

## CHARACTERISTICS OF CRIMINAL PERSON AS THE SUBJECT OF DISCLOSURE OF THE STATE SECRET

### ХАРАКТЕРИСТИКА ОСОБИ ЗЛОЧИНЦЯ – СУБ'ЄКТА РОЗГОЛОШЕННЯ ДЕРЖАВНОЇ ТАЄМНИЦІ

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The article considers the subject's affiliation with the disclosure of state secrets in special entities. As well as on the basis of general theoretical provisions, the determination of the subject of disclosure of state secrets is justified. The article explores scientific views regarding the content of the notion of "identity of the offender". It is proved that the classification of criminals should be based on signs that reflect the motivation of criminal behaviour, the social genesis of the formation of the individual on the criminal path, the nature and degree of anti-social orientation of views, interests, value orientations, social roles of persons in criminal organizations of different direction. On the basis of the dominant motives of the motivational sphere of offenders and the motivation of their criminal behaviour, four criminological significant types of identity of the offender in the field of protection of state secrets have been identified: 1) political; 2) self-serving; 3) frivolous (careless); 4) cowardly-cowardly. Definitions of the offender's identity are presented – a set of criminological significant properties of the person, which under certain situational circumstances (or outside them) lead to the commission of the crime. It has been determined that all the characteristics of the person of the offender in the field of protection of state secrets are interrelated and interdependent. Therefore, such a person is not a frozen combination of socio-demographic, socio-psychological characteristics and psychophysiological features, but a single, relatively stable and simultaneously dynamic system, which is in constant interaction with the social environment. The main difference between the person of the offender and law-abiding citizens is not the absence or presence of special components, but in the content and manifestation of certain signs, in the specific nature of the attitude of the person to social values, in the characteristic content and structure of its motivational sphere are realized in the motivation of criminal behaviour. It is noted that the classification of the person of the offender should contain signs that reflect the motivation of criminal behaviour, the social genesis of the formation of the person on the criminal path, the nature and degree of anti-social orientation of views, interests, value orientations, social roles of persons in criminal organizations of different directions.

**Key words:** subject, crime, criminal liability, disclosure of state secrets.

У статті розглянуто приналежність суб'єкта розголошення державної таємниці до спеціальних суб'єктів. А також на підставі загально-теоретичних положень обґрунтовано визначення суб'єкта розголошення державної таємниці. У статті досліджуються наукові погляди щодо змісту поняття «особа злочинця»; доводиться, що в основу класифікації злочинців мають бути закладені ознаки, які відображають мотивацію злочинної поведінки, соціальний генезис становлення особи на злочинний шлях, характер і ступінь антисоціальної спрямованості поглядів, інтересів, ціннісних орієнтацій, соціальні ролі осіб у злочинних організаціях різного спрямування. Виходячи зі змісту домінуючих спонукань мотиваційної сфери правопорушників та мотивації їхньої злочинної поведінки, виокремлено чотири кримінологічно значимі типи особи злочинця у сфері охорони державної таємниці: 1) політичний; 2) корисливий; 3) легковажний (необережний); 4) боягузливо-легкодухий. Представлено визначення особи злочинця: це сукупність кримінологічно значимих властивостей особи, що за певних ситуативних обставин (або поза ними) призводять до скоєння злочину. Визначено, що всі ознаки, що характеризують особу злочинця у сфері охорони державної таємниці, взаємопов'язані і взаємозалежні. Тому така особа є не застиглою сукупністю соціально-демографічних, соціально-психологічних ознак і психофізіологічних особливостей, а єдиною, відносно стійкою й одночасно динамічною системою, яка перебуває в постійній взаємодії із соціальним середовищем. Основна відмінність особи злочинця від законотворчих громадян полягає не у відсутності або наявності якихось особливих компонентів, а в змісті й прояві деяких ознак, у специфічному характері ставлення особи до соціальних цінностей, у характерному змісті та структурі її мотиваційної сфери, що реалізуються в мотивації злочинної поведінки. Зазначено, що у класифікацію особи злочинця мають бути закладені ознаки, які відображають мотивацію злочинної поведінки, соціальний генезис становлення особи на злочинний шлях, характер і ступінь антисоціальної спрямованості поглядів, інтересів, ціннісних орієнтацій, соціальні ролі осіб у злочинних організаціях різного спрямування.

