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EDITORIAL BOARD

CONTENT

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CONTENT

TOPICAL

Ivan PRYSIAZHNIUK
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UDK 343.13

PROBLEM ASPECTS OF SETTING THE TASKS OF CRIMINAL PROCEEDING

The article focuses on problem aspects of setting the tasks of criminal proceeding. It points the exclusiveness of the Constitution of Ukraine provisions as regard to the place of a person in the state, and emphases the fact that these particular provisions are basis for every existing legal relation in the state. The author reveals the issue of vulnerability of the place of a person in the criminal proceeding in comparison with other spheres of social life.

It is determined in the article that correct definition and logically agreed formulation of the criminal proceeding tasks should be of systematic and fundamental character, and it should foresee the opportunity of their real and effective execution. Thereby, more than three years' experience of application of the Criminal Procedure Code of Ukraine provisions and the exploratory work of Ukrainian legal science, both give grounds to debate the issue of reality and efficacy of the provisions of the Article 2 of the Criminal Procedure Code of Ukraine, and that, in particular, stipulates the relevance of the present study.

The article analyzes the issue of criminal proceeding tasks institution development. In the course of study, the author discovered the fact that the first codified criminal procedure law on the territory of modern Ukraine (Code of Laws) did not contain the separate norm designed to set the criminal procedure tasks. However, in times of Code of Laws the scientists started to make efforts to set the criminal proceeding tasks.

Likewise Code of Laws the Statute of Criminal Justice of 1864 also did not contain the separate norm designed to set the criminal procedure tasks.

The main trends of scientific thoughts of the second half of the XIX century – the beginning of the XX century regarding the issue of setting tasks and targets of the criminal procedure are considered.

The author states that the first criminal procedure codes of the soviet power in Ukraine did not contain the normative definition of the criminal proceeding tasks. Situation became better after the Criminal Procedure Code of Ukraine of 1960 came into force. The ideological statements about «strengthening of socialistic law and order» and «respect of laws of socialistic life» were set forth in the Article 2 of this Act. Moreover, criminal justice had to facilitate

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«eradication of crimes», that was and remains unreal. That was the reason why at the end of 1992 the mentioned above norm was amended and was left as such until the Criminal Procedure Code of 1960 became invalid. Setting forth the criminal proceeding tasks in the Criminal Procedure Code of 1960 constantly became the debating issue for national researchers and, moreover, was repeatedly criticized.

The modern regulation of criminal proceeding tasks is based on the intension of Ukraine to become the full member of the European community and to implement values that are set forth in the European Convention on Human Rights and in Case Law of the European Court of Human Rights. At the same time, the author indicates the drawbacks of modern normative definition of the criminal proceeding tasks.

The article pays attention on incorrectness of defining „persons, society and state from criminal offences" as the object of protection. It is stated that it is more successful to use the formulation that contains the institution of rights and interests of the mentioned objects of protection.

The statement «the insurance of quick, comprehensive and impartial investigation and trial in order that everyone who committed a criminal offence were prosecuted in proportion to his guilt, no one innocent were accused or convicted, and no one were subjected to ungrounded procedural compulsion and that an appropriate legal procedure applied to each party to criminal proceedings» is analyzed. The fact of duplication of criminal proceeding basics is stressed. The article defines that quality and real execution of criminal proceeding tasks regarding quick, comprehensive and impartial investigation is extremely difficult.

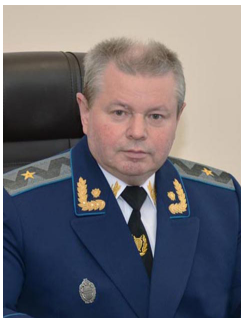
The author notices that the basis of criminal proceeding tasks should be found in the balance between the categories of justice and appropriate legal procedure.

Ivan PRYSIAZHNIUK

PROBLEM ASPECTS OF SETTING THE TASKS OF CRIMINAL PROCEEDING

The article is focused on problem aspects of setting the tasks of criminal proceedings. On the basis of current legislation, the main approaches to the modern understanding of criminal proceeding tasks were elicited. Proposals for improvement of legal regulation of criminal proceeding tasks were suggested.

Keywords: criminal proceeding; criminal proceeding tasks; pre-trial investigation; trial; protection of human rights.



Oleksandr TOLOCHKO

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UDK 343.12

HUMANIZATION OF CURRENT CRIMINAL PROCEDURE MODEL IN UKRAINE

In the article the author sets the humanized features of current criminal procedure model in Ukraine and studies the trends towards convergence of European procedural systems of common and continental law. The process both of adaptation of criminal procedural legislation to international legal standards and of interpenetration of procedural institutions from developed national legal systems is of objective character.

The author proves that renewed Ukrainian criminal process has become more adversarial as it is based on liberal provisions of international legal standards, case law of the European Court of Human Rights and modern doctrine. In particular, the role of the court in demanding evidences has become less important; parties have obtained the right to decide on the order of examining gevidences; witnesses are grouped according to the party they support; the investigative judge decides on the enforcement of all measures of restraint; the court is prohibited to examine the testimonies obtained in the course of the pre-trial investigation without the consent of the parties; the institution of subsidiary investigation has been abrogated; the preliminary hearing involving the parties has been set forth; the provisions concerning the possibility of exclusion of evidences have been made. Moreover, the rights of the suspects (accused) and victims have been extended, additional guarantees of their legitimate interests defense have been granted and restraint the actions of the state authorities (investigator, public prosecutor)concerning restriction of rights of the criminal proceeding parties have been restrained.

Current national criminal procedure belongs to the continental type, and now it is in the stage of social and legal convergence towards other procedural systems. These systems share the same panhuman values: the right to human treatment (the prohibition on torture or on inhuman or degrading treatment); the right to liberty and security of person (the right to personal liberty, to security of person, to respect one's private and family life, one's home and one's correspondence); the equality before the law and the prohibition on discrimination; right to a fair trial (the right to a competent legal assistance, to access to justice, to presumption of innocence etc.).

However, the convergence of these legal systems will not cause in theirmerging in one procedure type, as the common humanization philosophy of criminal procedure is not able to eliminate their differences.

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These differences appeared in the process of historic evolution of each procedural system, so they have natural character, ensure the integrity of the system, but they do not resist the integration processes on the international legal level.

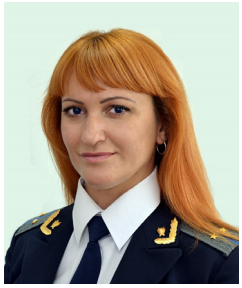
Oleksandr TOLOCHKO

HUMANIZATION OF CURRENT CRIMINAL PROCEDURE MODEL IN UKRAINE

This article presents the study of the peculiarities of criminal procedure humanization in Ukraine. The author states that mentioned process is based on two main constituent parts. The first one is the common legal ideology that recognizes the priority of panhuman values and grants the effective realization of procedural rights of an accused and a victim. And the second one is standardization of procedural powers of state authorities concerning restraining the rights of the parties of the criminal proceeding.

Keywords: humanization; criminal procedure; convergence of criminal systems.

