

JURISPRUDENCE: LEGAL THEORY

INFRINGEMENTS OF THE LAW

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Abstract. Our editorial staff presented at the journal № 6, 2013 heading «Jurisprudence (legal theory)», where were fragments of the textbook of Professor Svetlana Boshno. The textbook outlines the main provisions of the theory of state and law as an academic discipline with the intention to bring its essence to followers of other types of legal systems. To ensure the availability of the textbook to such readers it published in English. Focus on the reader said predetermined some methodological and methodical features of presentation. The following chapters have been published here: Boshno S. Interpretation of legal provisions // Law and modern states. 2013. № 4. C. 18-25; Boshno S. Law system and legislation system // Law and modern states. 2013. №5. C. 13-25; Boshno S. State // Law and modern states. 2013. № 6. C. 58-72; Boshno S. Features of law // Law and modern states. 2014. № 1. C. 55-59; Boshno S. Codification // Law and modern states. 2014. № 2. C. 40-46; Boshno S. Means and methods of legal regulation // Law and modern states. 2014. № 3. C. 47-54; Boshno S. Lawmaking and legislative process // Law and modern states. 2016. № 2. This chapter deals with the offense, which is culpable and wrongful socially dangerous act.

Keywords: delinquency, crime, culpable act, offense, illegal act, misdemeanour, administrative offense, civil offense, disciplinary offense.

§1. Definition and Features of Law Infringement

Infringement of the Law is a guilty, illegal act prejudicial to a person, society and state.

Infringement of the law is a delinquent behavior. It is in this very feature that its juridical nature is revealed. Apart from the juridical side, infringement of the

law has social meaning as it endangers the peace of a member of society and the public as a whole. It is important that the juridical nature of the law infringement corresponds to the social one, what reveals in the fact that infringement of the law is an act that definitely and obviously contradicts to the social interests and established mental and ethical norms set in the form of legislative text. If society doubts maleficence of certain way of behavior, acknowledging it as infringement of the law may be ineffective. The evidence and incontestability of the harm of delinquent behavior to some important values enable the legislator to establish this model as illegal.

Delict has certain features – illegality, social insecurity and culpability among them.

Socially dangerous character of the law infringement is seen in the fact that it damages values protected by the rule of the law. The social danger of certain delict may be not so obvious (for example, crossing the road on red light). However, even such insignificant infringement of the law endangers the life, health and property of an individual as it is not the transgressor only that can be injured. The peril of his behavior lies in the fact that it presents a threat for other people (drivers, other pedestrians). All infringements of the law taken together are the threat to the legal order of society.

The infringement of the law inheres in **illegitimacy**, that is the juridical expression of social insecurity (in the form of prohibition). The infringement of the law is an act committed against the law. Social danger of a delict explains its illegitimacy: as a deed is dangerous for a certain individual, group of individuals or society as a whole, it is forbidden by the rules of law.

Illegality is violation of prohibition clearly stated in the law, subordinate acts or neglect of the duties stemming from regulatory acts, acts of law enforcement or resulting from a signed agreement.

A delict is committed by the subjects of the law. The history of the law has known some episodes of bringing animals to responsibility. Thus, for example, in Middle Ages some countries considered that animals (pigs, rats, dogs and other) could break the law, therefore, they were judged with all the stringency of the court proceedings. Russian law does not recognize animals as subjects of the law and, consequently, animals cannot be considered as transgressors and brought to responsibility.

Infringement of the law is an act of an individual who is capable of committing it.

Delictability is based on the law mental ability of a person to be aware of the impact of his acts and accountable for them. Any responsible individual of certain age can be recognized delictable. For example, Criminal Law acknowledges delictable a person aged 16 except for some special kinds of crimes, where the age of criminal discretion goes from 14 years. These age specifications correspond to the gravity of offence, its social danger. The legislator proceeds from the maleficence and danger of the most serious crimes (for example, lucrative killing) being obvious even in juniority.

Infringement of the law is **an act in the form of action or inaction**.

Law-breaking is a pattern of behavior, not a way of thinking. The behavior is reflected in illegal activities or inactivities, in which socially dangerous intentions of a delinquent are implemented. Thoughts themselves cannot represent a clear objective criterion of social insecurity, illegitimacy and, therefore, legality or illegality of a person's behavior. If a certain way of thinking or judgment contradictory to the official state doctrine is considered as a crime and prosecuted by the law, it is a sign of totalitarian state.

Activity is an act of active behavior (theft, fight, etc.). An action is often body motion. However, an act can consist in pronouncing certain words (for example, obscenities).

Inactivity is recognized as a wrongful act if the situation or the call of duty supposed that a person should have done something but he did not do that (absence, leaving a victim in a situation where mortal danger threatens him). Inactivity takes place when, for instance, a person with certain expertise is a doctor, but he did not help a victim. The doctor was supposed to be active but he was inactive, what led to some socially dangerous consequences such as death.

