

DC 343.98

DOI 10.31733/2078-3566-2022-5-303-307



Kateryna POKRASA ©
Graduate Student
(Dnipropetrovsk State University
of Internal Affairs, Dnipro, Ukraine)

CRIMINAL LAW AND FORENSIC CLASSIFICATION OF CRIMES RELATED TO FIRES

Катерина Покраса. КРИМІНАЛЬНО-ПРАВОВА І КРИМІНАЛІСТИЧНА КЛАСИФІКАЦІЯ ЗЛОЧИНІВ, ПОВ'ЯЗАНИХ З ПОЖЕЖАМИ. В статті розглянуто кримінально-правова та криміналістична класифікація злочинів, пов'язаних з пожежами. Наголошено, що кримінальним законодавством України передбачено кілька видів злочинів, у механізмі вчинення яких має місце пожежа. Це різноманітні злочини, склади яких сформульовано в різних розділах Особливої частини Кримінального кодексу України. Розглянуто категорію кримінальних правопорушень об'єднаних з криміналістичної точки зору в одну групу, де засобом вчинення є підпал: диверсія; умисне знищення або пошкодження майна; незаконне заволодіння ґрунтовим покривом земель; порушення правил охорони або використання надр, незаконне видобування корисних копалин; знищення або пошкодження лісових масивів; умисне знищення або пошкодження територій, взятих під охорону держави, та об'єктів природно-заповідного фонду; терористичний акт; масові заворушення; умисне знищення або пошкодження майна працівника правоохоронного органу, державної виконавчої служби, приватного виконавця; умисне знищення або пошкодження майна службової особи чи громадянина, який виконує громадський обов'язок у зв'язку з їхньою службовою чи громадською діяльністю; умисне знищення або пошкодження майна, що належить журналісту, його близьким родичам чи членам сім'ї; умисне знищення або пошкодження майна судді, народного засідателя або присяжного; умисне знищення або пошкодження військового майна.

Зазначається, що наведені кримінальні правопорушення зазвичай суттєво відрізняються один від одного за своїми кримінально-правовими ознаками: об'єктом і предметом посягання, суб'єктом, формою вини тощо. Але у механізмі їх вчинення важливу роль відіграє спосіб вчинення – підпал та виникаюча при цьому пожежа, що відбувається у специфічній обстановці, утворює характерні сліди. Тобто, за криміналістичними ознаками зазначені кримінальні правопорушення можуть бути об'єднані в одну групу для якої потрібно розробити загальні теоретичні положення та практичні рекомендації.

Зроблено наголос на тому, що у розглянутих кримінальних правопорушеннях є спільне та важливе з криміналістичної точки зору: наслідки дії вогню, виявлення яких є підставою для початку кримінального провадження. Саме наслідки пожежі, як правило, є вихідною інформацією і фактором, що визначає характер слідчих ситуацій на початковому етапі розслідування. Ця обставина обумовлює спільність окремих теоретичних положень і практичних рекомендацій щодо розслідування цих правопорушень і дає підстави об'єднати їх в окрему однорідну з криміналістичної точки зору групу для розробки основних положень методики їх розслідування.

Ключові слова: кримінальні правопорушення, кваліфікація, розслідування, спосіб вчинення злочину, пожежа, підпал.

Relevance of the study. The criminal legislation of Ukraine provides for several types of crimes, in the mechanism of which fire takes place. These are various crimes, the components of which are formulated in various sections of the Special Part of the Criminal Code of Ukraine [1]. But they also have something in common, which is important from a forensic point of view: the consequences of fire, the detection of which is the basis for initiating criminal proceedings. As a rule, the consequences of the fire are the initial information and the factor that determines the nature of investigative situations at the initial stage of the investigation. This circumstance determines the commonality of certain theoretical provisions and practical recommendations regarding the investigation of these offenses and gives grounds for combining

them into a separate homogeneous group from a criminological point of view for the development of the main provisions of the methodology of their investigation.