ISSUES ON ORGANIZATION AND ACTIVITY OF THE PUBLIC PROSECUTOR'S OFFICE



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UDK 658.012.61(075.8)

THE STAGES OF THE MANAGEMENT TEAM FORMING IN THE LOCAL PUBLIC PROSECUTOR'S OFFICE (PSYCHOLOGICAL ASPECTS)

The process of reforming the public prosecutor's office of Ukraine, approximation of its operation to the European standards requires enhancement of efficacy and performance of public prosecutor's operation. This causes the need to form a highly professional staff and proper organization of its work. That's why the organization of work must be built on modern legal principles and procedures, adopting the best European practices of management in public prosecutor's offices.

The management team of a public prosecutor's office of a certain organizational level is a group of senior staff, who hold administrative positions. The management team forming by a head of the local public prosecutor's office must be based on his/her knowledge of specific psychological mechanisms and substantial psychological characteristics of the process of forming by a head his/her immediate circle in the office.

Modern practice, which is currently being shaped in public prosecution, gives grounds to talk about a repeated sequence of events in the activities of persons, who have formed a management team of local prosecutor's office. In particular, the team is a group of public prosecutors, entrusted with the special legal status; which is not teamed up due to administrative or working relationships, but due to common aims, tasks and problems of public prosecutor's office functional operation, to be solved by their joint actions.

That is why it's from the position of organizational and psychological science, that it is possible to state, that there are following stages of the local prosecutor's office management team development: forming, storming, norming, performing. And in terms of socially-psychological essence, the team forming always takes place through passing the stages of preparation, establishing (adaptation) and self-actualization (awareness).

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At the forming stage the development of the common vision on task solving takes place, which is one of the major factors of effective team work. In fact the law on public prosecutor's office determines the limits of competence, and the orders by the Prosecutor General appoint the local public prosecutor's office senior staff. However, the team forming process in terms of management and functional activities is underway.

Thus, on the basis of theoretical analysis and the results of study of the management activity psychological characteristics, the article considers the stages of management team forming in the local public prosecutor's office.

Inna BEVZIUK

THE STAGES OF THE MANAGEMENT TEAM FORMING IN THE LOCAL PUBLIC PROSECUTOR'S OFFICE (PSYCHOLOGICAL ASPECTS)

On the basis of theoretical analysis and the results of study of the management activity psychological characteristics, the article considers the stages of management team forming in the local public prosecutor's office.

Keywords: public prosecutor's office; management; local public prosecutor's office; administrative positions; team.

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UDK 343.8

FEATURES OF THE PUBLIC PROSECUTOR'S SUPERVISION OF COMPLIENCE WITH LAWS WHEN RENDERING MENTAL HEALTH SERVICES

During 2015 on treatment was in psychiatric institutions 3221 mentally sick. Such persons, according to article 25 of the Law of Ukraine «About mental health services», are given the same rights and freedoms, as other citizens. The corresponding restriction is allowed only in the cases provided by the Constitution of Ukraine and according to laws of Ukraine. The international treaties are adopted also the provision that mentally sick persons can have the similar rights, as persons with other diseases. However, in practice a situation a bit different – violations of the rights of persons with problems of mental health are systematically allowed.

It is represented that vulnerability of such persons is the reason of system violations, inability to assert the rights and to show any resistance to illegal actions. And, unfortunately, such situation health workers quite often abuse. As public prosecutor's checks testify, heads of lunatic asylums try to use patients as labor in own mercenary motives and for the benefit of the third parties. The technicians of hospital force patients to perform instead of itself work (mopping, ware, etc.).

Considering deterioration in a condition of legality when rendering mental health services extremely important to investigate questions of observance of the rights of mentally sick persons owing to implementation by the prosecutor's supervision of compliance with laws in mental health facilities.

As have shown public prosecutor's checks in our state in the majority of psychiatric institutions the rights of mentally sick persons aren't observed, in particular there are systematic violations of fundamental human rights. It is promoted, including the existing legislative gaps in this sphere.

The prosecutor too not always takes exhaustive measures for increase of efficiency of supervision in this direction and real elimination of violations of laws.

Considering that during rendering mental health services numerous violations of St 14, 16, 21 Law of Ukraine «About mental health services» and items 9, 17 of the Order of application of coercive measures of medical character in psychiatric institutions are allowed to persons, patients with mental disorders and the relevant laws which have made socially dangerous acts, to the prosecutor at implementation of check of observance it is necessary to pay special attention to the norms regulating an order of hospitalization of the persons who have made socially dangerous acts in a condition of diminished responsibility and questions of treatment of persons to which coercive measures of medical character are applied.

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Olha BOHATYROVA

FEATURES OF THE PUBLIC PROSECUTOR'S SUPERVISION OF COMPLIENCE WITH LAWS WHEN RENDERING MENTAL HEALTH SERVICES

The article deals with separate questions of public prosecutor's supervision of observance with laws in mental health facilities where persons are placed there for treatment of a mental disease without them on that consent within criminal proceedings are considered. Problems of implementation of such supervision when rendering mental health services are examined.

Keywords: public prosecutor's supervision; psychiatric establishment; lunatic asylum; criminal proceedings.

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UDK 343.163

INTEREST AS THE SUBJECT OF PROSECUTOR'S REPRESENTATION ON THE NEW LAW OF UKRAINE «ON PROSECUTION»

Reform of law enforcement, prosecution and, above all, should be a priority of the new modern state, in which respect European values. Law of Ukraine «On Prosecution» of October 14, 2014, together with the adopted amendment introduced new legal principles of organization and activity of organs. In particular, substantially changed the rules concerning representation Prosecutor interests of citizens or the state in court.

Specifying position p. 2, art. 121 of the Constitution of Ukraine, p. 2 s.1 art. 2, art. 23 of the Law of Ukraine «On Prosecution» stipulates that a single system of Ukraine prosecutors assigned function representing the interests of citizens or the state in court in cases determined by law. Thus, the subject of representation in the exercise of this function still is interest. However, the prosecutor of his powers of representation in court significantly narrowed.

The interests of the citizen and the state prosecutor's offices as a subject explored in his writings M. Kosyuta, O. Mikhailenko, M. Mychko, M. Rudenko and other scientists. This paper considers the following interests in view of the current regulation and prosecution representative function finds the meaning of these concepts.

It is noted that the term «interest» occurs in a number of the law, but its definition in the law no. Thus, the Constitution of Ukraine contains rules which broadly applicable category of «interest», although the content of interest in the broadest sense in the Constitution of Ukraine not disclosed.

Analyzed the Constitutional Court of Ukraine, which provided the interpretation of such notions as «national interests», «legitimate interests». The positions of scientists to determine the content of these concepts.

By studying the effectiveness of implementation prosecutors office of representative in terms of legislative changes highlights the main areas where prosecutors made representation of citizens or state court in accordance with the current (new) of the Law of Ukraine «On Prosecution».

It is claimed that taking into account changes in the scope of powers of the Prosecutor in the exercise representing the interests of citizens and the state in court, limited opportunities to obtain material from government entities, the need to pay

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court fees in the period from 15 July 2015 to 31 December 2015 the number of pre 'claims revealed in the public interest decreased and almost no complaints were presented to the public interest.

