

A.V. Bryzhak

Assistant Professor of
the Department of Specific
Legal Disciplines,
Chernivtsi Faculty
of the National University
"Odesa Law Academy"

RELATIONSHIP BETWEEN VICTIM AND CRIMINAL IN POSITIVE BEHAVIOUR OF THE VICTIM IN CRIME COMMISSION

Analysis of the issues covered in this paper fully confirms the relevance of criminal justice training for the theory of criminal law and for the law enforcement. The circle of these issues is so broad, and the problems are so deep that they certainly cannot be covered in one investigation. The study of the theory of criminal law, the issues of the criminal law and its application justifying the conclusion that the victim of the offense and the circumstances connected with it, are important to establish the social nature of the crime, to clarify the nature and the degree of its social danger, criminalization and decriminalization of acts, differentiation of justice. The victim and the circumstances connected with it, allow to distinguish one crime from another; they serve much of the grounds of the crime, they promote specifying other characteristics of crime; they are included in the classification of crimes and sentencing, as well as while solving the questions of the validity of the law on criminal liability in space, exemption from criminal responsibility and punishment.

Background research. Quite an important component in the mechanism of the offense that is essential for a criminal act, a person is injured.

Problem victim of crime in the criminal law is not yet sufficiently developed. It is complex and interdisciplinary in nature. If we consider the notion of victim of crime in the criminal law, the General and Special Part of the Criminal Code of Ukraine contains many articles that are for certain victims of crime (Articles 8, 46, 67, 112, 170, 206, 431, 442 CC Ukraine, etc.).

It is important that the study of individual victims is impossible without establishing general concept of the victim of the crime, identify common patterns that are necessary for the construction of the law on criminal responsibility. Therefore, this study primarily aims at developing a concept to determine its essential features.

Of course, the victim, as such, can not exist without interaction with the offender, that is a criminal. Such relationships provide every situation corresponding character and provide an opportunity to assign them to a certain kind of conduct. Also, the feature is that the considerable role played by the behaviour itself injured during, or after the commission of a criminal assault. Often it does it affect the qualification of the offense, for example determines the subjective side of crime or the victim, characterized justified (positive) behaviour in the crime, may give a clearer formulation or concretized person, the offender and others.

Analysis of recent research suggests that the study of the past and more attention was paid to the classification of crimes committed by individual components of the offense, including the victim alone, separate criminal. It should be

noted that the victim, the offender, relationships and circumstances associated with them, can distinguish one from another crime, promote specifying other characteristics of, have a direct impact on the qualification of crimes considered in sentencing, as well as addressing the effect law on criminal liability in space, exemption from criminal responsibility and punishment.

For theoretical development of skills and attitudes of the victim in criminal law, the scientists and lawyers of the former USSR, CIS and Ukraine, as well as some foreign researchers paid attention only to certain issues associated with them in the criminal law, particularly in the works: Y.M. Antonyan, Y. Baulina, A.A. Gertsenzon, P.S. Dahelya, G. Kaiser, M.I. Korzhanskoho, V.N. Kudryavtseva, N.F. Kuznetsova, V.T. Malyarenko, V.S. Minsk, V.I. Polubinskaya, D. Rivmana, A.L. Repetsky, S.A. Tarahunina, M.S. Tagantsev, V.J. Trays, V.A. Tulyakov, B. Holysta, H.I. Chechel L. Shapovalov, T. Shavhulydze, M. Sharhorod, N. Yarmysh and others. Research scientists are handling these theoretical foundation study of certain provisions relating to the qualifications, separately for the offender, and separately for the victim.

The aim is to study more in-depth, comprehensive, integrated legal analysis of the behaviour and personality of the offender and the victim, their interaction in the mechanism of the crime. Identify the factors and circumstances Relations "offender-victim", which in any way affect the qualification of crimes, including positive behaviour of the victim. How is it formed and its consequences. Identify and justify the theoretical issues of crime problems qualification in appropriate circumstances.

The main material. Crime against the person by the interaction of at least two people, one of which is recognized in the future, the accused, the other - the victims. In a detailed study of the individual defendant and the circumstances of the crime, determined his guilt, responsibility, decided his fate. But often provoked by criminal acts of the accused frivolous or unlawful actions of the victim. The behaviour of the victim, which belongs to the objective elements of the crime may affect the guilt of the accused, and sometimes exclude it.

However, the national criminological and criminal trials in the analysis of the behaviour of the victim of crime this view has been overlooked. In schools abroad study this question at an early stage.

The role of the victim - a significant factor in the crime. After all, her behaviour may well influence the development of the conflict that will transform it from an object of the crime on his subject.

Within crime rate behaviour of the victim can be estimated as:

1. justified (positive) when the victim responds to valid legal way to socially dangerous actions of the offender or whether it does not create conditions for the offense;
2. neutral as between the actions of the victim and the offender no direct link;
3. illegal (provocative) when the victim steps have elements of an offense, including an offense.