Culpability of an act is also a feature of the law infringement. Guilt is a psychological attitude of a person towards his own behavior and its results in which negative or reckless attitude towards the law, public interests, rights and freedoms of other citizens is reflected. Culpable conduct, that is infringement of the law, can take place only when the decision of a person whether to act, as it states the law, or break the law depended on his will and he chose a wrongful way.

Correspondingly, delinquent are not considered the deeds of those individuals who, owing to their age (juveniles) or state of health (incapable due to mental disease), cannot realize the meaning of their actions and conduct them. These people are not aware of their actions. Also, accident, is not considered as a law infringement - an event that have caused harm as a result of a set of objective circumstances excluding any fault.

§ 2. Elements of offence (*corpus delicti*)

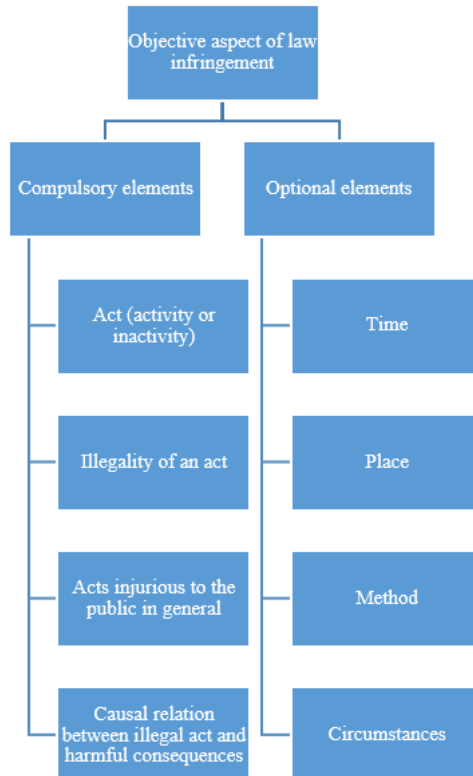
Elements of offence represent a group of elements such as the object of the law infringement, subject and subjective aspect.

The object of offence are those events of the world to which delinquency is directed. There are general, generic and direct objects of offence.

General object is public relations protected by law.

Generic object is a group of homogeneous public relations elements attacked by offender. In Labour Law it is, for instance, labor discipline, in Family Law – the order and conditions of marriage. The generic object of law infringement specifies general object pointing out certain groups of public relations which have been disturbed.

Direct object is certain goods, personality, his health, dignity, etc. which have been infringed on. Any breaking of the law encroaches simultaneously on general, generic and direct objects.



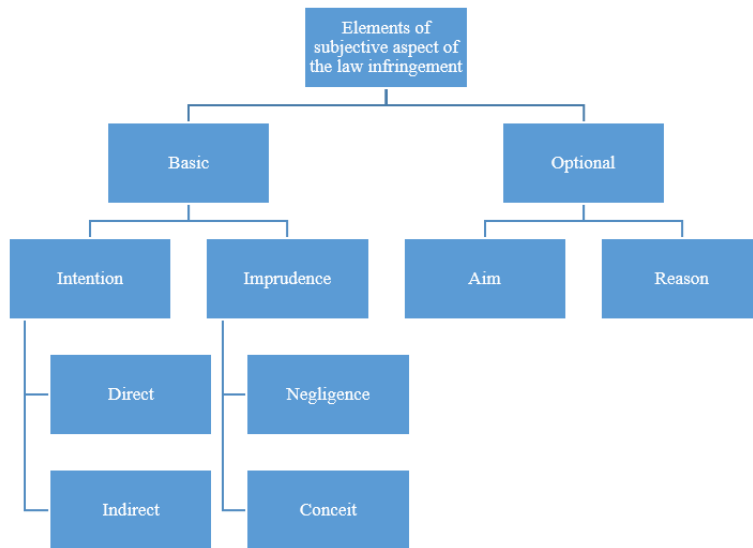
P.1. Objective aspect of law infringement

Objective aspect is an outer display of the illegality of act. It consists of the following elements: a deed, illegality, harm, causal relation between the act and the damage.

Harm is unfavorable and, therefore, undesirable consequences taking place as a result of the infringement of the law. These negative consequences may have pecuniary (the loss of property), non-pecuniary (an insult), organizational (deprivation of opportunity to exercise a right), personal (homicide) or other character.

There should be cause-and-effect relation between the deed and the resulting harm.

The **subject of the infringement of the law** is a person who has broken the law. Only delictable person can be qualified as a subject of the law infringement.



P. 2. Elements of subjective aspect of the law infringement

Subjective aspect of the law infringement is guilt, that is psychological attitude of an individual towards his infringement of the law and the resulting harm. There are two types of guilt: intention and imprudence.