Substantiated the view that the activities of the prosecutor should not depend on whether the legislation in accented attention to the legality of interest for the protection of which the prosecutor may apply to the court.

Oksana SEVRUK

INTEREST AS THE SUBJECT OF PROSECUTOR'S REPRESENTATION ON THE NEW LAW OF UKRAINE «ON PROSECUTION»

Consider issues concerning the representative concepts of «the interests of the citizen», «national interests» and «legitimate interests». Analyzed as legislative changes regarding the scope of powers of the prosecutor in the representation of interests of citizens and the state in court affected the efficiency of prosecutors executive powers in specific areas.

Keywords: prosecutor's representation; citizens' interests; the interests of the state; the legitimate interests.

CONTINUOUS TRAINING OF THE PUBLIC PROSECUTORS

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UDK 343.163

PRINCIPLES OF CONTINUOUS TRAINING OF PROSECUTORS

The principles of lifelong learning are key laws and regulations that define the specific system of requirements for training organization, compliance with which should ensure the efficiency of training programs. The principles determines the content, forms and methods of continuous training of public prosecutors. Existence of theoretical problem and lack of regulation in the current legislation of Ukraine, both have led to the need for scientific examination of the principles of the system of continuous training of the public prosecutors in Ukraine.

The aim of this article is to identify and to review the principles of continuous training of public prosecutors organization.

In fact, the organization and conduct of lifelong professional training of public prosecutors in the National Academy of the Public Prosecutor's Office of Ukraine is provided in the mode of postgraduate education: initial training of candidates for a position of a public prosecutor and continuous training of public prosecutors. However, this activity should be seen not only as a system of continuous training of certified specialists in their professional activity, but rather as a form of adult education throughout their lives, based on their individual needs in obtaining special legal knowledge, developing skills and abilities of prosecutorial activities, developing special professional competence and personal qualities.

The formation and implementation of the curriculum is carried out by certain principles. These are functional principles. Unlike organizational principles such as equality, transparency, continuity, transparency of learning, independence and autonomy of educational institutions etc., principles of functioning of the continuous training system express the essence and the social purpose of this social and legal institution.

So, it is necessary to mention the following basic principles of continuous training of prosecutors:

– The principle of unity;

– The principle of differentiation;

– The principle of collective (joint) training;

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– The principle of educational and developmental nature;

– The principle of science;

– The principle of compulsory and continuous education;

– The principle of advancing character of education;

– The principle of establishing mutual rights, duties and responsibilities;

– The principle of establishing the legal consequences of continuing professional training;

– The principle of public administration and coordination of all elements of continuous training of prosecutors;

– The principle of ensuring high quality and efficiency of education;

– The principle of taking into account domestic and foreign experience of initial training and continuous professional training of prosecutors.

In terms of law-making, these principles can be implemented in building the mechanism of public and legal support and legal regulation of continuous professional training of prosecutors by introducing relevant provisions into the Law of Ukraine "On Prosecution" and other legal acts.

Ihor KOZIAKOV

PRINCIPLES OF CONTINUOUS TRAINING OF PROSECUTORS

The article investigates the principles of a system of continuous training of public prosecutors in Ukraine. The author analyzes the organizational principles of continuous vocational training the prosecution bodies of employees, particularly in the National Academy of the Prosecutor's Office of Ukraine.

Keywords: prosecutors; improve the professional competence of the prosecutor; further training of prosecutors; prosecutorial system of training of enforcement personnel; continuous training of public prosecutors.

NATIONAL SECURITY AND DEFENCE OF UKRAINE

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UDK 355

NATIONAL MILITARY COMPONENT SECURITY OF UKRAINE

The problems of providing of military security of Ukraine are examined in the article. Separate positions of normative acts are analysed in the field of national security and defensive of our state. An idea speaks out an author that effectiveness of measures, directed on the increase of military efficiency of the soldiery formings in Ukraine depends on many factors. An important place among them occupies the legislative providing of military building in the state, law-enforcement, reconnaissance, activity is against secret service, similarly questions of co-operation of the soldiery formings.

It becomes firmly established that the Military doctrine of Ukraine is the basic system of looks to reasons of origin, essence and character of modern soldiery conflicts, principles and ways of prevention of their origin. Speech goes in the Military doctrine about preparation of the state to the possible military conflict, and also foundation of application of military force, for defence of state sovereignty, territorial integrity, other vitally important national interests.

In the new Military doctrine of Ukraine a term «military security» is remembered often enough, but without determination of his maintenance and combination with other components of national security of Ukraine. Determination of concept of national security of Ukraine needs a serious comprehension and revision. Thus military security of Ukraine is a through concept, that fully does not gather with any segment of national security of Ukraine, but crosses with all her constituents.

Military security of Ukraine is an important concept, that fully does not gather with any segment of National safety of Ukraine, but crosses with all her constituents.

Author considers that national security of Ukraine protects vitally important interests of man and citizen, society and state and impossible without inhibition of her military security. The state of safety is determined by modern character of external and internal threats. The subjects of providing of military safety are Military organization and law enforcement authorities of the state, military service is envisaged in that. Military safety of Ukraine is the state

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of security of country from the external and internal threats of military, military character for the sake of counteraction that is Military organization of the state.

Providing of military security needs proceeding in courts martial and creation of provost corps of Ukraine. Laws need making alteration acts on questions criminal, administrative, disciplinary responsibility of servicemen. Drawn conclusion an author about expedience of passing an act of Ukraine «About satus of servicemen».

Mykola TURKOT

NATIONAL MILITARY COMPONENT SECURITY OF UKRAINE

The article deals with the problematic aspects of military security of Ukraine. Analyzed certain provisions of normative acts in the sphere of defense and national security. In order to strengthen the defense capability of Ukraine, proposed changes in the specific legislation.

Keywords: Ukraine's national security; defense; military security; military doctrine; military formations.

ISSUES ON CORRUPTION PREVENTION

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UDK 343.35

WAYS TO IMPROVE THE EFFICACY OF FIGHTING CORRUPTION

Corruption is the most significant cause of destabilization of state power mechanism and of political organization of the society. That is the reason why fighting this negative phenomenon is the most vital strategic activity on the highest state and political level.

The state sector dominates and influences other sectors of social life. One can feel the impact of corruption in both legislative and legal activity.

A number of scientists is searching for the ways to improve the system of law enforcement authorities designed to fight corruption. In their opinion, to attain these ends the number of objectives is to be solved. They are the following: 1) highlighting the causes and conditions that have induced to state the issue on creating the special anti-corruption authorities; 2) recognition the necessity of such authorities creation; 3)analysis of the conditions under which they can become not only the special authorities in the sphere of fighting corruption, but the genuine coordinator which will be responsible for the state of such fighting.

The situation of fighting corruption is so complex that it is complicated to propose the universal and comprehensive mechanism of its fighting. However, it is the average citizen who suffers most from corruption, but the most benefit belongs to corrupt officials. And this appears to be the essence of its malign character.

