

The Problem of Normative Reflection (Consolidation) of Causation in the Criminal Law of Ukraine and Some Foreign Countries

The author raises up an issue of normative reflection (consolidation) of causation in the criminal law of Ukraine and some foreign countries. The author emphasizes that to characterize of causation which is a criminal law category, one must reflect this connection or its prediction in the norms of the Criminal Code of Ukraine and some foreign countries, which belong to the continental legal family. The author provides a comprehensive analysis of the problem of reflecting the causal link in criminal law. He begins by analyzing the concept of legal construction and then he analyzes the terminological problems of causation both in the post-Soviet countries (Georgia, Moldova, Ukraine) and in the EU countries (Spain, France, etc.). The article states that the legal construction of „causation“ is reflected in particular in Article 8 of the Criminal Code of Georgia, where the emphasis is put on the fact that causation exists when the act has entailed illegal consequences or created a specific danger of illegal consequences. Within the Criminal Code of Ukraine, a set of commonly used special technical terms is used to reflect the causal link. In this case, the causal link is reflected by these terms within the articles of the Special Part of the Criminal Code of Ukraine and their parts. Within the framework of criminal codified acts of some foreign countries, the reflection of causation is achieved by emphasizing the harmful consequences of the act.

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1. Normative reflection of the causal link in the criminal law and legislation of Ukraine

Normalization in the presented scientific research (based on research issues) can be considered as the standardization of causation in the Criminal Codified Act (Code) to achieve a certain socio-legal goal.

From the point of view of the author, the mentioned purpose is to define the causal connection as a special legal, and in criminal law – a criminal law category, which is considered within the external, most informative side of the crime (criminal offence)¹¹.

1 Oleksandr O. Dudorov, Roman O. Movchan, „Criminal law concept other serious „consequences“: problems of

The characterization of causation as a criminal law category at its moment has the reflection of this connection in criminal law. The highest level of reflection of one or another legal category in the legislation is the presence in the legislation of its legal structure.

According to D.A. Kerimov, the legal construction – „the highest legal abstraction, covering several single-order legal concepts of the lower level and one that reveals the main, basic, essential in these concepts”²².

Examples of legal constructions are the construction of a contract in the Civil Code of Ukraine (Article 646), the legal construction of a crime under Art. 11 of the Criminal Code of Ukraine. These legal constructions are a generalization of specific manifestations of human behaviour, enshrined in special articles of the codes.

It should be noted that within the current Criminal Code of Ukraine there is no legal structure of „causation”, which corresponds to the state of most of the Criminal Codes of the CIS. At the same time, Art. 8 of the Criminal Code of Moldova entitled „Causation” contains a legal structure.

Part 2 of this article stipulates that a causal link exists when the act was a necessary condition provided for in the relevant article of this Code of unlawful consequences or a specific danger, without which these consequences would not have occurred, or such a danger would not have arisen.

In Art. 8 of the Criminal Code of Georgia, the legal construction of „causation” is reflected in 2 parts. The first part of the article defines the conditions when it is necessary to establish a causal connection:

- 1) when the act caused illegal consequences;
- 2) or created a specific danger of the formation of such consequences.

Part two contains the legal criteria for causation: causation exists when an act is a necessary condition provided for in the relevant article of the Code of Unlawful Consequences or Specific Danger, without which this time these consequences were not formed or such a danger would not arise.

Part three provides for the special legal construction of „causing inaction”, which is a special case of the general construction of „causation”.

In the current Criminal Code of Ukraine, the category of „causation” is reflected in a certain set of legal structures provided by the Special Part of the Criminal Code of Ukraine. More than 100 main corpus delicti of the Special Part of the Criminal Code of Ukraine contain such a feature of the objective side as „causation”.

interpretation and improvement of legislation” *Legal Scientific Electronic Journal* (2015): 162.

- 2 D. A. Kerimov, *Legislative technique. Scientific-methodical and study guide* (Moskow: INRFA-M Norma, 2000), 19-38.

This estimate is determined by the fact that the number of such *corpus delicti* is constantly changing. Compositions that contain a causal connection (within the Special Part of the Criminal Code of Ukraine) do not have within the General Part of the Code of legislative reflection and characteristics of this important feature of the objective side of the crime.

The General Part of the Criminal Code of Ukraine does not define the „nature, type of connection” of acts and socially dangerous consequences, which characterize certain legal structures provided by the Special Part of the Criminal Code of Ukraine³³.