Intention, in its turn, can be direct and indirect. Direct intention is reflected in the a person's recognition of illegality of his deed and the will to see socially dangerous consequences. With indirect intention a person knows about the illegality of his act and consciously admits the coming of some harmful consequences.

Imprudence consists of two forms: negligence and deceit. Negligence suggests that a person is not aware of illegality of his behavior, does not foresee its consequences, though he can and has to do it (dumping of waste from the roof). Conceit supposes that a person is aware of illegality of his act, foresees its dangerous result but carelessly hopes to prevent it (speeding).

§ 3. Classification of Law Infringements (crime and offense)

The infringement of the law is divided into crime and offence according to the following criteria:

- Degree of social insecurity
- Extent of the damage
- Importance of the relation protected by the law

- Method, time and place of breaking the law
- Personality of transgressor
- Sanctions for a deed

Crimes are socially dangerous culpable acts foreseen by criminal legislation. Only the Criminal Law can classify certain behavior as a crime. There is a principle: *nullum crimen sine lege* (without indication in the law there is no crime).

Compared to an offence, for committing a crime the most rigorous punishment is enforced. Criminals undergo public coercive measures considerably restricting their rights: deprivation or restriction of liberty, a long term of corrective labour and other heavy penalty.

Criminal punishment is applied not only for committing a crime but for criminal attempt, preparation, participation, concealment and failure to report a crime as well.

It is the court that has authorities to return guilty and impose punishment in a procedural form provided by the Code of Criminal Procedure of the Russian Federation. The service of sentence is prescribed by the special legislation – the Correctional Code of the Russian Federation. After serving a term a convicted person reserves conviction – a special legal state representing an aggravating circumstance during repeated offence. It reflects on moral and legal status of a person returned guilty. Thus, some kinds of activities are inaccessible for people who have been judged. For example, conviction is an obstacle for obtaining a license for safeguarding activity.

Crimes are classified according to different aspects. Thus, on the base of the character and degree of social danger of an act the following forms can be sorted out:

1. **Crimes of little gravity** are intended and reckless deeds with provided punishment of up to 2 years of imprisonment;
2. **Crimes of medium gravity** are intended and reckless deeds with provided punishment of up to 5 years of imprisonment and also imprudent acts with punishment of more than 2 years;
3. **Grave crimes** are intended deeds with punishment of up to 10 years of imprisonment and also imprudent acts with maximum punishment of more than 5 years of imprisonment;
4. **Especially grave crimes** are intended acts with maximum penalty of more than 10 years of imprisonment or even more severe sentence.

Offence is another kind of the infringement of the law.

Offence is a guilty illegal act which do not represent any social danger. Offences differ by the kinds of relations which they put into disorder and also by the sanctions imposed for them.

The kinds of offence are the following: administrative, disciplinary, civil law, procedural.

Administrative offence is an illegal guilty activity or inactivity of an individual or legal person for which the Administrative Offences Code of the

Russian Federation and the administrative offences laws of subjects of the Russian Federation provide administrative responsibility.

For administrative offences the following sanctions can be imposed: notice, administrative fine, deprivation of a specific right (driving or hunting license), administrative arrest, refundable confiscation of crime instrument or administrative infringement matter, disqualification and administrative deportation of a foreign citizen or apatride outside the Russian Federation boundaries (art. 3.2 of the Administrative Offences Code of the Russian Federation). Administrative sanctions can be imposed no later than 2 months after the day of the law infringement. For some offences (such as abusing the legislation on the elections and referendum, financing terrorism and others) a regulation cannot be issued on the expiry of a year after the day of committing an offence.

Disciplinable offence is a break of the labour, staff, school and military discipline. The Labour Law provides such punishment as admonition, reprimand, discharge. Federal laws, charters and discipline regulations may involve other kinds of disciplinary sanctions typical for a particular service. Disciplinary responsibility is imposed by the authorities of an enterprise, institution or organization within a month since the offence detection. A prescription period of a disciplinary offence is a year. It means that at the end of a year term a disciplinary responsibility of a person will be eliminated.

Civil law offence is a trespass to a person or citizen's property, violation of rights and interests of a legal person. The example of civil law offence is an illegal agreement, abuse of contractual commitments, property piracy, breaking author's or inventor's rights. The civil offence draws the application of such sanctions as compensation of damages, compulsory restoration of rights or implementation of an open commitment and also other restoration activities.

Procedural offence is abuse of the rules of procedural legislation, for example, the Arbitration Procedure Code of the Russian Federation, the Civil Procedure Code of the Russian Federation. The legal procedure demands certain activities from the subjects of the law. The evasion of this obligation represents a procedural offence and a reason for a fine.

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