Probably it is necessary to use the potential of the public prosecution service in the sphere of fighting corruption. The public prosecution service due to its experience can be more active in fighting corruption.

The public prosecutor's activity in the sphere of fighting corruption has many aspects and depends on the number of factors, including the category of corruption offence.

To perform the duty on fighting corruption Specialized Anti-Corruption Prosecutor's Office was created in the structure of the Prosecutor General's Office of Ukraine. Its main functions are the following:

1. Supervision over law observance in the course of the operative and detective activities performance, pre-trial inves-

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tigation conducted by the National Anti-Corruption Bureau of Ukraine;

2. Prosecution in the corresponding cases;

3. Representation of the interests of the state or the person in the court in cases related to the corruption offences and set forth in the Law of Ukraine «On Public Prosecution Service».

The public prosecution authorities are the specially authorized entities in the sphere of fighting corruption under the Law of Ukraine «On Corruption Prevention».

In the majority of cases, the public prosecutor has to make the objective and legal decision on solution to the controversial issues on jurisdiction of criminal proceedings, demanding of materials and so on. That is why it is logical to charge the public prosecutor authorities with fighting corruption.

The criteria of efficacy of the coordination activity of the public prosecutors in the sphere of fighting corruption are:

– Real impact on the improvement of the condition of crime fighting;

– Improvement of the efficacy of crime prevention;

– Defense of rights and freedoms of citizens, interests of the state from the criminal infringements;

– Reimbursement of damage caused by the corruption offence.

Nowadays the public prosecutor's functions are constricted. The public prosecution service is deprived of remedial function, performing the pre-trial investigation in criminal proceedings, making the report on administrative offences related to corruption and so on. However, the public prosecution service still has the function of coordination in the sphere of criminal corruption, representative function, and these are those functions that must be used.

Yury DOMIN

WAYS TO IMPROVE THE EFFICACY OF FIGHTING CORRUPTION

The article is devoted to the issues of improving the efficacy of fighting corruption regarding the last changes in Ukrainian society and in the Ukrainian anti-corruption legislation. The author lists the views of certain scientists on organizational and legal factors of influence this negative social phenomenon and on attraction the professionals to this issue. More wider use of the public prosecution authorities potential is proposed.

Keywords: anti-corruption legislation; Specialized Anti-Corruption Prosecutor's Office; corruption-fighting sphere.

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OTHER PAID ACTIVITY AS A COMPONENT OF RESIDENCE OR LIMITATION COMBINATION WITH OTHER ACTIVITIES

A content analysis of such concepts as «other paid activity» as part of restrictions on combining jobs and combining with other types of activities for persons authorized to perform state functions or local government.

Through interpretation of «other paid activity» should take into account the overall concept of the Law of Ukraine «On prevention of corruption». The legislator, setting different limits for persons authorized to perform state functions or local government (Sections IV, V hereof), trying to reach them not receiving such persons certain remuneration payment and a violation of the most restrictions (including restrictions on occupation of another paid activities).

According to the authors, the other paid activity is characterized primarily by the fact that it is part, and the combination of entrepreneurial activities and teaching, research and creative activities, medical and judicial practice, instructional practice of sport.

In addition, for prosecution under article 172-4 of the Code of Ukraine on Administrative Violations sufficient to establish that the person at least once violated statutory Restrictions on paid activities.

Violation of a person authorized to perform state functions or local government restrictions on employment in other paid activities may consist only of active actions. Getting a person authorized to perform state functions or local government, passive

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income (such as interest on current or deposit (deposit) bank account) is not covered by the prohibition to carry out other paid work. Because passive income received by a person not as a result of its daily activities, ie without its active participation and without the use of their work for such income.

Also other paid activity occurs in the case where a person authorized to perform state functions or local government received for work done or services rendered adequate remuneration, payment, or appropriate actions committed and the purpose of its preparation.

Proposed a new wording of Article 172-4 part 1 of the Code of Ukraine on Administrative Offences. Thus, it is advisable to agree with the title of this article, stating that the administrative responsibility is also a person for violation of statutory restrictions on combining, the combination. Also proposed to improve the wording of the additional administrative penalties as confiscation («confiscation of the revenue from business activities or rewards from working part-time, or any other combination of paid employment») and provide not mandatory but optional.

Valentina SENIK
Zoya ZAGINEY

OTHER PAID ACTIVITY AS A COMPONENT OF RESIDENCE OR LIMITATION COMBINATION WITH OTHER ACTIVITIES

A content analysis of such concepts as «other paid activity» as part of restrictions on combining jobs and combining with other types of activities for persons authorized to perform state functions or local government, as well as highlighted its essential features. Proposed changes in art. 25 of the Law of Ukraine «On Prevention of Corruption» and h. 1 tbsp. 172-4 KUoAP.

Keywords: other paid activities; moonlighting; combination; persons authorized to perform state functions or local government; offenses related to corruption.

CRIMINAL LAW

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THE PROBLEMS OF DEFINITION OF INSIGNIFICANCE OF THE ACT IN LAW

The problematic issues must be focused on the new Criminal Procedure Code of Ukraine (CPC) and practical reform aspects of criminal legislation in the context of the implementation of criminal offenses.

Firstly, there are problems concerning the content of criteria of the insignificance of the act. Pursuant to P. 2, Art. 11 of the Criminal Code of Ukraine (CC) the legislative criteria of insignificance are identified as: 1) the insignificant act has formally all the objective and subjective characteristics of crime provided for in the Criminal Code; 2) it is not of public danger due to its insignificance; 3) from the subjective side the insignificant act should not be aimed at causing any personal injury. There are different attempts by legal scholars to define other criteria (or concretization of existing) of the insignificance of the act. These scientific positions, as well as analysis of the materials of court and investigative practice, indicate the existence of current problems of legal understanding and enforcing the law category of «insignificance of the act».

The legislator does not define the concept of «substantial harm», so judicial and investigative bodies have to interpret this feature on their own. We consider ambiguous the principles of investigators and courts in subjective determination of substantial harm without taking into account the limits of criminal consequences prescribed by the law. Law courts take into account the following circumstances which they believe indicate the insignificance of the act: insignificant amount of actual damage, compensation for losses, (absence of claims from the victim), an incomplete criminal activity (a guilty person

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was unable to dispose of stolen property), individual characteristics of a person (commission of a crime for the first time, a predicament material status, a positive characteristic, an employment of guilty person, an admission of guilt, penitence, retention relatives, etc).

In our opinion, there is a substitution of such concepts as «insignificance» and «extenuating circumstances». Undoubtedly, the concept of «insignificance act» a value, but the presence of clear legislative boundaries to criminal consequences, consider questionable position of investigators and courts ignore them and take a rather subjective decision. In the theory of criminal law are different promising solutions to this problem. One of the options – a rejection of the deadline, the other – the preservation of the mentioned concept, but use it only on formal offenses, which act through insignificance is not socially dangerous.

Another problem is, in our opinion, the uncertainty of regulation of «significant damage», as that term is used in some criminal law of the Criminal Code, leading to conflicts between standards.

