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CRIMES AGAINST THE CIRCULATION OF OBJECTS OF CIVIL RIGHTS:
CONCEPTUAL AND THEORETICAL BASIS OF MODELING

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INTRODUCTION

Relevance of the research topic.

Currently, criminal law is being positioned with a shift in paradigms and theoretic concepts. There is no longer the classical criminal law that existed in the twentieth century. Today, criminal law is characterized by pluralism of views, a variety of concepts and theoretical constructions of new institutions, the denial of basic postulates that previously seemed inviolable (the concepts of crime and criminal responsibility, the *corpus delicti*, etc.¹). Criminal law is increasingly proposed to be considered in a broad sense, like Western European standards in a triad of crime-misconduct-offence, as a result of which it is already impossible to avoid reforming the protection of the public sphere of social relations.

All this was made possible by the fact that society entered the age of information technology and globalization processes were further developed. The era of postmodernism imposes a new method of research, including in criminal law, and criticism of modernity, along with the method of deconstruction, is the basic impetus for the large-scale modernization of public relations in the post-industrial era.² This state of affairs has both positive and negative features.

Today, one cannot but see that significant changes occurred in economic relations. New objects of civil rights appeared, the statics and dynamics of property relations became more complicated, and the property itself began to be considered as one of the types of "rights in rem". These processes cannot go unnoticed for the science of criminal law and do not affect one of its key problems - the protection of property relations. Moreover, the question can be raised in another way: is the current criminal law able to adequately respond to ongoing criminal processes in the economy and properly protect property relations from criminal encroachments? Obviously, in such

¹ See: Khilyuta V.V. Global instrumentation of criminal law. M., 2020; Khilyuta V.V. Punishment and Criminal Law Impact: Finding an Optimal Model for Countering Crime // Russian Journal of Legal Research. 2019. № 3. PP. 138-147; Khilyuta V.V. Philosophy and criminal law: raising a question // Law and education. 2019. № 5. PP. 123-129; Khilyuta V.V. Criminal misconduct: to be or not to be ? // Jurist. 2019. № 2; Khilyuta V.V. Philosophy of Globalization of Criminal Law // Russian Journal of Legal Studies. 2019. № 2. PP. 73-81; Khilyuta V.V. Crime in conditions of formation change // Law and education. 2020. № 7. PP. 18-25.

² See: Khilyuta V.V. What is the methodology of criminal law // Lex Russica. 2016. № 12. PP. 20-31; Khilyuta V.V. Prospects for the development of criminal law methodology in the postmodern era // Journal of Russian Law. 2017. № 5. PP. 88-96.

a situation, the old institutions of criminal law protection of property relations and the applied design of theft of someone else's property cannot be fully perceived today. So, if previously criminal attacks occurred mainly on corporeal forms of property, now they are aimed at incorporeal (immaterial) property benefits, sometimes of no less value than ordinary things.

All this raises the issue of the content and signs of the subject of criminal encroachment in the economy and the possibility of applying old, established dogmas (the concept of taking possession of a thing or stealing someone else's property) to new forms of property encroachment. In other words, the question is whether the theory of theft can be applied to cases of criminal encroachments on immaterial (incorporeal property).³ It should also be noted that the existing criminal law (crimes against property) is focused exclusively on the protection of things and is less aimed at the criminal law protection of property rights and the circulation of economic benefits.

For this reason, known costs and contradictions in scientific approaches to the qualification of property crimes became inevitable: from complete denial of all previous experience and attempts to once again create "fundamentally new," "ultra-modern" legal constructions to equally unsuccessful ideas for the preservation of ideas and institutions of criminal law protection of property relations. Meanwhile, the main way of criminal law protection of property relations should be free from these extremes. It is necessary to take into account both the classical concepts and categories worked out for centuries (pre-revolutionary and Soviet ideas about the theft of other people's property) and the modern realities of the development of economic relations, including the specifics of the mechanism of the functioning of crimes in the economy.

³ Criminal law at present cannot adequately solve the task of a legal assessment of attacks on incorporeal benefits: whether they should be automatically recognized as the subject of theft or whether they need to develop some fundamentally new legal qualifications. Here, the main problem is that not things, but property is the subject of theft. Things are part of a broader category - "property" and property is a collective, generalized concept, and not a single self-contained object of law. Moreover, due to the legal principle of specialization in "property" it is impossible to establish absolute real law. For example, for civilists, it is obvious that certain similarities between the legal construction of "property law" and the construction of "ownership of a thing" are not enough to put an equal mark between them. Why, then, the criminal law should equalize corporeal and incorporeal benefits within the framework of the same criminal law protection and choose a single mechanism for implementing this state of affairs.

It is obvious that in connection with the modification of the subject of criminal encroachment in the property sphere (mainly due to the inclusion of non-material benefits) today it is extremely difficult and impractical to create a single doctrine on the theft of material and intangible property benefits. Objectively existing differences in the natural properties of objects of civil rights are reflected in their legal regulation and create the prerequisites for their distinction and non-identical legal protection.

Thus, the depth and importance of the problems of combating theft raises the question of developing a mechanism for the radical transformation of criminal legislation, which cannot be reduced to fragmented innovations and requires an integrated approach - a revision of the established provisions of the criminal law in order to provide a conceptually new view of the legal regulation of economic activities in the country and the suppression of selfish crimes in this area. In this part, a hypothesis is put forward about the inconsistency of the concept of "theft" with established social relations in a socially oriented market economy and the need to develop a new theory in criminal law - the doctrine of crimes against the circulation of objects of civil rights.

Thus, the novelty of the stated study is determined by its fundamental and applied task of developing an effective concept of criminal liability for crimes in the field of economics in the context of the transformation of society and the development of modern information technologies. The solution to this problem allowed the author to model the concept of modernization of criminal liability for crimes against property and against the procedure for carrying out economic activities, which were not developed at the fundamental level in the post-Soviet space. The dissertation proposed a new theoretical model of criminal liability for crimes against the circulation of objects of civil rights. This conceptual model is being put forward for the first time in global practice of criminal liability for property crimes.

The proposed copyright doctrine on crimes against the circulation of objects of civil rights is a conceptual alternative to the existing system of crimes against property and the procedure for carrying out economic activities. It should be noted that the doctrine of crimes against the circulation of objects of civil rights could not be in-

ferred from existing legal texts or learned empirically. We can only talk about the proposal of a theoretical design (model), the most convenient and understandable one today for the theory and practice of criminal law. There are a number of difficulties and risks associated with the methodological development of the material supply, the universality of its presentation and the proper testing.

The state of scientific development of the topic of research.

The problem of improving criminal legislation on liability for crimes against property does not fall under the section of newly emerging ones. Issues of criminal law protection of property relations are constantly the subject of research by many scientists. Attempts to radically change legislation in this area have always been made. The doctrine of criminal law, and in particular its largest representatives: A.G. Bezverkhov, A.I. Boytsov, G.N. Borzenkov, V.V. Veklenko, V.A. Vladimirov, B.V. Volzhenkin, L.D. Gaukhman, S.A. Eliseev, I.A. Klepitsky, S.M. Kochoi, G.A. Krieger, N.A. Lopashenko, Yu.I. Lyapunov, P.S. Matyshevsky, A.A. Pinaev, N.I. Panov, V.I. Plokhova, E.S. Tenchov, I.S. Tishkevich, S.I. Sirota, V.S. Ustinov, P.S. Yani and others have developed fundamental provisions for criminal liability for crimes against property and rules for qualifying theft.

Various aspects of understanding the essence and general features of crimes in the field of economic activity were considered in dissertation research (for the degree of Doctor of Law) by D.I. Aminov, A.P. Gorelov, I.I. Rogov, O.G. Karpovich, I.A. Klepitsky, S.F. Mazur, N.A. Lopashenko, T.V. Pinkevich, M.V. Talan and V.I. Tyunin, T. D. Ustinov, M.Kh. Khakulov, I. V. Shishko and others. A significant contribution to the understanding of economic crime over the years was made by B.V. Volzhenkin, L.V. Golovko, G.A. Esakov, A.E. Zhalinsky, V.V. Kolesnikov, L.L. Kruglikov, N.A. Lopashenko, N.I. Pikurov, P.S. Yani and others.

