

Volodymyr Benkivsky*

Kyiv, Ukraine

Relevant Connection in Criminal Law

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Abstract: The article is devoted to the study of modern problematic issues of causation in criminal law. These issues include, in particular, the issue of relevance of causation in criminal law itself, and the specifics of manifestations of relevance of causation in criminal law.

The article notes that the purpose of scientific research is to identify and analyze the characteristics and criteria of relevant causation. The methods of the presented study include dialectical, systemic-structural, logical, etc. The results of the study are summarized in a number of important provisions. The author emphasizes the importance of the study of causation in criminal law as a formal and legal one, which is related to the study of causation as relevant, meeting the requirements and solving the problems of modern criminal law.

The article notes that the characterization of causation in criminal law should not be limited to the connection between an act and socially dangerous consequences, since causality expressed by causation is manifested in a combination of components which are part of the content of various criminal law institutions. The article examines some characteristics of the relevance of causation in criminal law. Attention is drawn to the importance of legal and technical reflection of causation in criminal law as a condition for the relevance of causation.

The article notes that the formalization of causation is the basis for considering such a connection as relevant (meeting legal requirements). The author examines institu-

tional and inter-institutional manifestations of causation in criminal law. Furthermore, the author examines the causal manifestations which combine a criminal offense (in particular, a crime) and the legal consequences provided for by criminal law in relation to the subject who committed the offense. The article examines the peculiarities of causation in relation to certain criminal law institutions.

The main conclusions of the study are the following: the need to clarify the criteria of relevant causation, the statement of relevant causation in criminal law within certain criminal law institutions, the need to consider causation in a broader criminal law context, and not only within the *corpus delicti*, etc.

Keywords: causal connection, relevant connection, Criminal Code, criminal law institute, complicity, crime, significant harm, grave consequences, relevance

Introduction

Undoubtedly, it is relevant to consider causation as a legal element of the criminal law system, the establishment of which is the basis for legal assessment of offenses. The need for such consideration stems from the need to distinguish the relevant (compliant with legal requirements) causal link from the everyday links which have no legal significance.

* Volodymyr Benkivsky – Candidate of Juridical Sciences, Assistant at the Department of Criminal and Legal Policy and Criminal Law, Educational and Research Institute of Law of Taras Shevchenko National University; <https://orcid.org/0000-0003-4830-8322>; e-mail: svetlanawunder@gmail.com.

The concept of relevant causation is also necessary to characterize the specifics of certain criminal law institutions (in particular, crime, complicity, etc.), their features in comparison with other institutions that do not contain causation as a separate and important characteristic.

The issues of formal and legal causation, its correlation with the institutions of criminal law, its legal characterization adopted in Ukraine within the objective side of the *corpus delicti* of a criminal offense were, in particular, the subject of the works of such authors as N.M. Yarmysh («Theoretical Problems of Causation in Criminal Law»: Philosophical and Legal Analysis, 2003), Muzyka A.A. (a set of scientific works from 2008 to 2023), Dudarets D.V. («Causation in Crimes Against Life and Health Committed by Inaction»: PhD thesis... Candidate of Law, 2014), Emelianov V.P. (Criminal Law: General part. The main issues of the doctrine of crime, 2018).

Doctrinal foundations of the concept of relevant causatio

In order to establish a criminal law relevant causal link, the process of its legal formalization is envisaged. Legal formalization of causation in legislation is possible in several ways:

- 1) causation is provided by a special article of the General Part of the Criminal Code;
- 2) causation is provided for only in the articles of the Special Part and is considered when socially dangerous consequences are a mandatory feature of a criminal offense (Tatsiy, 2020, p. 154).

The signs that causation is relevant are as follows:

- 1) legislative and technical: the use of terms whose interpretation of which indicates a connection;
- 2) reasons for the connection: the cause must be defined as a necessary condition for the effect.

It should be noted that clause 2 arises when the formation of a formal and legal causal link is associated with its provision in a separate article of the General Part of the criminal law codified act (the Code).

Within the framework of the modern characterization of causality, the manifestation of causation in criminal law is, in particular, the connection between preparation for an act and the legal consequence in the form of criminal liability of a person; similarly, «attempted –

criminal liability»; similarly, «completed crime – criminal liability». These connections are thought of outside the objective side of the *corpus delicti* of a criminal offense; in support of this approach, Prof. Muzyka A. A. considers the causal connection between a crime and grave consequences (paragraph 5 of Article 67 of the Criminal Code of Ukraine). Thus, causality expressed by causation should be considered in a broader sense; within the framework of such causality, it is possible to study the combination of components which form the content of criminal law institutions.