Procedural problem is the lack of grounds for terminating criminal proceedings – insignificance act (art. 284 CCP). The question arises, and what guided investigators and courts at the close of proceedings. Analysis of the investigative and judicial practices revealed the following: close the investigation proceedings in the absence of corpus criminal offense (para. 2 ch. 1, Art. 284 CCP); Court – in connection with the release of a person from criminal responsibility (para. 1 ch. 2, Art. 284 CCP). This practice, in our opinion, does not meet the theory of criminal law and the norms of the Criminal Code.

Above-indicated is allowed an offer in certain directions of improvement of regulatory problems of understanding and application of the concept insignificance acts: 1) to Art. 11 new CC p. 3 as follows: «minor acts not set when the offense sufficient and designated persons and property consequences for the composition»; 2) replacement of the term «substantial damage» in the disposition norms of the Criminal Code to another – «significant damage»; 3) add ch. 1, Art. CPC 284, paragraph 9 to read: «set insignificance act».

Vitalii KUZNETSOV
Larysa KUZNETSOVA

THE PROBLEMS OF DEFINITION OF INSIGNIFICANCE OF THE ACT IN LAW

The article studies the definition of insignificance of the act. The certain directions of improvement of regulatory problems of understanding and application of this concept in the law are proposed.

Keywords: criminal liability; crimes, the object of crime; object of criminal law protection; criminal law protection.

CRIMINAL PROCEDURE LAW

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PROSECUTOR IN CRIMINAL PROCEEDINGS ON THE REVISION OF DECISIONS, RENDERED ON THE STAGE OF ENFORCEMENT OF JUDGMENTS

The article analyzes the procedure on the revision of decisions rendered on the stage of enforcement of judgments, which is under the criminal procedure law. The article researches the position of the prosecutor in criminal proceedings on the revision of decisions, rendered on the stage of enforcement of judgments. Considered the characteristic features of this production. Identified the reasons for the cancellation or modification the court decisions of first instance on the stage of enforcement of judgments.

The article is focused on the research of theoretical and practical issues of prosecutor's participation in criminal proceedings of execution of court decisions. The formation of the institute of prosecutor's participation in the institute of execution of court decisions as the stage of criminal proceedings is clarified.

Foreign experience of legal regulation of this institute is analysed. Taking into consideration the European Court of Human Rights practice the prospects for further development of this institute are considered. Peculiar features of procedural form of prosecutor's participation are determined and the grounds for initiating the execution of court decisions by prosecutor are analyzed.

On the basis of research results the author proposes improvements of criminal procedural legislation of Ukraine.

Draws attention that the current Criminal Procedure Code of Ukraine doesn't define circle of persons who are eligible to appeal decisions rendered on the stage of enforcement of judgments, therefore proposed a list of them: 1) convicted, his legal representative and defender; 2) person who has filed a petition; 3) authority or penal institution; 4) person who served his sentences; 5) prosecutor, who took part in considering the issues, and the higher prosecutor; 6) victim, civil plaintiff, civil defendant and other persons in part, that directly related to their rights, duties or legal interests.

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In legal literature justice is primarily seen as a quality inherent not to all judgments but only to the conclusion of a basic act of justice. According to the author, the decision on the stage of enforcement of judgments must also comply with moral principles related to attitude to convicted person and his offense and have educational value. It is a fair solution in which the question of punishing a person is decided according to the requirements of the criminal law on the basis of his personality and taking into account the principle of humanism. In connection with the above author proposes to supplement the list of grounds for cancellation or modification of the court decisions of the first instance in the proceedings of the enforcement of judgments with provisions regarding the decision on punishment without regarding behavior and personality of convicted person during his serving.

Krystyna ARUSHANYAN

PROSECUTOR IN CRIMINAL PROCEEDINGS ON THE REVISION OF DECISIONS, RENDERED ON THE STAGE OF ENFORCEMENT OF JUDGMENTS

The article researches the position of the prosecutor in criminal proceedings on the revision of decisions, rendered on the stage of enforcement of judgments. Considered the characteristic features of this production. Identified the reasons for the cancellation or modification the court decisions of first instance on the stage of enforcement of judgments.

Keywords: prosecutor; criminal proceeding; enforcement of judgments; criminal procedural activity; stage of the criminal proceedings.

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PREJUDICIALNESS OF COURT DECISIONS IN APPLYING OF CRIMINAL PROCEEDINGS SEPARATION IN LEGISLATION OF UKRAINE

The article examines questions concerning prejudicial value of judgments in cases where in relation to certain suspects or accused the materials of pre-trial investigation (criminal proceeding) are seperated in individual proceeding and hereafter court passes judgement of guilt, which entered into force, and in relation to others, who committed crimes together with convicted, criminal proceedings are considered by the court.

The article states that despite the lack of regulatory consolidation of prejudicialness of court decisions in criminal proceedings, prejudicialness of court decisions occurs when a court judgement confirms the fact of preliminary conviction of a person to determine whether a criminal record and / or return to certain crimes of individuals.

It indicates that previously passed judgement of guilt against the person is prejudicial as it confirms his conviction. However, such sentences can not be prejudicial for confirmation of commitment of new crimes by him or by others.

The author defends the position that relative prejudicial value of such sentences may be only in cases where the person in whose respect the criminal proceeding is initiated fully agrees with the charges and if the proceeding is considered without evidences, which are litigated, or if the court considers concluded agreement on the recognition of guilt or plea agreement, or if the court sonsiders the question of exemption of person from criminal liability if he doesn't deny.

However, in all cases where a person does not recognize the offense with others, who are already convicted, his guilty should be prooved in a general order, prescribed by the criminal procedural law, and all the evidences provided by the public prosecutor should be examined in court.

Moreover, if examined evidences do not prove his guilt in committing the alleged crime, the decree should be the reason for the review of sentences in relation to previously convicted persons under the new circumstances.

The question of prejudicialness of not only judgements of guilt, which convicts persons for commitment of crimes with a person, the proceeding against which was separated in the individual proceeding and which is considered by the court, but also of the acquittals and court orders to release persons from criminal responsibility

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and judgements on the basis of agreements have to be considered similarly.

However, when passing such judgments the court should indicate that the person commits the crimes together with another person, materials of pre-trial investigation or criminal proceedings in respect of which are seperated in a separate proceeding.

The features of appealing of such judgement by the person, the proceeding against which is separated in individual, isn't provided in the law, as the proceedings against him is not considered, the question of his guilt wasn't considered and punishment was not intended. When sending judgements of guilt against that person to a court, the person can fully or partly admit his guilt in committing the alleged crimes, or doesn't admit his guilt stating that other convicted persons slandered her. But it is necessary to take into account that passing and approval of such judgments by the court on the basis of agreements evidences aren't studied, so the possibility of further prejudicialness of such judgments under conditions of adversarial criminal proceedings is even much more in doubt than when passing judgments in criminal proceedings, in which evidences are examined.