In the opinion of the author of the presented study, typical characteristics of causation as a result of generalizations of features that characterize specific crimes should be provided within a separate article of the Criminal Code of Ukraine, as the connection refers to the characteristics of crime.

At the same time, such a generalization would be the basis for the criminalization of new socially dangerous acts, for the criminal-legal characterization of which in the composition it is necessary to provide a causal connection between the act and the consequences.

In addition to the legal construction of „causation” (desirable for the current Criminal Code of Ukraine) to accurately characterize the cause of a particular crime requires the use of appropriate terminology.

The scientific literature summarizes the following types of terms used in the construction of legislation:

- 1) commonly used;
- 2) special (technical);
- 3) artificial (purely legal).

It is believed that if there is competition (in the construction of the law, part of the law) between the technical and commonly used term, it is necessary to give preference to the latter.

As a rule, preference is also given to commonly used terms over artificial ones (purely legal), based on the criterion of simplicity and clarity of the rule of law.

D.A. Kerimov offers a slightly different classification of legislative terms:

- 1) commonly used legislative terms;
- 2) special legislative terms (special technical, special legal).

Clarity of construction and understanding of the legislative norm requires, in the opinion of the author of the presented study, not only preference

3 Criminal Code of Ukraine: as amended and supplemented as of 01.06.2021, PALIVODA A.V. (2021): 264.

in the construction of the law to commonly used terms but also the use of such legislative terms that would correspond to the organization of the norm.

Since the causal link is a component of the objective side of certain structures provided for in the Special Part of the Criminal Code of Ukraine, this fact should be appropriately reflected. For the legislative organization of the content of the norm, which fixes the cause, the appropriate terminology is needed: „special, special terminology”.

The special nature of this terminology means that it should characterize not individual elements of a criminal act (in this case actions (inaction) or socially dangerous consequences), but the causal connection of such elements.

For this purpose, the articles of the Special Part of the Criminal Code of Ukraine use such terminological elements (which form in combination with other terminological inflexions) as „causing”, „proving”, „abandonment” and others.

At the same time, the use of special terms to reflect the causal link in criminal law is not always implemented.

In the opinion of the author of the study, it is possible to implement three options for the legislative implementation of causation in the Criminal Code:

- 1) without the use of terms corresponding to the causal organization of the content of the norm, which uses the legislative model of causation;
- 2) with the use of certain legislative constructions;
- 3) direct way, when the causal connection is reflected by the use of special terms or phrases.

The presented options should be considered on the example of separate articles of the Criminal code of Ukraine.

An illustration of the first version of the legislative implementation of causation can be seen in the example of the legal composition of the crime under Part 1. Article 185 of the Criminal Code of Ukraine.

The disposition of the first part of this article is formulated as follows: „Secret theft of another’s property (theft)”.

It should be noted that the disposition of this article does not contain terms that would indicate the presence of a causal link in this crime. The existence of a connection between the act and the consequence in Article 185 of the Criminal Code of Ukraine is established by the interpretation of the content of the act, as the damage caused by secret theft of another’s property (material corpus delicti) is obvious.

The second variant of reflecting the causal link in the norm of the law on criminal liability can be illustrated by the example of the disposition of the first part of Art. 192 of the Criminal Code of Ukraine, which deals with

„causing significant property damage by deception or abuse of trust in the absence of signs of fraud”.

The use of the consequence „significant property damage” in the disposition of the article indicates the fact that the causal connection that characterizes the act is somewhat uncertain, as „significant property damage” is an appraisal category. In this case, the conclusion that there is a causal link depends on compliance with certain requirements: the study of all the circumstances of the case, the legal awareness of the judge.

The second part of the article under consideration is formulated as follows: „The same acts committed by a group of persons with prior conspiracy, or those that caused property damage on a large scale”. In addition to the fact that this part of the article contains qualifying features (committed by a group of persons by prior conspiracy, causing property damage on a large scale), it is necessary to pay attention to the peculiarity of its legislative and technical construction.

The presence of a causal link of the act is provided for in Part 2 of Art. 192 of the Criminal code of Ukraine, is established not directly but employing a legislative construction: „the same actions”.

The application of this legislative structure, which is widely used in the Criminal Code of Ukraine, actually refers to the previous part of the article, to clarify what is meaningfully meant by the actions provided for in other parts of the article.