In the same context, we can consider the legal situation related to a factual error, that is, a person's misconception of the objective characteristics (signs) of the act committed by him (Veresha, 2022, p. 190).

In the above cases, formal (expressed in certain terminology) and legal (agreed by lawyers under certain conditions and within the interpretation of the provisions of a codified act) causality is non-institutional.

This nature of causality (expressed by causation) in the above case means that it is characterized by:

- 1) cause(s);
- 2) the effect, i.e. criminal liability of the person for committing an act at any of the above stages.

It is necessary to note a certain logical and legal connection when considering the situation of exemption from criminal liability.

In particular, in the articles of the Criminal Code of Ukraine that provide the grounds for exemption from criminal liability, one can find a connection of the type «the degree of gravity of the act – exemption from criminal liability».

At the same time, additional conditions are:

- 1) the form of guilt in which the act is committed;
- 2) compensation for damages (legally fixed fact of compensation);
- 3) an agreement (legally fixed) between the person who committed the crime and the victim of the crime.

The formality of this connection is emphasized, in particular, in its interpretation and through terminology that reflects important legal situations: «mediation», «criminal law agreement», etc., therefore, the legal nature of the connection means its explicit or implicit use within the framework of the legal procedures defined in the codified acts.

Within the framework of the study of institutional manifestations of causality in the CC of Ukraine,

we can consider its complicated version (if the purpose of the study is to record formal and legal causal connection).

As already noted, within the framework of the theoretical interpretation of the provisions of the General Part of the CC of Ukraine, some scholars, in particular, Professor Muzyka A.A. (Muzyka, 2008, pp. 324–368), consider the causal link of the «crime (act) – grave consequences» type; the establishment of this link generates a legal consequence in the form of increased criminal liability of a person.

That is, causality is manifested in the process of analyzing three institutions: «crime», «aggravating circumstances» and «criminal liability».

Accordingly, causality has the form of a causal «chain»: «crime (act) – grave consequences – criminal liability» (aggravated version).

It should be noted that the part of the «chain», «crime – grave consequences», can be considered as real and actual, since the crime is characterized by the property of causing; however, in general (considering the resulting legal consequence of «criminal liability»), this connection (causal «chain») is formal and legal.

It should be noted that criminal law considers a set of legal consequences for a person who has committed a criminal offense, including criminal liability, punishment, exemption from criminal liability and punishment.

This complex can be characterized as the result or conclusion of the legal assessment of a person's tortious behavior.

Logical and institutional legal study of causation in criminal law

From the author's point of view, when identifying (interpreting) formal and legal causality (connection), it is sufficient to use the general concept of «legal consequence»; the logical scope of this concept is associated with such criminal law situations when, because of a punishable act or in connection with it, certain legal restrictions, and special legal regimes in relation to a person are generated.

It should be noted that when determining the legal nature of causation (expressed by a relevant causal link) within the framework of the Criminal Code of Ukraine, the provisions of formal logic regarding the

basis (set of necessary and sufficient conditions) of the result should be used; otherwise, there is a possibility of an error in assessing the nature of the link.

In particular, the connection of legal (criminal law) states and results cannot be considered as a manifestation of formal and legal causality.

For example, we are talking about the connection between a criminal record (not expunged or not lifted in court) and legal restrictions on a person: in this case, we can consider a combination of several manifestations of non-causality.

Similarly, we can state that there is no causality if a person is in a state of insanity when committing an act; the legal consequence in the form of a legal prohibition to bring such persons to criminal liability is correlated (and not a result) with the state of insanity.

In our opinion, the logical basis for a certain result in criminal law is expressed and realized in a certain activity of a subject who, by behavior, generates a certain legal status which «entails» legal consequences.

The criminal law states mentioned above, and others are not a cause in the formal and legal sense, but one of the conditions for the occurrence of a legal (criminal law) consequence against a person who violates criminal law provisions.

It is clarified that the «state – legal result» connection is a correlation, i.e., a non-causal connection in which a change or occurrence of a legal (criminal law, prohibited by the provisions of the Criminal Code of Ukraine) state is associated with a change (occurrence) of the legal regime in relation to a person who violates the normative provisions of a criminal law codified act.

The situation looks somewhat simplified when we consider structurally determined and legal causation (causal) connection.

It should be emphasized once again that a structurally conditioned and legal connection is so because its legal characteristic and necessity, is determined by the specificity (specific structure) of a criminal law institution or a combination of constituent elements of different institutions, caused by the typical «real» behavior of a criminal or, in general, a subject of criminal law connections.

