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THE CONNECTIONS ESSENTIAL FOR THE SOLUTION OF PROBLEM ISSUES OF CRIMINAL LAW

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Abstract. The article considers causal and other connections essential and its significance for solving criminal law issues.

The emphasis on the causal approach is carried out at the methodological level of research that is the basic concepts of cause and condition, system, structure, etc. are considered.

The author draws attention to the fact that in addition to the cause, which has legal criminal significance, it is necessary to consider such elements of the causal complex as conditions, reasons, incentives, circumstances that are necessary to clarify the mechanism of causing legal value.

The author notes that if the cause and condition based on their importance in criminal law have the characteristics of «full» factors, the reason, incentive, circumstances can be considered and evaluated as subcausal factors.

These factors are taken into account in criminal law indirectly and, as the author notes, are rather criminal proceedings.

The article separately considers the possibility of using among the causal factors of psychological attitude; it is noted that in accordance with the approaches of the psychological school of Professor Uznadze, the installation is considered at the subconscious level and can't be considered in the implementation of criminal law assessments.

The article mentions a number of other problems related to the causal approach in resolving issues of legal, criminal, and legal nature.

In particular, attention is focused on the term «causal complex», the problem of the inverse effect of the consequence on the cause, the separation of «social» causality from «natural» and others.

The author considers in the article the importance of conducting a causal analysis in the study of criminal law issues.

It is noted that the methodological establishment of the criterion of the cause of the phenomenon (consequence) is also necessary in the case of ambiguous (several or more causes and consequences) causal connection or complex causality.

The author notes that the «vector» of the causal connection is complicated given the previous aspects of the study.

Key words: cause, condition, occasion, causal complex, consequence, other circumstance.

Introduction. It should be noted that the term «causal complex» should be understood as a set of possible factors within the limits of connection: causes, conditions and other circumstances accompanying the causation process.

In the philosophical paradigm, it is emphasized that unlike a cause that directly or indirectly generates a particular phenomenon or process, a condition forms an environment (environment) in which the action of the cause takes place.

However, from the author's point of view, such a characterization is incomplete, since it is not excluded (as already noted) that the condition is a factor that affects the process of causation itself, and in some cases (which should be of interest to jurists) on the formation of the consequence (in criminal – in the legal sense – the formation of so-called «harmful» consequences).

It should be noted that other factors (motive, stimulus, circumstances) are of special importance not for criminal law (solving its tasks), but for criminology and psychology; in criminal law, the specified subcausal factors are taken into account indirectly, cursorily, and as a rule, when the stage of criminal procedural implementation of normative prescriptions of criminal law comes.

As for such a specific factor as psychological attitude, this factor (factor) is relevant, according to Professor Uznadze's scientific approach to the processes occurring in the human subconscious, which takes the analysis of this concept beyond the limits of criminal law evaluations.

In a certain sense, the connection is also related to the concept of «system structure», and therefore to the related concept above, «content».

The structure is considered in the classical philosophical sense as that within which the content is realized; to clarify this statement, the term «sewage» is used. That is, content is what «channels» (develops, forms, exists) within the structure. Connection is an element, the primary component of the structure.

Theoretical foundations of connection understanding

Based on the subject of research, the following can be stated:

1) the category «connection» is in the connections discussed above with other categories («interaction», «system», «structure»);

2) within the framework of the presented correlations, the connection can be either one-way («vector»), in particular, developing from cause to effect, where the effect, within the «classical» approach, does not affect the cause, or two-way;

3) it should be noted that an example of a two-way connection is a functional connection in which the elements forming it interact;

4) the most adaptive form or type of connections is causal; adaptability in this case means that the causal connection is the most used or is characterized by a greater «specific weight» of analysis in social and legal sciences compared to other connections;

5) the causal manifestation of determination should be considered within the limits of the modern system of scientific knowledge, modified, taking into account relatively new and recent ideas about the functional role and content of connection.