Recent publications review. Development of methods of investigation of certain types of criminal offenses such scientists as: Y. Alenin, V. Bakhin, A. Volobyev, A. Ishchenko, N. Klymenko, V. Konovalova, V. Kuzmichev, V. Lisichenko, V. Lukashevich, E. Lukyanchikov, O. Odery, I. Pyrih, M. Pogoretsky, M. Saltevsy, M. Segay, R. Stepanyuk, V. Tishchenko, L. Udalova, P. Tsimbal, K. Chaplinsky, S. Chernyavsky, V. Shepitko and other scientists. However, in the scientific works of these scientists, insufficient attention was paid to the qualification and investigation of criminal offenses related to fires.

The article's objective. Identifying the category of criminal offenses and combining them from a criminalistics point of view into one group, where the means of commission is arson.

Discussion. Let's consider the category of criminal offenses united from a criminological point of view into one group, where the means of commission is arson.

Sabotage is a crime against the foundations of national security of Ukraine and provided for in Art. 113 of the Criminal Code. This crime can be committed by arson and is aimed at the mass destruction of people, harming their health, destroying or damaging objects of important economic or defense importance with the aim of weakening the state. The direct object of this crime is the economic basis and internal security of Ukraine.

Deliberate destruction or damage to property is a criminal offense against property, the direct object of which is property relations and provided for in Part 2 of Art. 194 of the Criminal Code. The crime consists in destroying or damaging someone else's property by arson, explosion or other generally dangerous means.

Liability for illegal possession of the soil cover (surface layer) of lands, provided for in Part 2 of Art. 239-1, if it created a danger to life, health of people or the environment, committed by arson, explosion or other generally dangerous method or caused the death of people, mass death of objects of animal or plant life or other serious consequences.

Among the criminal offenses against the environment (Chapter VIII of the Criminal Code of Ukraine), which consist in the destruction or damage of objects of the natural environment by fire, the following can be distinguished:

- violation of the rules of protection or use of subsoil, illegal extraction of minerals (Part 4, Art. 240 of the Criminal Code), if this created a danger to life, health of people or the environment, committed by arson, explosion or other generally dangerous method;
- destruction or damage of forest areas (Art. 245 of the Criminal Code), committed by arson.

- intentional destruction or damage of territories taken under state protection and objects of the nature reserve fund, committed by arson or in another generally dangerous way, if this caused the death of people or other serious consequences (Part 2, Art. 252 of the Criminal Code).

The object of a terrorist act (Art. 258 of the Criminal Code) is public safety. It can be committed, including by carrying out explosions, arson or other actions that create a danger to human life or health or cause significant property damage or the occurrence of other serious consequences. The purpose of a terrorist act is a violation of public security, intimidation of the population, provocation of a military conflict, international complication, influence on decision-making or the execution or non-execution of actions by state authorities or local self-government bodies, officials of these bodies, associations of citizens, legal entities, international organizations, or drawing public attention to certain political, religious or other views of the terrorist.

The object of committing mass riots (Art. 294 of the Criminal Code) is public order. This crime manifests itself in the organization of group actions accompanied by violence against a person, pogroms, arson, destruction of property, seizure of buildings or structures and other dangerous actions aimed at disrupting public order.

Separate articles of Chapter XV of the Criminal Code of Ukraine "Crimes against the authority of state authorities, local self-government bodies, citizens' associations and criminal offenses against journalists" provide for liability for criminal offenses committed, including by arson:

- intentional destruction or damage to the property of an employee of a law enforcement agency, a state executive service, a private executor (Part 2 of Art. 347 of the Criminal Code);
- intentional destruction or damage to the property of an official or a citizen who performs a public duty in connection with their official or public activities, as well as committing such actions against their close relatives (Part 2 of Art. 352 of the Criminal Code);

– intentional destruction or damage to property belonging to the journalist, his close relatives or family members, in connection with the journalist's legitimate professional activity (Art. 347-1 of the Criminal Code)

Intentional destruction or damage to the property of a judge, people's assessor or juror (Part 2 of Art. 378 of the Criminal Code), intentional destruction or damage to the property of a defender or representative of a person or their close relatives, in connection with activities related to the provision of legal assistance (Part 2 of Art. 399 of the Criminal Code). These crimes encroach on the life, health, personal safety, and property of judges, people's assessors, and other members of the judiciary in connection with their performance of duties, administration of justice, or provision of legal aid (Chapter XVIII of the Criminal Code of Ukraine).