The legislative construction of „the same acts” (in Part 2 of Article 192) is interpreted in the light of Part 1 of Article. 192 of the Criminal Code of Ukraine in such a way that fraud or abuse of trust (methods of committing a crime) causes property damage in large amounts. In this case, the emphasis is on the causal aspect of interpretation; the qualifier „by prior conspiracy by a group of persons” is not considered, as attention is focused on the terms that characterize the cause.

Conclusion on the reflection of causation in Part 2 of Art. 192 is as follows:

- 1) directly, the terms that characterize and indicate the causal connection in the disposition of Part 2 of Art. 192 are not used;
- 2) the role of terms that indicate the existence of a causal link in Part 2 of Art. 192, fulfils the legislative formula „the same acts” but not directly, but by reference to Part 1 of Art. 192.

Thus, the reflection of the causal link in parts of the articles of the Special Part of the Criminal Code of Ukraine, in the opinion of the author of the presented study, may be direct or indirect.

There is a direct way when the terms that indicate the reflection in the norm of the law of causation, directly express the cause prohibited by criminal law.

An indirect way of reflecting the causal link implies the presence in the article of a certain legislative structure, which indirectly indicates the causal link, by referring to the part of the article that describes a certain type of action. The use of legislative constructions for the formulation of normative provisions in articles provides for the definition of the principles of formation of legislative constructions.

According to Z.A. Zaginey (Trostyuk), it is important to unify legislative constructions when describing qualified (especially qualified) *corpus delicti*. This position is a key statement in the monograph of the scientist⁴⁴.

The Special Part of the Criminal Code of Ukraine uses the following methods of legislative construction of qualified and specially qualified warehouses:

- 1) „the same actions...”, „the same action...”;
- 2) „actions (deeds) provided for in Part 1 (Part 2), Part 1 or Part 2 of this Article”;
- 3) reproduction of the name of the main *corpus delicti* with the subsequent indication of a qualifying (especially qualifying) feature (features).

In the opinion of the author of the study, it is necessary to focus on these types of legislative constructions (legislative „formulas”), because they are important not only to indicate the qualifying (especially qualifying) features but are legislative and technical means of reflecting causation in articles of the Special Part of the Criminal Code of Ukraine.

For example, „fraud committed...” (parts 2, 3, 4 of Article 190 of the Criminal Code of Ukraine) with the subsequent indication of qualifying (especially qualifying) features.

However, in the opinion of the author of the presented study, not directly, but by reference to the part (parts) (usually in Part 1.2, in which the causal connection is reflected in the terminology that directly characterizes the cause („cause”), „Proof”, „causing”, etc.).

In this respect, Article 120 of the Criminal Code of Ukraine „Driving to Suicide” is indicative.

The first part of the article is worded as follows: „Bringing a person to suicide or to attempt suicide as a result of ill-treatment, blackmail, coercion to commit illegal acts or systematic humiliation of his human dignity...”. Causal terminology is used here directly (the term „proof” in combination with terms that characterize the consequences: „suicide”, „suicide attempt”).

Part two of the said article: „The same act committed against a person who was materially or otherwise dependent on the perpetrator, or against two or more persons...”.

4 Z. A. Trostyuk, *The conceptual apparatus of the Special Part of the Criminal Code of Ukraine* (Kiev: Attica, 2003), 144.

The qualified, legislative version of the act contains the legislative construction „the same act”, which not only contributes to the formulation of qualifying features but also essentially refers to the terms „proof” and „consequential” terms that indicate a causal connection.

Finally, the third part of the article „Driving to suicide”: “The act provided for in parts one or two of this article, if it was committed against a minor...”. In this case, the legislative construction „the act provided by part 1 or 2 of this article” is used (for the formulation of a specially qualified structure).

Obviously, in this case, using the legislative construction „the act provided for in Part 1 or 2 of this article” the legislator indirectly, based on the peculiarities of the legal structure, indicates the causal link between the act in a certain legally defined form (cruel treatment, blackmail, coercion or systematic humiliation of human dignity) and the consequences in the form of leading to suicide or suicide attempt.

A special case of reflection in the criminal law of the causal link is the provision in the norm of the real possibility of socially dangerous consequences.

In the criminal law literature and legislation, the real possibility of harmful or socially dangerous consequences is realized by using, in particular, such terminology as „real threat of occurrence”, „creating a danger”, „could lead”, etc.

Consider, for example, Article 142 of the Criminal Code of Ukraine „Illegal experiments on humans”.