Nevertheless, the degree of scientific development of the problem under consideration cannot be characterized unambiguously. Each year, a number of dissertations are defended on the topic of crimes against property and in the field of economic activity. The problem of property crime is constantly under the attention of scientists and practitioners. For many centuries, society has been asking questions about the

effectiveness of criminal law in protecting property, trying to solve the problems of preventing this type of crime in the economy. This circumstance once again emphasizes the relevance of this area of scientific research, both for theory and law enforcement practice, therefore it could be unequivocally stated that this topic of research is thoroughly developed and exhausted, but in reality it turns out that this is not quite so, for a number of reasons:

there are cardinal disagreements on many aspects of criminal law protection of ownership relations (property relations) in science of criminal law, and this global problem remains not resolved to this day (despite quite large number of scientific works on this subject);

forensic experts today fail to formulate an effective model for the protection of real and compulsory legal relations in the new economic conditions;

modern legal studies, as well as the existing concept of criminal liability on crimes against property, take the ideas of Soviet criminologists developed in the 60-s and 70-s of the twentieth century as the main source of their postulates;

the idea of dividing theft into different forms, depending on the mode of criminal assault, now requires detailed justification and revision;

the concept of "theft" and its characteristics must be subject to certain verification, since this abstract composition in the construction of crimes against property plays a central role, and the filling of its new content requires a revision of established dogmas, which today give a certain failure in the qualification of cases of encroachments on property relations of owners and non-owners that are not previously known in judicial practice;

the cornerstone of the concept of crimes against property is the resolution of the issue of the subject of criminal encroachment, in particular, the subject of theft (can cashless money and non-documentary securities, information, intellectual property objects, intangible goods, etc.);

in scientific terms (however, as in practical terms), there is an urgent social need for a theoretical study of the criminal law problems of protecting property relations in the complex, in relation to modern socio-economic conditions, the legal situation, the

criminal situation and law enforcement practice, in order to remove legal obstacles to the application of criminal law.

Thus, the doctrine of criminal law cannot currently solve the fundamental problem of adequate criminal protection of property relations, as a result of which it is not possible to formulate an effective model for the protection of real and compulsory legal relations in the new economic conditions. Criminal legislation on the design of liability for economic crimes cannot be considered immutable and established. The existing rules, based on previous postulates, are unable to give further impetus to the elaboration of the basic provisions of the concept of modernization of criminal liability for crimes in the field of the economy. Meanwhile, the development of methodological problems in the systematization of criminal law normsestablishing criminal liability for crimes against property and in the field of economic activity is the key to countering crime.

Purpose and objectives of the study.

The *purpose* of the study is to formulate the provisions of a new theory - criminal law protection of the circulation of objects of civil rights on the basis of modernization of the doctrine on the signs of theft in the context of the transformation of society and the economy from the position of adequate criminal law protection of property relations.

Research Objectives:

to formulate a conceptual idea to improve the mechanism of criminal law regulation of liability for crimes against property and against the procedure for carrying out economic activities in the context of modernization of property relations;

to identify modern trends in the transformation of property subject to criminal law protection in the context of the taxonomy of signs of theft and other means of criminal law protection of property relations and property turnover;

to carry out scientific modelling of the signs of crimes against the circulation of objects of civil rights in connection with the modification of the essential characteristics of theft and the modernization of civil circulation;

to develop a basic theoretical model of the chapter on crimes against property and circulation of objects of civil rights and, on the basis of its identified features, formulate proposals for adjusting existing criminal legislation;

to identify prospects for reforming the object and system of crimes against the procedure for carrying out economic activities in connection with the development of the doctrine of crimes against the circulation of objects of civil rights;

to identify the place of theft in the structure of crimes against property and carry out a theoretical analysis of the modern problems of criminal law protection of property relations against criminal attacks;

to show the purpose of physical, economic and legal characteristics of the object of theft (property) in the new conditions of criminal law protection of objects of civil rights and reform of the multi-layered economy in order to preserve the concept of theft and develop a new doctrine on crimes against the circulation of objects of civil rights;

to investigate the patterns of the influence of objective and subjective signs of theft on the content of its subject within the framework of legislative design of forms of theft;

to examine the contradictions and trends of existing rules for the qualification of theft and, on this basis, develop practical-oriented recommendations on the application of criminal law rules on liability for theft and other crimes against property.

Object and subject of study.

The *object of the study* is a set of tort-penal social relations that arise, change and cease in connection with crimes against property and against the procedure for conducting economic activities.

The *subject of the study* is: norms of domestic and foreign criminal law that establish liability for crimes against property and against the procedure for conducting economic activities; analytical materials, statistics, published and unpublished jurisprudence on crimes against property and economic activity; theoretical works of domestic and foreign scientists containing doctrinal provisions on criminal liability for theft and economic crimes.

Research methodology.

The basis of this work is the general scientific dialectical-materialistic method of knowledge. The use of this method was expressed in the study of legal phenomena in their development and interaction, taking into account the provisions on the social conditionality of crimes and the social conditionality of criminal law. In the course of the study, the author assumed that the concept being developed, being based on formal logic, should be based on the traditional provisions of the doctrine of the object and subject of the crime that have passed the test of criticism, but should not be disconnected from the needs of practice and be a purely dogmatic construct. The dissertation study is based on theoretical-instrumental, formal-dogmatic, comparative-legal and systemic-structural approaches of cognition, which allow you to comprehensively consider the object and subject of the study.

Theoretical basis of the study.

The *theoretical basis* of the dissertation study was the provisions of the general theory of law, civilization, criminal and administrative law, presented in the works of S.S. Alekseev, N.A. Babia, A.G. Bezverkhova, V.A. Belova, A.I. Boytsova, G.N. Borzenkova, B.V. Volzhenkina, L.V. Golovko, G.A. Esakova, A.E. Zhalinsky, I.A. Klepitsky, G.A. Krieger, N.A. Lopashenko, S.A. Markuntsova, A.V. Naumova, N.I. Pikurova, Yu.E. Pudovochkina, E.A. Sukhanova, K.I. Sklovsky, V.M. Khomich, P.S. Yani and others.

The *legal basis* of the study was the Constitution of the Russian Federation and the Constitution of the Republic of Belarus, norms of international law and foreign criminal legislation, Russian and Belarusian civil and criminal law, regulatory legal acts, law enforcement practice.

Empirical basis of the study.

The main method of obtaining scientific information was the analysis of documents and materials. There have been examined Criminal case files (more than 500) on crimes against property and economic activity (from 2001 to 2020), published jurisprudence of the Supreme Court of the Russian Federation and the Supreme Court of the Republic of Belarus (from 2001 to 2020), official statistics of the Ministry of

Internal Affairs of the Republic of Belarus and the Russian Federation, guidance letters and explanations of law enforcement agencies on the application of criminal legislation, as well as publications in the media.

Empirical data have been also collected by a survey (questionnaire) method, which allows obtaining data from a primary source. According to a special questionnaire, judges, investigators, prosecutors, researchers at universities were interviewed for law enforcement and improvement of criminal legislation in the field of economics. In total, 181 experts (126 practitioners; 55 scientific and pedagogical workers from the Republic of Belarus and the Russian Federation) were surveyed.

In addition, the study is based on the following private scientific methods: formal-logical (when studying the norms of criminal law, the practice of their application; when qualifying and delimiting theft from other crimes); statistical (when examining quantitative indicators characterizing the status and dynamics of the crimes in question); technical and legal (when identifying the features of the construction of legislative structures and documents of forensic practice); logical-semantic (when interpreting the concepts and terms used to state criminal law rules on liability for theft); systematic analysis (in the study of the characteristics of the criminal legal characteristics of crimes against property and against the procedure for conducting economic activities using the materials of investigative and judicial practice).

The application of these research methods ensured the representativeness of the research data and the reliability of the results. In addition, the reliability and validity of the results of the study is ensured by the use of special scientific methods repeatedly tested in the science of criminal law and criminology, mutual comparison of data obtained by various methods and from different sources, compliance with the requirements of representativeness and validity of the material selected for study.

Scientific novelty of research.

The dissertation is the first fundamental comprehensive scientific and theoretical study devoted to the conceptual development of the most important scientific area in legal science - the criminal law protection of real and compulsory relations. Based on the achievements of modern legal science, the applicant developed a fundamentally

new doctrine in criminal law on crimes against the circulation of objects of civil rights. The dissertation study significantly develops the domestic science of criminal law in terms of analysis of the general theoretical design of property crimes and signs of theft, their systematization and differentiation, criteria for the criminalization of socially dangerous behavior in the field of economics, rules for the characterization of crimes against property and the procedure for conducting economic activity.

Scientific novelty has:

the concept of reform of criminal legislation on crimes against property and against the procedure for carrying out economic activities, which provides a real social and economic effect in terms of improving the protection of the property interests of the State, legal entities and individuals as priority social values in the system of ensuring economic stability and national security;

provisions on the systematization of property relations and the need for comprehensive and differentiated protection of real and compulsory relations by means of criminal law, taking into account the detailing of the object (property relations) and the subject (material and intangible benefits) of criminal encroachment, objective differentiation and classification of encroachments on property relations, which will improve the state policy in the field of combating economic crime and increase its effectiveness, reduce the negative consequences of the criminal law;

comprehensive scientific modelling of signs of crimes against the circulation of objects of civil rights in connection with the modification of substantive aspects of theft and the modernization of civil circulation on the basis of the applicant's doctrine on the criminal law protection of objects of civil rights from criminal encroachments;

the formulated definition of the concept of "theft," the detailing of its features and forms (based on the peculiarities of the subject, mode of activity and criminal purpose), the substantiation of the theoretical development of the model of the chapter of the Criminal Code "Crimes against property and the circulation of objects of civil rights," which will reduce the amount of criminal repression and improve the quality of criminal law;

developed practical-oriented recommendations on the application of criminal law norms on liability for theft and other crimes against property, which optimizes the criminal legal fight against property crimes and ensures the development of uniform approaches in law enforcement practice in solving qualification tasks and making model decisions in the new socio-economic conditions;

the proposed system of measures to reform the facility and the system of crimes against the procedure for carrying out economic activities in connection with the development of the doctrine of crimes against the circulation of objects of civil rights, formulated criteria for criminalizing socially dangerous acts in the field of economic activity on the same basis and proposed measures for the liberalization of economic criminal legislation, which may indicate the reality of steps to "decriminalize business" and humanize criminal legislation in the economic sphere.