Intentional destruction or damage to military property (Part 2 of Art. 411 of the Criminal Code) involves the destruction or damage of weapons, military supplies, means of transportation, military and special equipment or other military property by arson or in another generally dangerous way. The direct object of this crime is the procedure for using military property (Chapter XX of the Criminal Code).

The listed criminal offenses usually differ significantly from each other in terms of their criminal law characteristics: the object and subject of the offense, the subject, the form of guilt, etc. But in the mechanism of their perpetration, the method of perpetration plays an important role – arson and the resulting fire, occurring in a specific environment, form characteristic traces. That is, according to forensic characteristics, the mentioned criminal offenses, in our opinion, can be combined into one group for which general theoretical provisions and practical recommendations need to be developed.

Analysis of criminal legislation shows that concepts such as "arson" and "fire" are used to determine the characteristics of certain crimes of this group. Our study of the norms of criminal law and special legal literature allows us to conclude that until now there is no single approach to defining these concepts that would be acceptable for use in special and legal literature, although this is important for the legal assessment of the event under investigation. A clear definition of the content of these concepts is important for learning the essence of crimes of this group and carrying out their criminological classification.

In the explanatory dictionary of the Ukrainian language, a fire is defined as "a flame that engulfs and destroys everything that can burn, as well as burning itself, the destruction of something by fire, a place where something burns or burned" [2, p. 1013]. In the normative legal acts that regulate legal relations in the field of fire safety, a fire is defined as an uncontrolled process of destruction or fire damage to property, during which factors dangerous to creatures and the natural environment arise [3]. In the special literature, essentially the same definition is used [4]. The corresponding concept of fire as the uncontrolled burning of objects outside a special fire, which creates a direct threat to the life and health of people, property or the environment, is used in criminal and legal literature and scientific research [5, p. 252].

Considering a fire as a burning process that causes harmful consequences, these definitions from a legal point of view, in our opinion, do not take into account a number of important points. According to the criminal law, a fire is a crime in those cases when its occurrence and development are causally related to a careless or deliberate, criminally punishable act of a person, resulting in socially dangerous consequences. Therefore, from a legal point of view, a fire should be defined as uncontrolled burning, which appeared as a result of an illegal act of a person, resulting in socially dangerous consequences. Such consequences include: physical harm to life and health of people or destruction or damage to property. A fire that was the result of certain human actions and caused property or physical damage to people's health entails criminal responsibility, i.e., constitutes a certain component of the crime. At the same time, the concept of "arson" is used to define such acts in criminal legislation.

Arson or arson is an action that consists in bringing fire to any objects, or "setting fire to something, forcing it to engage, burn" [2, p. 961]. The concept of arson is used to define the intentional actions of a person who wants to use the properties of fire to achieve a criminal goal: loss of life, destruction or damage to property, disorganization of the activities of state bodies, intimidation of government officials and the population, etc. Due to the ease of obtaining fire, criminals use it to commit or conceal criminal offenses. Once ignited, the fire spreads quickly and has a devastating effect on the environment. At the same time, the combustion process is difficult and sometimes impossible to control. Thus, arson is a type of generally dangerous way of committing various crimes. In addition, arson can be used by a criminal as a means of concealing the traces of other, previously committed crimes, such as, for example, murder,

misappropriation or waste of property or taking possession of it by abuse of official position, etc.