It is necessary to clarify that when we are talking about the latest ideas about the functional role and content of the connection, then within the scope of the research topic is meant the possibility of considering the causal connection in criminal law as informational or as such, which can be established on the basis of additional criteria. Additional to the main ones (necessity, regularity of the connection) can be considered an increased degree of probability of the connection, an increased degree of awareness of the development of a causal connection by the person guilty of committing a criminal offense.

A special problem arises when causation becomes «electronic»; in particular, it is possible to consider the situation when criminal offenses are aimed at acquiring «electronic» currency (bitcoins) or tokens, «electronic» securities.

In the opinion of the author, within the framework of the mentioned problems of causation in the above situations that characterize criminal offenses, the problem of establishing a causal connection in general arises.

The consequence of such a problem is the establishment of a causal connection as a fundamental condition of criminal liability.

A significant «specific weight» of the use of the causal approach in law, and in particular, in criminal law, is due to the fact that the clarification of the causal connection provides a legal (normative) description or characterization of acts, the commission of which gives rise to certain legal consequences up to the point of criminal liability of a person (Panov, 2012); at the same time, this is due to the clear «vector» nature of the causal connection.

The latter means that this connection has a generalized form: «cause → effect». But, as outlined above, a number of problems arise within the framework of a systematic and meaningful study of the causal (cause-and-effect) connection. The first of them is establishing the limits of causality for law, criminal law. The second is to establish the nature of the effect of the effect on the cause, which can be used in the analysis of causality, which has legal significance.

A separate problematic issue of causality is the separation of so-called «natural» causality from «social» causality.

«Natural» causality is considered within the limits of natural processes (physical, chemical, and other similar in nature); «social» causality is related to the field of social sciences, including with law, criminal law. The peculiarity of «social» causality, in particular, consists in a specific mechanism of occurrence, causing significant and harmful (formally prohibited, punishable) consequences.

Methodologically, it is also important to determine the criteria for establishing the real cause of a certain phenomenon, consequence.

The defined set of problems does not exhaust all the issues of causality, since new technological manifestations of the functioning of society appear: informational or cyber manifestations and conditioning of social processes. Questions of causality (causality) within the so-called mass phenomena (statistical aggregate of phenomena), establishing the mechanism of causation in case of inaction, etc. are constantly relevant.

Within the social sciences (in particular, criminal law) it is also important to emphasize that any causation is mediated by the subject's behavior. Also, it can be argued that within the limits of the philosophical paradigm, the causal connection is not only a physically necessary connection of phenomena (Lozovoy, 2009) but also socially necessary.

Considering the above, it is possible to assert the existence of a complex of legal problems of causality.

So, regarding causality, its adaptive interpretation within the limits of modern ideas about the social interaction of phenomena, a number of important conclusions can be made:

- 1) within the scope of the topic of scientific research, it is necessary to find out the peculiarities of social causality in comparison with the so-called «natural» one;
- 2) it is necessary to find out the mechanisms of occurrence within the limits of social causality;
- 3) clarification of p.p. 1, 2 will allow to establish novel causality in law and criminal in particular.

It should be noted that in the scientific literature, lawyers emphasize the fact that the causal connection is one of the types of social connections.

If we consider the mechanism of causation within the framework of social causality, then its main characteristic will be the constant mediation of causation by intentions (realized in particular in the planning of a criminal delict), actions, «expression of will» of the subject.

In the system of philosophical knowledge, as a rule, the problem of distinguishing «natural» (related to natural processes: physical, chemical, biological, etc.) causality (causality) from social (socially determined, subjectively mediated) is not investigated. This problem arises where and when there is a need for a cause-and-effect analysis of the development of social (in particular, legal and criminal-legal processes) manifestations of human behavior; in the legal aspect, when it is necessary to establish (prove, argue or determine reliably) the material and legal basis of legal consequences; in the criminal law aspect, when it is necessary to establish a legal basis (composition of a crime, criminal offense or Latin, *corpus delicti*) of such a legal consequence as the criminal responsibility of

a person (and in the case of the implementation of a legal procedure, the subject of a crime) who, in accordance with the criminal legislation of Ukraine (or another state), committed an act provided for by the Criminal by the code.

