

EUROPEAN REFORMS BULLETIN 2021 No 1

European Reforms Bulletin

2021

scientific peer-reviewed journal

No. 1

Founded and edited by Centre for European Reforms Studies, a.s.b.l. Grand Duchy of Luxembourg (Registre de commerce et des sociétés, Luxembourg, F 10.340, siège social: L-1541 Luxembourg, 36, boulevard de la Fraternité).

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Recommended for publication by the Centre for European Reforms Studies (protocol of the general meeting No. 03 07.04.2021)

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SUBJECT MATTER OF A CRIME FOR HIGH TREASON: ART. 111 OF THE CRIMINAL CODE OF UKRAINE

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Abstract: In the study of the crime, which involves criminal liability for treason, to clarify the content of these relations is essential to the subject of the crime, which, although not an independent element of the crime, but belongs to the structure of social relations. This is not the opinion of all scientists, and therefore, in contrast to this position, there is an opinion that the subject of the crime is an independent optional feature of the crime. However, we support the generally accepted view in the criminal law literature that the corpus delicti contains four elements of the corpus delicti, and therefore we believe that the subject of the crime can only be a sign of the corpus delicti (object). Therefore, the subject of the crime is not mandatory, but an optional feature of the general concept of the crime. If the subject of the crime is defined directly in the law, then this feature is mandatory.

Thus, the subject of the crime under Art. 111 of the Criminal Code of Ukraine, there is information that constitutes a state secret, which has the following features: 1) is information that is subject to classification, ie there are restrictions on the dissemination and access to specific classified information; 2) are significant and important for the interests of the state; 3) a special procedure for circulation is established in relation to this information; 4) clearly defined in the areas in which it may exist.

Keywords: crime, criminal law, subject of the crime, espionage, subversion, national security, territorial integrity and inviolability.

In the study of the crime, which involves criminal liability for treason, to clarify the content of these relations is essential to the subject of the crime, which, although not an independent element of the crime, but belongs to the structure of social relations [1, p. 154]. This is not the opinion of all scientists, and therefore, in contrast to this position, there is an opinion that the subject of the crime is an independent optional feature of the crime [2, P. 273; 3, pp. 31; 4, pp. 41; 5, P. 67]. However, we support the generally accepted view in the criminal law literature that the corpus delicti contains four elements of the corpus delicti, and therefore we believe that the subject of the crime can only be a sign of the element of the corpus delicti (object). Therefore, the subject of the crime is not mandatory, but an optional feature of the general concept of the crime [4, P. 34, 47]. If the subject of the crime is defined directly in the law, then this feature is mandatory [6, p. 93].

In the theory of criminal law there is no single approach to what should be attributed to the subject of the crime. Some scholars consider as the subject of the crime any things only of the material world, with certain qualities of which the criminal law connects the presence in the actions of a person of signs of a specific crime [3, P. 273; 2, P. 31]. In particular, it is noted: if we recognize the subject of the crime not only tangible but also intangible values, then, first, it will be significantly more difficult to establish the real subject in a particular crime, as it is possible to identify the subject and object of the crime [7, P. 298]; secondly, "the obligatory for any object of crime its applied load will be destroyed (to be material evidence in criminal proceedings, possibility of its expert research, to belong to a subject of proof, in some cases - to be a subject of special confiscation, etc.)" [8, S. 112]. It is emphasized that intangible assets cannot be the subject of a crime due to the lack of a physical feature of the subject of the crime, the essence of which is manifested in the fact that the subject of the crime are only values endowed with natural quality [9, p. 67].

In turn, others believe that the subject of the crime are both material and intangible goods, which offer to include energy, information, services, etc. [10, P. 78; 11, pp. 10; 12, pp. 79–81]. In particular, EV Lashchuk believes that information can be seen, felt, heard, certain actions can be taken (create, copy, etc.). You can also use special technical means to determine the properties of electricity - to measure current, voltage, etc. [11, pp. 65-66].