**Ключові слова:** суб'єкт, злочин, кримінальна відповідальність, розголошення державної таємниці.

**Statement of a problem.** The criminal legal characteristics of any norm of the Special Part of the Criminal Code of Ukraine (hereinafter referred to as the Criminal Code of Ukraine) are of great importance both for theoretical consciousness and for practical application. Nor does it care about the problem of the criminal legal characteristic of the disclosure of state secrets. The relevant meaning, in this characteristic, is the analysis of the subject of the crime.

For example, the Security Service established two facts of contacts between officers of the Armed Forces of Ukraine and Russian special services, threats tried to bring out state secrets. The military tried to recruit during their stay in Russian diplomatic institutions in Ukraine and a personal visit to occupied Donbass. They were required to provide information on Ukraine's defense sphere.

It is noted, that Ukrainian was subjected to psychological and physical pressure, threatened the life and health of members of their families. At the same time, the officers did

not carry out the illegal actions demanded by the Russian security services and reported in advance on the attempts of the ambivalent. The Security Service called on citizens to avoid travelling to the occupied Donbass and Russia, and warned that all recruitment offers should be notified to law enforcement officers [13].

Therefore, the purpose of our article is to determine the criminal legal characteristic of the subject by disclosing state secrets and, on the basis of which to determine its content.

**Analysis of the last researches and publications.** The analysis of the subject of disclosure of state secrets should begin primarily to determine the level of development of this problem in the scientific world. This issue was dealt different times by a large number of scientists. Among them are V.A. Vladimirov, G.A. Levitsky, V.S. Orlova, V.G. Pavlova. But at the same time, scientists such as M.P. Carpushin, V.I. Kurland, A.A. Pinayev, A.A. Pioneer, A.N. Trainin and others, exploring the problem of crime in general and its

composition, to some extent addressed the issue of the subject of the crime and its analysis. During the time, scientists investigate the problem of the subject of the crime, in the vast majority, scientific thought on this issue has already clearly formed the corresponding positions. That is, using mathematical terminology, everything that is connected with the subject, as an element of the composition of the crime, began to be perceived in the theory and practice of combating crime axiomatically. In general, in the theory of law, a subject is defined as a person, or an organization, which has the capacity to have subjective rights and legal obligations (i.e. to have legal capacity) [1, p. 754].

**Purpose of scientific research** is to investigate scientific views on the content of the concept “identity of the offender”, the identification of specific features that can be used to classify criminals in the field of protection of state secrets.

**Statement of the main material.** In criminal law science, the understanding of the subject of the crime is based on a statutory definition, namely, that the subject of the crime is a physical imputed person who committed the crime at the age from which criminal liability may be incurred (Art. 18, p. 1 of the Criminal Code) [2]. The science of criminal law considers the subject of the crime as an element of the composition of the crime, through the lens of three mandatory characteristics: the person natural; the person charged; a person who has reached a certain age of criminal responsibility. A subject possessing only the above-mentioned characteristics in criminal law science is defined as the general subject of the crime. At the same time, the Law on Criminal Responsibility and the science of Criminal Law provide for the existence of a special entity along with a general entity. Thus, Article 18, paragraph 2 of the Criminal Code states: “The special subject of the crime is a physical imputed person who has committed, at the age from which criminal responsibility may arise, an offence whose subject may be only a certain person” [2]. In other words, the special entity, in addition to the above-mentioned general mandatory characteristics, must have other characteristics provided for in the criminal law. Based on the theoretical postulates described above, we will analyze the subject disclosure of state secrets. The disposition of this criminal norm notes that disclosure is carried out “the person to whom this information was entrusted or became known in connection with the performance of official duties” [2]. That is, the subject of disclosure of state secrets is the person to whom this information was entrusted or became known in connection with the performance of official duties, in the absence of signs of high treason or espionage. In other words, the person must first have permission to use the information constituting state secrets; secondly, such information should be entrusted to it or become known in connection with the performance of official duties; thirdly, to have an appropriate official position, which allows her to use such information.