Provisions for thesis defense.

1. In the context of reforming economic relations, the existing doctrine and the system of crimes against property do not reflect the complex model of criminal law protection of property relations (real and property rights in property turnover).

Comprehensive criminal law protection of property relations is possible only on the basis of the differentiation of the system of crimes against the property itself in the framework of detailing the doctrine of theft and other property encroachments, which is a fundamental task for the science of criminal law and involves solving practical tasks to protect property and the protection of objects of civil rights from criminal encroachments.

The chapter of the Criminal Code should be presented in a new version and called "Crimes about property and the circulation of objects of civil rights." This is because the criminal law protection of property relations does not meet the realities of society, political life and the level of development of socio-economic relations, due to the fact, that both real and compulsory relations should be subject to legal protection.

The composition of the crimes in this chapter should be structured on the basis of three groups of crimes: (a) theft; b) intentional or negligent destruction or damage of property; c) crimes about the circulation of objects of civil rights. The differentia-

tion of the system of crimes against property and the circulation of objects of civil rights implies that the object of the crime (material and non-material benefits), the method of action (capture and acquisition, use, alienation, evasion) and the other possible goal (enrichment and extraction of property benefits).

2. The right of ownership in the classical sense is adapted to regulate relations about things, and it is impossible to apply most of the rights of ownership to incorporeal property due to the lack of material shell for such objects. In this regard, the doctrine of criminal law should revise the final approach of criminal protection of corporeal (material) and incorporeal (non-material) property benefits.

The norms on crimes against property in their original (current) state protect and should protect only the statics of property relations, since property relations are protected within the framework of the basic doctrine of crimes against property (theft of someone else's property, its destruction or damage, appropriation of found property, etc.). In turn, the norms of the criminal law on property crimes should be systematized into norms-prohibitions that protect the statics of property relations, and norms, focused on protecting the dynamics of property relations, due to the turnover of property benefits (crimes against the circulation of objects of civil rights).

3. The prerequisites for the formation of the doctrine of crimes against the circulation of objects of civil rights indicate that as property relations developed and became more complicated, socially dangerous acts began to appear, which consist in the extraction of property benefits, but are not associated with an attack on a specific "corporeal thing." In the existing paradigm of crimes against property, only the "corporeal thing" can be the subject of the crime, since real property cannot arise on any other property. A separate subsystem should be created for the criminal law protection of "incorporeal things" facilities, since crimes against property are designed only for the protection of "corporeal things."

Crimes against the circulation of objects of civil rights - a new direction of criminal law protection of public relations. Legal prohibitions aimed at protecting the dynamics of property relations related to the circulation of property goods are aimed at comprehensive protection of property relations. Crimes against the circulation of ob-

jects of civil rights are intentional acts committed in the field of circulation of objects of civil rights, related to the unlawful acquisition, use, alienation of objects of civil rights or evasion of obligations in order to obtain property benefits and entailed causing damage in a significant amount in the absence of signs of theft.

4. The institutionalization of the concept of property crimes raises the question of abandoning the outdated Soviet theoretical heritage of crimes against property and the creation of a new modern criminal law doctrine for the protection of real and compulsory rights. This is due to the fact, that the Soviet concept of "theft of someone else's property" was designed to solve completely different institutional and social problems than today. Therefore, old doctrinal constructions cannot be universal and must be revised.

5. The reform of economic relations raises the question of revising the object and system of crimes against the procedure for carrying out economic activity. The current Chapter 22 of the Criminal Code of the Russian Federation by inertia includes two blocks of criminal encroachments: a) crimes against the established procedure for conducting economic activity (art. 169, 170, 170², 171, 171¹, 171², 171³, 171⁴, 172, 172¹, 173¹, 173², 174, 174¹, 175, 181, 184, 185⁵, 186, 187, 189, 190, 191, 191¹, 192, 193, 193¹, 200¹, 200², 200³, 200⁴, 200⁵ of the Criminal Code of the Russian Federation); b) crimes against property interests of entities engaged in their activities in economic turnover (art. 170¹, 172², 176, 177, 178, 179, 180, 183, 185, 185¹, 185², 185³, 185⁴, 185⁶, 194, 195, 196, 197, 198, 199, 199¹, 199², 199³, 199⁴ of the Criminal Code of the Russian Federation).

Crimes against the procedure for carrying out economic activities encroached on the main link in the mechanism for regulating public relations in the economy - economic activity. Today chap. 22 of the Criminal Code of the Russian Federation does not have a single object of crime, because the individual acts contained in this chapter lie outside its limits (art. 169, 184, 189, 190 and 2005 of the Criminal Code of the Russian Federation).

The chapter of the Criminal Code on crimes against the procedure for carrying out economic activities should contain only those offences that prohibit the unlawful

conduct of entities carrying out various actions (economic operations) related to the conduct of business and economic activities. Such activities may not contain an element of obtaining direct property benefits at the expense of another person and his property benefits.

6. In view of the fact that civil turnover is a legal form of economic turnover that regulates the process of transferring property and subjective rights of participants in civil law relations, criminal law should protect public relations on the proper transition of material and non-material property benefits of participants in these legal relations and establish liability for violation of the rules for conducting activities in economic turnover.

The object of crimes against the ownership and the circulation of objects of civil rights should be property relations, that is, relations associated with the ownership of property to a certain person, as well as related to the defense of property benefits. Thus, criminal law protection should be subject not only to material, but also to compulsory relations, since prior offenses are aimed not only at the thing itself (as a material substrate), but also at numerous rights, which in most cases are not real.

7. The classical approach to the subject of crime only as the subject of the material world unreasonably narrows the scope of the use of this right of the fourth category in identifying new forms of general dangerous deviation, where the object of criminal encroachment is exclusively non-material goods. This situation in criminal law protection is particularly evident in the modern practice of the circulation and use of property rights in market conditions of economic activity. Therefore, corporeal (material) and incorporeal (non-material) benefits must be recognized as the subject of the crime, for which social relations arise and the influence on which the perpetrator acts as a criminal offense.

Accordingly, the subject of encroachment in theft as a basic doctrine of a crime against property can be exclusively a thing, and other non-material benefits cannot be the basis of the subject of criminal encroachment in the commission of theft, since they are aimed not at taking possession of other people's property, but at obtaining property benefits. Attempts to mechanically transfer the provisions of economic

theory on property to the sphere of coal law outside the context of civilization give rise to uncertainty and an infinite transformation of the subject of criminal encroachment by expanding the concept of theft.

8. In the context of globalization of law and its digitalization not only objects of civil rights as such, but also to the very circulation of these rights should be subject to legal protection. Based on this, it is stated that objects of civil rights can be subjected to various effects: (a) theft, when illegal seizure of things, money, documentary securities occurs with the simultaneous movement of these material goods in space and their deprivation by the owner or other owner; b) destruction or damage, appropriation of found property; c) unlawful use, acquisition, alienation, evasion of obligations, i.e. when there is no criminal seizure of a material object, but there is another extraction of property benefit by replacing the owner or other owner of the property (we are talking about cashless funds, non-documentary securities, the results of work or services, property rights), or unlawful enjoyment of civil rights (intellectual property, information) where the objects of civil rights remain with the owner or other owner and are at the same time with the perpetrator.

When determining the subject of crimes against the circulation of objects of civil rights (as a structural element of the element of encroachment), it should be assumed that the material sign of property must be correlated not only with objects of the material world with physical properties, but also with a thing and its place in the system of objects of civil rights. For this reason, it was proposed that non-material goods should be considered the subject of crimes against the circulation of objects of civil rights.

The specificity of criminal attacks on cashless funds and without documentary securities requires a review of the established and folded system: "crimes against property," because criminal encroachments of property can be directed not only to property rights as such, but also to other rights. Property rights cannot be the subject of theft, they cannot be stolen, but they can be illegally acquired, which requires a different approach to modeling the signs of such property crimes and their qualifica-

tion. From this point of view, it is necessary to deal with the unlawful acquisition of property rights of the owner or other legitimate owner.

In the event of a criminal encroachment on property rights, the perpetrator does not carry out the act of physically moving foreign objects into his own property, but gains property benefits as a result of the unlawful acquisition of property rights, their use for his own purposes, illegal alienation or evasion of obligations. The illegal acquisition of objects of civil rights is not expressed in the seizure of someone else's property, but in the illegal transfer of objects of civil rights into the possession of the perpetrator. Having acquired various rights, the actions of the perpetrator are aimed at causing damage to the owner or another legitimate owner and are characterized by the extraction of property benefits. The facts of taking possession of documents of a property nature should be regarded as infringement of property rights.