The clarification of the subject of the crime of treason, of course, should be based primarily on the provisions of the Law of Ukraine on Criminal Liability, as well as in view of the main direct object of the relevant encroachment. It should be noted that the subject is a sign of treason, which consists in espionage. Other methods of treason are pointless. An indication of the subject of this corpus delicti is contained in Art. 114 of the Criminal Code of Ukraine, which provides for liability for espionage. Since this independent corpus delicti is at the same time one of the forms of treason, their subject matter is identical. Thus, the subject of the crime of "treason" is information that is a state secret.

The concept of state secrets is contained in the Law of Ukraine "On State Secrets" of January 21, 1994 55 3855-XII, which defines it as a type of secret information covering information in the field of defense, economics, science and technology, foreign relations, state security and protection of law and order, the disclosure of which may harm the national security of Ukraine and which are recognized in the manner prescribed by this law, a state secret and are subject to state protection [13].

The features inherent in the legal structure of "information constituting a state secret" directly follow from the analysis of this Law: first, information constituting a state secret is information subject to classification, ie there is a restriction on the dissemination and access to specific classified data; secondly, information that constitutes a state secret is significant and important for the interests of the state. The degree of importance of information is determined by the probable harm that may result from its disclosure or transfer to a foreign organization; thirdly, a special order of circulation is established for this information. According to the decision of the state body, only a limited number of subjects have access to it. It is of special importance for the state, and therefore a special legal regime has been established for it, and its transfer or collection by a citizen of Ukraine for the purpose of transfer to a foreign state constitutes a crime of "treason"; fourth, information constituting a state secret is clearly defined in the areas in which it may exist. Information constituting a state secret is specified in the relevant provisions (Collection of information constituting a state secret SBU Order of December 23, 2020 № 383 [14], Laws of Ukraine "On Counterintelligence Activities" of December 26, 2002 № 374-IV [15] and "On Intelligence" of January 1, 2021 № 912-IX [16].

In addition, in Art. 8 of the Law of Ukraine "On State Secrets" of January 21, 1994 № 3855-XII lists the data belonging to the state secret. This, in particular, information in the field of:

- defense: on the content of strategic and operational plans and other documents of combat management, preparation and conduct of military operations, strategic and mobilization deployment of troops, on the development of certain types of weapons, military and special equipment, their number, tactical and technical characteristics, as well as other important indicators that characterize the organization, number, location, combat and mobilization readiness, combat and other military training, armament and logistics of the Armed Forces of Ukraine and other military formations, etc. (Part 1 of Article 8);

- economics, science and technology: on the content of mobilization plans of state bodies and local governments, mobilization capacity, mobilization training and mobilization measures and their funding, stocks and supply of strategic raw materials, as well as plans, content, volume, financing and execution of the state defense order, etc. (Part 2 of Article 8);

- external relations: on military, scientific, technical and other cooperation of Ukraine with foreign states, if the disclosure of information about it will harm the national security of Ukraine; on export and import of armaments, military and special equipment, certain strategic types of raw materials and products (Part 3 of Article 8);

- state security and law enforcement: the means, content, plans, organization, financing and logistics, forms, methods and results of operational and investigative, intelligence and counterintelligence activities; about persons who cooperate or have previously cooperated on a confidential basis with the bodies conducting such activities; on the composition and specific persons who are undercover staff of bodies that carry out operational search, intelligence and counterintelligence activities (Part 4 of Article 8).

At the same time, this Law specifies information that should not be classified as a state secret, in particular: the state of the environment, the quality of food and household items, the impact of goods (works, services) on human life and health; about accidents, catastrophes, dangerous natural phenomena and other extraordinary events that have occurred or may occur and threaten the safety of citizens; on the state of health of the population, its standard of living, including nutrition, medical care and social security, as well as on socio-demographic indicators, the state of law and order, education and culture of the population; about the facts of violations of human and civil rights and freedoms; on illegal actions of state bodies, local self-government bodies and their officials and officials, etc. (item 14, part 4 of Article 8).