Within the scope of elucidating the social and causal connection of phenomena (in comparison with natural ones), the following features can be fixed:

1) this connection is socially necessary, that is, it combines social phenomena, sociologically – facts;

2) as a result of such a causal combination, complex phenomena are formed that are objects of legal regulation;

3) as a result of legal (in particular, criminal law) regulation, the possibility of a scientific explanation of a special social mechanism of causation appears.

Point 1 of the above is interpreted in such a way that the causal connection, since it is immanent in the social process, is also natural for society.

From point 2, we can draw an important conclusion that a combination of social or socio-psychological phenomena form:

a) objects for legal analysis and normalization;

b) within the scope of the research topic, we are talking about the objects of criminal and legal analysis and normalization;

c) being normalized, such objects acquire the meaning of legal phenomena (criminal-legal institutes, sub-institutes, etc.).

Point 3, from the author's point of view, is of particular importance because it provides for the following:

a) transformation or «transformation» of purely social facts and phenomena into socio-legal ones;

b) on the basis of the previous one, it becomes possible to explain the mechanism of causation in complex cases on the basis of legal (in particular, criminal law) ideas about behavior.

One of such difficult cases is, in particular, the explanation of the mechanism of causation by inaction.

Causing by inaction cannot be explained within the framework of natural (physical, chemical, etc.) causation, but as a result of legal regulation of social facts and phenomena, legal (in particular, criminal law) science examines the mechanisms of said causation.

In particular, while objectively not causing a criminal result, inaction is considered as such that it (a criminal result) causes it formally and legally, when the subject does not fulfill the duties assigned to him by the state and society.

So, in this case, social causation (social causation) is considered.

The criminal-legal causal connection within the limits of the criminal delict may overlap with the objective «natural» causality (in the case of causation by action) and may not overlap; in the second case, a certain convention and formalization is necessary to identify the criminal-legal causal connection.

Thus, an important element of the mechanism of «social» and criminal-legal causation (criminal-legal causation) is the inaction that has significance within the limits of the criminal-legal assessment, the formalization of the connection.

In particular, inaction regulated by criminal law (criminal inaction) is associated with failure to fulfill a social duty, with the action of a passive environment, with a complex multi-link combination of components, social and production processes, etc.

All this is the result of legal regulation, accepted legal «conditions».

Adaptation of theoretical concepts of connection to solve criminal legal problems

The problem of determining the limits of causality is also connected with a peculiar adaptation of philosophical provisions about causality to the needs of law and criminal law in particular, since

in the philosophical doctrine there is the concept of «infinite causality», while, within the limits of solving the problems of criminal law, limitation (correction) is necessary the length or number of «links» of a cause-and-effect connection that has legal, criminal-law significance. A separate issue is the issue of the boundary that separates the causal connection from other objective regularities (Pinaev, 2002).

The need to adjust the cause-and-effect connection in criminal law is also related to the need for normative consolidation (implementation, reflection) of the cause-and-effect connection and the legally significant nature of its components (components).

In this sense, causality manifests itself more precisely as a methodological basis for the analysis of legal, criminal-law phenomena, and the cause-and-effect connection, based on the peculiarities of its structure and meaningful «cause-effect» characteristics, sets a certain «form» of the above-mentioned analysis. On this basis, it can be concluded that there is such a special type of analysis as cause-and-effect.

Conclusions. Methodologically, causal connection analysis, in particular of criminal law phenomena, involves:

1) consideration of philosophical ideas (philosophical doctrine) about the peculiarity of the causal connection (one-sidedness, «vectority»);

2) time asymmetry: connection components are in a certain time sequence;

3) finding out that one of the components of the causal connection is characterized by the property of generating another;

4) determination of the conditions for establishing a causal (causal) connection of criminal legal phenomena;

5) the fact that random causal connections do not reflect (Tatsy, 2017) natural development of processes and cannot be considered as an element of cause-and-effect analysis.