Criminal encroachment on intellectual property objects is significantly different from theft of material objects, because intellectual property rights do not depend on the right of ownership of the material carrier (thing), in which the corresponding results of intellectual activity or means of individualization are expressed. Therefore, in case of illegal use (acquisition, etc.) of such results, the rights to them should not be subject to protection. It is advisable to consider the unlawful violation of property rights to objects of intellectual property as a crime against the circulation of objects of civil rights, because the criminal law should protect not only the material carrier from criminal influence (within the framework of the doctrine of crime against property), but also the information component of the invention, utility model or industrial design. The assignment of machine information, including software, unauthorized copying of information, possession of information that constitutes bank or commercial secrets, etc., is not considered as theft because illegal receipt of information does not lead to a decrease in its volume from a legitimate user, which cannot be the case with the physical seizure of someone else's property. Information is the subject of crimes against property benefits and, where the offender is not subject to special criminal liability, such acts for obtaining property benefits should constitute crimes against the circulation of objects of civil rights.

9. Crimes against the circulation of objects of civil rights (property benefits) can be committed in various ways, the essence of which is not to seize someone else's property, but to cause damage in order to gain property benefits through the unlawful use of other people's property or other objects of civil rights, their illegal acquisition, alienation or unlawful evasion of obligations.

Recognition as the object of theft of property only requires a review of such features as "right to property," "actions of a property nature," "property benefit" in the context of their relationship with the concept of a thing and its varieties in the structure of objects of civil rights. Data on signs of property crimes are constitutional signs of crimes against the circulation of objects of civil rights.

The right to property is a criminal legal fiction that cannot be attributed to the object of theft. The content of the concept of "acquisition of the right to property" does not correspond to the content of the right to property as a subjective right of a person, therefore the current legislative formulation - "acquisition of the right to property" is devoid of any meaning in the context of the concept and signs of theft and should be excluded from its features. The acquisition of the right to property is not connected with its physical seizure (seizure, circulation), but is an independent illegal act in the system of crimes against objects of civil rights.

It is proposed to supplement the chapter of the Criminal Code on crimes against property and the circulation of objects of civil rights with new criminal legal prohibitions: 1) illegal use of objects of civil rights (intentional illegal gratuitous use of other people's property or other objects of civil rights in order to obtain property benefits, resulting in significant damage); 2) illegal acquisition of objects of civil rights (intentional illegal gratuitous acquisition of objects of civil rights in order to obtain property benefits, which entailed causing damage in a significant amount in the absence of signs of theft); 3) illegal alienation of objects of civil rights (intentional illegal gratuitous alienation of someone else's property or other objects of civil rights in order to obtain property benefits, resulting in significant damage); 4) unlawful evasion of obligations (deliberate unlawful evasion of obligations, as well as imposing the burden

of their expenses on another person in order to obtain property benefits, resulting in significant damage).

A distinctive characteristic of the system of crimes against the circulation of objects of civil rights is the method of criminal encroachment and the mechanism for causing damage to the owner or another owner. Such crimes are committed in the system of civil traffic and have a property character, as a result of which they encroach on property relations regarding the transition of material and non-material benefits; the subject of crimes are objects of civil rights (property benefits); acts involve significant damage, are committed intentionally and have the purpose of obtaining property benefits.

10. Damage in crimes against the circulation of objects of civil rights should be defined as material losses caused to subjects of economic relations by restricting or depriving them of the ability to satisfy their material interests (to benefit) from the economic turnover of objects of civil rights.

Property benefits cannot be the subject of theft, but there is a constructive sign of crimes against the circulation of objects of civil rights. The property benefit is also not the subject of a crime, since a person cannot influence it, but is a result that is formed by certain actions with objects of civil rights. Thus, property benefits are property-related actions performed by a person (both the victim and the perpetrator) with objects of civil rights and aimed at extracting property benefits by saving his own property fund, recovering profit or getting rid of material costs.

11. Theft is a delict of an absolute nature, where the wrongfulness of an act consists in taking possession of someone else's thing and causing damage to the owner or other owner. The definition of theft should be preserved exclusively as an attack on someone else's thing, thereby protecting the static nature of the thing on the right of ownership or possession of certain subjects.

Criminal encroachments on objects of civil rights (with the exception of things) should be removed from the system of encroachments constituting theft, and form an independent group of crimes covering acts against property relations, and formulated according to a different model of criminal law prohibition, different from the seizure

of property. In this case, there is a different mechanism for committing a crime than in theft. While classical theft is characterized by the movement of things in space by taking possession of it and joining someone else's illegal possession, in the event of a criminal attack on non-material goods, there is no influence on the material shell, but a mechanism for obtaining property benefits from illegal actions with non-material goods.

Legislative definition of theft has to be formulated as follows: "Theft is the deliberate illegal gratuitous taking by someone else's property by stealing, robbery, extortion, fraud, breach of confidence, assignment, use of the computer equipment which caused damage to the owner and directed to enrichment of the guilty person or other persons due to physical possession of property".

12. The criminal law doctrine in modern conditions should detail the physical, economic and legal characteristics of the object of theft due to the development of a multidimensional economy of a socially oriented type.

The subject of theft can only be a thing that has individually defined characteristics that condition the establishment of "right in rem" regime.

Criminal attacks on real estate in most cases do not infringe on immovable property as a thing, an object of material world with certain physical characteristics and legal status, but on a set of property rights owned by its owner or another legitimate owner, the possession of which is the purpose of committing a crime. Therefore, real estate can be the subject of any form of theft, as well as illegal use or acquisition of property rights with the simultaneous extraction of property benefits. Accordingly, criminal infringements may occur not only with respect to the right of ownership of immovable property, but also with respect to the separate rights to real estate - the right of use and possession.

The characteristics of the object of theft in market conditions are determined by the value of the goods (their price); hence, the object of theft is recognized as such a thing whose value is expressed in price or measurable. The economic characteristic of the object of theft is determined not only by the consumer and exchange value of the thing, but also by its ability to be the subject of civil turnover. The subjective attitude

of a person to a thing can serve as a criterion for assigning property to the category of valuable things due to the special importance of property. From these positions, the value of property should be determined not only by its price, expressed in monetary form, but also by the ability to satisfy the social and individual needs of a person.

Natural objects can be the subject of theft and crimes against the loss of civil rights objects.

Possession of property seized or restricted in civil circulation must be recognized as theft of other persons' property and be regarded as a crime against property, except in cases where the theft of objects seized or restricted in civil circulation is already subject to independent criminal liability. At the same time, the value concept of assessing the economic characteristic of the object of theft cannot be applied to objects withdrawn from civil circulation, because in this case the cost (monetary) of such property is not important, since the very fact of encroachment on such objects is criminal.

The property is alien to the perpetrator, who has neither the real nor the alleged right to the property, and such property belongs on the right of ownership (or otherwise) not to the owner, but to the other person. This property is the object of someone else's possession, while the seized property is in the actual possession of a certain person, and not the perpetrator.

The criminal law should protect not only the right to property, but also the actual possession of property. From this point of view, the purpose of criminal law on property crimes is to prohibit harm to both the interests of owners and owners of property. By committing an unlawful act of taking possession of another's property, the guilty person commits theft as such, that is, seizes another's property in a prohibited way, and the criminal consequence of causing damage (to the owner or other owner) is secondary to the criminal act of assault.

The object of theft cannot be found, abandoned, accidentally showing up property in the face. Assignment of abandoned things (left by the owner in a place reliably known to him or for a short time; has identification signs of belonging) must form the theft of someone else's property. Theft of lost, forgotten things will occur if the cul-

pruit, when appropriating the thing, reliably knows who owns the property to be appropriated, or has reasonable grounds to believe where the owner of the thing is and that he can return for it. The external conditions, environment, position and properties of a thing may indicate that it is not lost by its owner, but left or forgotten by him.

13. Objective and subjective signs of theft have a direct connection with the subject of criminal encroachment and largely determine the precedence of criminal law protection of property relations.

The method of theft should be related to the subject of the criminal offender and correlate with it. The criminal mode of action in theft cannot be linked to the extraction of property benefits. In the case where the method of activity consists in the extraction (obtaining) of property benefits, this is a crime against the circulation of objects of civil rights.

Taking possession is the act of seizing someone else's property, transferring it to his physical possession against the will and consent of the owner of the property or its legal owner. Taking possession consists of actions on: a) the seizure of someone else's property, that is, the extraction, exclusion, separation of the property of the proprietor or its owner and its introduction into its property turnover; b) the conversion of someone else's property to the criminal possession, that is, when the owner himself transfers the property to the perpetrator, trusting him, with or without giving authority over the property, under the influence of deception or threats.

The moment of completion of the theft should be determined by the moment of seizure of someone else's property by the guilty, regardless of whether he had a real opportunity to use or dispose of the stolen. If the owner of the property during the theft loses real dominance and control over his thing, while the culprit takes possession of someone else's property, then there is a final theft.

Reducing the possession of stolen property to the limits of the real possibility to use and dispose of the stolen one gives rise to a wide question about the source for subjective perception (judicial interpretation) of the situation and levels an objective criterion for the moment of the end of the crime. The time of completion of the crime should be uniform for all forms of theft.

