



# **IDEAS ABOUT THE CORPUS DELICTI AND THE CLASSIFICATION OF CRIMES IN THE CRIMINAL LEGISLATION OF FOREIGN COUNTRIES**

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<b>Received:</b> August 20 <sup>th</sup> 2022 <b>Accepted:</b> September 20 <sup>th</sup> 2022 <b>Published:</b> October 24 <sup>th</sup> 2022	This article reveals the issues of legal regulation and ideas regarding the Corpus delicti and the classification of crimes in the criminal legislation of selected developed foreign countries. From a scientific and theoretical point of view, the author analyzes the Corpus delicti, as well as the classification of crimes according to various criteria. In particular, it is noted that at present in foreign countries the corpus delicti is represented by only two elements, and consists of a criminal act (actus reus) and a culpable attitude (mens rea), the subject of the crime does not matter for the doctrine of criminal law. The author analyzes the legal provisions related to the Corpus delicti and the classification of crimes in different countries and formulated scientific and theoretical conclusions

**Keywords:** Corpus delicti, classification of crimes, act, guilt, motivation, direct intention, mercenary and foul motives.

English common law and US criminal law have historically developed differently in terms of corpus delicti. Today, it consists of just two components: the criminal act (actus reus) and the culpable attitude (mens rea)<sup>1</sup>. For American criminal law doctrine, the subject matter of the crime is irrelevant. Furthermore, historical evidence demonstrates that even animals were held accountable in the previous century.

Currently, according to the the legislation of different countries the age limit of individuals is different; sanity is not seen as a necessary indicator of a subject of a crime, insanity does not exclude the presence of the elements of crime; legal entities are also subject to criminal liability<sup>2</sup>.

According to the doctrine, there are three primary points of view; actually, corpus delicti is vaguely interpreted. The first and most traditional position entails recognizing the actual existence of the corpus delicti of the crime. For instance, according to N.S. Tagantsev, a criminal act is a legal relationship including a particular sign of guilt between the offender and the

object of encroachment. Guilt is a legal relationship that embodies this sign. In the science of criminal law, especially in German literature, the sum of these characteristics of a criminal act is called the corpus delicti. (composition of a criminal act)<sup>3</sup>. The structure of the crime consists of three elements: 1) the guilty person (the offender who committed the crime); 2) the object or subject of the crime (the victim or object of the crime); 3) reflection of internal criminal act - guilt and external reflection (outside evidence ) of criminal activity (objective manifestation of guilt)<sup>4</sup>.

The composition of the crime, according to other adherents of the pre-revolutionary classical school of criminal law, consists of significant signs "without which the crime cannot be imagined"<sup>5</sup>. The ideas of these scholars are supported in the science of Soviet and later post-Soviet criminal law. According to them, the composition of the crime is a set of four signs

<sup>1</sup> Polyansky E.Yu. The theory of corpus delicti in US criminal law: key positions and main shortcomings / E.Yu. Polyansky // Lex russica. - 2013. - No. 11. - p. 1192

<sup>2</sup> Nikiforov B.S. Modern American criminal law / B.S. Nikiforov, F.M. Reshetnikov. - M., 1990. - p.25

<sup>3</sup> Tagantsev N.S. Russian criminal law. General Part: lectures / N.S. Tagantsev. - St. Petersburg, 1902. - V.1. - p.335.

<sup>4</sup> Tagantsev N.S. The same source – p.423.

<sup>5</sup> Kistyakovsky A.F. Elementary textbook of general criminal law / A.F. Kistyakovsky. - Kiev, 1875. - p.59.



(elements) constituting the crime<sup>6</sup>, a construction that embodies the reality of the act<sup>7</sup>.

The composition of a crime, in accordance with the currently dominant normative viewpoint in criminal law, is a set of objective and subjective signs that characterize a socially dangerous act as a crime. It is seen as a legal model of a criminal act<sup>8</sup>. Opinions on this position are shared by A.N. Trainin and A.A. Piontkovsky. They considered the composition of the crime, on the one hand, as an objective reality, a concrete act, and on the other hand, as a set of signs characterizing the crime<sup>9</sup>.

It should be noted that it was A. N. Trainin who made the concept of "corpus delicti" one of the main categories for the doctrine of Soviet criminal law<sup>10</sup>.

The modern third position on the corpus delicti relates to merely recognizing it as a legal construction, it is a set of signs that describe an act as a crime, which exists in the criminal law and is prohibited by the norms of the Criminal Code<sup>11</sup>.

Corpus delicti - it is a specific pattern of criminal activity, with which an official of a law enforcement agency will work with it, qualifies the crime and considers it as a model, typical<sup>12</sup>, informational<sup>13</sup>, logical<sup>14</sup> structure.