The disposition of the first part is formulated as follows: „Illegal conduct of medical-biological, psychological or other experiments on a person, if it endangered his life or health”.

The causal link, in this case, is reflected in the law by the following terminology: „illegal conduct of medical and biological experiments” (a form of criminal action), „illegal conduct of psychological experiments” (a form of criminal action), „illegal conduct of other experiments on humans” (Form of criminal action) and „danger to life” (socially dangerous consequence) and “creation of danger to health” (socially dangerous consequence). It is necessary, in the opinion of the author of the presented study, to analytically highlight (which was illustrated by the example of Part 1 of Article 142 of the Criminal Code of Ukraine) terminological elements, the combination of which reflects the presence of causation.

It is necessary to emphasize the disposition of Part 1 of Art. 142 of the Criminal Code of Ukraine contains terms that are subject to interpretation. In particular, the complex terms „medical and biological experiments”, „psychological experiments”, „other experiments on humans”.

In the scientific literature, a large number of scholars conclude that the authors of the draft Criminal Code of Ukraine did not follow the path

that is familiar to the creators of many modern regulations, which contain special articles or even sections on the interpretation of terms used.

We believe that the current Criminal Code of Ukraine does not always provide the necessary special explanatory rules similar to the Criminal Code of Ukraine of 1960 (example: there is no interpretation of concepts and terms related to theft), which would disclose the meaning of terms of exceptional importance for accurate and qualitative assessment of specific criminal acts and their socially dangerous consequences.

Such an interpretation is a necessary prerequisite for the establishment of specific causal links, as well as for their proper reflection in the criminal law of the article, the necessary interpretation of special terms, which in some cases characterize a legally significant act (action or inaction) and socially dangerous consequences.

Many crimes against the environment are considered to be torts of danger⁵⁵ (crimes whose legal characteristics include terms denoting the connection between the act and the real possibility of harmful consequences).

For example, the crime under Art. 239 of the Criminal Code of Ukraine „Pollution or damage to land”.

2. Normative reflection of the causal link in the criminal law and legislation of some foreign countries

The reflection of the causal link in foreign criminal law provides for the preliminary disclosure of the meaning of the term „Special part of the criminal law of foreign countries”.

A special part of the criminal law of foreign countries is a general rule is a system of criminal law institutions and norms that reveal the concepts and characteristics of specific types of crimes and those that determine the sanctions for their commission. In foreign law, the Special Part is usually not limited to the relevant part of the codified normative act. Often criminal liability is established either in constitutional acts (USA), in special laws (France, Germany), or in other codes that operate in parallel with the criminal (France). In some states, criminal liability may be established (in some cases) and by-laws (France).

The clearest part is distinguished in the criminal law of the continental legal system (France, Germany, Spain, etc.), where it has a certain system and structure that reflects the type and value of the object of encroachment. The most complete criterion of the value of the right to a protected good is taken into account in the new codes of Spain in 1995 and France in 1992, Germany in 1998.

5 Justina Burachynska, „Criminal liability for creating danger: the state of research in the doctrine of criminal law” *Entrepreneurship Economy and Law*, No. 6 (2019): 245.

To protect the public good from criminal encroachment within the framework of these codes, the disclosure of encroachment is envisaged, incl. because of its characterization as causing.

The analysis of codified, criminal-legal acts of foreign states in the aspect of reflection of causal connection is incomplete without establishing a connection of separate normative provisions of the General and Special parts of these normative acts.

In particular, Book 1 of the Spanish Criminal Code („General provisions on crime and misdemeanours, persons subject to criminal, liability, punishment, security measures and other consequences of criminal offences”) contains Article 10 which defines the crimes and misdemeanours specified in Books 2, 3 of this code. According to Article 10 of the Spanish Criminal Code, „crimes (delitos) or misdemeanours (faltas) are punishable by law acts or omissions committed with intent or negligence”.

This norm is specified, in particular in book 2 („Crimes and punishments”) and book 3 („Misdemeanors and punishments for them”). In terms of the legal reflection of causation, the concept of the provisions of Article 10 of the Spanish Criminal Code in Articles 138, 139, 142, 143 of Chapter 1 („Murder and its types”) of Book 2 of the Spanish Criminal Code deserves attention. In particular, Art. 138 stipulates that „one who has caused the death of another person shall be punished as guilty of murder (asesinato) by imprisonment for a term of ten to fifteen years”.

A similar terminology („the one who caused the death of another person” or „the person who caused the death of another person”) indicates the existence of a causal link also in Articles 139, 142 of the Spanish Criminal Code.

