

# SITUATION OF COMMITTING CRIMINAL OFFENSE AS ELEMENT OF FORENSIC CHARACTERISTICS

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**Abstract.** *It has been emphasized that the issue of independent allocation of the situation in the structure of a criminal offense's corpus delicti and the mechanism of its commission is debatable. It has been noted that there is no unified approach to determining the essence and content of the situation of a criminal offense's commission as an element of forensic characteristics. Scientific approaches to the interpretation of the categories "situation of committing a criminal offense", "time of committing a criminal offense", "place of committing a criminal offense" in the theory of criminal law and criminalistics have been analyzed. The situation of committing a criminal offense has been studied from various aspects: as a component of the mechanism of committing a criminal offense; as an element of forensic characteristics; as a circumstance to be ascertained during the investigation. Methodology. The author of the article has used a combination of general scientific and special scientific methods of building and conducting scientific research, in particular, the formal and logical method, the formal and dogmatic method, analysis and synthesis, the systemic and structural method. Results. It has been found out that the situation of committing a criminal offense is an integral element of forensic characteristics expressed in its close relationship with other structural components of such characteristics. It has been established that the situation of a criminal offense's commission as an element of forensic characteristics is usually interpreted in a broad and narrow sense. It has been proved that components of the situation of a criminal offense's commission are often so intertwined that it is impossible and inappropriate to consider them separately from each other. In such cases, it is more appropriate to cover the situation depending on the broad understanding. It has been suggested that the situation as an element of forensic characteristics should be understood as a set of information about the time-space and other conditions for the implementation of criminal illegal plan by the offender.*

**Key words:** *forensic characteristics, criminal offenses, forensic technique, mechanism of committing a criminal offense, situation, time, place.*

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## 1. Introduction

Time, place and circumstances are studied in the theory of criminal law, criminal proceedings, criminology and criminalistics. However, the meaning of these concepts will be different, although closely intertwined. Besides, it is worth emphasizing that there are still discussions about the expediency of their independent allocation within the structure of a criminal offense's corpus delicti and the mechanism of its commission. In particular, it is quite often suggested to consider them as components of a single system of criminal offence's situation. Opponents of this approach emphasize the need to allocate them as independent elements. In this regard, the issue of determining the essence and content of the situation of a criminal offense's commission as an element of forensic characteristics is relevant.

The problems of forensic characteristics of criminal offenses in general and individual structural elements are constantly studied in scientific works focused on forensic science by many scholars, in particular: V.P. Bilenchuk, V.A. Zhuravel, O.V. Pchelina, A.V. Starushkevych, R.L. Stepaniuk, V.V. Tishchenko,

V.M. Shevchuk, V.Yu. Shepitko, B.V. Shchur, etc. But still many aspects of the outlined problem remain debatable or unresolved. As an example, there is no unified approach to determining the essence and content of the situation of a criminal offense's commission as an element of forensic characteristics. Therefore, the purpose of the presented work is to clarify the essence of the situation of committing a criminal offense, to determine its features and role within the structure of forensic characteristics.

## 2. Research methodology

The author of the article has used a combination of general scientific and special scientific methods of building and conducting scientific research. The formal and logical method made it possible to present scientific ideas in a certain sequence. The formal and dogmatic method contributed to reveal relevant provisions regarding the concepts of "situation of committing criminal offenses", "commission of criminal offences", "place of committing criminal offences" in the context of content filling of forensic characteristics. The method of analysis and synthesis

has been used to determine the essence of the situation of committing a criminal offense as an element of forensic characteristics, its content and significance. The systemic and structural method has assisted to determine specific features of the situation of committing a criminal offense as a component of the "forensic characteristics" system, and to clarify its structure and relationship with other elements.

### 3. Results

The criminal and legal significance of the situation of committing a crime, due to its ability to influence the public danger of a crime, is the fact that it can transform the corresponding criminal act into its qualified type [1]. At the same time, the objective conditions, where a criminal offense is committed, is quite often suggested to understand in the theory of criminal law as the specified category [2, p. 66]. The given definition is concise, but, in our opinion, too abstract. It is not clear from its content what kind of conditions we are talking about.

O.O. Maslova notes that the situation is the systemic formation that contains a number of elements that give it qualitative certainty. Any specific situation is a certain structure with a non-constant number of elements composing it. At the same time, the scholar emphasizes that there is no unified approach to the structural filling of the situation in the theory of criminal law. Some scholars believe that the situation is formed only by people and events, others consider this issue more broadly and believe that the situation includes, in addition to people and events, the time and place of a crime [3, p. 158–159].