All of these points of view are logical, but they do not alter the primary objective of the crime. When this model is applied to concrete reality, it turns into a tool for classifying the crime. In law, corpus delicti remains an ideal model of an act containing a sufficient set of criminal signs<sup>15</sup>.

In the theory of foreign criminal law, for instance, it can be claimed that it is important to break down the elements of a crime into their component parts, that its subjective signs and objective signs are closely associated, that the inner side of the crime manifests itself through the outer side. The most important postulate of P.A. Feuerbach's doctrine is that the state is obliged to determine "the real existence of a crime". Therefore, the need to determine and define the exact criteria of the objective and subjective signs of the crime remains, because the possibility of punishment of the act depends on their coherence.

Therefore, it is ineffective to fundamentally reject the existing form of the corpus delicti. The daily work of investigators, judges, and other law enforcement officers is predicated on evidence of wrongdoing; up until this point, the total of these signs has been the only justification for criminal prosecution. Taking this into account, the corpus delicti should be defined very precisely in terms of its structure and content.

The corpus delicti can be viewed as a special "matrix"<sup>16</sup> in which any illegal aspect of social reality can be positioned, because crime is not separate from social relations, its implementation in a negative criminal form. This matrix should have certain contours formed in the doctrine. However, thanks to the constant reference to judicial and investigative practice, the characteristics and structure of the criminal offense begin to be determined empirically, and this becomes an acceptable fact.

<sup>6</sup> Criminal law. General part / ed. A.A. Herzenson. - M., 1948. - p.282; Criminal law. Part General / ed. A.A. Gertsenzon, B.S. Osherovich, A.A. Piontkovsky. - M., 1939. - p.41.

<sup>7</sup> Kuznetsova N.F. Problems of qualification of crimes: lectures on the special course "Fundamentals of qualification of crimes" / N.F. Kuznetsova / scientific. ed. V.N. Kudryavtsev. - M., 2007. - p.37.

<sup>8</sup> Gaukhan L.D. Qualification of crimes: law, theory, practice / L.D. Gaukhan. - M., 2005. - p.32-33; Naumov A.V. Russian criminal law: a course of lectures: in 2 volumes / A.V. Naumov. - M., 2004. - T. 1: General part. - p.170; Criminal law of Russia. General part / ed. A.I. Raroga. - M., 2009. - p.72.

<sup>9</sup> Piontkovsky A.A. The doctrine of crime in Soviet criminal law. The course of Soviet criminal law. General part / A.A. Piontkovsky. - M., 1961. - p.120; Full course of criminal law: in 5 volumes / ed. A.I.

Korobeeva. - St. Petersburg, 2008. - Vol. 1: Crime and punishment. - p.305.

<sup>10</sup> Trainin A.N. Composition of a crime under Soviet criminal law / A.N. Trainin. - M., 1951. - p.11.

<sup>11</sup> Criminal law: textbook: in 3 volumes / under the total. ed. A.E. Zhalinsky. - M., 2011. - T. 1: General part. - p.343.

<sup>12</sup> Alekseev S.S. General theory of law / S.S. Alekseev. - M., 1982. - T. 2. - p.27.

<sup>13</sup> Kudryavtsev V.N. General theory of qualification of crimes / V.N. Kudryavtsev. - M., 2004. - p.60.

<sup>14</sup> Criminal law. General part: textbook / otv. ed. AND I. Kozachenko. - M., 2008.- p.186.

<sup>15</sup> Markuntsov S.A. On the relationship between the concepts of the composition of the crime and the criminal law prohibition / S.A. Markuntsov // Russian justice. - 2012. - No. 7. - p. 19–22.

<sup>16</sup> Chernov R.P. On the corpus delicti of a crime/ R.P. Chernov // Lawyer. - 2006. - No. 10. - p. 26–27.



What kind of act is considered a crime?, who can be the subject of a crime?, in which cases the act (although it includes certain elements of crime specified in the criminal law) is not considered a crime - all the answers for these questions are given in the criminal law. However, it is clear that not all criminal acts are the same. It is obvious that ordinary robbery is not analogous to aggravated robbery, just as manslaughter committed under the influence (while intoxicated) or in the act of self-defence is not comparable to ordinary manslaughter.

The classification of crimes in the criminal legislation of different jurisdictions is based on the division of crimes into categories. I suggest to focus on the characteristics of the classification of the main representatives of certain foreign countries, particularly the Anglo-Saxon and Romano-Germanic legal families, as an example.