Of particular interest in our opinion is the analysis of h.h. 2, 3, 4 of Article 143 of the Criminal Code of Spain. Part 2 of Article 143 of the Spanish Criminal Code states that „a person who assisted another person in committing suicide shall be punished by imprisonment for a term of two to five years”.

The analysis of parts 3, 4 of Article 143 of the Criminal Code of Spain allows to establish options for the legislative reflection of the cause:

- 1) imprisonment of a person „whose assistance led to the death of another person”;
- 2) „one who causes or actively contributes to the death of another person” under the following conditions:
 - a) at the persistent, serious and clear request of the victim;
 - b) if the victim suffered from a serious illness that would lead to death or also that causes the victim constant severe suffering.

In our opinion, it is noteworthy to reflect in the above articles not only the unlawful infliction (Part 4 of Article 143 of the Criminal Code of

Spain) but also the conditions that contribute to the infliction (parts 1, 2, 3 of Article 143 of the Criminal Code of Spain) of death and which are established by clarifying the meaning of the term „assistance”.

Part 4 of Article 143 of the Criminal Code of Spain, in our opinion, contains an intermediate version of the legislative reflection of causality, which is not reduced to causing or conditioning in its pure form. This option is implemented by introducing the terminology „active assistance in causing death to another person”. There is a question of distinguishing between the meaning of the terms „assistance” and „active assistance”. In our opinion, the use of the term „active assistance” in the context of the norm of the article means a combination of conditioning and partial causing of death to another person.

The analysis of the texts of the articles of Book II („crime and punishment”) gives the following generalized idea of the legislative reflection of the causal link:

- 1) reflection by using the term „causing” and terminological inflexions of the form „the one who caused the death of another person”, „the person who caused the death of another person”, „the one who caused damage to another person” (Articles 147, 149, 150, 152, 153, 155 of the Criminal Code of Spain), etc.;
- 2) reflection (indirect) using the terms „assistance”, „active assistance”;
- 3) reflection by combining several terms that indicate causality (Article 187 of the Criminal Code of Spain): „one who coerces, encourages or facilitates prostitution”;
- 4) other options for legislative reflection of the causal link, through the use of certain terms („encroachment”, „possession”, etc.).

Book III of the Spanish Criminal Code („Misdemeanors and punishments for them”) contains a legislative description of the so-called misdemeanours - acts that are not considered a crime under the Spanish Criminal Code (Article 617 of the Spanish Criminal Code) but for which this Code provides punishment not related to deprivation freedom (fine) or short-term imprisonment (arrest).

Legislative consolidation of infliction within the framework of Book III of the Criminal Code of Spain is provided by Art. 617, 621 of the Code and is carried out using the term „causing”.

Since the Book 3 of the Spanish Criminal Code provides for the consolidation of not crimes but criminally punishable misdemeanours, the question arises as to the appropriateness of a detailed consideration of the reflection of causation and causation in the Code, as we should be interested in legally-established links within offences increased public danger (crimes).

Currently, the Special Part of the Criminal Code of 1992 includes six books – from the second to the seventh. The second, third and fourth books

(adopted in July 1992) constitute the main body of the Code. The fifth was initiated by the Senate in January 1992, before the Code came into force, and originally contained only two articles on animal cruelty.

Book Six is a collection of regulations issued in March 1993 in the form of decrees in the State Council. Book seven entered the Code after it entered into force in March 1996.

Due to the large number of parts (books) that characterize the Criminal Code of France, it is advisable to selectively consider the problem of legislative reflection of causation in the Code. In our opinion, the legislative reflection of the causal link in the Special Part of the Criminal Code of France on the example of certain articles of Chapter 2 („On the encroachment on the person”) of Chapter 1 („On the encroachment on human life”).

Article 221-1 of the French Criminal Code contains a provision according to which intentional infliction of death on another person constitutes premeditated murder (*meurtre*). It is punishable by thirty years in prison.

In this case, the term „intentionally causing the death of another person” is used to legally reflect the causal link.

Article 221-2 of the French Criminal Code provides for „premeditated murder, which transmits, accompanies or follows another crime, is punishable by life imprisonment”, as well as „premeditated murder for the purpose of preparing or facilitating a misdemeanour, or for the purpose of facilitating the escape or ensuring the impunity of the perpetrator or accomplice of a misdemeanour is punishable by life imprisonment”.

