

Concept and Role of Damage for Determining the Consequences of Property Theft in Criminal Law of the Republic of Kazakhstan

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Abstract: The article is devoted to the definition of penal consequences of the crime of property theft in the Republic of Kazakhstan. The share of this type of crimes in the total number of crimes in the Republic of Kazakhstan is very large and has a strong tendency to further growth, so the research of damage as a consequence of theft is important. In most modern legal systems the grading of crimes against property is based on the valuation of the stolen property as a mechanism for calculating damages. The author examines different points of view on this issue, beginning with consideration of the concept and structure of the overall economic and social costs of crime, reveals the economic concept of damage and costs, structure of the economic impact and costs borne by society to overcome the effects of crime and its prevention and then, going directly to damage from theft, explores the criminalization of theft in the legislations of different countries depending on the extent of damage, describes the procedures and methods for its calculation and generates its own vision of the formation of the mechanism of harming the property relations as the object of criminal law protection.

Key words: Damage • Criminal liability • Theft • Crime

INTRODUCTION

The crime has economic and social consequences. As it was rightly pointed out not all crimes attract public attention, but all of them bring a tremendous hardship to the individual, family, society and the state [1]. The economic impact can be expressed in a certain amount. The social consequences are not subject to monetary evaluation.

In the study "Crime and methodology of its study" referring to the works of Polish scientists B. Holyst and Lernel, S. Yakovlev classifies all economic consequences, highlighting:

- Damages directly or indirectly caused by criminal activity and especially by property crimes;
- Loss of material benefit;
- Costs associated with maintenance of law enforcement agencies, including expenditures for combating of criminogenic phenomena and their prevention;
- Costs of response to already committed crimes.

He also determines social impact as "the adverse consequences of crime, which:

- First, do not affect the individual directly, do not complicate life in society and
- Second, are the destruction of values ??that are beyond a material assessment" [2].

However, the division of the negative effects of crime into social and economic can not be finalized because the economic consequences also represent a negative social phenomenon, which in turn can lead to a negative impact on the economy, i.e. has the opposite effect [3].

The consequences that have the monetary value comparable in time can be called by an economic term-damage or costs.

Damage is understood as financial or accounting measure of property (material substance) reduction. In each case the damage is calculated differently. For example, there is a criminal destruction of any material assets intended for resale. The damage caused by the destruction concerns two things: the price of

purchase, delivery, storage, raw materials (own expenses) and loss of anticipated profits.

Costs are the human labor input, which has the immediate or distant objective of solving a particular task (costs borne by society: related to work of law enforcement and other authorities other than law enforcement agency with regard to prevention, identification of criminals, investigation of crimes and execution of punishment).

The economic consequences are composed of two layers:

- Macro-(a question of economic consequences of criminal acts or other events on a national scale);
- Microeconomic-(negative effects may occur, for example, in the victim's family).

The question of the price of crime seems simple; however most of the discussions are conducted by scientists on the three aspects of the problem: types and scope of the negative effects of crime, methods of their proper evaluation and measures for alleviating the economic and social consequences.

Regarding the latter issue, it is very difficult to evaluate it in monetary terms. For example:

- A delay in the detection of crime and social and criminal prosecution and punishment that violates the requirement of law and public order;
- Negligence and sluggishness undermining the feeling of harmony and order and providing actual unwarranted privileges to people violating the law;
- Negligence and sluggishness in the activities of the investigating authorities indulging cash disbursement (work with witnesses);
- The cost of treatment of convicted drug addicts and alcoholics;
- Socio-economic consequences of the penalty of confinement seem to be impossible to count completely.

It is rightly pointed out that victims of crime always bear certain expenses, which list depends on what actions are needed to overcome the consequences of the crime [4].

The greatest damage subjected to monetary evaluation in the total number of crimes is caused by the crimes against property [5], among which theft takes a significant place.

The size of the stolen property, as a rule, is the basis for differentiation of criminal liability for theft, which caused consequences that differ in the degree of social danger. The consequence of theft is objectivated in its size.

The Note 1 of Article 175 of the Criminal Code of the Republic of Kazakhstan understands theft as illegal gratuitous and lucrative seizure and (or) use of someone else's property for the perpetrator's or somebody else's good, causing damage to the owner or other possessor of the property [6]. But, according to Article 26 of the Constitution of Kazakhstan citizens may privately own any legally acquired property. No one shall be deprived of his possessions except by the court order [7].