Federal law in the US does not recognize the idea of crime. In several states' criminal codes, it can be found. However, the official approach has a major role in how crime is defined in American criminal law<sup>17</sup>. Section 1.05 of the US Model Penal Code is an example of a formal definition of a crime "No conduct constitutes an offense unless it is a crime or violation under this Code or another statute of this State"<sup>18</sup>. Therefore, there are different approaches to the classification of crimes in the science of US criminal law. We refer to Section 1.04 of the US Penal Code, which defines a three-term system of categories of crimes: 2) A crime is a felony if it is so designated in this Code or if persons convicted thereof may be sentenced [to death or] to imprisonment for a term that, apart from an extended term, is in excess of one year; 3) A crime is a misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto; 4) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto or if it is defined by a

statute other than this Code that now provides that persons convicted thereof may be sentenced to imprisonment for a term of which the maximum is less than one year<sup>19</sup>.

This categorization is based on the official standard, which is the kind and severity of the penalty. On the other hand, it can be challenging to draw a line that is distinct enough between a major offense and a misdemeanor.

Criminal law in the UK lacks both a statutory classification of offenses and a statutory definition of what constitutes a crime<sup>20</sup>. Similar classifications of crimes are provided by English legal scholars, and they are as follows: 1) based on the sources of criminal culpability; 2) based on the significance of the target of encroachment; and 3) based on the level of risk associated with the crime<sup>21</sup>. Due to the existence of two legal systems in Great Britain—common law and statute law—the classification of crimes is more complicated.

The general idea of crime and criminal offense was abandoned by the German legislature. Numerous provisions of the General section of the Criminal Code of the Federal Republic of Germany contain the signs of the general concept of a criminal act, and it is clear from an analysis of these provisions that a criminal act under German criminal law is any unlawful act that satisfies all of the signs of the content and is subject to punishment. All signs of *corpus delicti* come from Article 12 of the Criminal Code of the Federal Republic of Germany<sup>22</sup>. Thus, the formal-material definition of the crime prevails in the doctrine of German criminal law. According to Article 12 of the German Criminal Code, all criminal acts are divided into two groups by the legislator: 1.2.1 crimes - illegal acts, for the commission of which imprisonment for a period of at least one year, as well as a more severe punishment, can be applied<sup>23</sup>. 1.2.2 - criminal offenses - illegal actions punishable by imprisonment for a term of less than one year or a

<sup>17</sup> Criminal law of foreign countries. General and Special parts: textbook / ed. I.D. Kozochkin. 3rd ed., revised and additional. - M.: Wolters Kluwer, 2010. - p.157.

<sup>18</sup> Model United States Penal Code 1962. [Electronic resource] Website of the Public Free Political and Legal Internet Library of Roman Pashkov. URL: <https://constitutions.ru/?p=5849>

<sup>19</sup> The same source.

<sup>20</sup> Criminal law of foreign countries. General and Special parts: textbook / ed. I.D. Kozochkin. 3rd ed., revised and additional. - M.: Wolters Kluwer, 2010. - p.15.

<sup>21</sup> Golovanova N. A. Criminal law of England: textbook. manual for undergraduate and graduate studies / N.A. Golovanov. - M.: Yurayt Publishing House, 2017. - p.18.

<sup>22</sup> Kravtsov R.V. Criminal act in the criminal law of Russia, Germany, the Netherlands: a comparative aspect. // Siberian Legal Bulletin. - 2007. - No. 3. - p. 38 - 45.

<sup>23</sup> Criminal law of foreign countries. General and Special parts: textbook / ed. I.D. Kozochkin. 3rd ed., revised and additional. - M.: Wolters Kluwer, 2010. - p.15.



fine<sup>24</sup>. This classification is based on the minimum amount of punishment, which is the official sign<sup>25</sup>.

If the crime is punishable by a fine, such an act is called a breach of public order. Sanctions for their commission are provided in the additional criminal law<sup>26</sup>, which (in addition to the Criminal Code) includes federal laws that make certain actions subject to criminal penalties. Even German lawyers are unaware of the quantity of such legislation. These rules primarily govern civil and public law relationships rather than criminal and legal ones<sup>27</sup>.

Legislators in Albania, Hungary, Spain, Italy<sup>28</sup> and Lithuania<sup>29</sup> have also adopted this practice of categorizing criminal offenses as felonies and misdemeanors. According to E.L.Kombarova The differences are in the types and sizes of punishments, which is unimportant<sup>30</sup>.

