



## VALUES AS THE OBJECT OF CRIME: THE LEGISLATIVE PREMISES

Orest GRINISHIN,

postgraduate student, Department of Criminal Law and Criminology,  
Law Faculty, Ivan Franko National University of Lviv

### Summary

The article focuses on the theory that declares values as the object of crime. The appropriate analysis is primarily made in the light of the law rules in force. The definition of values is examined in terms of legal philosophy and axiology. The constraints on the sense of the concept „value” are proposed in order to avoid too wide construing within the criminal law. The value approach is compared with the theories of benefit and person as the objects of crime.

**Key words:** crime, object of crime, values, social relations, axiology, benefit, person.

### Аннотация

Статья посвящена теории ценностей как объекта преступления. Соответствующий анализ осуществляется в первую очередь исходя из норм действующего законодательства. Исследуется определение ценностей сквозь призму философии права и аксиологии. Предлагаются ограничения относительно значения понятия ценности во избежание слишком широкого толкования в криминальном праве. Ценностный подход сравнивается с теорией блага и человека как объектов преступления.

**Ключевые слова:** преступление, объект преступления, ценности, общественные отношения, аксиология.

**Introduction.** The problem of the Object of crime is known to be a classical one for criminal law. Among scientists there is no unity concerning what it is necessary to consider as the object of crime. Nevertheless, everyone agrees that the correct answer to this question is the cornerstone of understanding the social essence of a crime per se and necessary condition of the correct criminal qualification. It should be noted that the start point of any legal research of one or another crime is the clarification of its object. At the same time, the determination of the object of a particular crime inevitably demands definiteness with more common problem – what in essence is the object of crime irrespective of its kind or name.

Aim of the article. Nowadays there are a lot of various theories of the object of crime. In this article we will not characterize each of them. Our task is to define and explore the general object of crime on the basis of the relevant provisions of the Constitution of Ukraine and the Criminal Code of Ukraine, that is, to find out a legislator’s position.

**Methods and used materials.** For the achievement of the stated goal the following general scientific and special scientific methods of knowledge were used: dialectic (for establishment the interrelation of theories of the object of crime among themselves), structural (while analysing the system of social values), formal and logical (were used in interpretation of law rules). For clarification of the terms meaning such linguistic method as semantic was

used. The legal base of the research is represented by the Constitution of Ukraine and the Criminal Code of Ukraine. Works of scientists on criminal law, legal philosophy and linguistics became the theoretical basis for the work.

The results of the research. From our point of view, the answer to a question what is the object of crime should be primarily sought in the provisions of the criminal legislation. The Art. 1 of the Criminal Code of Ukraine defines the tasks of this act. These tasks are as follows: legal protection of the rights and freedoms of the human being and citizen, property, a public order and public safety, environment, the constitutional system of Ukraine from criminal encroachments, providing the piece and safety of mankind, and also the prevention of crimes [1].

The aforesaid provision casts a light on understanding the general object of crime by the legislator [2, p. 130]. Actually, we have the official legal list of the objects which are protected by the criminal law. The case in question is rights and freedoms of the person and citizen, property, public order and public safety, environment, constitutional system of Ukraine, world and safety of mankind. Thus, searching the answer to a question what is the object of crime is reduced to finding out that general term which, on the one hand, would coordinate with all of the objects listed in the Art. 1 of the Criminal Code if Ukraine by its meaning, and, on the other hand, would cover them by its scope. Moreover, both general and direct objects of a crime have to be uniform in the sense that, for instance, it can not be

the situation when general object is the social relations, and the direct one is the person.

It is obvious that widespread concept of the social relations as the object of crime does not work here. It is impossible to consider, for example, human rights or environment as the social relations, because these concepts are different in their substantial signs. According to S. Gavrish, the theory of social relations as the object of crime implies the conclusion that the criminal law „does not protect values and benefits, life, health, environment as such, but defends a certain form of their manifestation or connections between subjects of the relations...” [3, p. 28, 64, 65]. We agree with this opinion of the scientist, however, in the same time, it should be emphasized the interrelation of the rights, property and similar objects with the social relations: the last are the sphere of their realization and protection.

So what is the object of crime? How could we name all objects specified in the Art. 1, namely: rights, freedoms, property, a public order and public safety, environment, the constitutional system, the world and safety of mankind?

The provisions of the Art. 3 of the Constitution of Ukraine establish: „the human being, his or her life and health, honour and dignity, inviolability and security are recognized in Ukraine as the highest social value” [4]. This rule is deemed to be the universal basis of a social and state system because the Section 1 of the Constitution, containing this rule, is headlined as „General



provisions". It expressively testifies that all legal regulation is aimed at provision of the development and protection of the values dominating in society. And this idea refers not only to the criminal law, but to all other branches of the law.

In fact, the provisions of the Art. 1 of the Criminal Code of Ukraine are continuation of the provisions of the Art. 3 of the Constitution of Ukraine (it is about the list of values), but merely in security aspect.

Considering the above mentioned thoughts, we join the theory of values as the object of crime, argued by E. V. Fesenko [5, p. 75-78]. Nevertheless, we are about to complement it with several specifications and let's begin with the analysis of the concept „value”.

First of all, it should be set aside an everyday meaning of the word „value” as „the cost expressed in money; price” [6, p. 237] or as synonym to the words „weight”, „importance” [7]. The term „value” shall be construed solely as the philosophy category which is investigated by the separate section of philosophy – an axiology [8, p. 256-259].

The determination of values, made by V. Tugarinov, can be taken as a basis: „values bear those objects, the phenomena and their properties which are necessary (essential, useful, pleasant, etc.) to the members of a certain society or a class or to the individual as means of satisfaction of their requirements and interests, and also the values are ideas and motives as rules, purposes or an ideals” [9, p. 68]. As we can see, such philosophical definition of the values seems to be too wide for application within the science of criminal law and law practice, and, therefore, it is desirable to place some constraints on it.