In particular, the institute «Crime» or now «Criminal offense» manifests itself through causality (cause, causal connection) both directly and through a combination of its characteristics (complex elements) and

characteristics of another institute within the CC of Ukraine.

Directly, the institute «Crime» or now «Criminal offense» manifests itself through causality when interpreting the provisions of Parts 1, 2 of Article 11 of the CC of Ukraine; the interpretation shows that:

- 1) at the general normative level, causality between the act and significant harm is defined;
- 2) in essence, within the framework of Article 11 of the CC of Ukraine and based on the interpretation of its provisions, the connection of «act – substantial damage» is considered as a characteristic of a criminal offense that distinguishes it from other types of offenses.

The institute «Criminal offense» contains a normative characterization of the causative (inflicting) property of a punishable act; the said characterization is established by the interpretation of the legal wording of Part 2 of Article 11 («minor act»), which states, in particular, that a minor act does not cause significant harm. Accordingly, a crime that causes such harm (confirmation of the negative causative property of the act).

Considering Part 1 of Article 11 of the CC of Ukraine (where the punishable act is characterized) and the consequence «substantial damage» reflected in Part 2 of Article 11 of the CC of Ukraine, the link «act (criminal offense) – substantial damage» is formed.

This causal link is, in the author's opinion, the main one, and it performs a criterion function in relation to other manifestations of causation in the criminal legislation of Ukraine.

Some additional aspects of causation analysis in criminal law

Legally and technically, the causal connection of the «act – substantial damage» type affects the construction (legal construction) of crimes under the Special Part of the CC of Ukraine (CC of Ukraine, 2022, p. 312).

As already mentioned, a crime reveals its causality when considering the grave consequences (clause 5 of Article 67 of the CC of Ukraine) that are caused by it. It can also be argued that the institute «Criminal offense» in its specific manifestation is a crime

related by the criterion of «causality» to the provisions of Article 67 of the CC of Ukraine («Aggravating circumstances»).

In particular, from the point of view of the author of the study, causality is expressed not only by the link «act (crime) – grave consequences» but also by the link «act (crime) – commission of a crime against an elderly person, a person with a disability or a person in a helpless state – real threat of negative consequences»; that is, when analyzing the institutional connection between «Crime» and «Aggravating circumstances», it is necessary to conduct an interpretation operation, taking into account the special social and medical characteristics of the persons against whom the crime is committed, since they, in combination with the offense, are likely to cause negative consequences.

The institute of «Complicity» (Articles 26–31 of the CC of Ukraine) fixes a typical causal link between the actions of accomplices in the commission of an intentional crime and the criminal result; intermediate conclusions on the institute of «Complicity» were presented above.

While within the institute of «Complicity» the existence of a causal connection is beyond doubt, within the institute of «Involvement» (part 6 of Article 27 of the CC of Ukraine, etc.) the fixation of such a connection requires additional analysis.

The analysis of the institute of «Involvement» allows us to make a preliminary conclusion about what it refers to or characterizes:

- 1) the normative provision provided for in parts 6, 7 of Article 27 of the CC of Ukraine;
- 2) Articles 198, 396 of the Criminal Code of Ukraine;
- 3) other articles (norms) within which the aforementioned institution can be found.

In particular, from the analysis of the provisions of Articles 364, 368, 369 of the Criminal Code of Ukraine, it can be concluded that it is possible to condone (in particular, by inaction) as a type of involvement in a crime. That is, these provisions realize that involvement is an action or inaction that is directly related to the crime but is not complicity (Azarov, 2018, p. 97).

The listed existing and possible (in the interpretation) variants of involvement are specified in the normative framework as:

- 1) not promised in advance to hide the offender;
- 2) not promised in advance concealment of tools and means of committing the crime;
- 3) not promised in advance concealment of traces of a crime or objects obtained by criminal means or acquisition or sale of such objects.

The legal meaning of the normative definition and specification of involvement, in particular, in Part 6 of Article 27 of the CC of Ukraine, is, in the author's opinion, to prevent or deter:

- a) behavior «loyal» to criminals and their criminal activities;
- b) complex damage to social connections caused by this normatively defined form of post-criminal (in the sense, as a rule, after the crime) human behavior.

Concealment not promised in advance can be considered as a certain set of actions or techniques or methods of concealment.

In other words, a certain cause is formed that implies the occurrence of consequences.

However, the question arises as to the content and nature of such consequences.

In the situation with the institute, «Involvement», with no pre-promised concealment (actions to conceal), causes, in our opinion, a special manifestation of causality, which is not reduced to either formal and legal or structurally determined and legal connection.