The behaviour of the victim in the crime may be entirely legitimate, positive, that is aimed at stopping crime. Studying the issue of lawful behaviour, it should be noted that research in this area is almost not made. By the textbooks for the course theory of law and good behaviour are included as a subject of study in the chapter on

offenses and legal responsibilities very briefly as opposed to mostly conceptual stuff it in some way been studied in connection with legal facts, acts and concessions. Good behaviour - these actions (deeds) that do not conflict with the requirements of law and the fundamental principles of law of a certain state, it is the behaviour and activities of social regulation that meets the requirements of current legislation, legal rights and lawful interests of other persons and not socially dangerous to the state and society as a whole.

L.V. Ilyin allocates the victims, opposing evil, stop crime during the arrest of the offender, in the defence of others against criminal assault, etc. These victims characterizes positive behaviour, high moral character, honest performance of public or official duties. [1]

A.V. Balyaba, E.V. Vienna, E.A. Didorenko, B. Rozovsky say that perhaps it is time to radically revise their original positions criminology. Researchers, in particular, note that criminology has traditionally been considered the science of the causes of crime, its purpose - to find out why people commits an offense, but a large number of reasons and factors that lead to crime, became the basis for the aphorism, "it is easier to call, not cause crime than all that it is. " Therefore, we can propose the idea to flip setting objectives, identifying priority studying criminology reasons why people commits an offense while under pressure from legal restrictions, regulations, prohibitions, etc., willingly bear the burden of these restrictions.

Depending on the dominant motifs distinguish four kinds of lawful behaviour:

- Positive (familiar);
- Conformist (passive);
- Marginal;
- Socially active legitimate. [2]

Positive behaviour is subject to the usual activities for compliance and enforcement of laws. This behaviour in everyday life - the official, domestic and other spheres of public life. This behaviour is frequent repetition of social experience that is based on positive behaviour is convinced of the need for compliance with the rules of conduct. In fact, at the heart motif is a habit. Positive behaviour is essential for the functioning and development of society, because it is through this kind of behaviour implemented vital human needs.

The vast majority of people want realize their own needs legitimate means, so the study of this type of behaviour is considerable interest to determine the cause of crimes when the victim showed good behaviour. Generally, this type of lawful behaviour is valuable for maintaining law and order in the society and its normal development, but in the context of combating crime carries a significant negative impact on the process and does not create a counterweight to spread and increase in crime as habitual behaviour does not involve activities that go beyond limits daily activities and are specific in relation to it.

In conformist behaviour to understand passive observance of the law through their actions of subordinating behaviour of others. It is characterized by adaptation, passive perception of relevant system, subordinating external psychological pressure. In the literature, there are virtually opposite positions on the characteristics of the analyzed type of behaviour. Conformist behaviour considered legitimate because it is

socially useful qualities through individual, other obeyers' position complies with the requirements of law and thus contributes to the realization of their life [3]

However, I think that conformist behaviour is reflected in the fact that the person deliberately avoids the use of any part of subjective rights and freedoms. In his view, this behaviour is in the legal framework, but does not meet its objectives. Indeed, a person not in all cases, their lives may be in law-abiding society, consciously obeying the psychological impact of others may be a potential offender. The person in social and legal relations enters legally, because it feeds others. This behaviour may remain for as long as the individual is under the influence and control of a particular social group. Once he is freed from this control, its behaviour can manifest their own individual position and motifs that can form the basis of wrongful conduct. As a person in my life is guided by conformism, is a potential danger to society if law-abiding environment changes on the environment, which has negative anti-social guidance.

Marginal behaviour based on fear of legal liability, fear of condemnation. It is combined with a penchant for illegal behaviour. Feature reasons for this behaviour is that they are internally consistent with existing legal requirements, but are expressed in lawful behaviour. A person in such situations, though internally and does not respect the law, but forced to consciously observe this behaviour. The state in turn is interested in voluntary observance of the law. This dominant motives of the most characteristic of minors and other categories of people with low levels of justice. The difference is that in the case of marginal behaviour occur subjective internal transition states are teetering between criminal and non-criminal, describing the motivation of the person as a whole, as such, under certain conditions, will certainly be illegal, while in the commission of acts which subject attributes circumstances precluding criminal act or are close to them, we are not talking about the transition state of motivation. In the latter case, the person is motivated positively (acceptable), even when such acts are committed with the excess of allowable harm.

Recently, in view of the proposed classification is socially active good behaviour - activities to implement the law on the basis of their understanding of the value of deep belief in the need to perform. If there is such a motivating good behaviour is not only dependent on the violations of the law, performing legal requirements, but also acquires its highest property - the value of social behaviour that is creative, intense and initiative of the individual, which exceeds the usual requirements for a possible behaviour that is both predictable and unpredictable rule of law, but so that they do not conflict aimed at strengthening democratic institutions of society, law and order.