It is clear from the above that the situation of committing a criminal offense in criminal laws is the feature of an objective party, which in cases defined by the law on criminal liability can be a qualifying factor. However, the essence of the indicated category has not found its unanimous coverage yet, since there are ongoing discussions about its content.

At the same time, the specified category is studied in criminalistics from various aspects: as a component of the mechanism of committing a criminal offense; as an element of forensic characteristics; as a circumstance to be ascertained during the investigation. In the context of the research subject matter, we want to clarify in details the significance, essence and content of the situation of committing a criminal offense as an element of forensic characteristics.

I. Parfylo substantiates the reason for allocating the situation in the structure of forensic characteristics of criminal offenses. In his opinion, the situation of committing a crime has all the features of an independent structural element of forensic characteristics of a crime, since the situation of committing a crime:

1) is a source of forensically significant information, i.e. the situation of a crime's commission is the system, where information about the circumstances

of a criminal offense is formed and is stored there for a certain period of time depending on the properties of the situation;

2) is an objective condition for the commission of a crime, since any crime is committed within specific space-time limits, in an appropriate environment;

3) interacts with other elements of the considered characteristics and largely determines and corrects the *modus operandi*, is associated with the presence of material and ideal traces, often indicates certain important features of the criminal's personality that form such a situation, indicates a relationship with the subject matter of criminal trespass;

4) information about the situation of a crime is almost always essential for the initial forensic analysis of the essence of the event and its circumstances;

5) such a situation of committing a crime cannot be replaced by another element of forensic characteristics of a crime, although it is in a close correlation relationship with other elements of such characteristics [4, p. 198].

V.A. Dyntu substantiates that the system of forensic characteristics of criminal offenses should include the situation of their commission. It is explained by the fact that "situation of a crime is closely correlated both with the offender's personality and with the volitional decisions made by the offender, and accordingly with the crime's *modus operandi*" [5, p. 244]. Moreover, the scholar emphasizes that the situation of such a crime as illegal use of humanitarian aid, charitable donations or free assistance for obtaining profit occupies a significant place among the elements of forensic characteristics, since the information it carries is the key element in forensic characteristics, because it is interrelated with data about other elements, sometimes determines their content, acts as a kind of systemic starting point within the framework of the characteristics [5, p. 242]. At the same time, the complex structure of the specified category is emphasized. In particular, it is indicated that the situation of the crime consists of material, micro-social and moral-psychological environment, where the actions of preparation, implementation and concealment of the crime are committed. Depending on the type of crime, the given structure of the crime's situation can be truncated and consist of two elements: micro-social and moral-psychological environment (that is, when there is no material environment) [6, p. 393].

The situation of a crime's commission is usually understood in criminalistics as a part of material environment, which in addition to the territory plot includes a set of various objects, the behavior of the event's participants, psychological relations between them, etc. The situation as a set of material objects at the crime scene reflects the mechanism of the investigated event, the actions of a criminal and other persons [7, p. 343]. O. Ya. Smolianinova provides a more detailed interpretation of the situation of a crime's commission in the forensic aspect, namely

as the system of objective reality factors, which interact with each other in a certain way and in specific conditions of place and time, which determine the orientation and course of people's behavior within a crime, as well as the determining character, mechanism and conditions of material reflection, processes and phenomena that occur in the form of characteristic, relatively stable (for the same type of crimes) set of traces, the study of which makes it possible to estimate the essence of occurred events [8, p. 98].

Ye.Yu. Budzhyhanchuk offers to highlight the essence of the situation of a crime's commission by revealing its content, namely such constituent elements as: place of commission, time and conditions [9, p. 241]. The multi-component nature of the situation of a criminal offense is also pointed out by V.V. Tishchenko, according to whom this category includes:

- a) time characteristics of a crime's dynamic;
- b) spatial characteristics at all its stages;
- c) material conditions of the place of a crime's preparation, commission and concealment;
- d) weather and other natural and climatic conditions;
- e) behavior of participants of a criminal act;
- f) social and everyday, psychological relations;
- g) general conditions, which were the background of a criminal act;
- h) circumstances that facilitate or hinder the preparation, execution and concealment of a crime [10, p. 69].

It is clear from the above that the situation of committing a criminal offense is an integral element of forensic characteristics expressed in its close relationship with other structural components of such characteristics. First of all, we are talking about the dependence of the situation with the methods, time of committing illegal action and its typical traces. The specified relationship is directly used while establishing and restoring a criminal offense, as well as while collecting the relevant evidentiary information, in particular, during the planning and organization of a pre-trial investigation, the conduction of certain procedural actions, etc.