The first constraints involve the definition of the values as ideas and motives, that are mentioned in the given definition above. In philosophy all the values are divided into two groups: subjective values and objective ones. Subjective values are known to be the methods and criteria on the basis of which the assessment procedures of the phenomena are carried out; they are fixed in public consciousness and culture. Subjective values act as guidelines of the personal activity. Subjective values can exist in the form of attitudes and estimates, requirements and bans, the goals and projects that are reflected in the form of normative installations [9, p. 258].

Objective values subsist in the whole variety of the objects of human activity, including the social relations and the natural phenomena as objects of the valuation [9, p. 258]. Exempli gratia, the environment is the subject value. While the maxim „treat others as you would like they treat you” represents a subjective value. Objective values really exist outside (in relation to the person) and are the objects that are significant for the person. To tell the truth, the process of giving the value to the real objects (the value assessment) is subjective by its nature since it is exercised in the mind. Subjective values exist exclusively mentally – at the level of thoughts. As it is impossible to cause damage to the opinion as such, only objective values have to be recognized as the object of crime. Involuntarily, this belief was expressed also by E. Fesenko. The scientist pointed out that the values were the objects of the material world [5, p. 76].

Although it must be kept in mind that not only the physical objects, available to sensory perception, could be classified as the objective values, but the non-material phenomena too, including those with the social origin (for example, the peace and safety of the mankind). Consequently, E. Fesenko distinguishes the materialized and not-materialized values [5, p. 77].

The second clarification is about the level of values. The level of values reflects the scale of their recognition. By the level all values fall within personal, social, professional, group, national and universal ones [10, p. 25]. It goes without saying, the criminal legislation cannot protect all values – in spite of their level. Each person has the unique range of values, that does not always comply with the common patterns and sometimes even contradicts them. That is why only national and universal values can be the object of crime. It can be assumed such global values constitute the general standard that dominates in the state. Such values can be named as social ones because they were formed and implemented in the particular society.

The third constraint deals with the character of values. The point is that values can be esthetic, religious, moral, scientific, etc. [11, p. 91]. Only legal values – that is, the values arising from the natural rights and (or) directly fixed by positive law – can be the object of crime. Legal values are deontic ones,

i.e. they have the explicit character. Legal values belong to the sphere of due and are enforced by the state and its bodies [12, p. 259]. The example of the legal value fixed by the positive law is the provision of the Art. 3 of the Constitution of Ukraine: „the human being ... is recognized ... as the highest social value” [4].

The concept of values as the object of crime is the branch continuation of the valuable approach to the law in general which emergence is connected with spreading of the natural legal views. Within the legal philosophy, the axiological theoretical direction has developed. The protection of social values is the common aim of law [13, p. 207].

The question could arise whether it is not better to recognize the person as the object of crime, as G. Novoselov suggests [14, p. 53–64]. More than one hundred years ago A. Kistyakovsky marked that only the person with all his rights can be the object of crime [15, p. 280]. Undoubtedly, legal values are derivative of the personality [12, p. 262] because the value means that something is important for the person (people, society). Respectively, it is impossible to deny the fact that damnification to certain values directly (for example, when causing bodily harms) or indirectly (for example, tax avoidance on a large scale causes the suffering of the social maintenance) does damage the person. At the same time, we are of the opinion that recognition of the person (society) as the object of crime – though comply essentially with the valuable approach – ignores the all variety of values, that exist and that are protected by the penal statute, replacing them only with one – the person or associations of persons. Notably, the Art. 3 of the Constitution of Ukraine recognizes the person as the highest social value – but not the singular one. Accordingly, such approach seems to be too simplified and low-informative.

S. Gavrish offers to discern the object of crime in two aspects: firstly, as normative, legal category, since the crime first of all breaks the regulation of the criminal law; secondly, as the benefit protected by this regulation („the legal benefit”) [16, p. 10–15]. Some other scientists, such as A. Naumov, S. Rastoropov, V. Trubnikov, V. Filimonov, support this point of view. Our understanding is that there are no grounds to discriminate



the „normative” aspect of the object of crime. We share A.N. Traynin's position according to which the law rules do not suffer from committing a crime, and, thus, they cannot be the object of crime [17, p. 174–175].

The benefit is what satisfies the needs of people, what correspond to their interests, desires and intentions [18, p. 126]. In such meaning this term, in principle, is similar to the concept „value”. S. Gavriș considers these concepts to be synonyms and defines the benefit as the protected value [3, p. 61; 16, p. 15]. E.V. Fesenko includes the benefits to the structure of values [19, p. 9]. These statements confirm the unity of the examined concepts. Nevertheless, in the 19th century the term „benefit” was replaced by the term „value” [20, p. 144; 21, p. 55].

Furthermore, the word „benefit” has additional meanings as: 1) good, happiness; 2) prosperity, advantage, natural foods and so on – i.e., all the things the person needs in his life; 3) well [22, p. 153–154].

**Conclusion.** As a result of the performed research, we have reached the following conclusion:

1. The provisions of the Constitution of Ukraine and the Criminal Code of Ukraine reflect the valuable approach to the object of crime.

2. If the values are recognized as the object of crime, it must be kept in mind that solely axiological sense of the word „value” should be used with eliminating its day-to-day meanings; only objective social legal values are examined.

3. The theory of the person as the object of crime and the theory of benefits as such object are similar to the values approach.

4. The person is not the single value, therefore, it is wrongly to manifest the person as the uniform general object of crime.

5. The term „value” has been superseded by the outdated and too multiple-valued term „benefit” so the concept of the benefits as the object of crime „loses” terminologically the values theory.

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