In our opinion, since the consequence of actions on concealment not promised in advance is factual and unspecified (specific losses due to concealment or creation of conditions for committing another crime, etc.), it is possible to assert the existence of a special causal link in which:

- 1) the reason (act) is normative in nature (actions for concealment not promised in advance);
- 2) the actual consequence is of an unspecified nature.

The connection characterizing the institute of «Involvement» can be considered as normative and factual: by interpreting the provisions of Part 6 of Article 27 of the CC of Ukraine, the content of the previously unpromised concealment as a set of actions (reasons) is established; the actual consequence of the above concealment is clarified or established.

The significance of the case under consideration is in clarifying the content of special types of punishable activities.

Involvement may be associated with the commission of a single and single-subject crime, or it may be a certain consequence of complicity, or it may be associated with the commission of a crime as part of a group of persons.

The legislator obviously links the institute of «complicity» and the institute of «involvement» within the same article (Article 27 of the CC of Ukraine), achieving the following goals:

- 1) distinguishing complicity in its special manifestation (promised concealment) from a related manifestation (not promised concealment);
- 2) forming general normative grounds for manifestation and specification of complicity and involvement in the Special Part of the CC of Ukraine.

At the same time, it can be assumed that the normative combination of «role» and substantive specification of complicity and involvement within the framework of Art. 27 of the CC of Ukraine has an additional purpose: to outline (or emphasize) the connection of the above types of punishable activities.

In our opinion, the current CC of Ukraine refers to the logical scope of legal situations regulated by the legislator, which are as follows:

- 1) a single crime combined with complicity;
- 2) complicity in combination with involvement;
- 3) involvement as itself.

Clause 2 is scientifically promising, since the analysis allows to clarify the connection between the condition of involvement and complicity; here, involvement in a crime committed by accomplices can be considered as a condition (and not the cause, which are the actions of accomplices) of the result.

That is, it is understood that with a certain reservation (and this is enshrined in the normative framework of Article 27 of the CC of Ukraine) we can talk about the existence of a causation link; the causation link can be considered as a certain condition that contributes to the «classical» causation.

At the same time, this connection is not always obvious and requires defining the range of relevant cases.

A special connection is also considered within the institute of «Multiple crimes».

In particular, the connection of actual causation may be considered in the case of the so-called «ideal» set of crimes, when one action may cause consequences that in the process of criminal law assessment re-

ceive the legal «status» of separate and often different crimes.

In particular, here we can consider the «classic» case when an offender's action (specifically, arson) simultaneously gives rise to the crime of «intentional murder» and the crime of «intentional destruction of another's property».

Carrying out an institutional analysis (characterization) of causality (causal connection) in the criminal law of Ukraine, it should be noted that the causal analysis of the connection «predicate (predicate crime) – predicate offense» is promising within the framework of this issue.

This analysis, in the opinion of the author of this study, is interesting because the predicate (predicate act, crime) can be considered as a condition for the predicate crime. Within the framework of the Criminal Code of Ukraine, the connection between the predicate crime (for example, related to abuse of power or official position) and the crime provided for in Article 209 of the Criminal Code of Ukraine (Kopylova, 2016, p. 128) «Legalization (laundering) of the proceeds of crime» is considered. In other words, in the construction of predicate act and main act, we can consider the possibility of combining causation and conditioning.

However, it should be emphasized that consideration of the problematic issues of correlation between causality (a specific manifestation – causal link between an act and socially dangerous consequences) and non-causality (in this case, the link of conditioning) is associated with the problem of application and identification of non-causal links as having legal significance.

Conclusions

Based on the foregoing, the following conclusions can be drawn:

- 1) in order to solve the problematic issues of criminal law assessment of a person's behavior, it is necessary to clarify the criteria of relevant causation;
- 2) it is necessary to clarify the «close» connection of the relevant causal link with certain institutes

of criminal law (in particular, the institutes of «crime», «complicity», «involvement»);

- 3) causation is important in the analysis of certain institutions and articles of criminal law only if it acquires the features of relevance (compliance with legal, legal, and technical or legislative and technical requirements);
- 4) it is promising to study the correlation between causation and non-causal (non-causal) character;
- 5) the above mentioned in clause 4 can be considered both within the framework of analysis of a separate institution, in particular, complicity in the commission of a criminal offense, and within the framework of analysis of the content of certain acts provided for in certain articles of the Criminal Code of Ukraine;
- 6) it is especially important to note that some authors, in particular V.P. Emelyanov, emphasize the «auxiliary» meaning of causation in criminal law: socially dangerous consequences can be imputed to a person only if they were in a causal connection with an action or inaction (Emelyanov, 2018, p.103).

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