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**CRIMINAL RESPONSIBILITY FOR DESECRATION OVER THE  
GRAVE, OTHER PLACE OF BURIAL OR OVER THE BODY OF THE  
DEAD: PROBLEMS OF IMPROVEMENT AND CORRELATION**

Article 297 of the Criminal Code of Ukraine provides for liability for the desecration of the grave, other burial place or the body of the deceased [1], in the current Criminal Code of Ukraine this criminal offence is contained in Section XII of the Special Part of the Criminal Code of Ukraine “Criminal offences against public order and morality. In addition, public relations arising in this area are regulated by the Law of Ukraine "On Burial and Funeral Business" dated July 10, 2003 [2] and other regulatory legal acts.

In general, criminal offences against public order and morality are defined by law as acts that grossly violate the normal conditions of everyday life and activities of people in society (public peace, moral standards, etc.). Accordingly, the generic object of these criminal offences is public relations in the sphere of public order and morality.

In our opinion, morality is the order of behaviour that has developed in society on the basis of traditional cultural and spiritual values, motivated by moral ideals, beliefs and principles. The direct object of the criminal offence provided for by the first part of Article 297 of the Criminal Code of Ukraine is public relations that ensure generally accepted moral principles and religious traditions of the burial of the dead and respect for the memory and ashes of the deceased. The commission of such a crime causes moral damage to the relatives and friends of the deceased to the greatest extent and also harms the proper education of people in relation to universal values [3, p. 587].

The direct object of the criminal offence provided for by part two of Article 297 of the Criminal Code of Ukraine is the historical memory of the Ukrainian people, reflecting the respectful attitude of the Ukrainian society towards those who gave their lives for its ideals, freedom and human rights [4, p. 938].

The subjects of the act provided for by the first part of Article 297 of the Criminal Code of Ukraine is a grave (a place in a cemetery, in a crematorium, columbarium or in another building or structure intended for organizing the burial of the dead, where a coffin with the body of the deceased or an urn with ashes is buried) [2]; another place of burial (cemetery, columbarium or other building or instrument intended for the burial of the dead, including a crypt, a mausoleum, a memorial wall with the ashes of the dead, parts of a mine, a ship or plane with the bodies of the dead, etc.) [2]; the body (remains, ashes) of the deceased (a lifeless human body (corpse), both whole and dismembered, or its separate parts, regardless of its condition and causes of death) [4, p.939]; an urn with the ashes of the deceased (a container designed to store the ashes of the deceased)[2]; items located on (in) the grave, another place of burial, on the body (remains, ashes) of the deceased (any things located in the grave or on it, in another place of burial above the place of burial, as well as clothing, individual items and jewelry, orders and medals, a coffin, wreaths, lamps, vases, etc.) [4, p. 939]. Article 297 of the Criminal Code of Ukraine was supplemented by parts two and three with the Law of Ukraine "On Amendments to Article 297 of the Criminal Code of Ukraine on liability for desecration or destruction of monuments erected in memory of those who fought against Nazism during the Second World War - Soviet soldiers-liberators, members of the partisan movement, underground workers, victims of Nazi persecution, as well as soldiers-internationalists and peacekeepers" 2014 [5]. Subsequently, changes were repeatedly made to part two [6].

According to Professor V. A. Navrotsky, the second part of Article 297 of the Criminal Code of Ukraine (and the corresponding qualified types of crimes) does not cover the relevant actions in relation to the monuments of the enemies of the

Ukrainian people - foreign occupiers, employees of repressive bodies and acting as their supporters [4, p. 940].

As for the correlation of the objects of crime in part two of Article 297 of the Criminal Code of Ukraine and part two of Article 298 of the Criminal Code of Ukraine, the second part of Article 297 of the Criminal Code of Ukraine does not cover acts committed in relation to monuments related to distant historical events. In particular, megalithic tombs, pyramids, burial mounds, catacombs, as well as monuments dating back to the period of the 10th-19th centuries and the beginning of the 20th century are not subject. Encroachment on such items in the presence of other mandatory elements of crimes should be qualified under Article 298 of the Criminal Code of Ukraine [4, p. 940]. Article 297 of the Criminal Code of Ukraine provides for an act in the form of desecration over the grave, another burial place, over the body (remains, ashes) of the deceased or over the urn with the ashes of the deceased (insulting attitude, rude mockery, demonstrating disregard for the burial place by destroying tombstones or excavating or the ashes of the deceased committing obscene intentional acts on the body (remains, ashes) of the deceased, unauthorized removal of clothing from the body (remains, ashes) of the deceased, moving to another place or dismemberment or destruction of the body (remains, ashes) of the deceased, committing an act of necrophilia, using parts of the buried body with ritual or other purposes not provided for by the current legislation, or the commission of other actions that were intended to trample on the family or public memory of the deceased, demonstrate a negative attitude towards the deceased, insult the relatives and friends of the deceased, show disregard for social, religious principles and traditions in yes sphere) [2]. This correlates with such actions as destruction or damage in the second part of Article 298 of the Criminal Code of Ukraine, but with the obligatory presence of an insulting attitude, gross mockery and a demonstration of disregard for the grave or remains of the deceased. Accordingly, this does not apply to such actions as, for example, illegal archaeological research on ancient graves that are objects of archaeological heritage, because they have other motives and goals, so such actions will be qualified under Article 298 of the Criminal Code of Ukraine.

This also applies to such an action as “defilement”, provided for by the second part of Article 297 of the Criminal Code of Ukraine, because this term refers to acts that basically coincide with those covered by the concepts of “outrage” and “mockery”. We are talking about violating the inviolability of places of memory, mocking the feelings of individuals, the public assessment of the sanctity of the relevant objects and the value of the ideals for which the fighters for their approval fell [4, p. 940]. With the actions provided for by the second part of Article 298 of the Criminal Code of Ukraine, “defilement” is correlated in the same way as “abuse”.

The next criminal act, provided for in Article 297 of the Criminal Code of Ukraine, is the illegal possession of the body (remains, ashes) of the deceased, the urn with the ashes of the deceased, objects located on (in) the grave, in another place of burial, on the body (remains, ashes) of the deceased. Such actions are committed, as a rule, with a mercenary motive, when such taking is carried out for their subsequent sale or extortion of funds for their return. Also, a selfish motive will take place in the case of retaliatory actions for a reward [4, p. 941].

This is fully consistent with the actions provided for by part four of Article 298 of the Criminal Code of Ukraine. But again, when it comes to the actions provided for in Article 297 of the Criminal Code of Ukraine in relation to moving objects - the bodies (remains, ashes) of the deceased, the urn with the ashes of the deceased, objects located on (in) the grave, in another place of burial, on the body (remains, ashes) of the deceased originating from ancient burials that are objects of archaeological heritage, such actions are qualified under Article 298 of the Criminal Code of Ukraine and do not require additional qualification under Article 297 of the Criminal Code of Ukraine.

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