of view according to which these signs reflect the subjective attitude to deeds and characterize not objective and the subjective side of a crime therefore are not signs of an act[29]. However, as it is rightly noted, consciously strong-willed character of act does not coincide completely with guilt as a sign of a crime and is an independent characteristic of action and inaction. Conscious volitional nature of the act involves the actual adjustability of behavior and absence of external barriers to choose one or another variant of behaviour[30]. *Gruntov* noted that in the commission of a socially dangerous act a certain orientation of the will of man is reflected. In turn, every volitional act, including a criminal one, is associated with a varying degree of awareness of the circumstances in which a person acts[31]. Awareness and volunteerism are recognized as objective signs consisting respectively in the existence of possibility of recognition by the person of the

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[25] V. N. Kudryavtsev, *Ob'ectivnaya…* [The objective…], p. 106.

[26] B. V. Zdravomyslov (ed.), *Ugolovnoe pravo Rossii. Obshchaya chast': Uchebnik* [Russian criminal law. General part: The textbook], Moscow 1996, p. 131; N. Babi, *Ugolovnoe pravo…* [The criminal law…], p. 108; L. D. Gaukhman, *Kvalifikaciya prestypleniy…* [Qualification of crimes…], p. 90, 93; M. Kropachev, B. V. Volzhenkin, V. V. Orekhova, *Ugolovnoe pravo Rossii. Obschaya chast: Uchebnik* [Russian criminal law. General part: Textbook], Sankt-Petersburg 2006, p. 407.

[27] A. I. Korobeev, *Polnyj kurs ugolovnogo prava: V 5 t.* [A full course of criminal law in 5 volumes], Sankt-Petersburg 2008, p. 272.

[28] N. A. Babi, *Ugolovnoe pravo…* [The criminal law…], p. 102.

[29] A. I. Korobeev, *Polnyj kurs…* [A full course…], p. 360; L. L. Kruglikov, *Ugolovnoe pravo Rossii. Obschaya chast: Uchebnik* [Criminal law of Russia. General part: The textbook], Moscow 2012, p. 145–146.

[30] J. E. Pudovochkin, *Uchenie o prestuplenii. Uchebnoe posobie* [The teaching of the crime. Textbook], Moscow 2009, p. 74.

[31] N. A. Babi, *Ugolovnoe pravo…* [The criminal law…], p. 141.

act and absence of insurmountable obstacles in the choice by the person of this or that behaviour[32].

Awareness implies the ability of a person to be aware of his or her actions, to understand their social meaning and significance, and the results they can produce. An uncontrolled act of consciousness of a person may not create an objective basis for his or her criminal prosecution. For example, a reflex movement, instinctive reactions exclude liability for injury of any severity of harm. The criminal law literature provides a textbook example of when, as a result of a sudden bus braking, one passenger causes damage to the health of another passenger due to instinctive motion.

The volitional nature of the conduct of a person presupposes the existence of capacity to control his or her act, to choose any form of behaviour. The prerequisite of the strong-willed nature of behaviour is the voluntary nature, the absence of circumstances that create objective obstacles to the commission or refusal to commit such an act. Among the circumstances that create obstacles to the commission of a voluntary act of conduct in the criminal sense are force majeure, physical and mental coercion. As it is pointed out by *Babi*, a persons' freedom of expression may be impaired by external factors that completely or partially deprive a person of the opportunity to act at his or her own discretion. It obligates one to define criminal and legal value of such influence[33].

Extraordinary and unavoidable in these conditions events, phenomena that a person cannot resist and it accordingly force him to commit an act (action or inaction) prohibited by criminal law in criminal legal doctrine is recognized as a superior force or so called actus Dei[34]. Such events and phenomena can be a phenomena of a natural character (for example, natural disaster, animal behaviour); a phenomena connected with the operation of technical equipment (e.g. vehicle breakdown, which creates the doctors' inability to help the patient, which excludes liability under Article 161 of the Criminal Code of Republic of Belarus for failure to provide medical care to a sick person); a phenomena related to the activities of other people or physiological processes in the body of the subject of the act (for example, loss of control of a vehicle due to a driver's heart attack resulting automobile-the driver' pedestrian accident). Such circumstances, due to their extreme nature, cannot be predicted and settled and are objective characteristics of the act. *Babi* rightly points out that the court recognizes insurmountable force, considering all objective and subjective capabilities of the person. The author argues that in determining the insuperability of certain phenomena it is necessary to take into account the abilities of a particular person (physical, psychological, professional and other), as well as the specific situation in which their action unfolds and the set of those means available to a person to overcome such phenomena and perform the duties[35]. Inaction

[32] L. D. Gaukhman, *Kvalifikaciya prestuplenij…* [Qualification of Crimes…], p. 92.

[33] N. A. Babi, *Ugolovnoe pravo…* [The criminal law…], p. 108.

[34] E. A. Sarkisova, *Ugolovnoe pravo…* [Criminal law…], p. 136; N. A. Babi, *Ugolovnoe pravo…* [The criminal law…], p. 416–417.