Therefore, we fully agree with the opinion that the situation of a crime's commission is one of the significant system-forming elements of forensic characteristics, since "restoration of the mechanism of a crime's commission is reflected in various traces of the committed as trace-forming and trace-receiving objects, which is of essential importance for establishing a retrospective model of the committed crime. All of the above-mentioned forensically significant components of the researched situation of a crime's commission ensure in their totality the formation of the situation of the commission ... as an independent element of forensic characteristics of the researched crime. At the same time, the situation of a crime's commission in order to fulfill its system-forming significance must be interconnected with other structural elements of forensic characteristics of a crime.

The presence of interdependencies of such elements ensures the fulfillment of the functional purpose by forensic characteristics" [4, p. 201].

At the same time, it is worth emphasizing that the content of the situation of committing a criminal offense will depend on its interpretation. In a broad sense, the situation is the totality of the time, place and conditions of committing a criminal misdemeanor and / or crime, and in a narrow sense – it is exclusively the circumstances (conditions) under which the preparation, direct commission and concealment of a criminal offense took place. At the same time, we should separately emphasize that the components of the situation of committing a criminal offense are often so intertwined that it is impossible and inappropriate to consider them separately from each other. In such cases, it is more appropriate to cover the situation depending on its broad sense.

At the same time, it is impossible to characterize the situation of a criminal offense's commission as an element of forensic characteristics without clarifying the interpretation of such categories as the time and place of the commission of a criminal offense.

A. Vozniuk, researching the current problems of criminal and legal understanding of the time of a crime's commission, notes that it is an element of events of a criminal offense and, therefore, it is a circumstance that is subject to proving within criminal proceedings; ensures the correct qualification of a criminal offense and bringing a person to criminal liability; it is an element of forensic and criminological characteristics of criminal offenses, given that they are respectively used for the development of an effective method of investigating criminal offenses and an effective system of measures to prevent socially dangerous actions provided by the law on criminal liability [11, p. 258].

The time of committing a criminal offense is a concept, whose interpretation is consolidated by the legislator in Part 3 of the Art. 4 of the Criminal Code of Ukraine, according to which the time of committing the act or omission by a person is provided by the law on criminal liability [12]. However, the given definition in no way determines the essential features of the specified term, which make it possible to clarify its role and difference from others, in particular, related concepts. In particular, the doctrine of criminal law suggests to determine the time of committing a criminal offense by using the phrase "certain (relevant) period (segment) of time" [13, p. 181]. Some clarifications are indicated by A.V. Savchenko and P.L. Fris. Namely, factors associated with a certain period, during which a criminal offense is committed: time of a year, month, week, day, as well as time associated with certain conditions [14, p. 16]; the occurrence of the legally prescribed harmful consequences [15, p. 139].

The approach of differentiated interpretation of the time of committing a criminal offense in criminal law is impressive. We are talking about distinguish-

ing the time of the commission of a criminal offense as a universal criminal and legal category and as a mandatory feature of the objective aspect of a criminal offense. In the first case, the outlined concept should be understood as the period during which the subject commits a criminal offense, and in the second case – the feature of the criminal offense characterizing the duration of its commission is provided by the disposition of the criminal norm [11, p. 261].

The time of committing a criminal offense from the forensic point of view is not limited by astronomical properties: year, month, date, hours, minutes, seconds, but is considered in the whole set of relationships and relations with other circumstances of the investigated criminal offense. It can be the time associated with seasonality, with the onset of darkness or, on the contrary, the light time of the day, the time of the least number of possible witnesses, etc. [4, p. 200].

The place of committing a criminal illegal act is usually considered as an essential feature within criminal law along with the method, situation and time of committing a criminal offense. The indicated feature, according to A.A. Muzyka, T.V. Rodionova, “can assist in learning the causal potential of the corresponding behavior of a person” [16, p. 144]. Moreover, the scholars focus on the fact that clarification of the crime scene’s specifics allows establishing a causal relationship between the action and its consequences. Being an optional feature of the objective aspect of a crime’s corpus delicti, the crime scene does not directly affect the qualification of the committed, however, its certain features may indirectly affect the establishment of certain features of corpus delicti. For example, the features of the place where the crime was committed often indicate the natural character of the occurred socially dangerous consequences. And this, in turn, allows us to evaluate a certain action as one that contained an internal regularity of generating dangerous consequences [16, p. 145].