The illegality and gratuity of theft are binding constructive signs of the objective side of theft, and they should not be excluded from its definition. When determining the gratuity of theft, along with the sign of insufficient equivalence, one more thing must be taken into account - whether the subjective rights of the owner or another owner of the property are violated in the equivalent seizure of property.

Damage in theft should be calculated according to the value of the theft of property (the monetary expression of the value is the price), and the loss of profit and other possible types of material harm are not included in the concept of damage due to the fact that the mechanism of harm to property relations as an object of criminal law protection is determined by the subject of the crime. In this part, it is necessary to design all forms of theft according to the type of material elements of crimes, including in them as socially dangerous consequences of real property damage - direct positive material damage caused to proprietor or another owner in the form of loss of property.

A selfish goal cannot be a systemically important sign of theft, as it does not indicate the result to which the perpetrator seeks to commit an act of theft. For a more complete definition of a crime, the nature of the perpetrator's actions and the motive for his conduct must be decisive. Therefore, from the point of view of subjective signs of theft, its purpose should indicate that such an act is aimed at enriching the perpetrator or other persons. Such an outline of the purpose of theft, (theft is aimed at enriching the perpetrator or other persons by physical possession of property) can serve as one of the clear criteria for distinguishing between theft, and other mercenary crimes.

In the chapter on crimes against property and the circulation of objects of civil rights, it is advisable to highlight a special criminal law norm that would provide for responsibility for the unlawful seizure or alienation of someone else's property in the absence of the purpose of enrichment (Article: Illegal actions with property: "Illegal gratuitous alienation or seizure in a significant amount of someone else's property in the absence of selfish motives").

14. When theft, is committed, the direct impact on the object can only be physical, and it is inherent only in such property crimes that are committed in the form of an act. The object of theft, was interrelated with the objective side, since criminal acts were committed against the object and direct criminal influence was carried out on it.

From these positions, we propose to consider that: theft - secret seizure of property; robbery - open non-violent possession of property; violent robbery - possession of property involving the use of physical violence; extortion - taking possession of property by means of coercion involving the threat of violence, destruction or damage of property, restriction of the rights, freedoms or legitimate interests of the victim or his relatives, disclosure of information that they wish to keep secret, or other actions (inaction) that the victim fears; fraud - taking possession of property by deception; abuse of trust - taking possession of property by intentionally using a person's relationship of trust, as well as the rights and opportunities granted to him to the detriment of the perpetrator, or owner of the property; - embezzlement taking possession of property entrusted to the perpetrator, as well as using official powers; theft using computer technology - seizure of property by modifying the results of automated processing of computer system data.

Theoretical and practical significance of the study.

The *theoretical significance* of the study is determined by the fact that it is devoted to the development of a new scientific direction - the theory of criminal law protection of objects of civil rights from criminal encroachments, conceptually develops one of the current scientific directions - the theory of qualification of theft, and the mechanism of comprehensive protection of property from criminal encroachments, and also contains fundamentally new results, the totality of which is a major achievement in the science of criminal law.

The significance of the results obtained by the author of the dissertation for the development of legal science is determined by the fact that it forms in its totality a new (author's) concept of reforming criminal legislation on crimes against property and against the procedure for carrying out economic activities, they significantly develop the established doctrine of criminal law protection of property relations and

economic activities from criminal encroachments and contribute to the creation of a relatively independent private criminal legal theory of crimes against the circulation of objects of civil rights.

The provisions of the dissertation study significantly deepen theoretical ideas about the concept, signs of theft and their transformation in the era of globalization and the information society, the methods of committing theft and property crimes in the economy, the basics of identifying and modeling the signs of crimes against property and against the procedure for carrying out economic activities in the conditions of modernization of the doctrine of theft, contribute to the development of criminal law theory in general.

The *practical significance* of the study is determined by the possibility of using the provisions, conclusions and recommendations formulated in it for the further scientific development of the concept of modernization of criminal responsibility in the field of the economy and in the formation of the State's criminal law policy. The main provisions formulated provide a methodological basis for improving the norms of criminal law and improving the legislative mechanism for bringing to criminal responsibility persons who commit unlawful acts in the property sphere.

The practical-oriented results of the study concerning the qualification of theft , based on the characteristics of the subject of the crime, objective and subjective elements of theft, its forms, can serve as initial theoretical prerequisites and actual legal material for legislative activities to improve criminal law, other laws and regulatory legal acts. The author has developed a wide range of practical recommendations on the characterization of crimes against property (forms and types of theft, other crimes against property not involving theft) and against the procedure for carrying out economic activities, changes and additions aimed at improving criminal legislation. In addition, numerous practical recommendations on the characterization of crimes in the field of economics are posted in information and legal systems: Consultant-Plus (Russian Federation, Republic of Belarus), Register, Etalon, Normativka.by (Republic of Belarus) and other databases.

Provisions of the work aimed at resolving qualification tasks when establishing signs of theft and other crimes against property and the procedure for carrying out economic activities can be used in the law enforcement activities of investigative and prosecutorial bodies, as well as in judicial interpretation of the norms of the current legislation, explanation of their significance by the Plenum of the Supreme Court of the Russian Federation and the Plenum of the Supreme Court of the Republic of Belarus.

The dissertation material can also be widely used in determining the directions and objects of further scientific research in the field of combating crime in the field of economics, the qualification of crimes against property, in research activities and in the educational process when teaching courses in criminal law and criminology, special courses in criminal law topics, as well as in the work on improving the skills of law enforcement and judicial systems. The dissertation formulated specific problems of further scientific development of the fundamental doctrine of theft, directly arising from the results of this study.

Practical evaluation of the dissertation and information on the use of its results. The conceptual and theoretical provisions set forth in the dissertation were approved by the author at: the Russian Congress of Criminal Law ("Systematics in Criminal Law" (Moscow, 2007); "Modern criminal policy: finding the optimal model" (Moscow, 2012); "Criminal law in the era of financial and economic changes" (Moscow, 2014); international conferences: "Criminal law: a strategy for development in the 21st century" (Moscow, 2007, 2012, 2013, 2014, 2015, 2016); "Current problems of criminal and penal enforcement law" (Novokuznetsk, 2009); "Moral, ethical and religious foundations of criminal law" (Yekaterinburg, 2009); "Russia is a legal state: problems and ways of formation" (Derbent, 2010); "State anti-criminal policy in the Eurasian space" (St. Petersburg, 2010); "Constitutional and legal regulation of public relations in the Republic of Belarus and other European States" (Grodno, 2011); "Problems of Russian legislation: history and modernity" (Togliatti, 2011); "Strategy for the socio-economic development of society: managerial, legal, economic aspects" (Kursk, 2011); "Problems of improving law enforcement in the field of

combating crime and corruption" (Minsk, 2011); "Organized crime in the 21st century: problems of theory and practice" (Moscow, 2011); "Problems of combating crime and training for law enforcement agencies" (Minsk, 2011); "Problems of law-making and enforcement in Central and Eastern European States" (Grodno, 2012); "Criminal legislation in the 21st century: the modern state, problems of interpreting and applying its provisions taking into account the tasks of further strengthening the economic order" (Nizhny Novgorod, 2012); "Current problems of countering corruption crimes" (Khabarovsk, 2013); "Procedural, forensic, criminal law and criminological problems of liability for serious and particularly serious crimes in Russia and Germany" (Kazan, 2013); "Contemporary problems of criminal law, criminal procedure and forensic science" (Krasnodar, 2013); "Current problems of criminal liability" (Kharkiv, 2013); "Criminal procedure and forensic means of ensuring the effectiveness of criminal proceedings" (Irkutsk, 2014); "Activities of state authorities to counter organized crime and corruption" (Yekaterinburg, 2014); "Problems of law-making and law-enforcement practices in the context of the development of the information society" (Grodno, 2015); "Theoretical and applied aspects of modern legal science" (Minsk, 2015); "Improvement of criminal legislation and its application in modern conditions" (Minsk, 2016); "Countering false entrepreneurship and illegal business activities" (Minsk, 2017); joint Russian-German round table: "Crimes in the field of economics: Russian and European experience" (Moscow, 2010, 2014, 2015, 2016, 2017); Scientific and practical conferences: "Countering economic crime: problems of theory and practice" (Minsk, 2015); "Problems of application by courts of legislation on liability for fraud, misappropriation and embezzlement" (Moscow, 2015), etc.

The main provisions of the dissertation were reported and discussed at the Scientific Council of the State University "Scientific and Practical Center for the Strengthening of Law and Order of the General Prosecutor's Office of the Republic of Belarus" at the Department of Criminal Law, Criminal Procedure and Criminology of Yanka Kupala Grodno State University.

A number of monographic works of the author on the topic of research are included in the minimum program of the candidate exam in the specialty "12.00.08 - criminal law and criminology; Penal enforcement Law" of the Higher Attestation Commission of the Republic of Belarus, St. Petersburg State University; in the curriculum in the academic discipline "Criminal Law of Russia. General and Special Part of Moscow State University and other universities. The results of the study were introduced into the practical activities of law enforcement and judicial authorities (16 implementation acts and 2 letters), into the educational process (15 implementation acts and 1 certificate), used (2 implementation acts), and can also be used to improve legislation and practice (1 implementation certificate and 1 letter).

