

8. Конституція України. [Електронний ресурс]. Режим доступу: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

Konstytutsiia Ukrainy [Constitution of Ukraine]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

9. Депутатський індемнітет. [Електронний ресурс]. Режим доступу: <https://zakon.rada.gov.ua/laws/show/v002v710-08#Text>.

Deputatskii indemnitet [Deputy indemnity]. Retrieved from: <https://zakon.rada.gov.ua/laws/show/v002v710-08#Text>.

Liia Pochapska

Vasyl' Stus Donetsk National University

Vinnitsia

Research Supervisor: I. Y. Zhdanova, PhD in Criminal Law, Assoc.Prof.

Language Advisor: O. O. Odintsova, Senior Lecturer

COMMITTING A CRIME BY INACTION

Introduction. The concept of crime combines action and inaction as two forms of harm to public relations protected by the Criminal Code and other laws of Ukraine in the legislation. They are combined into a common term – deed.

The problem of inaction is important not only for lawyers, but also for ordinary citizens who are not involved in jurisprudence. This topic requires a deep research.

Review of recent publications. Such scientists have dealt with problems related to inaction as a way of committing a crime A. A. Ter-Akopov, N. D. Sergievsky, P. D. Kalmykov, A. F. Berner, O. V. Lokhvitsky, A. A. Piontkovsky, V. B. Malinin, M.I. Bazhanov, O.K. Gamkrelidze, A.I. Kovaleva, V.N. Kudryavtseva, N. F. Kuznetsova, A. B. Naumova, E. F. Pobegailo and others.

Objectives of the paper. The object of this is inaction as a way of committing a crime, and comparison of inaction with action.

Results of the research. Inaction is a phenomenon of criminal law, which can be seen as a passive form of committing crime [1: 2]. Inaction, compared to action, may be more satisfactory in the context of criminal law, it is easier to avoid criminal liability for inaction than for action. But if inaction is defined as a separate concept, it will lead to its separation from the action, which is completely wrong, because these terms are equivalent to forms of wrongdoing.

If we talk about the place of inaction in criminal law, it is considered simply as another form of external expression of socially dangerous acts. So inaction is identified with the action. For all legal and social reasons, inaction, as well as the action is socially dangerous, illegal, and is considered act of will.

Thus, criminal liability for socially dangerous inaction is based on the presence of a certain obligation of a person to act in certain situations. And of course, for this inaction to be qualified as a criminal offense, it is necessary that there are two

conditions: the person concerned had a special obligation to take active action, which would have prevented the occurrence of relevant socially dangerous consequences and the person in a given situation was there is an opportunity to take appropriate actions of an active nature, which would lead to the prevention of socially dangerous consequences.

Referring to this topic, it became clear that the issue of inaction is not only legal, but ordinary, vital. Many people do not even know that not committing a certain act is an offense. More precisely, the word «crime», which is not used today, was perceived by legally ignorant citizens only as the commission of certain actions.

Here it would be appropriate to draw a parallel between a criminal offense and something more vital, which we face every day, such as lies. Some of us think that partial concealment of the truth is not a lie. Similarly, many people do not understand that a criminal offense is not only a socially dangerous act, but also inaction, is failure to perform their duty.

According to N.D. Sergievsky external criminal misconduct of man, can consist of both action and inaction [2: 307]. The commission of inaction requires much less stress from a person than the commission of an action, accordingly, it is considered illegal much less often than the action of a person. P.D. Kalmykov said that a criminal omission is «a violation caused by the absence of any act» [3: 31]. A.F. Berner also called inaction «criminal omissions.» He believed that they consisted of non-performance of an act prescribed by law [4: 449]. But, nevertheless, inaction is not just an omission, but real negative actions, because they have the will of the person. A. Lokhvytsky, compared the concepts of action and inaction [5: 39]. He called the first a «positive act», which manifests itself in violation of the law, and the second – a «negative act», which is not to comply with what was previously written in the law.