The provisions of Part 2 of Article 22 of this legislative Act state: “Access to state secrets is granted to capable citizens of Ukraine...”. In other words, at the legislative level, Ukraine establishes that only Ukrainian citizens can possess information that constitutes a state secret legally. On the basis of the provisions of the Ukrainian Citizenship Act, a citizen of Ukraine is considered a person who has acquired Ukrainian citizenship in accordance with the procedure provided for by the laws of Ukraine and international treaties of Ukraine. At the same time, this law clearly states that a person is an individual (Art. 1) [4]. That is, a citizen of Ukraine, first of all, is an individual. From this logical chain, which, by the way, has a legislative basis, we can conclude that the subject of disclosure of state secrets can be only an individual. That is, the physical identity of the subject of the crime indicates that only a person can be responsible for the disclosure of state secrets. Even if, at the time of the commission of the crime, the natural person acted on behalf of or in the interests of the legal person, in this case, only specific natural persons whose

actions established the elements of the crime are subject to criminal prosecution. The second characteristics of the subject of the offence under Article 328 of the Criminal Code should be attributed to the imputability of an individual. In accordance with the provisions of Article 19 of the Criminal Code of Ukraine, a person who, at the time of the commission of the crime, could understand and lead his or her actions (inaction) is considered imputed [2].

On the basis of general theoretical provisions, it is possible to emphasize the following: in accordance with the provisions of criminal law, full imputability, in relation to Article 328 of the Criminal Code of Ukraine, can be defined as the possibility of a natural person, when disclosing information constituting a state secret, to understand and direct his actions, and limited as the inability of a person, at the time of the commission of the offence, to be fully aware of his or her actions and/or to guide them through his or her mental disorder. Therefore, in establishing the fact of imputability of a person, divulges information containing state secrets, it is necessary to be clearly guided by the theoretical provisions that we have set out earlier. Reaching the age established by law is the next of the mandatory conditions for bringing him to criminal responsibility for the disclosure of information constituting a state secret. In accordance with the provisions of Article 22, paragraph 1 of the Criminal Code, persons who, at the time of the commission of the crime, and in our case, the disclosure of state secrets, have reached the age of sixteen, are subject to criminal liability. It's first of all. Secondly, we need to take into account the issue of admission to state secrets of a person, which is regulated under the Law of Ukraine “On state secrets” [3]. The provisions of Part 2 of Article 22 of this Law note: «Access to state secrets is granted to capable citizens of Ukraine aged 18 and over». In addition, the provisions of this article note the need for a person to have an appropriate official position, namely “who need it under the conditions of their service, production, scientific or scientific and technical activities or training”. That is, as a general rule, persons who have reached the age of 18 may be granted access to State secrets. At the same time, in accordance with the provisions of paragraph 3, the above-mentioned norm in certain cases, which are determined by ministries and other central executive bodies, in agreement with the Security Service of Ukraine, citizens of Ukraine aged 16 and over may be granted access to state secrets with degrees of secrecy “top secret” and “secret”, and at the age of 17 also to state secrets with a degree of secrecy of “special importance”.

Thus, this problem defines the law, although, as we see, there is no unconditional establishment of a limit on the age, from which criminal liability for the disclosure of state secrets comes. In scientific space, there is also no common view of this problem. The vast majority of scientists in the educational and scientific literature commenting on this criminal law norm, the question of determining the specific boundary of criminal responsibility for the disclosure of state secrets is bypassed. And only individual authors focus attention in their works. Thus, for example, M.I. Havronyuk emphasizes that access to state secrets is granted only to persons aged, usually from eighteen years of age (As an exception, persons between the ages of 16 and 18 – say, students in some higher education institutions – can also obtain such admission). If a person under the age of 18 is in fact admitted and made public information constituting a state secret, Article 22 of the Criminal Code states that he is the subject of the offence. Failure to reach the age of 18 does not in itself exclude a person from the sphere of social relations related to the protection of state secrets and does not terminate these relations [5, p. 908]. A.V. Zapik clearly defines the age of criminal liability for disclosure of state secrets by reference to the provisions of Article 22 of the Law “On state secrets” [6, p. 518].

Therefore, in summing up the above, we would like to emphasize the following: given the fact that the subject is a

special disclosure of state secrets, namely, that he is the person to whom this information was entrusted or became known in connection with the performance of official duties ties, it is necessary to use the provisions of Article 22 of the Law "State secrets". Act in certain cases when determining the age of criminal responsibility. And as a general rule, criminal liability for disclosure of state secrets comes from the age of sixteen. In order to fully disclose the content of the subject of the crime, it is necessary to analyze special characteristics separating it from the general subject. In this case it is necessary to stop on the concept of "trusted persons, became known to the person and official duty". At the legislative level, the term "official duties" is not defined to some extent, but is reflected in certain areas of enforcement.

