

No ideology can be recognized by the state as obligatory. Censorship is prohibited.

The state guarantees freedom of political activity not prohibited by the Constitution and laws of Ukraine. Provisions of Art. 10 European conventions are also reflected in Art. Art. 34 and 35 of the Constitution of Ukraine.

Conclusions. If we analyze even the decisions of the European Court on the requests of Ukrainian citizens concerning the right to freedom of expression, it seems possible to conclude that the European Court is more inclined to adopt a position of freedom than its restrictions, stipulated in Part 2 of Art. 10 of the European Convention.

When comparing art. The 10 European Convention on the Law of Ukraine stipulated by the domestic legislation of Ukraine clearly shows that theoretically, the latter meet the requirements of Art. 10 of the European Convention. Therefore, it is necessary to eliminate the continuous corruption in the Ukrainian judicial system, so that the courts clearly comply with the requirements of the current legislation, and thus, they did not violate the rights of citizens stipulated by art. 10 of the European Convention. To a certain extent, this will be facilitated by the speedy establishment of an anti-corruption court in Ukraine.

Veresha Roman, Professor of
the Academy of Advocacy of
Ukraine, Doctor of Law

CRIMINAL INTENT

It is generally accepted that criminal intent is a person's idea of the result of his or her activity, of that, which the person wishes to achieve by committing a crime. It is worth examining the definitions of the 'criminal intent' term, given by different authors. For example, according to F. de Jong (2011), the term 'criminal intent' is related to

a specific manifestation of an intentional act. The intent 'inspires' the subject to act and eventually materializes as the subject's acts.

According to I.O. Khar' (2013a), intent (prospect) is a source of the subject's orientation and activity. It depicts an imaginary model of the future (that, which the person would like to achieve by its actions). At that, in each individual case, there can be many intents of an action, but one of them is dominating. Criminal intent mediates the means and nature of the criminal's actions, determines the vector of his or her actions.

Criminal intent is the final (interim) result in the culprit's consciousness, which he or she pursues by committing a crime. Criminal intent is the subject's psychic idea of the result he or she pursues. The person acts with an intent of committing a crime if he or she knows what he or she is doing and wishes to achieve natural and possible consequences of such conduct, which are known to be results of such conduct (Bassiounim 1978). Criminal intent is the activity result that the criminal wishes to achieve by committing a crime.

According to S. Parsons (2004), intention is present, first where an actor wants or desires a consequence to occur – it is the intent of his action and, second, where a result is not wanted or desired but the actor does the act 'knowing full well' that the consequence is 'likely'. In juridical literature devoted to the analysis of criminal intent, it is stressed that intent is an obligatory condition of a crime with direct intention, since it shows the mental attitude of a person to both the action and its consequences. There are also opinions that a criminal offense is not any violation requirements, but only the one that is executed with a view to getting improper advantage, since such intent allows distinguishing between a criminal act and a noncriminal one. According to E.I. Orzhynska (2013), knowing the intent is one of the conditions for a quick and proper solution and investigation of cases. Some authors distinguish several types of criminal intent. For example, according to K.M. Orobets (2014), among criminal intents, one of the most common

ones is *lucri causa*, with which a person wishes to acquire material goods for him- or herself or third parties, or avoid unwanted losses.

In USA criminal law, besides the general term of criminal intent, there exists also the term 'specific intent'. To prove a person guilty, the prosecution must prove the intent with which the act was done. For example, the elements of the crime of burglary are: (1) the act of entering a building, and (2) the specific intent to commit a 'felony, theft or assault' therein. At that, according to J.A. Sigler (1981), for various reasons, primarily because specific criminal intent is difficult to prove, USA legislation gradually abandons this form of criminal intent. English legal precedents and juridical literature sometimes uses the term 'basic intention' and 'specific intention'. It is believed that a specific intent is present in crimes that have an important 'specific' purpose. In such cases, laws state that a person is responsible for causing injuries with an intent of causing grievous bodily injury.

Some authors distinguish the transferred intent. For example, while hearing a first-degree murder case, the District of Columbia Court of Appeals stated that when a defendant purposely attempts to kill one person but by mistake or accident kills another, the felonious intent of the defendant will be transferred from the intended victim to the actual, unintended victim. In criminal law science, criminal intent is an important constituent of *mens rea*. According to I.O. Khar'(2013b), the obligatory element of *mens rea* is criminal intent, which is analyzed with regard to crimes. R. Rengier also related criminal intent to *mens rea*. However, this scholar does not mention the motive of the crime as a constituent of *mens rea*. Some scientists view criminal intent as an indirect proof of commission of crime. For example, J.C. Smith (1995) states that the prosecutor has to provide proof, for instance, evidences of the fact that somebody saw the defendant press a gun against the victim's head and pull the trigger. This is a direct proof of the fact that the defendant murdered the victim and an indirect proof of the fact that the intent was murder.