There is also the so-called «mixed inaction», it is combined with action, but at the same time has no independent criminal significance. Formal crimes committed through inaction are called omission, or pure inaction, and material crimes committed through inaction are called impure or mixed inaction, as noted by A.A. Piontkovsky [6: 128] . This can be explained by the fact that the actions of a person who have an active character act only as a way of committing a criminal offense, but the real objective aspect of a criminal offense is inaction. In my opinion in order to better understand what we are talking about, we need to give examples. So, evasion of the person from payment of taxes, forgery of documents (Article 358 of the Criminal Code), or evasion of the serviceman from carrying out duties of military service by causing harm to itself (Article 409 of the Criminal Code).

Conclusion. Thus, the concept of inaction is very unfavorable for the legislator, as it requires a clear statement, clarity, and at the same time conciseness, which is very problematic or even impossible. In science and law, this concept is denoted and disclosed as the opposite of active action as a kind of action. That is, the concepts and features of inaction as a criminal offense are clarified by comparing it with the action. And as this ratio has shown, criminal inaction has many distinguishing features, which makes it possible to distinguish it from action, for example, the peculiarity of

the application of certain institutions of criminal law, such as preparation, assassination and complicity, and in my opinion, the most striking feature is effective development of «evil will» in comparison with active actions.

But, nevertheless, today in the Criminal Code of Ukraine inaction is defined not only as opposition to active action, but also as evasion, concealment, refusal, termination and, most importantly, as violation.

References

1. Снітько Д. Ю. Опозиція діяльності й бездіяльності людини в філософії Ч. Пірса // Матеріали І-ї всеукраїнської науково-практичної конференції «Придніпровські соціально-гуманітарні читання»: Бердянська сесія. Дніпропетровськ, 2012. С. 55–57.

Snitko D. Yu. Opozytsiia diialnosti y bezdiialnosti liudyny v filosofii Ch. Pirsy [Opposition of human activity and inaction in the philosophy of Pierce] // Materialy I-yi vseukrainskoi naukovo-praktychnoi konferentsii «Prydniprovski sotsialno-humanitarni chytannia»: Berdianska sesiia. Dnipropetrovsk, 2012. S. 55–57. [in Ukrainian].

2. Бернер А. Учебник уголовного права. Части общая и особенная: с примеч., прил. и доп. по ист. рус. права и законодательству положительному Н. Неклюдова. СПб., 1865. С. 449.

Berner A. Uchebnyk uholovnoho prava [Textbook of criminal law]. Chasty obshchaia y osobennaia: s prymech., pryl. y dop. po yst. rus. prava y zakonodatelstvu polozhytelnomu N. Nekliudova. SPb., 1865. S. 449. [in Russian].

3. Калмыков П. Д. Учебник уголовного права профессора Калмыкова П. Д., изданный А. Любавским / П. Д. Калмыков. СПб.: Обществ. польза, 1866. Ч. 1. С. 31.

Kalmykov P. D. Uchebnyk ugolovnoho prava professora Kalmykova P. D. [Textbook of criminal law by Professor P. D. Kalmykov], izdannyyi A. Liubavskym / P. D. Kalmykov. SPb.: Obshchestv, polza, 1866. Ch. 1. S. 31. [in Russian].

4. Лохвицкий, А. Курс русского уголовного права / А. Лохвицкий. 2-е изд. СПб., 1871. С. 39

Lokhvytskyi, A. Kurs russkoho uholovnoho prava [Course of Russian criminal law] / A. Lokhvytsktsyi. 2-e yzd. SPb., 1871. S. 39. [in Russian].

5. Пионтковский А. А. Учение о преступлении по советскому уголовному праву / А. А. Пионтковский. М.: Госюриздат, 1961. С. 128.

Piontkovskyi A. A. Uchenie o prestuplenii po sovetскому ugolovnomu pravu [Study of crime in the Soviet criminal law] / A. A. Pyontkovskyi. M.: Hosiuryzdat, 1961. S. 128. [in Russian].

6. Русское уголовное право. Часть общая : пособие к лекциям / Н. Д. Сергиевский. 2-е изд. СПб. : Кн. маг. А. Ф. Цинзерлинга, 1890. С. 307.

Russkoe ugolovnoe pravo. Chast obshchaia : posobyie k lektsiyam [Russian criminal law. General part: a guide to lectures] / N. D. Serhyevskyi. 2-e yzd. Spb. : Kn. mah. A. F. Tsynzerlynha, 1890. S. 307 [in Russian].