[35] N. A. Babi, *Ugolovnoe pravo…* [The criminal law…], p. 417–418.

in force majeure, considering the specific circumstances that characterize the situation and the ability of an inactive person to act, can solve the question of the absence of a strong-willed act of behaviour. When criminally assessing an act in the form of an action under force majeure conditions, the provisions of the law that establish the lawfulness of harm if absolutely necessary should be taken into account.

Physical and mental coercion can be considered as independent forms of manifestation of force majeure in the activity of third parties. They are expressed in external pressure to commit or refrain from committing any action. For a correct criminal and legal assessment of the commission of an act under physical coercion, it is necessary to decide whether there is a complete or partial absence of the possibility of free expression of will.

Mental coercion involves a mental impact on a person through the threat of physical violence or the threat of harm of a different nature. The threat of harm can be addressed not only to the person who is forced to do certain things, but also to third parties, and it can pose a danger to the interests of society or the state. Mental coercion does not fully paralyse the will of the person. The question of criminal liability for injury in such circumstances is decided on a general basis, taking into account the existence or absence of signs of an act committed in a state of extreme necessity. In the absence of signs of emergency, mental and physical coercion does not exclude liability for the committed act, but this fact is recognized as mitigating circumstances. (Clause 7 Part 1 Article 63 of the Criminal Cod of the Republic of Belarus).

Summarizing the above, it is useful to note, that the recognition in the criminal legal doctrine of public danger and a conscious-volitional nature as sufficient characteristics of the act seems reasonable.

From the point of view of the physical characteristics of the act, there are two external forms of its manifestation – action and inaction, through which human behavior is manifested in specific acts. Some legal scholars argue that a physical characteristic is inherent only in action and missing in inaction[36]. *Ter-Akopov* points out that on the physical side, the action is associated with the transfer of matter and energy from the subject to the object, which leads to a change in the object, and inaction (a passive behaviour) does not have this ability. The author believes that the essence of any crime in the form of an act or omission can be reduced to a change in proper behaviour. This puts the presence or absence of physical processes of motion transmission in the background[37]. It is the physical characteristics of the act that underlie the differentiation of action from inaction. Physical characteristics of the act reflect the ways of human interaction with the environment in the active or passive form of human behaviour.

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[36] L. L. Kruglikov, *Praktikum po ugolovnomu pravu. Obshchaya chast'. Osobennaya chast': uchebnoe posobie* [Workshop on criminal law. Common part. Special part: Textbook], Moscow 2002, p. 28.

[37] A. A. Ter-Akopov, *Bezdejstvie kak forma prestupnogo povedeniya* [Inaction as a form of criminal behavior], Moscow 1980, p. 36, 38.

III. ACTION AS A FORM OF CRIMINAL ACT

The action is the most common form of criminal act. About 75% of the crimes, as evidenced by the analysis of the Criminal Code of the Republic of Belarus, as a sign of the objective side, provide for the commission of active actions. Of course, action and inaction have common features that characterize the act: social danger and consciously strong-willed nature of the commission, the characteristics of which were given earlier. Therefore, it is necessary to focus only on the features of differentiation of action from the second form of act – inaction.

The key feature of the action is the activity of the subjects' behaviour, expressed in the active impact on the external world, changing the course of current events. Active impact on the environment is possible through human body movements. The fact that the action consists in certain movements of a person does not arise in the criminal law doctrine[38].

There are discussions on the classification of actions according to their external manifestations. The most common is the classification of actions on physical (energy) and information[39]. *Prokhorov,* in addition to the above, recognizes intellectual activity, such as for example the collection of classified information, etc. as separate forms of action[40]. Analysings a specified point of view, *Pudovochkin* rightly points out that the intellectual activity cannot be recognized as an independent form of action. As long as it takes place in the mind of the person and is not objectified, it is not an action, but as soon as the subject takes it outside, he will have to perform a series of movements, which constitute a criminal act, is a physical act[41]. Intellectual activity can be objectified in informational influence as well. For example, thinking about the intent to commit a murder can be realized in the threat of its commission.

Pudovochkin holds the opposite point of view regarding the collection of information carried out through its perception, not associated with physical actions in the form of seizing documents or materials. The scholar proposes to consider actions related to the perception of information as an independent type of actions, along with physical and informational impact[42]. It should be noted that in the criminal law doctrine, the point of view according to which information actions may presuppose and intellectual influence has already been expressed[43].

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[38] V. N. Kudryavtsev, *Ob'ectivnaya…* [The objective…], p. 71; V. B. Malinin, [in:] V. B. Malinin, A. F. Parfenov, *Ob"ektivnaya storona…* [The Objective side…], p. 49; N. A. Babi, *Ugolovnoe pravo…* [The criminal law…], p. 109; E. A. Sarkisova, *Ugolovnoe pravo…* [Criminal law...], p. 133.