Various aspects of the fight against crimes against property and the qualification of theft were investigated by the author within the framework of the Research Institute: "Forensic characteristics of credit and banking crimes" No GR 2001878 (2001), funded by the Ministry of Education of the Republic of Belarus (the dissertation was the head of the Research Institute); "Bankruptcy as a mechanism for redistribution of property: conceptual and theoretical foundations of counteraction" No. GR 20123260 (2012), funded by the Belarusian Republican Foundation for Basic Research (the dissertation was the head of the Research Institute) "Conceptual and theoretical problems of the transformation of the doctrine of the doctrine of criminal law" No. GR 20171128 (2017), funded by the Belarusian Republican Foundation for Basic Research (the dissertation is the head of the Research Institute) "Development of scientific and practical recommendations on combating the most dangerous types of crimes in connection with the phenomena of globalization" No. GR 2007353 (2007) under the "Theoretical and methodological foundations for the sustainable information development of the socially oriented economy of the Republic of Belarus", code "Economics and society 4.12" (the author of dissertation was the executor of the stage).

By Presidential Order No. 265po of 17 December 2012, the author was awarded a scholarship by the Head of Belarus "for the development of new methods for the qualification of theft and other crimes against property, the creation of a methodology

for investigating fraud in the field of banking, and the development of a new concept for the modernization of criminal legislation in the field of the economy."

The structure and scope of the dissertation.

The dissertation consists of an introduction, four chapters, fifteen paragraphs, a conclusion, a bibliographic list and annexes.

MAIN CONTENT

The first chapter of the dissertation "**Conceptual and theoretical problems of transforming property relations and creating a new doctrine on crimes against the circulation of objects of civil rights**" consists of three paragraphs, which raises the question of the need to develop a new scientific direction that would ensure adequate protection of property relations from criminal encroachments.

In the first paragraph *"State of development of the problem of protection of property relations in criminal law research and ways to solve it"* an analytical review of the literature on the topic of research, including the analysis of foreign sources of information, is carried out and the scientific task set is justified. The author states that on many aspects of criminal law protection of ownership, (property relations) in science of criminal law there are cardinal disagreements and this global problem remains not resolved to this day (despite quite large number of scientific works on this subject). Unfortunately, the majority of today's works in the field of criminal law protection of ownership, (property relations) have noncritical and axiological character therefore, researchers do not manage to formulate effective model of protection of real and obligations legal relationship in new economic conditions. In scientific terms, the problem posed (criminal law protection of property relations in economic circulation) must be assessed as very relevant, new and fundamental, since changing socio-economic conditions requires the development of scientifically sound recommendations on the correct application of criminal law norms and proposals for improving the legal mechanism for ensuring the security of property and economic activity in modern conditions.

The second paragraph *"Prerequisites for the formation of a doctrine on crimes against the circulation of objects of civil rights"* raises the question of comprehensive criminal law protection of property relations, the circulation of objects of civil rights and the procedure for carrying out economic activities. It is proved that property crimes (in a broad sense) are closely related to property relations and the procedure for the movement of objects of civil rights (property goods). Therefore, the current chapter 22 of the Criminal Code of the Russian Federation should set itself the task of protecting precisely the procedure for carrying out economic activities.

The construction of a single simulated chapter of the Criminal Code on crimes against property and the circulation of objects of civil rights is based on several criteria. One of them is the division of legal relations into absolute and relative, that is, in a sense the contrast between real and compulsory legal relations. However, criminal law in its pure form today does not protect material relations, but only speaks of encroachments on property. In this context, the question arises: can criminal law continue the line of its autonomy regarding the understanding of modern property relations and their protection? If this is so, it turns out, however, a rather strange construction, since binding relations are not protected in a complex, there is no integral system of their criminal law protection, as there is no such system in regard to property relations, but only property.

Another criterion is based on the opposition of corporeal and incorporeal benefits. The problem is that at present, both corporeal and incorporeal goods are involved in circulation, but there can be no property right to incorporeal goods, so the existing doctrine of crimes against property does not work here. Hence, follows the premise that only property objects of civil rights are the subject of crimes against the circulation of objects of civil rights. Therefore, criminal encroachment can occur both on the static of property relations - property, and on their dynamics - turnover, and not only material, but also intangible property benefits.

In the third paragraph *"Causing property damage without signs of theft as a prototype of the doctrine of crimes against the circulation of objects of civil rights"* the idea of designing a new doctrine in criminal law - protection from criminal en-

encroachments of the circulation of objects of civil rights - is substantiated in detail. The doctrinal provisions of this doctrine (crimes against the circulation of objects of civil rights) are disclosed, specific signs of new crimes are formulated and the system of property encroachments in the economy is differentiated by the object, method and purpose of the crime. Based on the characteristics of criminal encroachments on objects of civil rights, the need for inclusion of Article 165 of the Criminal Code of the Russian Federation from the norms of the criminal law on crimes against property and the rules for qualifying new crimes in the field of circulation in economic benefits are formulated.

The comprehensive development of the idea of transforming the signs of property crimes in the context of the modernization of economic relations allowed the author to further create a holistic concept of reforming criminal legislation on crimes against property and the procedure for carrying out economic activities and an improved model of the chapter of the Criminal Code "Crimes against property and the circulation of objects of civil rights."

The second chapter **"Place of crimes against the circulation of objects of civil rights in the system of crimes against property and the procedure for carrying out economic activities"** aims to develop a new conceptual and theoretical doctrine on crimes against the circulation of objects of civil rights based on the differentiation of crimes against property and the procedure for carrying out economic activities taking into account the transformation of the object of theft and consists of two paragraphs.

In the first paragraph *"The Institute of Crimes against Property: Conceptual Prerequisites for Reforming the Object and System"* the problems of protecting property from criminal encroachments in the historical, legal, comparative and functional aspects are discussed. The object of criminal encroachment is analyzed in detail, and property is considered through the prism of legal relations. The author suggests that the criminal law protection of property relations should be considered among the fundamental tasks. It also proposes conceptual ideas regarding the doctrine of crimes against property and the further improvement of criminal legislation in this direction.

In particular, it is noted that in the conditions of reforming economic relations, the existing dock and the system of crimes against property do not reflect the complex model of criminal law protection of property relations (property and liability rights in property circulation). In this regard, existing criminal legislation and law enforcement practice do not define an optimal measure of criminal law to ensure property order in the economy, taking into account the subject of criminal assault and the methods of committing crimes.

Comprehensive criminal law protection of property relations is possible only on the basis of the differentiation of the system of crimes against the property itself in the framework of detailing the doctrine of theft and other property encroachments, which is a fundamental task for the science of criminal law and involves solving practical tasks to protect property and the protection of objects of civil rights from criminal encroachments.

In the second paragraph *"Prospects for reforming the object and the system of crimes against the procedure for carrying out economic activities in connection with the development of the doctrine of crimes against the circulation of objects of civil rights"* the author analyzed the main theoretical problems of crimes against the procedure for carrying out economic activities, revealed the specifics of economic activities themselves and gave its systematization in relation to property relations and the procedure for the circulation of objects of civil rights. It is stated that the ongoing reform of the object, subject and system of norms on crimes against property and the procedure for carrying out economic activities should have as its main task the detailed development of specific criminal law norms with the aim of creating an effective legal regulation mechanism that ensures the effective functioning of economic institutions and respect for the rule of law in the implementation of property circulation of objects of civil rights. In view of the changes that have taken place in the economy, the Criminal Code should also transform the existing crimes against the procedure for conducting economic activities based on the modeling of new signs of these crimes.

The chapter of the Criminal Code on crimes against the procedure for carrying out economic activities should contain only those offences that prohibit the unlawful conduct of entities carrying out various actions (economic operations) related to the conduct of business and economic activities. Such activities may not contain an element of obtaining direct property benefits at the expense of another person and his property benefits.

The third chapter "**Fundamentals of identification and modeling of signs of crimes against the circulation of objects of civil rights**" is one of the central in the dissertation and consists of six paragraphs.

The first paragraph "*Influence of civil circulation on the criminal law protection of property relations*" justifies the provision, the essence of which is that criminal law must protect public relations on the proper transfer of material and intangible property benefits of participants in civil relations, and on the other hand, establish responsibility for violation of the rules for conducting activities in economic circulation (in the field of economic activity).

Prospects for the development of civil circulation suggest that the open list of objects of civil rights will be constantly replenished. This is due to objective global processes: the so-called problem of limited resources, the general dynamic development of scientific and technological progress, an increase in production and informatization, and greater competition. These factors not only allow, but also require involving in civil circulation all new objects. Such trends bring to the fore the turnover of property rights, which is already clearly visible in the legislation of a number of foreign countries.