Therefore, we considered appropriate L. Brych’s statement on the need to distinguish the place of a criminal offense’s commission as an integral property of every actually committed illegal action, in par-

ticular from the point of view of the action of criminal law in space, and as the feature of a criminal offense’s corpus delicti [17, p. 267, 277]. We should also pay attention to the statement that not a specific space that has exact coordinates is recognized, as a rule, as the place of committing a criminal offense, but certain links of social and industrial or other public and social system (specific enterprises, workshops, precincts, etc.) [4, p. 199].

#### 4. Conclusion

The conducted analysis of scientific approaches to the interpretation of the situation of a criminal offense’s commission in the theory of criminal law and criminalistics, as well as the definition of its features, significance and place within the structure of criminal illegal activity and forensic characteristics, allows us to reach the following conclusions:

1) time, place and circumstances are interdependent elements of the mechanism of committing a criminal offense;

2) the situation of a criminal offense’s commission is an integral element of forensic characteristics expressed in its close relationship with other structural components of such characteristics – with the methods, time of committing illegal actions and its typical traces. The specified relationship is directly used while establishing and restoring a criminal offense, as well as while collecting relevant evidentiary information, in particular, during planning and organization of a pre-trial investigation, conducting certain procedural actions, etc.;

3) the components of the situation of a criminal offense’s commission are often so intertwined that it is impossible and inappropriate to consider them separately from each other. In such cases, it is more appropriate to cover the situation depending on its broad understanding;

4) the situation as an element of forensic characteristics should be understood as a set of information about the time-space and other conditions for the implementation of the criminal illegal plan by the offender.

#### References

1. Bezyk H. Legal aspects of the situation of committing a crime / Scientific conferences. Available online at [in English]: <http://oldconf.neasmo.org.ua/node/1356>.
1. Fries P.L. Criminal law of Ukraine. General part: textbook. 2nd ed., supplement and processing. Kyiv: Atika, 2009. 512 p.
2. Maslova O.O. The structure of the situation in which the crime was committed. *Law and society*. 2017. No. 6. Part 2. p. 158–164.
3. Parfylo I. The circumstances of the commission of the crime as a system-forming element of the forensic characteristics of falsification and circulation of falsified medicinal products. *Jurnalul juridic national: theory and practice*. 2018. No. 6. p. 197–202.
4. Dyntu V.A. The situation of the crime in the structure of the forensic characteristics of the crime. *Actual problems of the state and law*. 2011. Issue 60. p. 240–246.
5. Dyntu V.A. The crime scene as an object of knowledge. *Actual problems of the state and law*. 2013. Issue 69. p. 392–398.
6. Sheremet A.P. Forensic science: a study guide for students. 2nd edition Kyiv, 2009. 472 p.
7. Smolyaninova O.Ya. Forensic characteristics of criminal offenses related to evasion of customs payments. *Scientific Bulletin of the International Humanitarian University. Ser.: Jurisprudence*. 2018. No. 35. Volume 2. p. 97–100.
8. Budzhiganchuk Ye.Yu. The circumstances of the crime as an element of the forensic characteristics of pimp-

- ing committed by an organized group. *Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs*. 2020. No. 1. p. 238–244. DOI: 10.31733/2078-3566-2020-1-238-244.
9. Tishchenko V.V. Theoretical and practical foundations of crime investigation methodology: monograph. Odesa: Phoenix, 2007. 260 p.
  10. Vozniuk A. The time of the crime: actual problems of criminal-legal understanding. *Entrepreneurship, economy and law*. 2019. No. 3. h. 258–262.
  11. Criminal Code of Ukraine: Law of Ukraine dated 04/05/2001 No. 2341-III. *Information of the Verkhovna Rada of Ukraine*. 2001. No. 25–26. Art. 131.
  12. Dudorov O.O., Khavronyuk M.I. Criminal law: study guide / by general ed. M.I. Havronyuk. Kyiv: Vaite, 2014. 944 p.
  13. Scientific and practical commentary on the Criminal Code of Ukraine / D.S. Azarov, V.K. Hryshchuk, A.V. Savchenko and others; in general ed. O.M. Dzhuzhi, A.V. Savchenko, V.V. Chernieia. Kyiv: Yurinkom Inter, 2016. 1064 p.
  14. Fries P.L. Criminal law of Ukraine. General part: textbook. 3rd ed., add. and processing. Odesa: Phoenix, 2018. 394 p.
  15. Musyka A.A., Rodionova T.V. The importance of the crime scene for establishing a causal link between the act and its consequences. *Bulletin of the Criminal Law Association of Ukraine*. 2016. No. 1 (6). p. 141–154.
  16. Brych L. The place of commission of the crime and its importance in distinguishing the components of crimes and distinguishing them from the components of other offenses. *Bulletin of Lviv University. Law series*. 2011. Issue 52. p. 267–280.