[39] N. I. Panov, *Sposob soversheniya…* [The method of committing…], p. 16; N. A. Babi, *Ugolovnoe pravo…* [The criminal law…], p. 109.

[40] N. M. Kropachev, [in:] N. M. Kropachev, B. V. Volzhenkin, V. V. Orekhova, *Ugolovnoe pravo Rossii…* [Russian criminal law…], p. 412.

[41] J. E. Pudovochkin, *Uchenie o prestuplenii…* [The teaching of the crime…], p. 82.

[42] J. E. Pudovochkin, *Uchenie o prestuplenii…* [The teaching of the crime…], p. 82–83.

[43] I. S. Jordania, *Struktura i pravovoe znachenie sposoba soversheniya prestupleniya* [Structure and legal significance of the method of committing a crime], Tbilisi 1977, p. 96; D. R. Sharapov,

Physical actions require physical action on objects in the external environment when making attacks (e.g., attacks, the manufacture of narcotic drugs, possession of weapons), information associated with the transmission of information in verbal form, shape, gesture, images (e.g., insult (Article 189 of the Criminal Code of Republic of Belarus), threats of murder, infliction of serious bodily harm or destruction of property (Article 186 of the Criminal Code of Republic of Belarus),CC false report of a danger (Article 340 of the Criminal Code of Republic of Belarus).

The action carried out by gestures or uttering words directly affects the consciousness of the victim; the action associated with the objects of the outside world, changes their quality and properties, position in space and interaction with other things and phenomena, and through these latter affects other people and their behavior. These are the physical signs of any action[44]. Thus, when committing a physical act, it is possible not only to make direct contact between the person committing the crime and the object of the outside world, but also indirectly using other objects of the outside world, phenomena of nature, activities of third parties, including the mechanism of causing harm to the protected object. In the educational literature, an example is given when D., knowing about A.s' addiction to alcohol, dissolved the poison in a bottle with an alcoholic beverage and put a bottle at the entrance door of the house A., hoping that A. would drink alcohol and be poisoned, which in fact did happen. D. did not enter with A. in physical collision, however his actions are a crime which in Art. 139 of Criminal Code of the Republic of Belarus are called in one word – murder[45]. As an example of the commission of a socially dangerous act of wilful action with the use of third parties, one can give an example of the commission of a crime indirectly[46]. The direct possession of property in theft may be carried out by a person under the age of 14 (for example, a 12-year-old) who is not criminally liable and who acts at the request of an adult to achieve the purpose of taking possession of property. In this particular situation, there is an indirect commission of a physical action containing signs of theft, as well as a direct informational impact on the consciousness of a teenager containing signs of involvement in the commission of a crime (Article 172 of the Criminal Code of Republic of Belarus), which form an ideal combination of crimes. In certain cases, provided for by criminal law, it is possible to commit a single complex composite crime through physical and informational actions at the same time, not creating a set of crimes. For example, a person commits rape with the threat of violence against the victim or her relatives (Article 166 of the Criminal Code of the Republic of Belarus). The informational

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Fizicheskoe nasilie v ugolovnom prave [Physical violence in the criminal law], Sankt-Petersburg 2001, p. 43–46; G. N. Borzenkov, [in:] L. V. Inogamova-Khegai, V. S. Komissarov, A. I. Rarog, *Rossiyskoe ugolonoe pravo. Obschaya chast: Uchebnik* [Russian criminal law: General part: Texbook], Moscow 2006, p. 129.

[44] V. N. Kudryavtsev, *Ob'ectivnaya…* [The objective…], p. 68.

[45] N. A. Babi, *Ugolovnoe pravo…* [Criminal law…], p. 110.

[46] The problems of indirect infliction of harm (mediocre) are analyzed in detail in the Chapter "Complicity in crime".

impact characterizing the method of committing a crime (in this situation is an independent action) acting as a means of paralyzing the victim's will as a guarantee of the unhindered implementation of a physical action in the form of sexual intercourse with her.

Informational influence in the commission of certain offences may give rise to physical effects. Analyzing such situations, *Babi* notes that in judicial practice, there are known cases of causing death by affecting the human psyche by provoking a fatal heart attack to a patient or invalid by a great insult, or by reporting information about the death of a loved one, which caused great excitement. It is also possible to use hypnosis and deception to ensure the impact on humans of the damaging properties of any objects, substances, etc., as well as mental coercion to undergo exposure to life-threatening factors leading to the death of the victim[47]. When causing physical harm by information actions, "contactless" means difficulties with the establishment of any indications of the crime may arise; namely, difficulties in establishing the very fact of the information impact that does not leave physical traces on the objects of the material world, as well as signs of a causal relationship between the information action and the ensuing material socially dangerous consequences. Today, considering the development of new information technologies, creating greater opportunities for indirect human impact on the objects of the external world, problem of legal evaluation of information actions must be solved urgently.

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[47] N. A. Babi, *Ugolovnoe pravo*... [Criminal law...], p. 110–111.

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