We highlight the first paragraph of Article 221-2 of the French Criminal Code because it provides for the existence of specific links between premeditated murder and other crimes. The following options are provided:

- 1) premeditated murder precedes (is the cause or condition) of another crime;
- 2) premeditated murder accompanies (is a condition or pretext) another crime;
- 3) premeditated murder follows (is a consequence) for another crime.

Paragraph 2 of Art. 221-2 of the Criminal Code of France reflects, in our opinion, conditional and causal links, which have the following form:

- 1) „act – the death of a person (consequence and at the same time condition) – preparation or facilitation of a misdemeanour”;
- 2) „act – the death of another person (consequence and conditions) – facilitating the escape, lawlessness of the perpetrator or accomplice”.

Based on the above, it can be concluded that the French Criminal Code of 1992 provides for a legislative structure of „simple” premeditated murder in which the term „causing” naturally reflects the causal connection

„act – the death of another person”. The legislative construction of „simple” premeditated murder is the basis for the creation of qualified types of murder.

Accordingly, the connection of the type „act – the death of another person” allows to establish and reflect the legislation of another specific connection that takes into account the objective, subjective and even procedural factors associated to cause death („murder for promoting the impunity of the perpetrator or accomplice”).

This conclusion, in our opinion, is specified in Art. 221-4 of the French Criminal Code, which provides for the premeditated murder of „a witness, victim or civil plaintiff in order to prevent the communication of facts, filing a complaint or testifying in court, or in connection with informing him of facts, complaint or testimony given in court”.

The reflection of causation and causation in the French Criminal Code is not limited to the following articles. However, the large number of cases of legislative reflection of the causal connection determines the need to identify the most specific manifestations of such reflection.

In particular, Art. 221-6 of the French Criminal Code provides for „unintentional infliction of death on another person as a result of intentional failure to perform security duties or precautions imposed (on a person) by law or Regulation”. In this example, the legislative structure provides for the reflection of the connection between objective causation and elements of intent and negligence.

Based on the study, you can conclude that the rules on liability for encroachment on human life are central to the French Criminal Code. The main provisions on liability for such criminal acts are posted at the beginning of the main part.

Accordingly, criminal acts are differentiated and systematized. This differentiation and systematization are also related to the normative consolidation of causation.

Along with the Criminal Code of Spain and France, the Special Part of the Federal Republic of Germany deserves special attention, in our opinion, in the context of resolving the issue of legislative consolidation of causation. The system of the Special Part of the Criminal Law of Germany consists of the Special Part of the Criminal Code of 1871 (as amended on November 13, 1998) and a large number of codified criminal laws.

The most important of which are: the Law on the Administration of Juvenile Justice of 1953 (as amended in 1974), the Law on Violations public order in 1968 (as amended in 1987) and others.

At the same time, the above-mentioned Criminal Code of Germany contains all the criminal law rules that make up the General Part and most of the rules that make up the Special Part, including all rules on so-called traditional crimes (murder, robbery, bodily harm, etc.).

In our opinion, specific options for legislative enshrinement of causation in the Criminal Code of Germany are provided by Chapter 16 of the Code „On criminal acts against life”. Within the framework of this chapter, there is a division of warehouses into murder (Totschlag) and aggravated murder (Mord). In addition, a particularly serious murder (besonders schwerer Fall des Totschlags) is being considered.

Paragraph 212 of the Criminal Code of Germany (Totschlag) enshrines the basic composition of premeditated murder as follows: „Whoever kills another person in circumstances where there are no signs of aggravated murder, is punishable by imprisonment for a term not less than 5 years”. This describes the intentional infliction of death without aggravating circumstances. Paragraphs 311 („Murder”) and 213 („Less serious case of death”) and other separate paragraphs contain a legislative reflection of the causal link established by the interpretation of the meaning of the rules.

The following paragraphs use „neutral” terminological expressions such as „who kills another person”, „if the person who committed the murder” (paragraph 213), „murder is the one who kills a person for the pleasure of death” (paragraph 211).

Therefore, in our opinion, the terminology that directly indicates the cause is contained in other paragraphs of the German Code.