Although the idea of a criminal act is absent from the current French Penal Code, its signs can be found in the text of the articles of the General and Special sections (severity of the crime, guilt, violation, threat of punishment). According to the French Criminal Code, all crimes are divided into three groups, the criteria for their division is set in Article 111-1 of the Criminal Code - the severity of the damage caused to society (replacing the official criterion, such as the type of punishment imposed for the crime):<sup>31</sup>: 1) if the crime

involves a long term of imprisonment (Article 131-1 of the French Criminal Code); 2) if the crime is punishable by imprisonment for a term not exceeding 10 years or other lighter punishment (Article 131-3 of the French Criminal Code)<sup>32</sup>; 3) offenses (or "discipline of public life"), for which a fine or other punishment not related to deprivation of liberty is applied<sup>33</sup>.

It is interesting to note that in accordance with the classification of criminal acts established by the French Criminal Code, all punishments established by the French Criminal Code are divided into three groups, criminal, correctional, and police punishments, each of which determines the punishment for the corresponding category of crimes<sup>34</sup>. No other criminal code has such a separation of penalties for the applicable category of crime.

According to the Criminal Code of the Republic of Belarus, crimes depending on nature and degree of public danger are subdivided into the crimes which are not constituting big public danger, less heavy, heavy and especially heavy (Criminal Code of the Republic of Belarus, Part 1, Article 12)<sup>35</sup>. The Belarusian legislature favored a formal-material approach when characterizing the idea of crime, defining it as "Crime is recognized committed socially dangerous act (action or failure to act) which is characterized by the signs provided by this

<sup>24</sup> Golovnenkov, P.V. Criminal Code (Criminal Code) of the Federal Republic of Germany: scientific and practical commentary and translation of the text of the law / P.V. Golovnenkov. - 2nd ed., revised. and additional - Moscow: Prospect, 2013. - p.16.

<sup>25</sup> Criminal law of foreign countries. General and Special parts: textbook / ed. I.D. Kozochkin. 3rd ed. rework and additional – M.: Wolters Kluwer, 2010. – p.427.

<sup>26</sup> The same place.

<sup>27</sup> Criminal law of foreign countries. General and Special parts: textbook / ed. I.D. Kozochkin. 3rd ed. rework and additional – M.: Wolters Kluwer, 2010. – p.418.

<sup>28</sup> Bagnyuk AS On the issue of categorization of crimes in Russia and abroad. // Young scientist. - 2018. - No. 42. - S. 85-90. [electronic resource] Website of the scientific journal "Young scientist". URL: <https://moluch.ru/archive/228/53132/> (date of access: 03/20/2020).

<sup>29</sup> Criminal Code of the Republic of Lithuania. Approved on September 26, 2000 by Law No. VIII-1968. [Electronic resource] URL: <http://law.edu.ru/norm/norm.asp?normID=1243877&>

subID= 100107735, 100107737 #text (accessed 03/20/2020).

<sup>30</sup> Kombarova E.L. On the problems of optimizing the structuring of the category of minor crimes in the criminal legislation of the Russian Federation. // Bulletin of the Voronezh Institute of the Ministry of Internal Affairs of Russia. - 2016. - No. 3. -p. 103-110.

<sup>31</sup> Criminal law of foreign countries. General and Special parts: textbook / ed. I.D. Kozochkin. 3rd ed. rework and additional – M.: Wolters Kluwer, 2010. – p.319.

<sup>32</sup> The same source – p.320.

<sup>33</sup> Criminal Code of France / Scientific. editing by L.V. Golovko, N. E. Krylova. - St. Petersburg: Publishing house "Legal Center Press", 2002. - p. 83 - 84, 90.

<sup>34</sup> Bogdanova E.Yu. The French Criminal Code as a guarantor of the rule of law. // Socio-economic phenomena and processes. - 2014. - No. 10. - p. 170 – 17.

<sup>35</sup> Criminal Code of the Republic of Belarus. [electronic resource] Site "Codes of the Republic of Belarus". URL: <http://xn----ctbcgfviccvibf9bq8k.xn--90ais/> (Accessed: 03/20/2020).



Code, and prohibited them under the threat of punishment is guilty<sup>36</sup>.

The criminal codes of jurisdictions like Turkmenistan and Tajikistan likewise include a four-level hierarchy of criminal categories. The size of the penalty in terms of deprivation of liberty as a criterion for the offenses included in each classification group, as well as the names of the categories of crimes, are the key variations<sup>37</sup>. Therefore, each state's criminal code defines crime in a unique way, the specific aspects of the classification of crimes may be related to the legal family, along with the traditions of law-making. All this emphasizes the evaluative nature of the concept of "crime category", as well as its variability. The categorization of crimes with three levels, as well as four levels, is, in our opinion, the most distinct and, hence, convenient for the implementation of the law among all the systems of categories of crimes described above.

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<sup>36</sup> The same source.

<sup>37</sup> Kombarova E.L. On the problems of optimizing the structuring of the category of minor crimes in the criminal legislation of the Russian Federation. //

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