

A. Adamian
Postgraduate Student,
Department of Criminal Law,
National University "Odessa Law Academy"

THE LEGAL NATURE OF CASUS AS INNOCENT HARM IN THE CRIMINAL LAW OF UKRAINE

In today's domestic criminal law concept of subjective incrimination prevails in accusation, which naturally activates a detailed scientific study of the institute of guilt and issues related to innocence. This innocent harm, which in criminal law doctrine is traditionally called casus, is not directly regulated by Ukrainian legislation, although its existence is recognized and is often found in practice. This situation of "illegal" status requires research of the legal nature of casus and identification of its correlation with some related legal categories.

In this article the legal nature of the casus as innocent causing of harm in the criminal law of Ukraine is discussed. The author conducted comparative legal analysis of related institutions of criminal law: forms of the fault, circumstances which eliminate criminality of act, criminal misconduct, mistake in criminal law. Also the author discovered a number of basic features inherent to casus. The introduction of the special concept of "criminal casus" (casus criminalis) into criminal law and doctrine was proposed.

In addition there is the issue of the establishment of a special name for the casus in the penal sense. This need is dictated by the fact that the theory of law and

legal concept of casus are used in different variations and different meanings. In this regard, there are the following related concepts: casus foederis, casus major, casus belli and more. In addition to these cases, concept of casus is used in other situations, being synonymous with atypical situations in lawsuit, case, etc. legal fact. Thus, casus in the criminal law is completely devoid of certain attributes in its definition. In this regard, it would be appropriate to identify innocent harm through the use of the phrase casus criminalis or criminal casus.

Thus, as a result of the study the author formed a number of scientific findings. The concept of casus is not part of any other institute of criminal law, which indicates its independent legal nature. The main features that characterize casus include: a) no need and possibility to predict negative consequences of his act by the person who committed it; b) damage caused as a result of casus can be of any scope; c) casus is not an offense; d) casus does not entail punishment; e) casus is not provided in the criminal law of Ukraine. Also, the author proves the necessity of legal introduction of the concept of criminal casus as a special notion for innocent harm.