Causal analysis, unlike other types of analysis (temporal, logical, etc.), is, from the author's point of view, conceptual, because:

1) all other types of analysis to one degree or another depend on cause and effect;

2) this type of analysis is built on the basis of a categorical «cause-and-effect» model, which allows (and in this also, the special value of cause-and-effect analysis) to simplify or reduce other types of analysis to the specified one;

3) causal analysis has a certain type of connection between things as its source, which can be characterized as necessary (Prychepiy, 2006).

An important point of causal analysis is the corresponding logical analysis.

In particular, the methodological part of the causal analysis is the proposition of the logic of causality, the task of the logical analysis of causality is to systematize those correct schemes of reasoning, premises, and conclusions (conclusions) that are causal, as opposed to non-causal.

Sometimes, attention is paid to the fact that the causal logic and the corresponding analysis are built in such a way that within its limits can be obtained descriptions of complete and incomplete reasons. Within the framework of criminal law, theorists consider the main cause and the combination of the main cause accordingly with other circumstances, which fully characterizes certain causation.

The idea of a complete cause or a logical basis is the basis of the causal approach as it relates to the solution of the tasks of specific sciences.

Causal analysis involves:

1) logical interpretation cause as a set of necessary and sufficient conditions and determination of the cause of the investigated phenomenon;

2) a temporary «check», which consists in establishing the fact that one phenomenon (effect) follows another (cause);

3) finding forms of concretization of causal analysis for a certain system of scientific knowledge (in particular, for law, criminal law);

4) the stage of schematizing the causal connection for social and, in particular, legal processes (procedures);

5) reducing the reason to an acceptable legal form (the reason as an act for criminal law in particular);

6) reducing the consequence to an acceptable legal form (consequence, as a socially dangerous consequence (damage) for criminal law in particular);

7) determination of the causal connection of a certain science (in particular, criminal law).

It is necessary to focus attention on the fact that the formal and logical study of criminal offenses allows to determine the causal basis of the occurrence of a harmful result.

In the process of formal and logical investigation of criminal offenses, sufficient conditions (reasons) are distinguished from necessary conditions; the conditions (reasons) affecting the court's decision to prosecute a person who is guilty of a tort are considered sufficient.

Causal analysis in the philosophical (methodological) sense also involves finding criteria (determining criteriality) of the real cause of this or that ontological object, phenomenon.

In particular, in law and criminal law, the posed problem finds its realization in the need to establish such an act (or acts) in terms of nature, intensity, method of implementation, which would be certain, with a probability close to «1» (100%) or based on legal justification (in the process of establishing, proving) would cause a normatively determined consequence.

Methodological establishment of criteriality of the cause of the phenomenon (consequence) is also necessary in the case of multi-valued (several or more causes and consequences) cause-and-effect connections or complex causality.

The issue of the inverse impact of the consequence (generated, caused phenomenon) is of particular importance in terms of the new understanding of causality.

Terminologically, the reverse effect of an effect on a cause can be characterized as «reverse» causality.

Reverse causality, from the author's point of view, requires a philosophical justification, since within its limits there is a violation of the classical approach to understanding causality and cause-and-effect connection as «vectorially» constructed (from cause to effect). At the same time, taking into account the previous research within the framework of the causal approach, it is necessary to conclude that the «vectority» of the causal connection is complicated and without posing the problem of the inverse influence of the effect on the cause; as a result of the inverse influence of the effect on the cause, a new type of connection arises, which requires justification of its legal and criminal law significance.

The formulation of this problem in the legal (criminal-legal) sense is determined by the specifics, in particular, of the interaction between the criminal and the victim during the commission of certain crimes, in the framework of which the victim's behavior (in the process of committing a crime against him) can be one of the determining factors of the criminal's behavior, but this problem, with in the opinion of the author, has a «mixed» criminal-legal and criminological character.

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