When defining the concept of arson as a way of committing a crime, it is necessary to take into account that in the event of a fire, not only the specified property is destroyed or damaged, but also the life, health and property interests of a significant number of persons are put in real danger. In addition, arson acts as a method of committing such crimes as sabotage and mass riots, the object of which is the internal security of the state and public safety, respectively. Among the crimes in which arson acts as a method of committing the crime, the legislator classified them as serious, therefore, in the definition of the concept of «arson», this should be reflected in the indication of causing serious consequences, which characterize the high degree of public danger of the considered method. It should also be noted that in Resolution No. 3 of the Plenum of the Supreme Court of Ukraine dated 03.03.2000 "On amendments and additions to the Resolution of the Plenum of the Supreme Court of Ukraine dated July 2, 1976 No. 4 "On issues arising in the judicial practice in cases of destruction and damage of state and collective property by arson or as a result of violation of fire safety rules" it is determined that the intentional destruction or damage of state or collective property by arson is the destruction or damage of such property by fire, if at the same time there was a threat to life and health. people or causing significant material damage. Therefore, the intentional destruction or damage of property by fire, which did not create such a threat (for example, burning an item in the oven), cannot be considered as a qualifying sign of arson [6].

When arson is used to commit a crime, almost any circumstance aggravating responsibility may occur, or a combination of these circumstances, because, having triggered the destructive forces of fire, the guilty person loses the opportunity to control them, to stop their spontaneous development. The objective side of this composition is characterized by active physical actions aimed not only at the occurrence of combustion, but also, mainly, at the creation of conditions for the occurrence of fire.

When a criminal intentionally commits arson, he expects that the maximum material damage or other harmful consequences will be caused with the help of fire. After the introduction of such a source of increased danger as a fire, the culprit, as a rule, is deprived of the opportunity to limit the spread of the fire and thereby affect the amount of harmful consequences or voluntarily refuse to bring the crime to an end. Taking into account the above, arson can be characterized as a deliberate, illegal, socially dangerous act that caused uncontrolled burning, committed with the aim of depriving a person of life or health or causing him material damage.

From a criminalistics point of view, the following are distinguished from the methods of committing offenses in the case of using fire as a means of intentionally causing harm: "1) that do not require significant preparation when introducing a source of combustion for their ignition; 2) with the use of auxiliary combustible materials or substances that were at the scene of the crime or were brought from outside to guarantee ignition; 3) with the use of special technical means, pre-prepared ignition devices, designed for high reliability and conspiracy when committing criminal acts, as well as a given ignition time" [7].

Conclusions. Taking into account the above, arson can be characterized as a deliberate, illegal, socially dangerous act that caused uncontrolled burning, committed with the aim of depriving a person of life or health or causing him material damage. The methods of committing arson are a key element of the forensic characterization of criminal offenses committed by arson, which connects other elements: the environment in which the crimes are committed, the trace pattern, the characteristics of the criminal's identity. The development of the method of committing arson in connection with other elements of forensic characteristics is a promising direction for further scientific research.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

References

1. Кримінальний кодекс України від 05.04.2001. Відомості Верховної Ради України. 2001. № 25-26. Ст. 131.
2. Великий тлумачний словник сучасної української мови / Уклад. і голов. ред. В. Т. Бусел. Київ-Ірпінь : Перун, 2003. 1440 с.
3. Кодекс цивільного захисту України від 02.11.2012. *Відомості Верховної Ради України*. 2013. № 34-35. Ст. 458.
4. ДСТУ 2272-93. Пожежна безпека. Терміни та визначення основних понять. URL : http://online.budstandart.com/ua/catalog/doc-page?id_doc=29684.
5. Кримінальне право України: Особлива частина : підруч. / за ред. М. І. Бажанова, В. В. Сташиса, В. Я. Тація. Київ : Юрінком Інтер; Харків : Право, 2001. 496 с.
6. Про внесення змін і доповнень до постанов Пленуму Верховного Суду України від 02.07.1976 № 4 «Про питання, що виникають в судовій практиці у справах про знищення та пошкодження державного і колективного майна шляхом підпалу або внаслідок порушення прав пожежної безпеки»: Постанова Пленуму Верховного Суду України від 03.03.2000 № 3. URL : <https://zakon.rada.gov.ua/laws/show/v0003700-00#Text>.
7. Особливості розслідування окремих видів злочинів : мультимедійний навч. посібник. URL : <https://arm.naiu.kiev.ua/books/orovz/lections/lection10.html>.