So, in the About Public Service Storage, which comes into force of 01.01.2014, official duties are defined as set of the duties of the public servant defined in this law, rules of the internal office schedule of the appropriate public authority, authority of the Autonomous Republic of Crimea or their device, and its functions [7]. Along with this definition, Law of Ukraine "On Protection of Rights to Inventions and Useful Models" by official duties understands the functional duties of the employee, which provide for the performance of works that may lead to the creation of the invention (useful model) [8]. Disclosing the content of the provisions of Article 115, paragraph 8, paragraph 2 of the Criminal Code of Ukraine, the Plenum of the Supreme Court of Ukraine (hereinafter referred to as the PVA of Ukraine), in its decision, notes that the performance of official duty is the activity of a person and falls within the scope of his powers [9]. In other words, the PSO of Ukraine identifies official duties with the powers of the person. At the same time, in Ukraine, powers are understood as rights granted for the exercise of something. For example, the economic encyclopedia defines powers as the rights of a legal or natural person to carry out economic transactions, as well as to representation, are enshrined by law or notary [10].

As for the scientific interpretation of the term, the uncertainty was much greater. In clarifying certain provisions of criminal law relating to duties, individual scholars give their understanding of the performance of duties rather than the duties themselves. For example, commenting on Article 367 of the Criminal Code of Ukraine "Official Negligence", P.S. Matyshevsky analyzes the concept of non-performance of official duties, namely, inaction of an official in conditions when she had to and could carry out actions that are within the scope of his official duties [11, p. 823]. At the same time, as we see, the understanding of duties and their direct content is not determined. This of course creates certain problems in the qualification of the act and in the process of further enforcement. At the same time, other scientists, commenting on certain articles of the Criminal Code of Ukraine, the content of which provides for official duty as a mandatory feature of this crime, to some extent attempt

to clarify and disclose the content of this term. For example, L.P. Brich commenting on Article 342 of the Criminal Code of Ukraine, namely resistance to a representative of the authorities, an employee of a law enforcement agency, a state executive, a member of a public formation for the protection of public order and the state border or a soldier, notes that the official duty concerns the victim. In other words, she is entitled to the appropriate official duty, which she by the way performs, and the subject of the crime resists during its performance. At the same time, in his opinion, the commission of an offence in the performance of official duties by a representative of the authority, including an employee of a law enforcement agency, means that the attack takes place in the exercise of the rights granted to him and in the performance of the obligations provided for by the relevant normative and legal acts governing the activities of the representative of the authority or the body, in which he works [12, p. 948].

**Conclusions.** Having analyzed this view, we see that L.P. Brich's definition of the concept of official debt stops and notes some characteristic features, namely: the person is granted the corresponding rights; provision is made for the fulfilment of certain duties; these rights and obligations are provided for in the relevant legal acts governing the activities of the representative of the authority or body, in which he or she works. It should be noted, that this position is much closer to determining the full content of the concept of official debt than was previously cited. But also in this case there remain separate issues that narrow the consideration of the problem. This definition of official duties can be used only in the sphere of representative power. The question arises: how will the understanding of official duty be modeled in other spheres of life? Can this understanding of official duty be used in health care, education, economic relations and the like. This approach is also seen in the positions of other scientists. V.A. Klimenko analyzing Article 343 of the Criminal Code of Ukraine by the performance of official duties implies the performance of those duties of a law enforcement officer, in which his law enforcement and law enforcement functions are embodied [11, p. 770]. In this case, that is, when it comes to the existence of official debt in the criminal law norm, we believe that it is necessary to rely first on a common understanding of the problem, and then to model it for the separate situation that is enshrined in this criminal law. With regard to the disclosure of state secrets, in this case the duty of service is understood to mean a set of relevant cases and a certain amount of work, determined by the position occupied by the obliged person, as part of the performance of his actions to ensure, then service, certain interests in the protection of state secrets. In summary, it can be noted that the subject of disclosure of state secrets is a special, namely, a person to whom information constituting state secrets was entrusted or became known in connection with the performance of official duties.

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