In the current commodity-money relations, the value of stolen property should be assessed at market prices and their documentary evidence. In the absence of price or an inability of its determination the value of stolen property may be determined based on the opinion of experts. It is these economic categories of assessment of the gravity of socially dangerous consequences that the criminal law takes into account differentiating responsibilities for various types of property theft and accordingly establishes criminal penalties.

Distinguishing different types of theft on the basis of the size of the caused property damage the Kazakhstani legislation recognizes the following types of thefts, according to Note 1 of Article 175 of the Criminal Code of the Republic of Kazakhstan:

- Minor larceny of the property, owned by a company or under its custody, committed by theft, fraud, embezzlement or misappropriation, does not entail criminal liability. A person guilty of such crime is administratively liable in accordance with the law. Theft is recognized minor, if the value of the stolen property does not exceed ten times of the monthly calculation index established by the legislation of the Republic of Kazakhstan at the time of committing the act.
- Grand larceny. The articles of Chapter VI, with the exception of Articles 184 (violation of copyright and related rights) and 184-1 (violation of rights to inventions, utility models, industrial designs, selection achievements or integrated circuits topology) of the Criminal Code of the Republic of Kazakhstan recognize the grand larceny or major damage as theft of the property or the amount of

damage which value five hundred times exceeds the monthly index, established by the legislation of the Republic of Kazakhstan at the time of the crime [6].

Thus, the minor larceny is a category of administrative rather than criminal law. In addition, at the minimum excess of the maximum limit of minor larceny the theft ceases to be small and the act is no more subjected to administrative law. The decision on what kind of theft has been committed, minor or punishable offense, according to the direct instructions of the law, should be based only on the value of the stolen property. Based on the foregoing, we can highlight the following features of minor larceny:

- Its size, which in any case can not be more than 10 monthly calculated index;
- A form of theft or its method, namely theft, fraud, embezzlement or misappropriation, i.e. in non-violent action;
- The so-called negative indication: in the listed possible forms of minor theft there should not be any of the aggravating or particularly aggravating circumstances of the same criminal offenses: a group of persons by previous concert; unlawful entry into a room, home or store, to steal; theft from clothes, bags or other carry-on baggage being on the victim; from the pipeline, oil pipeline, gas pipeline, by an organized group for fraud, embezzlement and committing such crime by a person using his official position, with some exceptions.

Only the simultaneous presence of all three of these indications can result in bringing to administrative responsibility. The absence of even one of them means that a person has committed not an administrative but a criminal act.

The concept of grand larceny is considered by the legislation, except for paragraph 2 of the Note to Art. 175 of the Criminal Code of the Republic of Kazakhstan and the Normative Regulation the Supreme Court of the Republic of Kazakhstan "On judicial practice in cases of embezzlement" dated July 11, 2011, where the grand larceny should be qualified as a continued single offense of theft of a few episodes, committed with a single intent if the total value of the stolen property 500 times exceeds MCI [8]. Thus, if the total value of the stolen property

on March 23, 2012 is 809 000 tenge following the Law "On Republican Budget for 2012 - 2014 years", where 1 MCI is set at 1,618 tenge, theft may be considered as grand larceny [9].

Calculation of the amount of theft in some foreign countries such as the Russian Federation in accordance with the Federal Law of 8 December 2003 No. 162-FL [10] is determined by the value of the stolen property in rubles and many Russian scientists support this idea. For example, N.A. Lopashenko in his monograph on "Encroachment on property" states: "Changing from the calculation of the amount of theft based on the minimum wage to Ruble has solved the problem, which was extremely controversial in the science of criminal law and in practice - the problem of establishing the specific content of the minimum wage [11].

Minimum wage is the constantly changing category. There used to be a rather real situations when a crime was committed at some minimum wage that allowed attributing the committed theft to grand larceny and bringing to criminal liability took place at a higher minimum wage, so in accordance with that particular size of minimum wage the theft was not a grand larceny. In accordance with the provisions of Article 10 of the Criminal Code [12] the Criminal Law, eliminating crime, mitigating punishment or otherwise improving the situation of the person who committed the crime shall have retroactive effect. However according to the note to Art. 158 of RF Criminal Code as amended up to the adoption of the Federal Law of December 8, 2003 No. 162-FL, the classification of theft took into account the minimum wage, which existed at the time of the crime. What law should be applied?" [11].