Submitted 09.11.2022

1. Kryminal'nyy kodeks Ukrayiny [Criminal Procedure Code of Ukraine]: Zakon Ukrayiny vid 05.04.2001 № 2341-III. Vidomosti Verkhovnoyi Rady Ukrayiny (VVR). 2001. № 25-26. Art. 131. URL : <https://zakon.rada.gov.ua/laws/show/2341-14#Text>. [in Ukr.].
2. Velykyy tлумachnyy slovnyk suchasnoyi ukraïyns'koyi movy [A large explanatory dictionary of the modern Ukrainian language]. Uklad. i holov. red. V. T. Busel. K.; Irpin': Perun. 2003. 1440 p. [in Ukr.].
3. Kodeks tsyvil'noho zakhystu Ukrayiny [Civil Protection Code of Ukraine]: Zakon vid 02.11.2012 r. № 5403-VI. Vidomosti Verkhovnoyi Rady (VVR). 2013. № 34-35. Art. 458. URL : <https://zakon.rada.gov.ua/laws/show/5403-17#Text>. [in Ukr.].
4. DSTU 2272-93. Pozhezhna bezpeka. Terminy ta vyznachennya osnovnykh ponyat' [Fire Security. Terms and definitions of basic concepts]. URL : http://online.budstandart.com/ua/catalog/doc-page?id_doc=29684. [in Ukr.].
5. Kryminal'ne pravo Ukrayiny: Osoblyva chastyna [Criminal law of Ukraine: Special part]: pidruchnyk / za red. M. I. Bazhanova, V. V. Stashysa, V. Ya. Tatiya. K. : Yurinkom Inter; Kh. : Pravo, 2001. 496 p. [in Ukr.].
6. Pro vnesennya zmin i dopovnen' do postanovy Plenumu Verkhovnoho Sudu Ukrayiny vid 02.07.1976 r. № 4 "Pro pytannya, shcho vynykly v sudoviy praktysi u spravakh pro znyshchennya ta poshkodzhennya derzhavnoho i kolektyvnoho mayna shlyakhom pidpalu abo vnaslidok porushennya pravyl pozhezhnoyi bezpeky" [On introducing changes and additions to the resolution of the Plenum of the Supreme Court of Ukraine dated 02.07.1976 No. 4 "On issues arising in judicial practice in cases of destruction and damage to state and collective property by arson or as a result of violation of fire safety rules"]. Postanova Plenumu Verkhovnoho sudu Ukrayiny vid 03.03.2000 № 3. URL : <https://zakon.rada.gov.ua/laws/show/v0003700-00#Text>. [in Ukr.].
7. Osoblyvosti rozsliduvannya okremykh vydiv zlochyniv [Peculiarities of the investigation of certain types of crimes]. Mul'tymediyyny navchal'nyy posibnyk. URL : <https://arm.naiu.kiev.ua/books/orovz/lections/lection10.html>. [in Ukr.].

ABSTRACT

The article deals with the criminal law and forensic classification of crimes related to fires. It is emphasized that the criminal legislation of Ukraine provides for several types of crimes, in the mechanism of which fire takes place. These are various crimes, the components of which are formulated in different sections of the Special Part of the Criminal Code of Ukraine. The category of criminal offenses united from a criminalistics point of view into one group, where the means of commission is arson, is considered.

It was concluded that the considered criminal offenses have something in common and important from a criminalistics point of view: the consequences of fire, the detection of which is the basis for initiating criminal proceedings. This circumstance determines the commonality of certain theoretical provisions and practical recommendations regarding the investigation of these offenses and gives grounds for combining them into a separate homogeneous group from a criminological point of view for the development of the main provisions of the methodology of their investigation.

Keywords: *criminal offenses, qualification, investigation, method of committing the crime, fire, arson.*