In the criminal law of the link between good behaviour of the victim and offender actions reflected in the rules governing the use of the subjective right of self-defence (Article 36 CC), extreme necessity (Article 39 CC), the detention of a person who committed a crime (Article 38 of the Criminal Code) and others.

We can consider the specific situation in which the behaviour of the victim will be justified (positive). For example, when the victim steps to protect third parties from criminal assault or aimed at halting the illegal actions of the perpetrator.

Often these victims are the people who by virtue of their duties trying to stop or delay the criminal assault. For example st.348 Criminal Code of Ukraine - attempt on the life of a law enforcement agency, a member of a public building for the

protection of public order, border or soldier, where the legislature clearly indicates that the attempt on the life of a law enforcement agency, a member of a public building for the protection of public order, border or military committed in the victim resistance during the performance of official duties or responsibilities for the protection of public order, covered by Art. 348 and additional qualification under Art. 342 is not required.

Also an example of a situation where the victim is present with positive behaviour can be considered actions that prevent appearance of a witness, victim, expert, forcing them to refuse to give evidence or opinion that under Art 386 of the Criminal Code of Ukraine. In this case, the victim has the intention and desire to give testimony or appear in court but some circumstances, such as interference or coercion to renounce such actions taken by the offender does not enable it to do the following.

It should be noted that the state encourages good behaviour person, including when it prevents the criminal acts. In criminal law this feature stimulus law to encourage socially beneficial behaviour fulfil rewards the criminal law. It is a variety of remedies incentives as important legal instruments of social control, which exclude government coercion. Method effects on volitional behaviour characterized by positive incentives solely for promotional rules.

Encouraging the criminal law should primarily promote and ensure a positive response in the form of exclusion of criminal law burden in cases of active anti-crime or socially dangerous encroachments in a state of self-defence arrest the person who committed the crime, emergency, etc.. Public utility specified lawful behaviour is to prevent or minimize damage to the objects of criminal protection. The implementation of these circumstances in a plane relations arising in connection with the commission of a crime or a socially dangerous assault crimes sometimes creates the illusion of the identity of the object causing the "sanctioned prejudice" and the object of lawful behaviour.

From the psychological point of view we can say that the good behaviour of the victim creates situations that the researcher A. Repetsky called positive: the situation is pushing the character in which the victim's behaviour is positive, that is not provocative, but related to the direction it violent offender, for example, the actions of a police officer who suffered during the arrest of the offender or provide the protection of third party [5].

Thus, under the analysis lawful conduct of the victim may also indicate that the legislature distinguishes a complex social and helpful behaviour and directs it to restore destroyed or damaged social relations, under the protection of the criminal law. However, for the good behaviour of the offender is a person such that prevents its actions. So good behaviour person might well be perceived as victimological factor.

In the study of the past, namely on neutral and provoking the victim's behaviour, attention was paid to the role of appropriate behaviour in the commission of rape. In my opinion, the following should be considered criminal assault and with a positive behaviour victims and the impact it has, for the qualification of acts of this kind.

In practice, often are reflected situations where the offender (rapist) commits a surprise attack on the victim, choosing this lonely spot, but there are cases when the victim creates resistance in the form of physical response and calls for help. The

behaviour of the victims in these cases serves as an exceptionally positive. And it can manifest itself in such forms as:

- Leaving the place of offense, interruption of contact with the criminal action without the use of his detention;
- Leaving the place of offense and immediate notification of adults (if children) about what happened;
- Take active steps apprehend the offender, not personally, but involving adults (if children), police, etc.

Conclusions. Summarizing the material in this section, we can conclude that there is a relationship between the behaviour of the victim and the offender. Thus, the individual psychological peculiarities of the person that shape its behaviour affect the person's falling into the category of victims. For different types of crime the main victims of psychological types can be distinguished. The behaviour of victims of violent crime is characterized as neutral - 24.7% of the total number of victims; positive - 10.1% negative, including displays of aggression on the part of future victims - 65.2%. In determining the victims' personal characteristics are: aggressiveness - 24.5%, brutality, inconsistency - 6.4%, despotism against friends, relatives - 4.3% not kindness - 8, 6% alcohol - 37.6%, sexual promiscuity - 7.8%, promiscuity in choosing dating - 31.9%, greed, self-interest - 1.7%, uncritical - 23.6%. When rape they distinguish the following main types of victim: the victim selectively uncritical and at the same time provoking type, another option - the victim selectively uncritical (in some cases with elements of passive or unconsciously provoking behaviour); purely passive type of victim - a woman not guilty of making a dangerous situation, but does not support rapists, being able to resist having a real opportunity to, proactive type of victim, whose behaviour is impeccable and that resist rapists, usually a woman physically strong, brave, strong. Victims of theft are often prone to behaviour that includes use of alcohol, promiscuous, neglect of safety property. Fraud is characterized in particular victims of noncritical behaviour, the structure of which is greed, self-interest, selfishness. In general, the type of behaviour in specific situations can become a factor in the commission of a crime against a person.

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