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LEGAL ASPECTS OF FUNCTIONING OF CRIMINAL MISCONDUCT

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Today the concept of criminal misconduct is inputted in the Criminal procedure code of Ukraine. It is important to understand the judicial order of its functioning. However its determination is given neither in this document nor in the Criminal code of Ukraine. In this document the necessity of gradation of crimes according to the degree of social danger is only determined. Scientists expound some ideas concerning that, how to bring our legislation according to world standards.

In the light of politics of humanizing of criminal legislation in a public formula main thing must be an observance of vector of commuting for the Commission of the offense.

And therefore in any case we should not talk about increasing of the range of acts for which the person who committed them will be punished.

That is, the algorithm looks like this:

All offenses that were contained in other regulations: Customs code of Ukraine, Code of Ukraine on administrative offences, the tax code of Ukraine, Code of labor laws of Ukraine are not equal, not being transferred to an anticrime legislation.

Is the registry of regulations of the Criminal code of Ukraine, and those rules, regulations which can be attributed to the misconduct of, or in separate Chapter or subsection of the code, or changed directly in the article, and to the General part is devoted to the definition of misdemeanor in criminal legislation [1].

According to the degree of the public danger offences are divided into crimes and misdemeanors. Both the crime and misconduct can be committed by a person during activity in any area. In modern theory of the law public danger is considered to be the major criterion of distinction between misdemeanors and crimes. It means that the act is harmful to society if it causes or creates the threat of such harm to public relations [2].

Offenses are distinguished from crimes by lesser degree of public danger.

The misconduct is minor offences that causes harm to the person or society and is the basis for holding the person who committed the offence, to liability as prescribed by law. If suspension acts not prohibited by the criminal law, the crime is not recognized. If the act has all the symptoms listed in the criminal law, but has not increased the degree of public danger, it may also not be recognized as a crime.

If the act is defined in law as a misdemeanor, then the person should bear the responsibility of it. For the person who committed the crime and brought to justice, the law as a consequence of this conviction is provided, whereas holding a person accountable for wrongdoing does not foresee the occurrence of priors [3].

At the same time there is a point of view about the presence of misconduct of such character as harm, and if the social harm of the offence reaches the level of public danger, it is a crime. Giving the definition, we emphasize that adherence to the definitions of «misdemeanor» or «felony» some definitions, for example, «public» or «criminal» doesn't change anything and doesn't explain. But now it you have to make consciously to eliminate misunderstandings and false interpretations.

An unfortunate error crept in the theoretical work and through the law wrong translation, the mismatch in stages of development rights and the like.

Therefore, while analyzing the social mechanisms of regulation of social-legal attitudes as expressed in legal provisions, we will rely on the proven the postulates of the theory of law, to use the correct terminology, as this will eliminate the possibility of distortions and interpretations. There should also be a Law fundamentals of the legislation and thus defined the basis for further development legislation in accordance with the changes in society which must be eliminated, moved outside of the crime activity that takes

place in various spheres of public life and may be regarded as misconduct. This will enable the formation of modern legislation governing public legal relationship according to modern international standards and constitutional provisions.

In addition, rules and various regulations in the codification will find its place in legislation, which will facilitate their use. In total thanks to marked approach to public law we will achieve the following objectives: the humanization of the legal system, the law is consistent with the provisions the Constitution of Ukraine, compliance with the law the essence of civil law. Simplicity and clarity of laws for the citizens would testify to the democratization society.

Returning to the difference between crime and misdemeanor, it should high light the main signs that allow distinguishing these two concepts:

1. The material sign of a crime is manifested in public danger acts in violation – public harm acts.

2. Criminal wrongfulness – fixing a criminal act in the criminal code of Ukraine indicates the existence of a crime. It the presence in the act on criminal offense demonstrates the affiliation act to this category.

3. The punishment for a crime provides for the application of the toughest, hardest for the convict of the consequences – punishment for misconduct applies not punishment, and penalties [4].

Therefore, the criminal procedural code of Ukraine contains a section of criminal offences in crimes and misdemeanors. These two concepts get away on material grounds, criminal wrongfulness and the punish ability. At the national level we should define normative fixing misconduct. There are two proposals – the retention of existing the criminal Code of Ukraine and the creation of new criminal Code of misconduct.

In the scientific literature today, special attention is paid to new procedural mechanisms for the implementation of criminal proceedings. First of all, this is due to the fact that the new criminal procedure code of Ukraine (adopted April 13, 2012), hereinafter – the CPC of Ukraine, has secured a number of new institutions.

Innovations relate to all stages of criminal proceedings – as pre-judicial, judicial. One of the key participants of the production, in practical activities which will show the changes, is the investigator. His work is multi-faceted, affects different spheres of social life. The investigator at each the actions and procedural solution implements certain code of criminal procedure tasks in criminal proceedings, the implementation of which is due to the implementation of such a function pre-trial investigation, as the implementation of proceedings in criminal misconduct, especially pre-trial investigation are regulated by Chapter 25 criminal procedure code of Ukraine.

The new criminal procedure code introduces the concept of criminal misconduct, which includes offences of little gravity, representing serious threats to society, such as copyright infringement and related rights, petty theft, disorderly conduct. As basic punishment for the Commission of criminal misconduct is a fine.

The introduction of a new term «criminal misconduct» involving special the procedure for conducting pre-trial investigation, on which I want more to stay [5].

