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LEGAL REGULATION OF CRIMINAL DELICT – THE WAY TO LEGAL SPACE OF THE EUROPEAN UNION

Paper reveals the priorities for Ukraine's European integration in general; particular attention is paid to the reforming of law enforcement and criminal law for their humanization and reduction to the European legal standards aimed at the protection of human rights and freedoms.

We consider general theoretical and practical problems associated with the introduction of a criminal offense to the criminal legislation of Ukraine for its humanization.

Keywords: *human rights, criminal offense, offense, administrative offense, criminal law, European Union.*

Документ розкриває загальні пріоритети європейської інтеграції України; особлива увага приділяється реформуванню правоохоронних органів і кримінального права для гуманізації їх діяльності та приведення її до європейських правових стандартів, що забезпечують захист прав і свобод людини.

Розглядаються загальні теоретичні та практичні проблеми, пов'язані з уведенням інституту кримінального проступку в кримінальне законодавство України з метою гуманізації.

Ключові слова: *права людини, кримінальний проступок, правопорушення, адміністративне правопорушення, кримінальне право, Європейський Союз.*

A priority direction of Ukraine's European integration is the adapta-tion of national legislation to the legislation of the European Union (EU), which is expressed in the convergence with the European system of law aimed at the protection and promotion of human rights. The introduction of essentially new kind of a criminal offense – "criminal offence" to national criminal law is justified by the progressive practice of the legal systems of EU member States. The transformation of legal field of Ukraine towards European integration primarily implies the rethinking of the process of socialist law; transplantation in Ukrainian legislation the principles of EU law; the study of Ukrainian legislation on the subject of their nonconformity to the acts of other international organizations, the member of which is or is going to become Ukraine [1. p. 58].

In 1995 Ukraine joined the Council of Europe, before that, in 1994, the Parliament of Ukraine ratified the Agreement on Partnership and Cooperation between the European Communities and Ukraine, and in 2004 adopted the National Program of Adaptation of Ukrainian Legislation to the EU legislation.

One of the key points of the development of the domestic legal system enshrined the priority of the human person as the highest social value (Article 3 of the Constitution of Ukraine) [2]. This fundamental principle, which replaced the socialist principle of the priority of public interests over personal, significantly affects the directions of the development, all branches of law including criminal as it is an instrument of the state protection of rights and interests of citizens, society and the state.

On transplantation into Ukrainian legislation of the legal principles of the EU as a unique international community, which is a striking example of a successful political and legal cooperation and economic integration, it is necessary to mention the following. EU law is an independent system that operates together with the national legal system and with the system of universal international law. The principles of EU law establish the General legal regime of European integration and its legal basics. Dominant one among the principles of EU law it should be defined the principle of the supremacy of EU law that means that the rules of a given legal system have a greater legal effect than the rules established in the support of the participating countries of the EU. In other words, in the case of discrepancies and coincidences between the law or any other source of national law on the one hand and the norms of EU law on the other it should be guided by the latter one. The complex structure of the EU can be imagined as a complex, which rests on three pillars, this is exactly what the so-called theory of "three pillars". The first pillar is the European community, the second is common external policy (human rights, democracy, etc.), and the third one is police and judicial cooperation in criminal law. Therefore, the harmonization of the national legislation to the European standards set in the regulations of the Council of Europe and the European Union is objectively necessary to improve the fight against crime. A significant step towards the improvement of criminal legislation and bringing it to proper international standards was the adoption of the concept of reforming the criminal justice of Ukraine [3] (hereinafter – the Concept). Active participation in developing the Concept was attended by international experts and public representatives who convincingly among the main provisions of the Concept stressed the necessity of improvement of criminal procedural norms and related legislation, taking into account world experience. In a further by the Decree of the Cabinet of Ministers of Ukraine from August 27, 2008 № 1153-R it was approved the Plan of Measures for Implementing the Concept which was based on the need after the adoption of the Criminal Procedural Code of Ukraine, the development and approval of the Bill "On Criminal and Administrative Violations". Providing the sequence of the state power, the Supreme Soviet of Ukraine of VII convocation has adopted the Criminal Procedural Code of Ukraine of November, 20, 2012 (the CPC) [5], based on the dispositions of the Concept. But, for today there is a topical issue of the introduction of the institution of misdemeanors.

As the main unsolved problem connected with the settlement of a question on criminal offenses it must be considered that the current criminal code of Ukraine (article 12) regulates four types of crimes that are classified according to their characteristics: the degree of seriousness of the act and penalty. But, despite the different severity of crimes, the criminal record acts as a general legal consequence for all persons who were found guilty of committing a crime.

Sentenced to the penitentiary of any penalty, persons from the moment of entry into force of a guilty verdict are considered to be judged as in the process of serving the sentence and after release from serving it within a certain time set by law. In addition, the existence of a criminal record can lead to as criminal law, and criminal law, but in any case the negative consequences that causes certain difficulties in the future of human life. Therefore, with the introduction of criminal offences into criminal legislationis recommended to repeal a criminal record for committing them.

Also, it should be noted that some problems arise with the application of the rules on administrative offences, which are provided for judicial jurisdiction and the imposition of penalties criminal law of detention (arrest, confiscation of property, deprivation of special rights, etc). Persons who are made answerable (or administrative

responsibility for offenses such as petty theft or fraud, infringement of intellectual property rights, domestic violence, vandalism, that properly not accorded with basic procedural safeguards. Such guarantees include: the right to legal assistance; appeal court decisions; and other rights envisaged by the Concept on the Protection of Human Rights and Fundamental Freedoms [6]. Accordingly, the specified administrative offenses are not reflected in crime statistics, therefore the state criminal policy on the prevention and crime prevention is not spread on it, it significantly complicates the fight against criminal offenses.

Repeatedly in the decisions of the EU on human rights (case "Doronin V". Ukraine) was drawn an attention to the illegality of the norms of the Code of Ukraine about Administrative Offenses, which contains activities characterized by the legal nature of criminal punishment. The attention on the absence of norms of the elements of competitiveness, determining the status and rights of participants in the process, primarily by the defense is drawn [7].

A significant contradiction was Article 263 of the CAO with the provisions of Article 6 "Right to a fair trial" of the Concept on the Protection of Human Rights and Fundamental Freedoms. The norm of the Administrative Code regulates the terms and procedure of an administrative detention in violation of the rules of the circulation of narcotic drugs to three, and even ten days to establish the identity and clarify the circumstances of acquisition of seized drugs – the decision of the Prosecutor, not the court, as guaranteed by the Concept of the Protection of Human Rights. Thus, by legislative consolidation of criminal misconduct it will be implemented the main idea of public policy on the issues of humanization of the criminal law through the reclassification of minor crimes and separate administrative offenses in criminal offenses. Nowadays in the proceedings on administrative violations are allowed to use a large number of penal measures (detention, searches and seizure of belongings and documents, and so on) without proper judicial control. The introduction of criminal offences will significantly reduce the number of such actions in administrative proceedings. These and many other rules compared to the current legislation will strengthen the protection of the rights of man and citizen. In addition, the introduction of the new institution will greatly simplify the procedure of criminal proceedings by conducting pre-trial investigation of criminal misconduct in the inquiry form.

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