Vasil KOZIY

PREJUDICIALNESS OF COURT DECISIONS IN APPLYING OF CRIMINAL PROCEEDINGS SEPARATION IN LEGISLATION OF UKRAINE

In the article the questions of obligatoryness of court decisions are lighted up in a criminal proceedings at application of separation of criminal proceedings. It is indicated about impossibility of obligatoryness of value of sentences and another court decisions persons are confessed that guilty in the feasance of criminal offences with another persons, productions in regard to that are distinguished separately and examined by a court.

Keywords: pre-trial investigation; criminal proceedings; unity and separation of materials of a prejudiciary inquiry; unity and separation of criminal proceedings; obligatoryness of court decisions.

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LEGISLATIVE SOLUTION OF THE PROBLEM OF INTERROGATION OF THE CHILDREN, VICTIMS OF SEXUAL VIOLENCE IN THE COURT

The problem of combating sexual violence against children on the state level in Ukraine is still been little studied, and the extent and socially dangerous consequences of such violence – undervalued.

Conducted research sample materials of criminal proceedings and judicial practice revealed some shortcomings of the current criminal procedural legislation, which affect the facts proven in court of such violence and can lead to re-traumatization of the child victims.

In the article were described some problems of interrogation of the children, victims of sexual violence in court. During the trial proceedings of criminal offenses against sexual freedom and sexual inviolability of minors usually experience tactical and psychological problems in the proof of guilt of the accused during questioning of victims, who often change their position.

In general, from a psychological point of view, the most complete and truthful victims of violence usually given during the first interrogation in pre-trial proceedings (for a short period of time after the event).

Later, under the influence of various subjective and subjective factors victims, especially children, tend to change their testimony.

Therefore, if a child victim of sexual abuse alters their initial testimony, saying in court that any violence against her accused did not commit, it would be tactically correct ad in the court of primary testimony.

However, the provisions of the Criminal Procedure Code of Ukraine makes it virtually impossible because of the principle of immediacy study testimony (evidence) in court.

In the article were presented the proposals of legislative changes in the Articles 225, 226 of Criminal Procedure Code of Ukraine, aimed at making it possible to use in court as evidence the video of interrogation of the child, victims of violence, conducted during the pre-trial investigation (without violating the principle of the immediacy of examination of evidence in court).

This legislative changes will be fully consistent with the provisions of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (25 October 2007), ratified by Ukraine on 20 June 2012 and will ensure

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the proper execution of our state, its commitments (Article 35).

In the article was stressed that a child who has suffered of sexual violence is, above all, a child who is suffering, and only then – a member of the criminal process. The rights of the victim have precedence before any interrogation.

Victoria MOZGOVA

LEGISLATIVE SOLUTION OF THE PROBLEM OF INTERROGATION IN COURT OF CHILDREN, VICTIMS OF SEXUAL VIOLENCE

In the article were described some problems of interrogation of the children, victims of sexual violence in court. Proposals of legislative changes in the Criminal Procedure Code of Ukraine, aimed at making it possible to use in court as evidence the video of interrogation of the child, victims of violence, conducted during the pre-trial investigation (without violating the principle of the immediacy of examination of evidence in court) were presented.

Keywords: criminal proceedings; examination of evidence in court; interrogation; the video of interrogation; sexual violence against children.

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UDK 343.163

THE PROCEDURAL ACTIVITY OF THE PUBLIC PROSECUTOR IN THE COURSE OF DISCLOSING MATERIALS TO THE OTHER PARTY

This article presents the study results of the topical issues concerning the procedural activity of the public prosecutor in the course of disclosing materials to the other party. The author states that the principle of legality charges the public prosecutor with the comprehensive, full and impartial examining of the circumstances of criminal proceeding; with finding circumstances both of incriminating and exculpatory nature in respect of the suspect, the accused, as well as the circumstances mitigating and aggravating their punishment; with making adequate legal evaluation thereof and with ensuring the adoption of lawful and impartial procedural decisions. In this case, the fulfilment of such Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC) requirement directly influences the further court perspective of criminal proceeding. The incorporation of the institution of disclosing materials to the other party into the CPC has aimed not only at setting public prosecutor's functions, but also at implementing both adversarial system and right to defense principle. The practice in the application of the CPC provisions has proved the significance of this institution in criminal proceeding and that has caused the relevance of the present study.

The procedure of exercising the right of the parties to review the records of the criminal proceeding and the corresponding procedural activity of the public prosecutor have been significantly changed. In this case, the attention should be paid to the real implementation of the adversarial system, as the CPC of 1960 had not contained the provisions concerning the right of the public prosecutor to review the materials of the party of defense and that, of course, placed the parties at a disadvantage.

In the article the author analyses the stages of the public prosecutor's activity in the course of disclosing materials to the other party. At the beginning of disclosing materials to the other party, the procedural documents of the public prosecutor are the following:

1) the assignment to the investigator to notify the suspect, his/her defense counsel, legal representative and the defense counsel of a person subject to the compulsory educational measures or to the compulsory medical measures about the completion of

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the pre-trial investigation and about granting access to the materials of the pre-trial investigation;

2) the notification of the suspect, his/her defense counsel, legal representative and the defense counsel of a person subject to the compulsory educational measures or to the compulsory medical measures about the completion of the pre-trial investigation and about granting access to the materials of the pre-trial investigation.

The author stresses the existence of drawbacks in legislation concerning granting access to the materials not only to the victim and to the representative of a legal entity, but also to the civil plaintiff, to his/her representative and to the legal representative, to the civil defendant, to his/her representative.

The second stage of the procedural activity of the public prosecutor is related to the direct granting access to the materials of the pre-trial investigation. The author states the main problem of practical importance: repeated cases of damage or destruction of the pre-trial investigation materials by the suspect.

The third stage of the procedural activity of the public prosecutor is related to the right to review the materials of the party of defense. This right involves applying with the request to the party of defense and reviewing the materials. The chief attention is focused on the procedural execution of granting access to the materials to the other party. The corresponding written confirmation is to be made in the report on granting access. Inappropriate and superficial execution of such report causes negative consequences for the public prosecutor during the trial. The author sets forth the main positions of the party of defense while applying to the court with the complaint on inappropriate review of the materials of the pre-trial investigation.

A number of topical issues concerning the public prosecutor's fighting the spinning out time, assigned to review the materials of the pre-trial investigation, by the party of defense is defined. The author states principal ways of the legal regulation of the public prosecutor fighting such spinning out time by the party of the criminal proceeding.

Oleksandr SAPIN

THE PROCEDURAL ACTIVITY OF THE PUBLIC PROSECUTOR IN THE COURSE OF DISCLOSING MATERIALS TO THE OTHER PARTY

The article is devoted to the research of the topical issues related to the peculiarities of the procedural activity of the public prosecutor in the course of disclosing materials to the other party. The peculiarities of the practical application of the CPC provisions in the course of disclosing materials to the other party are considered. The author suggests the ways to improve the legislative basis of the procedural activity of the public prosecutor maintenance in the course of disclosing materials to the other party in the criminal proceeding.

Keywords: public prosecutor; procedural activity; pre-trial investigation; completion of the pre-trial investigation; disclosing materials to the other party.