In the second paragraph "*Transformation of the doctrine of the subject of crime in modern criminal law in connection with the reformation of property relations*" it is stated that the classical approach to the subject of crime only as a subject of the material world unreasonably narrows the scope of the use of this right of the fourth category in identifying new forms of general dangerous deviation, where the object of criminal encroachment is exclusively non-material benefits. This situation in criminal law protection is particularly evident in the modern practice of the circulation and use

of property rights in market conditions of economic activity. Therefore, the object of the crime should be recognized as corporeal (material) and incorporeal (non-material) benefits, for which social relations arise and the influence on which the perpetrator acts as a criminal offense.

This leads to the hypothesis that the subject of encroachment in theft as a basic doctrine of the crime of property may be only a thing, and other intangible benefits cannot be the basis of the subject of criminal encroachment in the commission of theft, since they are aimed not at taking possession of other people's property, but at obtaining property benefits. Attempts to mechanically transfer the provisions of economic theory on property to the sphere of criminal law outside the context of civilization give rise to uncertainty and an infinite transformation of the subject of criminal encroachment by expanding the concept of theft.

In the third paragraph "*Objects of civil rights as a special subject of crime: raising a problem*" it is stated that not only objects of civil rights as such should be subject to legal protection, but also the very circulation of these rights. Based on this, it is demonstrated that objects of civil rights can be subjected to various effects: a) theft, when illegal seizure of things, money, documentary securities occurs with the simultaneous movement of these material goods in space and their deprivation by the owner or other owner; b) destruction or damage, appropriation of found property; c) unlawful use, acquisition, alienation, evasion of obligations, i.e. when there is no criminal possession of a material object, but there is a different extraction of property benefit by replacing proprietor or other owner of the property (we are talking about cashless funds, non-documentary securities, the results of work or services, property rights), or unlawful use of objects of civil rights (objects of intellectual property, information) where the objects of civil rights remain with the proprietor or other owner and are at the same time with the perpetrator.

When determining the subject of crimes against the circulation of objects of civil rights (as a structural element of the element of encroachment), the applicant assumes that the material feature of possessing must be correlated not only with objects of the material world, have physical properties, but also with a thing and its place in the sys-

tem of objects of civil rights. For this reason, it was proposed that non-material goods should be considered the subject of crimes against the circulation of objects of civil rights.

The fourth paragraph *"Specificity of the method of committing a crime as a central feature of the objective side in the doctrine of crimes against the circulation of objects of civil rights"* develops provisions, the essence of which is that crimes against the circulation of objects of civil rights (property benefits) may be performed in various ways, the essence of which is not to seize someone else's property, but to cause damage in order to obtain property benefits through the unlawful use of someone else's property or other objects of civil rights, their illegal acquisition, alienation or unlawful evasion of obligations.

The dissertation also draws attention to the fact that the recognition of the object of theft of exclusively property requires a review of such features as "right to property", "actions of a property nature", "property benefit" in the context of their relationship with the concept of things and its varieties in the structure of objects of civil rights. Data on signs of property crimes are constitutional signs of crimes against the circulation of objects of civil rights.

With all the variety of options for assessing crimes against the circulation of objects of civil rights and the correlation of these illegal acts with theft and other crimes, it is important to take into account the following qualification rule. In the case where a person commits a more serious property crime (for example, embezzlement) when illegally using, acquiring, alienating objects of civil rights or evading obligations, it should be a question of developing one property crime into another - a more serious one (in the case of an unfinished crime).

A distinctive characteristic of the system of crimes against the circulation of objects of civil rights is the method of criminal encroachment and the mechanism for causing damage to the proprietor or another owner. Such crimes are committed in the system of civil traffic and have a property character, as a result of which they encroach on property relations regarding the transition of material and non-material benefits; the subject of crimes are objects of civil rights (property benefits); acts in-

volve significant damage, are committed intentionally and have the purpose of obtaining property benefits.

The fifth paragraph *"Causing damage as a necessary element of the criminal consequences of crimes against the circulation of objects of civil rights"* discloses the provisions of direct and indirect damage in criminal law and the need to correlate it with civil legal constructions. Damage in crimes against the circulation of objects of civil rights is considered as material losses caused to subjects of economic relations by restricting or depriving them of the ability to satisfy their material interests (to benefit) from the economic the circulation of objects of civil rights.

The applicant considers the procedure for determining damage when establishing signs of crimes against the circulation of objects of civil rights: a) when illegally using objects of civil rights; b) in case of illegal acquisition of objects of civil rights; c) in case of illegal alienation of objects of civil rights; d) in case of illegal evasion of obligations.

In the sixth paragraph *"Extraction of property benefits as a subjective sign of crimes against the circulation of objects of civil rights"* a definition of property benefits was proposed, subjective elements of crimes against the circulation of objects of civil rights were considered.

It is stated, that property benefits cannot be the subject of theft, but there is a constructive sign of crimes against the circulation of objects of civil rights. The property benefit is also not the subject of a crime, since a person cannot influence it, but is a result that is formed by certain actions with objects of civil rights. Thus, property benefits are actions of a property nature committed by a person (both the victim and the victim) with objects of civil rights and aimed at extracting property benefits by saving his own property fund, recovering profit or getting rid of material costs.

The reform of the criminal law on crimes against property implies that the concept of "property activities" should be replaced by the concept of "property benefits," because the actions of property of a military nature are a necessary element of property benefits, since a person illegally benefits for himself by the fact that someone performs any actions with objects of citizens' rights or refrains from committing them.

In the fourth chapter of the dissertation "**Conceptual and theoretical problems of the transformation of the doctrine of theft in the doctrine of criminal law**" four paragraphs disclose substantive, objective (including legislative methods of theft) and subjective signs of theft as a tort of an absolute nature and a correlation of theft and crimes against the circulation of objects of civil rights.

In the first paragraph "*Theoretical foundations for reforming the concept of theft and its signs at the present stage*" attention is paid to theft as an economic crime. Doctrinal views are studied on understanding the essence and functional content of the concept of "theft" and its features in the context of the transformation of property relations. The dissertation puts forward and justifies the idea (with the reinforcement of the results of a sociological study) of the need to preserve the definition of theft exclusively for crimes against property, as attacks on the statics of economic relations (theft - encroachment on a thing) with the simultaneous allocation of a group of *corpus delicti* covering illegal acts against proprietary and obligation relations. It is stated that theft is not characterized by a mode of activity that is related to the extraction of property benefits and the impact on intangible benefits, since in this case there is a different mechanism for committing a crime. If the classical concept of theft is characterized by the movement of a thing in space by its seizure and involvement in someone else's illegal possession, then in the event of a criminal attack on intangible benefits, there is no influence on the material shell as such, there is a mechanism for obtaining property benefits from illegal actions (use, alienation, acquisition, evasion) with intangible benefits. The idea is justified according to which an indirect criminal impact occurs on these objects of civil rights, where there is no act of seizure (withdrawal) and movement of goods in space, but only property benefits extracted by the guilty are present, which is uncharacteristic of theft.

Theft is an absolute offence, where the wrongfulness of the act consists in taking possession of someone else's thing and causing damage to the proprietor or other owner. The definition of theft should be preserved solely as an attack on someone else's thing, thereby protecting the static belonging of the thing to the right of ownership or possession of certain subjects. Fundamentally incorrect in this part is the

equalization of property with goods and the statement that everything that is of a commodity nature is the subject of theft. Criminal attacks on objects of civil rights (with the exception of things) should be removed from the system of attacks constituting theft and form an independent group of crimes covering acts against property relations and formulated according to a different model of criminal law prohibition, different from the seizure of property.

In the second paragraph "*Property as a constitutional object sign of theft*», criminal and civil signs of property are disclosed in detail. Doctrinal views on the subject of the crime are considered in criminal law and the provision is justified according to which criminal law must recognize as the subject of the crime material or intangible (non-material) benefits (values), over which social relations arise and influence on which the perpetrator carries out a criminal attack. The dissertation also concludes that a narrower understanding of property as an object of economic theft (in the context of things, money and securities) is necessary.

In particular, it is emphasized that the physical characteristic of property should be correlated not only with objects of the material world with physical properties, but also with a thing and its place in the system of objects of civil rights. Based on the fact that property should be understood as things, including money and documentary securities, that is, items of material peace that are alien to the perpetrator and have value, it is proved that intangible benefits (intellectual property, information, property rights, cashless funds, non-documentary securities, energy, gas and other property deprived of the real property) cannot be the subject of theft in the form of seizure of property. Infringement of property rights, cashless funds, non-documentary securities can be regarded as illegal acquisition of objects of civil rights.

The subject of theft can only be an independent thing that has individually defined features that condition the establishment of a "rights in rem" regime. The work levels the thesis that encroachments on other rights (except proprietary rights) should be regarded according to the rules of the doctrine of theft of someone else's property. The forced expansion of the legal regime and its extension to property rights ("incorporeal things") is impossible due to the differences in their natural properties. The

excessive expansion of the object of theft, including through the diversification of the physical character of the property, creates uncertainty and gives rise to various aspects of the qualification of attacks on property benefits.