The first feature of the pre-trial investigation of criminal offenses is the fact that it is in the form of the inquiry, as referred to in article 215 of the CPC Ukraine. Under inquiry is understood enforcement activities based on law aimed at detection, prevention, avoidance, and investigation criminal offenses, ensure the solution of problems of criminal proceedings. The function of inquiry is provided today by the current CPC of Ukraine. In comparison innovations are possible, for example, employees of operational units at the pre-trial investigation criminal misconduct, to use the powers of an investigator of the authority pre-trial investigation.

The procedure for receipt of materials to employees' operational units of is similar process of response to allegations and reports of crimes. The head of body of pre-judicial investigation examines the information received to it defines the legal qualification of the criminal offence with reference to the article of the Law and entrusts the investigation to the investigator or employee operational unit.

The process of pre-trial investigation of criminal offences is implemented according to the General rules of criminal proceedings, as referred to in article 298 of the CPC of Ukraine [6].

During questioning citizens have the possibili-

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ty to use the same rights of participants in criminal proceedings under the criminal procedure code of Ukraine during the implementation of pre-trial investigation of criminal offences in General. The difference in the rights will depend on the procedure status of the participant of criminal proceedings. For example, the victim may purchase as stipulated in article 56 of the CPC of Ukraine only after the submission of the application for involvement in the production as the victim. After that he received the memo the procedural rights and obligations of a victim, which is written confirmation acquisition of the status of the victim.

The specifics of implementation of proceedings in criminal misconduct assume that while their investigation is not allowed measures of restraint in the form of house arrest, bail or detention. These restrictions are imposed due to the fact that the social danger of criminal misconduct, compared to the crimes, is less so and procedural influence on rights and freedoms should also be less.

Taking this fact, the suspect may be elected only the measure of restraint in the form of personal liability or personal guarantee. Plus also, these measures can be elected only by the investigating judge, and only in the cases clearly stipulated by the CPC of Ukraine, which, in essence, is procedural guarantee the respect of human rights in criminal proceedings.

It is necessary to pay attention on limitations in use of investigative (investigation) actions during pre-trial investigation of criminal misdemeanors. So, article 300 of the criminal procedure code of Ukraine prohibits the holding of secret investigative (investigation) actions during the inquiry.

Public proceedings, which the investigator can use during the pre-trial investigation of criminal offences, remain questioning (including via video conference), the simultaneous questioning of two or more already interviewed persons, presentation for identification, entry to shelter or other possession of a person, the search, examination, investigative experiment and conduct examination. PT. 111 codes of criminal procedure confers the right of each party's pretrial investigation of the possibility to be informed about the criminal production [7].

Another novelty introduced in the criminal procedure code of Ukraine is the adoption of judicial the decision in a simplified procedure, which is a procedure of consideration of materials criminal proceedings on the merits without the trial in a court meeting. To do this, at the final stage of prejudicial investigation, namely time of drawing up the indictment the investigator, his approval and direction in the court by the prosecutor, is submitted the corresponding petition the latest. However, it can be made only under the condition that the suspect unconditionally has admitted his guilt, not challenged the established pre-trial investigation of the circumstances and agree with the review the indictment in his absence, and victim does not object to such consideration.

Taking into the consideration above-mentioned information, the above innovation allows you to avoid unwarranted delays in criminal proceedings and in no time to make a decision and act on it.

Innovations relating to criminal offenses also concern responsibility for their Commission. The conviction of a person for a criminal misconduct will not affect the further implementation in the face of their rights. On the other hand, the defendant in the Commission of a criminal offense the person will receive all procedural rights and guarantees of the criminal process, and it will be impossible to apply a measure of restraint in form of detention [9].

Analyzing and mastering the scientific terms and the order their application in practical activities, you can come to the conclusion that the pretrial investigation of criminal offences differs from the procedural notes of the peculiarities of its implementation, which consists in the selection of investigative (search) of action, applying certain precautions, adherence to a reduced timetable the conduct of the inquiry and the like. Anchoring of innovations in the criminal procedural code of Ukraine, serve as procedural safeguards the rights and freedoms citizens are perceived positively, given the democratic processes that recently taking place in our country. So, positive step for law enforcement agencies and citizens alike will be the fact that about 80 % cases the result of the pre-trial investigation of criminal misconduct may be the conclusion of the recon-

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ciliation agreement between the victim and suspect or accused, and also of the agreement between the Prosecutor and the suspect or accused on the recognition of guilt.

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In this article the process of decision of criminal misconduct is considered in a criminal statute. It is certain that introduction of institute of criminal misconduct is one of the basic stages in the conception of reformation of criminal justice in Ukraine. It is analyzed, that introduction of institute of criminal misconduct will become a positive step for law enforcement authorities, because simplified process of investigation and bringing in to criminal responsibility.

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Ільченко О.В., Ігнатенко Є.В. Правові аспекти функціонування кримінального проступку

Розглянуто процес визначення кримінального проступку в кримінальному законодавстві. Визначено, що введення інституту кримінального проступку є одним з основних етапів в концепції реформування кримінальної юстиції в Україні. Проаналізовано, що введення інституту кримінального проступку стане позитивним кроком для правоохоронних органів, оскільки буде спрощено розслідування і притягнення до кримінальної відповідальності.

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Ильченко А.В., Игнатенко Е.В. Правовые аспекты функционирования уголовного проступка

Рассмотрен процесс определения уголовного проступка в уголовном законодательстве. Определено, что введение института уголовного проступка является одним из основных этапов в концепции реформирования уголовной юстиции в Украине. Проанализировано, что введение института уголовного проступка станет позитивным шагом для правоохранительных органов, так как упроститься процесс расследования и привлечения к уголовной ответственности.