INTERNATIONAL EXPERIENCE

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PARTICULARITIES OF THE PROCEEDINGS RECORDING IN THE ANGLO-AMERICAIN LAW SYSTEM

In this article we review the actual questions of the use of the electronic and telecommunications systems in the criminal procedural activities of the Anglo-American (common) law system. We analyze the correlation of the new technologies with the principles of law.

Today the domestic criminal process requires a substantial renovation and further development using the electronic technology.

This is caused by our reformation of the public institutions system and we also seek how to implement some democratic reforms. In this connection, in this article we want to objectively and critically evaluate the national reality, however, for this we need to investigate the foreign legal experience.

We explored the ways to record the proceedings at the pre-trial stage in the Anglo-American criminal proceedings. They differ significantly from our usual ways of recording, where paper is the most common thing in the processing of the criminal proceedings. There is no sewn and numbered stack of paper of the procedural documents (criminal proceedings) in those countries that we study.

If in more details, this article examines the question of the electronic registration procedure, which is divided into: hard technology (equipment or materials) and soft technology (software, information systems). We explore the positive developments in the use of the Internet as a tool for solving crimes.

We study the practice of using electronic systems to solve crimes by using law enforcement authorities of the United States of America: «Oasis» (CIA – USA), «Magic Lantern» (FBI – USA), Fluent (USA), Magic Lantern (USA) and others.

We also examine the Scotland Yard (UK) proposals on the use of the online resources and email to solve crimes, using electronic communication with citizens and the results of such innovation. We study the practice of using a single electronic system of the criminal justice, such as the nationwide police computer (PNC) in the UK.

We are studying the electronic design of the procedural investigations, including such one that is performed by using the Internet connection, video conferencing and more. We explored the use of the modern high technology in the proceedings and the

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practice of equipping law enforcement, judicial and penal institutions with electronic devices.

We studied the rules, grounds for the testimony receiving with usage of the video conferencing and its application in practice.

We suggest the ways of implementing in our system individual institutions of the electronic proceeding that have positively proven themselves in another continent.

Anton STOLITNII

PARTICULARITIES OF THE PROCEEDINGS RECORDING IN THE ANGLO-AMERICAIN LAW SYSTEM

In this article we review the actual questions of the use of the electronic and telecommunications systems in the criminal procedural activities of the Anglo-American (common) law system. We analyze the correlation of the new technologies with the principles of law.

Keywords: criminal procedure; recording; telecommunication systems; internet technology.

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UDK 347.963

THE ROLE OF PUBLIC PROSECUTION IN THE JUSTICE SYSTEM: FOREIGN EXPERIENCE

Amidst this research there will be a good reason to learn foreign experience of the role of public prosecution in the juvenile justice system.

By now Georgia, Italy, Canada, Spain, Macedonia, Russian Federation, Kazakhstan, France, Germany and Poland other countries have adopted special regulations which determine the juvenile justice system functionality.

In the Republic of Kazakhstan it was the Presidential Decree No. 646 of August, 19, 2011, which ratified the Concept of the Juvenile justice system of the Republic of Kazakhstan for 2009–2011. Juvenile Prosecutor's Office is part of this system along with the other agencies.

The Juvenile justice Code of Georgia is intended to protect the primary interests of youths, to ensure their social adaptation and rehabilitation in case of conflicts with the law, protection of juvenile witnesses and victims, prevention of the repeated victimization of the youths and the repeated crimes, public order protection at the justice institutions.

According to the Code the juvenile public prosecutor who has received the necessary training is entitled to take solid part in juvenile justice proceedings.

The present-day juvenile justice institution of the Republic of Italy includes juvenile courts, prosecutor's office, court social services divisions and correctional services departments. All of them stay within the jurisdiction of the Ministry of Justice and collaborate with other organizations: police, municipal social services, volunteer organizations.

In the Republic if Italy the public prosecutor's office is attached to the court. The prosecutor represents the state in complaints against criminal defendants while the Republican prosecutor also conducts crime investigation. Prosecutors also have the court duties in civil cases especially when the interest of the youths is involved (for example, custody disputes).

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The juvenile justice system of the Kingdom of Spain includes juvenile judges and prosecutors who received a long-term training in the juvenile law. Juvenile prosecutors have wide authority in the criminal justice as well as beyond it to guarantee the protection of the youth rights.

The analysis of the foreign experience of the role of public prosecution in the juvenile justice system determines priorities of the juvenile justice development to be adopted in Ukraine to make sure children's rights are respected, protected and fulfilled. The first step of this process will be to pass the Law of Ukraine «On the juvenile justice in Ukraine» which is to determine not only the principles of the juvenile justice in Ukraine but also the duties of the public prosecutor in this sphere.

Vita ODUDENKO, Yuliia TURLOVA

THE ROLE OF PUBLIC PROSECUTION IN THE JUSTICE SYSTEM: FOREIGN EXPERIENCE

The foreign experience of the role of public prosecution in the juvenile justice system in the countries which have their specific juvenile legal system has been reviewed. The research determines priorities of the juvenile justice development to be adopted in Ukraine to make sure children's rights are respected, protected and fulfilled.

Keywords: system; juvenile justice; public prosecution; institutions; children's rights.

TRIBUNE FOR YOUNG SCIENTISTS

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CRIMINAL LEGAL DESCRIPTION OF THE SPECIAL CONFISCATION

Criminal legal description is one of the fundamental categories of criminal law, seen in close connection with criminalistic, criminological, criminal investigative executive and operational characteristics. In most authors use criminal legal description of the study of certain offenses. The use of criminal law to study the characteristics of other criminal categories are rare. In addition, criminologists meaning criminal legal characteristics defined differently. Special confiscation is unexplored means of criminal law response in criminal law of Ukraine. Through the prism of criminal law characteristics in the theory of criminal law is not considered. The above, as well as changes to the legal regulation of special confiscation of the Criminal Code of Ukraine, determine the relevance of scientific research in this area.

The article aims to provide criminal legal confiscation special characteristics of the latest legislative changes to its regulation.

In our view, the elements of criminal law special characteristics forfeiture would be appropriate to include the following: 1) the nature and content of the special confiscation; 2) criminal-legal nature of the phenomenon; 3) Criminal legal structure application (prerequisite, basis and conditions); 4) types of events; 5) criminal consequences.

The study to determine the location of special confiscation mechanism in combating crime based on the following hierarchical structure: 1) the mechanism of fighting crime – a special resistance to crime – the legal response – criminal liability – a form of criminal liability – special confiscation in addition to a form of criminal liability; 2) the mechanism of fighting crime – a special resistance to crime – the legal response – other measures of criminal law – special confiscation; 3) mechanism for combating crime – combating crime special – legal response – other measures of criminal law – special confiscation in conjunction with the criminal legal means in accordance with Section XIV and XV of the General Part of the Criminal Code of Ukraine.

Special confiscation – a penal unusual phenomenon: on the one hand – a manifestation of criminal responsibility; and on the other – is a manifestation response to a socially dangerous acts that are not criminal liability.