The characteristics of the object of theft in market conditions are determined by the value of the goods (their price); hence, the object of theft is recognized as such a thing whose value is expressed in price or measurable. The economic characteristic of the object of theft is determined not only by the consumer and exchange value of the thing, but also by its ability to be the subject of civil circulation. The subjective attitude of a person to a thing can serve as a criterion for assigning property to the category of valuable things due to the special importance of property. From these positions, the value of property should be determined not only by its price, expressed in monetary form, but also by the ability to satisfy the social and individual needs of a person.

Natural objects can be the subject of theft and crimes against the circulation of objects of civil rights. In the future, it is necessary to raise the question of recognizing all objects of the natural environment (in the event of their possession) as the subject of theft, regardless of whether they are removed from the natural environment or not.

Possession of property seized or restricted in civil circulation must be recognized as theft of other persons' property and be regarded as a crime against property, except in cases where the theft of objects seized or restricted in civil circulation is already subject to independent criminal liability. At the same time, the value concept of assessing the economic characteristic of the object of theft cannot be applied to objects withdrawn from civil circulation, because in this case the cost (monetary) of such property is not important, since the very fact of encroachment on such objects is criminal.

The criminal law should protect not only the right to property, but also the actual possession of property. From this point of view, the purpose of criminal law on property crimes is to prohibit harm to both the interests of owners and owners of property. By committing an unlawful act of taking possession of another's property, the guilty person commits theft as such, that is, seizes another's property in a prohibited way,

and the criminal consequence of causing damage (to the proprietor or other owner) is secondary to the criminal act of assault.

The object of theft cannot be found, abandoned, accidentally acquired by a person. Assignment of abandoned things (left by the owner in a place reliably known to him or for a short time; has identification signs of belonging) must form the theft of someone else's property. Theft of lost, forgotten things will occur if the culprit, when appropriating the thing, reliably knows who owns the property to be appropriated, has reasonable grounds to believe where the owner of the thing is and that he can return for it. The external conditions, environment, position and properties of a thing may indicate that it is not lost by its owner, but left or forgotten by him.

Possession of objects in the burial ground is abuse of a corpse or grave, and possession of objects in the burial ground should be considered a crime against property. The theft of objects on the body of the deceased or at the time of the deceased's burial should be considered a crime against property; the theft of objects from the body of a deceased person by damaging it must be assessed according to the rules on the totality of crimes (as a crime against property and against morality). Encroachment on hereditary property should be regarded as theft, since the crime can be carried out not only on the right to property, but also on the possession of property.

In the third paragraph *"The influence of objective and subjective signs of an act on the content of the object of theft: law-making and law-enforcement problems"* the criminal legal essence of the criminal method of theft was analyzed, "seizure" was defined as the "general method" of the objective side of theft, the dualism of the existing moment of the end of theft was shown and a new approach to its definition was proposed. The author has consistently revealed the problems of the ratio of criminal consequences when committing theft, established a mechanism for determining them, and the illegality and gratuitousness of theft are indicated as special objective signs of taking possession of other people's property. This section also pays considerable attention to the problem of understanding a self-serving goal when committing theft, reveals the motives for theft and shows the problems of a special goal of theft -

enrichment. In this vein, amendments to existing criminal legislation and law enforcement practices are proposed.

Thus, on the basis of many years of scientific research by the author, it is established that objective and subjective signs of theft have a direct connection with the subject of criminal encroachment and largely determine the pre-criminal law protection of property relations:

the mode of action for theft should not be linked to the recovery of property benefits;

the essence of the theft is the seizure of someone else's property;

the moment of completion of the theft should be determined by the moment of seizure of other persons' property by the perpetrator, regardless of whether he had a real opportunity to use or dispose of the stolen person;

damage in theft should be calculated according to the value of the stolen property, and loss of profits and other possible types of maternal harm could not be included in the concept of damage;

all forms of theft must be designed according to the type of material elements of crimes, with the inclusion of real property damage as socially dangerous consequences;

the self-serving objective did not indicate the result sought by the author in committing an act of theft;

the purpose of theft is to enrich the perpetrator or other persons by physical possession of property;

a special criminal law norm should be envisaged, which would provide for liability for the unlawful seizure or alienation of someone else's property in the absence of the purpose of enrichment ("Unlawful gratuitous alienation or seizure of a significant amount of someone else's property, in the absence of selfish motives").

In the fourth paragraph *"Problems of legislative design of forms of theft in the context of differentiation of the subject of property crimes"* based on the materials of forensic practice, the main provisions of the doctrine of criminal law in relation to the methods (forms) of theft are considered. The dissertation revealed the main trends in

the development of criminal law norms in the property sphere and determined the conceptual foundations of the legislative design of the methods of theft in new socially oriented market relations. On this basis, a new model of the Criminal Code on crimes against property and the circulation of objects of civil rights has been proposed. The author formulated approaches to statement in the text of the Criminal Code of ways of committing plunders (theft, robbery, extortion, fraud, breach of confidence, assignment, and computer theft) and the construction of their features.

The conceptual idea of formulating the methods of action when committing an act of theft (precisely as a tort of an absolute nature) is as follows:

"secrecy" and "openness" of theft should indicate not the situation, but the manner in which the crime was committed;

crimes of responsibility for physical and mental violence should be independently designed;

it is necessary to separate the violent (robbery, extortion) and non-violent (theft, plunder) method of theft;

when designing forms of theft, priority should be given to the act of capture rather than the use of violence;

there is a need to highlight the abuse of trust in a sovereign form of theft;

there should be a clear distinction between the concepts of entrusted property (which is characteristic of appropriation) and property in charge (which is characteristic of "official" theft);

theft is a method of alienating someone else's property and cannot be included in the act of "seizure"; and "computer" theft is not deception, but manipulation.

In the section "**Conclusion**", the dissertation formulated conceptual and theoretical conclusions of the study and proposed practical-oriented recommendations on the classification of crimes, as well as outlined the prospects for further theoretical and applied research in this field.

The global instrumentation of criminal law and the widespread introduction of digital technologies in economic and social relations make it possible to confirm the

functioning of several conceptual models for the development of criminal legislation on crimes against property and to conduct further scientific research in this direction.

The first model is related to the preservation of the existing doctrine of crimes against property and the simultaneous expansion of the boundaries of the object of theft. This means that theft will cover attacks on property rights of a real and compulsory nature. In principle, this model is applied today, but the issues of identifying the method of theft with its subject and the purpose of the crime are not resolved. With this paradigm, it is necessary to decide what constitutes theft and what its boundaries are. Objectively, this means that theft is a) taking possession of someone else's property, b) as well as obtaining property benefits by... This will further require a correlation of theft and economic crimes, as many "economic" crimes will be absorbed by theft.

The second model is more connected with compilation of the German criminal legislation on property crimes and indicates preservation of institute of theft as generic term, is exclusive to such structures as theft, plunder, robbery. At the same time, fraud, misappropriation and embezzlement, extortion stand out from a number of thefts and represent independent elements of property crimes with characteristic object features. The third model records the preservation of the concept of theft solely for crimes against property, which are designed to protect the statics of economic relations (theft is an attack on a thing). At the same time, it is necessary to identify a new group of crimes (crimes against the circulation of objects of civil rights) that would cover illegal acts against property and compulsory relations. Here, further scientific study requires a detailed separation of theft, crimes against the circulation of civil rights and crimes in the field of economic activity, the synthesis of their characteristic features and the design of new *corpus delicti*.

Each scenario of the development of criminal legislation on crimes against property and economic activity involves detailing the signs and forms of theft, since in any case (and under any model of development of criminal legislation) will have to solve the fundamental problem of finding appropriate separation criteria on the same type of grounds of secret and open, violent and non-violent seizure of someone else's

property, fraudulent theft and theft using official powers and its relationship with abuse of trust, as well as the need to independently develop the norm of theft using computer technology. Hence, in the future, the problem of adequate practice of applying the rules of criminal law and its doctrinal justification will arise.

The choice of a model for the development of criminal legislation will largely depend on the answer to one of the conceptual questions: what is the basis for the construction of norms on property crimes (crimes against property)? There can be two scenarios that require further detail and thorough scientific and theoretical research: either the dependence of norms on property crimes on theoretical constructions and doctrinal provisions of civilization, or the autonomous development of criminal law outside of foreign industry legislation and adjusting positive norms to the needs of practice and, as a result, the science of Criminal Law.

It should also be pointed out that the issue of the object and system of crimes in the field of economic activity, the criteria for criminalizing socially dangerous behavior in the field of economics and the difference between an economic crime and an offense have not been scientifically resolved yet. However, the dynamic component of criminal law protection of economic activity can only be properly resolved when deciding on an acceptable model of criminal law safeguard of the statics of economic relations. Accordingly, only under this condition will it be possible to solve the problem of the object and system of "property" and "economic" crimes and the need to develop economic criminal law as an independent sub-branch of criminal law.

The section "*Annexes*" to the dissertation contains the draft chapter of the Criminal Code "Crimes against property and the circulation of objects of civil rights"; sociological research program (questionnaire of specialists).

List of author's publications that reflect the main scientific results of the dissertation study

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6. Khilyuta V.V. Subjective imputation in criminal cases of fraud. - M.: Yurlitinform, 2020. - 248 p.

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