The answer to this question is the decision of the Constitutional Court of RF in the criminal case of Mr. D. Skorodumov, stating in para. 4: "The minimum wage, which determines such qualifying element as grand larceny, is established not by the criminal law, but another law. Its change does not change the provision of the criminal law, being in force at the time of the offense, as by the legal nature the minimum wage is a unit of account, which is determined by the federal legislator, taking into account social and economic factors for a certain period, which in this case excludes the possibility of the use of specific minimum wage in the criminal-legal relations that arose prior to its establishment. Otherwise it would lead-against the will of the legislator-to decriminalization of socially dangerous acts and violation

of the principle of justice, involving compliance of penalties and other measures with the nature and degree of social danger of the crime [13].

The Russian legislation distinguishes the following types of theft:

- Minor larceny (administrative offense) of somebody else's property by theft, fraud, misappropriation or embezzlement in the absence of aggravating and extremely aggravating circumstances of the crimes provided for in paragraphs 2,3 and 4 of Art.158, Parts 2 and 3 of Article 159 and paragraphs 2 and 3 of Article 160 of RF Criminal Code (the value of the stolen property does not exceed one thousand rubles-Art. 7.27 of Administrative Code of RF);
- A simple theft, i.e. theft that has not caused significant damage to the owner or the rightful owner of the property (amount stolen is from 1000 to 2500 rubles);
- Theft that caused significant damage to the owner or the rightful owner of the property (amount stolen is from 2,500 to 250,000 rubles);
- Grand larceny (amount stolen is between 250,000 to 1 million Rubles);
- Aggravated theft (amount stolen is over 1 million);
- Theft of items of special value (Art.164 Criminal Code) [12].

In the U.S., the nature of the stolen property and primarily its cost, is important for theft grading, which is provided by the legislation of all jurisdictions, with the possible exception of the federal. Originally there was the division of theft into minor and grand borrowed from the common law. As the only grading such division remained in the Criminal Code of the few states, such as California. In accordance with Art. 487 of the Criminal Code of the State the major theft is theft of money, labor services, real or personal property worth more than USD 400 [14].

Other states have provided a division into the degrees of major theft, such as in the Criminal Code of New York State four thefts for over \$ 1 million dollars is the grand theft of IV degree, amounting to over 3 thousand dollars - III degree grand theft, theft by worth over 50 thousand dollars or theft committed by extortion-II degree grand theft and worth more than \$ 1 million-I degree grand theft, which are the felonies of the classes E, D, C and B (Art. 155.30-155.42) and are

punishable by imprisonment for up-to 4,7,15 and 25 years, respectively [15].

The Criminal Code of the State of Minnesota provides the following dependence of punishment on the value of the stolen: imprisonment for up to 20 years if the value of the stolen is more than 35 thousand dollars; up to 10 years if the value is more than \$ 2,500; up to 5 years if the value is more than 500 dollar; and imprisonment for up to one year if the value of the stolen is more than \$ 200. All other cases (if the value of the stolen is USD 200 or less) provide imprisonment for up to 90 days (Part 3 Art. 609.52) [16].

It was rightly pointed out that in the context of inflation the considered gradation of property theft should be reviewed as often as possible, so that the severity of punishment fit the crime [17].

Criminal Law of England defines crimes against property, according to the Laws on the theft of 1968 and 1978, the Law on criminal damage to property of 1971, the Fraud Act of 2006 [18].

Under the current Criminal Code of Japan "Keyho" adopted in 1907, it is considered that the property does not necessarily have to have an economic value; it is enough if it has the sentimental value to the owner or possessor protected by the criminal practitioner [18].

In the Criminal Code of Italy the crimes against property are described in Sec. XIII. Chapter 1 of this section is called "crimes against property committed by violence over things and people." An interesting feature of the Italian criminal law is that criminal liability to persons, committed crimes against property, depends on the degree of their relationship with the victim [18].

CONCLUSION

Concluding the summary on criminal and legal characteristics of economic consequences, in the simplistic and very schematic form we can present a phased development of the major interrelated parts of the mechanism of damaging property relations as the subject of criminal law protection in the following formula: criminal exposure on the subject of offense-unlawful change of its position in the structure of social networks or physical destruction (damage)-the resulting deprivation of the actual owner of the real possibility of the free exercise at his discretion and on his power acts of economic possession, use and disposal of his property and as a result: disruption of normal property relations.

In this case, it is a mechanism of damaging individual volitional property relations; the principles of its operation are fully applicable to the entire set of objective economic relations of property, since by virtue of the laws of dialectics violation of part is a violation of the whole.

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