If the legislator provides for a concrete intent as an obligatory element of crime, then its absence in any specific case excludes this

crime. For example, fraud is impossible without *lucri causa*. At that, some scientists state that some countries provide for clauses, according to which a person is considered guilty by default in certain situations, despite the criminal law not mentioning the intent, required for establishing a crime. Scientific literature also studies the effect of criminal intent on the classification of crimes. For example, O.S. Steblynska (2014) states that intent does not affect the classification of environmental crimes. However, the culprit's intent does matter for distinguishing environmental crimes from related crimes (for example, crimes against national security, against life and health of people, property crimes, etc.).

Experts also share the opinion that evasion of obligations is an obligatory element of *mens rea*. When providing certain practical examples of criminal conduct, American legal experts note, that if a several persons participate in shoplift and one of them changed the intent of robbery 'on the doorstep' of the shop, this person can avoid responsibility only if he or she prevents his or her accomplices from executing the robbery. It is expedient to examine the experts' opinions of the interconnection between criminal intent and motive. Despite the fact that legislative acts and court holdings in England often mention the intent of committing a crime, they lack its general or even common definition. Nevertheless, certain precedents, created by the House of Lords during the last two decades, evidence attempts to find out what is 'intent', in contradistinction to, for example, 'motive'. At present, the main verdict regarding this issue is the holding of the House of Lords on the R. Moloney case in which the defendant was found guilty of murdering his stepfather.

The defendant and his stepfather (both had consumed a quantity of alcohol) after the rest of the family retired to bed after celebrating a family event, argued who could load, draw and shoot a gun quicker. The defendant was first to load and draw and the stepfather said, 'I don't think you have got the guts but if you have pull the trigger'. The defendant pulled the trigger but in his drunken state, he did not believe the gun was aimed at the stepfather. The defendant shot his stepfather killing him. In the holding, later

falsified by the House of Lords, the judge gave guidance on the approach for the test on oblique intent: 'In the rare cases in which it is necessary to direct a jury by reference to foresight of consequences, I do not believe it is necessary for the judge to do more than invite the jury to consider two questions.

First, was death or really serious injury in a murder case (or whatever relevant consequence must be proved to have been intended in any other case) a natural consequence of the defendant's voluntary act? Secondly, did the defendant foresee that consequence as being a natural consequence of his act?'

In criminal law theory, criminal intent is viewed in parallel to the criminal motive, which diminishes the independence of the topic to a certain extent. This causes a lack of attention to the topic as an independent element of crime. For example, according to L.O. Semykina (2013), motive and intent are closely related, interdependent, and correlative concepts. Intent is always mediated by a motive, just as a motive is always mediated by intent. The motive affects how a person formulates the intent, how it will be executed. Criminal intent is based on criminal motive; in combination, they form the basis for guilt (Veresha 2012). At that, it should be mentioned that in the criminal law of England and the USA, guilt is determined by the 'mens rea' term. English-speaking authors primarily convey the meaning of the 'mens rea' term by the phrase 'guilty mind'. In turn, English and USA criminal law use two similar concepts – 'intent, intention' and 'motive'. In everyday use, the terms 'motive' and 'intent' are considered synonymous, but in law, they are different. A motive is not an intent, although it leads to a formulation of intent. It precedes criminal conduct, while intent accompanies it. The motive tempts the mind to commit a crime, forces to act in order to achieve a certain result.

The motive and intent are frequently substituted by one another, which complicates the legal evaluation of a committed crime. According to R.I. Sakhno (2013), the motive and intent are not only independent elements of a person's conduct, but also interdependent, interconnected, since the motive is realized through

intent. In addition to the expressed positions, A.G. Babichev (2013) states that the criminal motive is oriented and coordinated by criminal intent, therefore, it is recognized among *corpora delicti* as a constructive or classifying element of this or that type of crime. According to another opinion, despite the fact that a motive and intent of an action are interconnected and interdependent, they are different elements of a person's volitional activity.

At that, A.V. Naumov (2010) states that, firstly, the motive and intent can be main (constructive) elements of *corpus delicti*. Secondly, the motive and intent can be elements, the presence whereof creates an aggravating *corpus delicti* (*corpus delicti* under aggravating circumstances). Thirdly, the motive and intent can be circumstances that aggravate or extenuate responsibility during the sentencing. According to I.Yu. Gora (2014), while the criminal motive is an incentive, the intent is the desired result of criminal activity, achieved by the criminal by performing a criminally punishable act. According to Yu.A. Dorokhin (2014), the criminal procedural law lacks an indication of criminal intent as a circumstance that has to be proven. However, the need for determining the intent follows from the volitional nature of a subject's criminal activity – from the fact that the intent of the actions themselves always corresponds with subjective reasons for an action in the form of motive.

This is also mentioned by other authors. For example, D.I. Masol (2013) notes that a lack of indication of motive or intent in the disposition of a criminal regulation does not mean that respective elements of *corpus delicti* are not among obligatory ones: both the motive and intent can be 'concealed' in the content of other elements (for example, it is generally accepted that the 'due to performance of obligations' formulation indicates either criminal intent – to prevent the legal activity of the victim, or motive – revenge for such activity); in addition, the motive and intent can be presented contextually, rather than textually (for example, lucrative motive and intent during so-called 'thefts').