In this regard, it is appropriate to cite the content of the norm of the Criminal Code of Germany provided for in paragraph 220 a („Genocide”). The norm on genocide was introduced into the Criminal Code of Germany by the Law of July 9, 1954 and entered into force on February 22, 1955. Its subsequent changes were purely editorial. Accordingly, the paragraph now reads as follows:

- I. „Whoever, to destroy in whole or in part a national, racial, religious or distinct community
 - 1) Kills members of this community,
 - 2) Causes serious physical or mental harm to a member of that community, in particular as referred to in paragraph 226,
 - 3) Puts this community of people in such living conditions that can cause the physical destruction of this community in whole or in part,
 - 4) Takes measures aimed at preventing the birth rate in this community,
 - 5) Forcibly transfers children of this community to other communities, is punishable by life imprisonment”.

It is obvious that paragraph 220 of the Criminal Code of Germany uses a whole terminological complex, which allows to enshrine and reflect the causes of particularly serious consequences of the crime of „genocide”.

As the current German Criminal Code contains up to 400 paragraphs, it is not possible to conduct a newer special analysis (in terms of the legal reflection of causation) of the paragraphs provided for in the Code.

In this part of the work, we have focused on the legislative reflection of causation and causation in the codified acts of those countries that characterize the continental legal system. The criminal law of Ukraine also belongs to this system.

As a rule, the legislative reflection and consolidation of the causal link in the criminal legislation of foreign states are concentrated in the Special Parts of Foreign Codified Acts.

Consolidation and reflection of the causal link in the norms of codified acts of the criminal law of the continental legal system have the following features:

- 1) as a rule, the legislative reflection of the causal connection occurs in the norms of the Special Part;
- 2) the legislative reflection of the causal connection of specific acts is characterized by specific „causal” terminology;
- 3) in some cases, the legislator does not use the appropriate terminology to reflect the causal connection in the norm; the existence of legislative consolidation is established by the interpretation of the norm (clarification of the meaning of regulations);
- 4) in the codified acts of criminal law nature of individual countries there is a normative consolidation not only of causal but also of conditional relations related to the cause (for example, the Criminal Code of France).

Foreign experience of the legislative reflection of causation in its individual elements (consolidation of communication in the General part of the codified act, use of terminological „complexes” within the article, etc.), in our opinion, is acceptable for the legislation of Ukraine.

This approach is because the causal link in criminal law performs methodological functions or is fundamental to criminal law. In particular, the following aspects can be distinguished in this context:

- 1) causation as a certain structural basis of the crime;
- 2) causation as a certain structural basis of a criminal offense⁶⁶.

3. Summary part of the researched problem

Preliminary, summarizing the study of the problem of legislative reflection of causation, we can draw the following conclusions:

- 1) in the dispositions of the articles of the Special Part of the Criminal Code of Ukraine (which contain material components, as well as torts

6 M. I. Havronyuk, *Criminal offenses. Scientific and practical commentary on the articles of the Criminal Code of Ukraine* (Kiev: VD „Dakor”, 2020), 10.

- of creating danger), the causal connection is reflected in the terms „causing”, „proving”, „causing”, etc.;
- 2) to characterize (in the norm of the law) specific causal links between the act (action or inaction) and the real possibility of harmful consequences, in the dispositions of the relevant articles, the legislative construction „if it created a danger” is used;
 - 3) causal connection in the dispositions of the parts of the first articles, which characterize the material components and torts of creating danger. is reflected directly by using the mentioned adverbs and terms that characterize the specifics of the act;
 - 4) at the same time, parts 2, 3, 4 of articles of the Special part of the Criminal Code of Ukraine characterizing qualified and specially qualified structures, from the point of view of the author of the presented research, indirectly indicate the existence of causal connections using special legislative structures;
 - 5) the mentioned constructions include, in particular, the following: „those actions”, „those actions”, etc.

In the framework of the further summary, it should be noted that in foreign law the Special Part is usually not limited to the relevant part of the codified normative act. Often criminal liability is established either in constitutional acts (USA), in special laws (France, Germany), or in other codes that operate in parallel with the criminal (France). In some states, criminal liability may be established (in some cases) and by-laws (France).

The special part is distinguished in the criminal law of the continental legal system (France, Germany, Spain, etc.), where it has a certain system and structure that reflects the type and value of the object of encroachment. The most complete criterion of the value of the right to a protected good is taken into account in the new codes of Spain in 1995 and France in 1992, Germany in 1998.

To protect the public good from criminal encroachment within the framework of these codes, the disclosure of encroachment is envisaged, incl. because of its characterization as causing.

The analysis of codified, criminal-legal acts of foreign states in the aspect of reflection of causal connection is incomplete without establishing a connection of separate normative provisions of the General and Special parts of these normative acts.