Summarizing the above, it should be noted that the analysis of recent changes in spe-

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cial confiscation allows noted that criminal law issues implementing EU legislation not fully resolved and requires further scientific developments and research in this area.

Oleksiiy YERMAK

CRIMINAL LEGAL DESCRIPTION OF THE SPECIAL CONFISCATION

Criminal legal description of the special confiscation as other means of criminal law considered. The problems of legislative regulation of special confiscation and the ways to overcome them.

Keywords: another means of criminal law; criminal legal description; special confiscation; legislative regulation.

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UDK 343

COMPLIANCE CRIMINALIZATION OF ARBITRARINESS GENERAL PRINCIPLES FOR ITS IMPLEMENTATION

Criminalization of socially dangerous behavior is part of state policy aimed at protecting society and government from them. One form of such behavior, the danger of which covers a wide range of objects of criminal protection is arbitrariness. The aim is to develop and submit proposals for changes to the existing criminal law to facilitate the application of Art. 356 of the Criminal Code of Ukraine. Implementation of this goal possible by analyzing the compliance process of criminalization of arbitrariness with the general principles of criminalization.

First of all, the work referred to the doctrine of criminalization in general. A wide variety of views of scientists on the matter does not allow to stop at each of them, but enables to allocate a common pattern. They characterize as a process of criminalization assignment legislator specific behavior to the number crimes. The grounds of criminalization is the social danger and the relative prevalence act. The principles of criminalization is a set of general rules applicable legislator for the assessment of individual behavior, as well as the formulation and law making in criminal law that allow, encourage or prohibit, under threat of criminal penalties specific forms of behavior. These we associate with the rules of legislative technique and we refer to them: 1) the principle of without gaps of law and profitability of ban; 2) the principle of consistency of the system of law; 3) the principle of procedural feasibility of prosecution; 4) the principle of proportionality sanctions and repression savings. The effectiveness of criminalization arbitrariness we analyze for compliance with each of these principles.

Principle of without gaps in law and profitability of ban means the need to prevent regulatory gaps or loss in the process of making the new rule of criminal law. The legislator attempted to cover various forms of socially dangerous arbitrariness behavior and establish responsibility for them. However, law enforcement still face with gaps otherwise. First of all, it concerns the definition of public relations which suffer from arbitrariness. Title of Chapter XV of the Criminal Code of Ukraine does not reflect the species object of arbitrariness. To solve this problem, in the article proposed the appropriately rename the section.

When taking into account the principle of systematic consistency it is important that as a result of criminalization is not recognized crime that allowed. Combating

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arbitrariness behavior continues by using standards other areas of legislation. The conflicts criminal law on liability for arbitrariness rules with other areas of law is not installed. Article 356 Criminal Code of Ukraine is articulated in such a way that it causes some conflict with crimes against property. To illustrate this in the article is an example of judicial practice, and for preventing incorrect training actions proposed amendments to the disposition of the considered norm.

It was also established compliance criminalization of arbitrariness principle of procedural feasibility of prosecution. In particular, the provision of Art. 356 Criminal Code of Ukraine formulated so as to avoid different negative social effects. Furthermore, since the creation of criminal law penalties set by the legislator, that is formulated sanction for the offense, the process of criminalization includes the penalization. The principle of proportionality sanctions and repression savings must also be met. Deviations from this principle, we not established.

Thus, detected partial compliance with criminalization of arbitrariness to principles of criminalization. Outlined problems possible to solve by making the changes to criminal law, which proposed by us in this article.

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COMPLIANCE CRIMINALIZATION OF ARBITRARINESS GENERAL PRINCIPLES FOR ITS IMPLEMENTATION

This article analyzes compliance with the principles of criminalization of arbitrariness in assigning the number of penal acts. The analysis put forward a number of proposals relating to amendments to existing legislation. It was found that the rate of criminal liability for arbitrariness does not comply, in particular, such as the principle of criminalization like a legal system consistency. Proposed to amend the title of Section XV of the Criminal Code of Ukraine and the precise meaning of Art. 356 Criminal Code of Ukraine in order to avoid conflict with the internal rules of responsibility for crimes against property and facilitate the qualification of arbitrariness.

Keywords: criminalization principles; legislative technique; arbitrariness;, proportionality of sanctions4 public danger; public relations; law appliances.

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POSTPONEMENT OF EXECUTION OF VERDICT TO SOLDIERS OR RESERVIST DURING THE ANTI-TERRORIST OPERATION

The article is focused on the study and implementation in the criminal lprocedure legislation of Ukraine a possibility of postponement of execution of verdict to soldiers or reservist during the anti-terrorist operation. Showed the formation of the legal foundation of this legal institution at the legislative level and envisaged only in time of war. It is known that it has acquired a significant relevance in the period of the Great Patriotic War and provided for in the following cases. Accordingly, if at the time of the court's verdict in force, according to which a person sentenced to imprisonment, but which is in the ranks of the Red Army or the Navy, the court which rendered the verdict, it has every right to apply this provision. This opportunity was provided, even if a person has committed a crime of counter-revolutionary, very dangerous for the society. In addition, in the case of committing desertion, the court, taking into account the specific circumstances of the case, as well as the presence of mitigating circumstances, can acknowledges appropriate to send to the front, he is entitled to use this institution right until the end of the war and the direction the convicting person in the army.

In the future this rule of low provided forin the foundations of the criminal law of the Union republics, the content of which has adopted the Criminal Code of Ukraine in 1960.According to this source of law in wartime execution of the sentence of imprisonment pronounced by the military or military service, which is subject to conscription or mobilization may be postponed by the court until the end of hostilities with the direction of the convicted person in the army.In addition to this, if the convicted person would be a staunch defender of the motherland, at the request of the military command, the court may release him from punishment or be replaced by a lighter.

In addition, this legal institution provided for in the rules of criminal and procedural law. Despite this, the possibility ofpostponement of execution of verdict to soldiers or reservist in time of war not envisaged. With this in mind, for the effective implementation of this base on the legislative level the following features should be considered.

Firstly, it is necessary to take into account the fact that it is focused on a certain number of persons: a soldier or a reservist. Second, the possibility of moving

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the beginning of the condemnation provided exclusively in wartime. However, given the current situation in the country is necessary to talk about the period of anti-terrorist operation, which officially launched the country's leadership. Third, the postponement of execution will be carried out at the same time sending the convicted person in the active military unit. Fourth, the period during which a person will be in a military formation depends on the period of administration and action against terrorism, after which eliminates the need for further postponement of execution. Fifth, the effects of the rule did not provide for the possibility of release the person from punishment or replacing it with a more soft, as in previous editions. Therefore, the verdict be subject to execution.

Anton CHERNIIENKO

POSTPONEMENT OF EXECUTION OF VERDICT TO SOLDIERS OR RESERVIST DURING THE ANTI-TERRORIST OPERATION

The paper studies the postponement of execution of verdict to soldiers or reservist during the anti-terrorist operation. Analyzed the main structural elements of said base and prompted its introduction in the criminal procedural legislation of Ukraine.

Keywords: criminal process; enforcement of court decisions; postponement of execution of verdict; soldier; reservist; anti-terrorist operation.

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