However, there are some doubts about the classification of information in the field of defense as a state secret, in particular about the number of the Armed Forces of Ukraine, the Border Troops, and the National Guard of Ukraine. After all, according to item 22 of Art. 85 of the Constitution of Ukraine, the approval of the number of all military formations is the authority of the Verkhovna Rada of Ukraine, ie in practice this information is published in laws, speeches of the President of Ukraine, the Prime Minister.

Information that is recognized as such a secret by a motivated decision of a state expert on state secrets may be recognized as a state secret. Yes, in accordance with Art. 9 of the Law of Ukraine "On State Secrets" state expert on secrets creates expert commissions of specialists and scientists who have access to state secrets, to prepare draft decisions on the classification of information as a state secret, reduce its secrecy and cancel these decisions. The relevant document, product or other material carrier of information constituting a state secret is classified ("of special importance", "top secret", "secret") (Part 2 of Article 15 of the Law "On State Secrets"). Therefore, the details of each material carrier of classified information consist of a seal of secrecy; copy number;

articles of the Code of Information Constituting a State Secret, on the basis of which classification is carried out; the title of the position and the signature of the person who provided the seal of secrecy (Part 2 of Article 15 of the Law "On State Secrets").

Thus, the subject of the crime under Art. 111 of the Criminal Code of Ukraine, there is information that constitutes a state secret, which has the following features: 1) is information that is subject to classification, ie there are restrictions on the dissemination and access to specific classified information; 2) are significant and important for the interests of the state; 3) a special procedure for circulation is established in relation to this information; 4) clearly defined in the areas in which it may exist.

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Предмет состава преступления за государственную измену: ст. 111 УК Украины

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Аннотация. В рамках исследования состава преступления, предусматривающий уголовную ответственность за государственную измену, для выяснения содержания этих отношений важное значение имеет предмет состава преступления, который, хоть и не является самостоятельным элементом состава преступления, однако относится к структуре общественных отношений. Так считают далеко не все ученые, а потому в противовес такой позиции прослеживается мысль, что предмет преступления является самостоятельной факультативным признаком состава преступления. Мы все равно поддерживаем общепринятую в уголовно-правовой литературе мнение, что состав преступления содержит четыре элемента состава преступления, а потому считаем, что предмет преступления может только быть признаком элемента состава преступления (объекта). Поэтому предмет преступления является не обязательным, а факультативным признаком относительно общего понятия состава преступления. Если предмет состава преступления, определенный непосредственно в законе, то этот признак является обязательным.

Итак, предметом преступления, предусмотренного ст. 111 УК Украины, есть сведения, составляющие государственную тайну, которым присущи такие признаки: 1) является информацией, которая подлежит засекречиванию, то есть имеется ограниченность на распространение и доступ к конкретным секретных данных; 2) являются значимыми и важными для интересов государства; 3) относительно этой информации устанавливается особый порядок обращения; 4) четко определены в сферах, в которых она может существовать.

Ключевые слова: преступление, уголовное право, объект преступления, шпионаж, подрывная деятельность, национальная безопасность, территориальная целостность и неприкосновенность.

Centre for European Reforms Studies a.s.b.l.
(Grand Duchy of Luxembourg)

European Reforms Bulletin

scientific peer-reviewed journal

2021
No. 1

Passed for printing 31.03.2021. Appearance 07.04.2021.
Typeface Times New Roman. Circulation 100 copies.

Design, computer page positioning, layout: **Centre for European Reforms Studies, a.s.b.l. Grand Duchy of Luxembourg**
All the articles are published in author's edition. Publishing institution: **Centre for European Reforms Studies, a.s.b.l. Grand Duchy of Luxembourg** (Registre de commerce et des sociétés, Luxembourg, F 10.340, siège social: L-1541 Luxembourg, 36, boulevard de la Fraternité),
+352661261668, email: bulletin@email.lu, <http://cers.eu.pn/bulletin.html>