In particular, Book 1 of the Spanish Criminal Code („General provisions on crime and misdemeanours, persons subject to criminal, liability, punishment, security measures and other consequences of criminal offences”) contains Article 10 which defines the crimes and misdemeanours specified in Books 2, 3 of this code. According to Article 10 of the Spanish Criminal

Code, „crimes (delitos) or misdemeanours (faltas) are punishable by law acts or omissions committed with intent or negligence”.

This norm is specified, in particular in book 2 („Crimes and punishments”) and book 3 („Misdemeanours and punishments for them”).

In terms of the legal reflection of causation, the concept of the provisions of Article 10 of the Spanish Criminal Code in Articles 138, 139, 142, 143 of Chapter 1 („Murder and its types”) of Book 2 of the Spanish Criminal Code deserves attention. In particular, Art. 138 stipulates that „one who has caused the death of another person shall be punished as guilty of murder (asesinato) by imprisonment for a term of ten to fifteen years”.

A similar terminology („the one who caused the death of another person” or „the person who caused the death of another person”) indicates the existence of a causal link also in Articles 139, 142 of the Spanish Criminal Code.

Of particular interest in our opinion is the analysis of h.h. 2, 3, 4 of Article 143 of the Criminal Code of Spain. Part 2 of Article 143 of the Spanish Criminal Code is formulated as „A person who assisted another person in committing suicide shall be punished by imprisonment for a term of two to five years”.

The analysis of parts 3,4 of Article 143 of the Criminal Code of Spain allows to establish options for the legislative reflection of the cause:

- 1) imprisonment of a person „whose assistance led to the death of another person”;
- 2) „one who causes or actively contributes to the death of another person” under the following conditions:
 - a) at the persistent, serious and clear request of the victim;
 - b) if the victim suffered from a serious illness that would lead to death or also that causes the victim constant severe suffering.

In our opinion, it is noteworthy to reflect in the above articles not only the unlawful infliction (Part 4 of Article 143 of the Criminal Code of Spain) but also the conditions that contribute to the infliction (parts 1, 2, 3 of Article 143 of the Criminal Code of Spain) of death and which are established by clarifying the meaning of the term „assistance”.

The emphasis in the summary part of the presented study on the criminal law of Spain is determined by several factors.

In particular, from the point of view of solving the problem of reflecting causation in criminal law and Spanish law, it is necessary to state more terminological and constructive possibilities for reflecting causation in comparison with the legislation of other countries related to the continental legal system.

The content of the presented study with an emphasis on the criminal law of Spain is determined by several factors.

In particular, from the point of view of solving the problem of reflecting causation in criminal law and Spanish law, it is necessary to state more terminological and constructive possibilities for reflecting causation in comparison with the legislation of other countries related to the continental legal system.

In particular, in most countries of the mentioned group, the term „harmful consequences” indicates „harmful consequences”, which the legislator singles out as a consequence of committing crimes, misdemeanours.

However, it should be noted that in the case of criminal offences, there is a problem of finding out the causal link that characterizes these minor offences, for which, as a rule, the legislator provides for the application of a penalty to the offender.

The general summary on the problem of normative reflection of causation in criminal law and legislation includes the following elements:

- 1) in the comparative analysis of criminal law and legislation of Ukraine and criminal law and legislation of the continental legal system, there is a problem of relevance, ie, the provision of causation in the General Part of criminal codes;
- 2) it should be noted that in the vast majority of cases, the causal link is not considered within the criminal codes of countries as a separate legislative entity;
- 3) causation within the countries of the continental legal system is considered indirectly, but through the types of causes that characterize individual crimes;
- 4) a separate problem related to the reflection of the causal link in the norms of criminal law is the provision of such a link for acts that have the character of criminal offences;
- 5) there is a problem (according to the author of the presented study) of a grouping of the actions provided by the Special part of the criminal codes proceeding from criterion „causal connection”;
- 6) all this set of problems is associated with the special importance of causation as a component of constructions of crimes, as a result of which significant damage is caused (characteristic of the crime in Article 11 of the Criminal Code of Ukraine) or harmful consequences as a characteristic that increases the degree of criminal responsibility (certain provisions of the criminal codes of foreign countries of the continental legal system).

The author of the presented study believes that the problem of normative reflection of causation in criminal law and legislation is not fully resolved, creating certain legal consequences for both law enforcement and for persons who are in criminal proceedings.

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