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Summary

The work is devoted to the investigation of procedural ways of obtaining things and documents in criminal proceedings. The article analyzes the grounds, conditions and procedural procedure for obtaining things and documents within the framework of the execution of the decree on temporary access to things and documents.

***Keywords**: receipt of things and documents, measures to ensure criminal proceedings, temporary access to things and documents, criminal proceedings.*

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TAKING INTO ACCOUNT FOR THE RELATIVE SEVERITY OF PENALTIES IN THE CRIMINAL LEGISLATION OF UKRAINE AND GEORGIA: A COMPARATIVE ANALYSIS

Рябчинська О. УРАХУВАННЯ ПОРІВНЯЛЬНОЇ СУВОРОСТІ ВИДІВ ПОКАРАНЬ В КРИМІНАЛЬНОМУ ЗАКОНОДАВСТВІ УКРАЇНИ ТА ГРУЗІЇ: ПОРІВНЯЛЬНИЙ АНАЛІЗ. Проаналізовано актуальні питання реалізації властивостей системи покарань в процесі правозастосовчої діяльності. Акцентовано на тому, що відсутність чіткої регламентації порядку заміни основного виду покарання на більш м'який його вид породжує проблему вибору покарання з множинності м'якших видів, по якій простежуються різні теоретичні підходи.

Відзначено схожість систем покарань, встановлених в кримінальному законодавстві України та Грузії, а також і основних положень, що регламентують певний механізм реалізації їх системоутворюючих ознак при призначенні покарань і вирішенні інших питань, пов'язаних з кримінальною відповідальністю.

***Ключові слова:** система покарань, види покарань, ознаки системи покарань, заміна покарання, більш м'який вид покарання, призначення покарання.*

Formulation of the problem. The system of punishments in Ukraine, including various punishments in content and nature, makes it possible to ensure both the differentiation of criminal responsibility and individualization, and the justice of punishment in accordance with the gravity of the crime and the identity of the perpetrator. In the Ukrainian criminal law doctrine, the following basic features of the punishment system are traditionally distinguished: the punishment system is established only by law, that is, no punishment can be freely determined; its type, size, order and grounds for application can be determined only by law; the list of penalties forming the system is mandatory for the court; the list of penalties included in the system is

exhaustive and recorded in the order in which it is given in Art. 51 of the Criminal Code of Ukraine - from the least strictly to the most stringent. These features of the system of punishments, supported by legislatively defined general principles of sentencing, are aimed at ensuring an adequate and fair application of criminal law measures to the guilty person and unity of judicial practice. That is why, in sentencing, an important aspect is compliance with the above properties of the punishment system, which, unfortunately, does not always take place in the practice of judges.

Analysis of publications on the research topic. The issue of the implementation of the properties of the system of punishments, certain types of punishments and the general principles of sentencing as a whole has been widely and comprehensively considered by such domestic scientists as T.A. Denisova, V.I. Tyutyugin, V.V. Poltavets, Yu.V. Ponomarenko, V.O. Popras, V.V. Stashys, N.I. Khavronyuk, Yu.V. Shinkarov and others. Nevertheless, the theoretical and practical problems of implementing the properties of the punishment system in imposing punishments in other countries, in particular those that have been developing for a long period of time under a single criminal law doctrine, having similar legislation with Ukraine, which take into account Model Criminal Code for the CIS countries.

The purpose of the article is the object of our research interest, we identified the mechanism for implementing this feature of the punishment system as their clear certainty in the degree of rigor in the process of sentencing under the criminal legislation of Ukraine and Georgia in order to find out the most reasonable approaches.

Statement of the actual material. The system of punishments provided for in Art. 51 of the Criminal Code of Ukraine (hereinafter - the Criminal Code), includes such types of punishments as: fine; deprivation of a military, special rank, rank, rank or qualification class; deprivation of the right to occupy certain positions or engage in certain activities; public Works; correctional labor; service restrictions for military personnel; confiscation of property; arrest; restriction of freedom; content in a disciplinary battalion; imprisonment for a fixed term; life imprisonment [1].

The main types of punishment are community service, correctional work, service restrictions for military personnel, arrest, restriction of liberty, detention in a disciplinary battalion, imprisonment for a fixed term and life imprisonment. Additional punishments are deprivation of a military, special rank, rank, rank or qualification class, confiscation of property. Penalties such as fines and deprivation of the right to hold certain positions or engage in certain activities can be used both as basic and additional punishments.

In accordance with Art. 40 of the Criminal Code of Georgia types of punishments are: fine; deprivation of the right to occupy positions or engage in activities; socially useful work; correctional labor; restriction of persons for military service; restrictions on the use of firearms; House arrest; imprisonment for a certain period of time; indefinite deprivation of liberty; seizure of property [2].

Thus, the list of penalties under the criminal legislation of Ukraine is broader than in the Criminal Code of Georgia. The approaches of the Ukrainian and Georgian legislators to the allocation of basic and additional punishments are similar, except for such moments: 1) socially useful work as a type of punishment can be appointed both as the main and as an additional punishment; 2) The Criminal Code of Georgia does not contain a normative prescription similar to that in part 4 of Art. 52 of the Criminal Code - only one main punishment can be imposed for one crime, provided for in the sanction of the article (sanctions of the article) of the Special Part of the Criminal Code, to which one or several additional punishments can be attached in cases and in the manner prescribed by law.

Along with the normative prescription relating to the general principles of sentencing, which contains a formalized requirement to impose a stricter punishment among those envisaged for the crime committed only in the case when a less severe type of punishment is not sufficient to correct the person and prevent him from committing of new crimes, in the law enforcement practice of Ukraine the need to appeal to the content of art. 51 of the Criminal Code (Kinds of punishments) arises in the following cases: when clarifying issues of mitigating or strengthening responsibility (Article 5 of the Criminal Code); to identify crimes of minor gravity (part 2 of article 12 of the Criminal Code); in determining the punishment for an unfinished crime and for a crime committed in complicity (Art. 68); in determining a milder punishment than provided for by the law (Article 69 of the Criminal Code); in determining the punishment in the presence of circumstances mitigating the punishment (Article 69-1 of the Criminal Code); in determining the final punishment for the totality of crimes and aggregate

sentences, including when taking into account the rules of addition of punishments (Art. 70-72 CC); 7) when replacing the unserved part of the punishment with a milder one (Article 82 of the Criminal Code).

A similar situation can also be traced when analyzing the norms of Chapter XI (sentencing) of the Criminal Code of Georgia, which require taking into account the relative severity of types of punishments, in particular when: clarifying issues of mitigating or strengthening responsibility (article 3); sentencing in the presence of mitigating circumstances (article 54); the imposition of a punishment milder than provided by law (art. 55); sentencing for unfinished crime (art. 56); sentencing in the recurrence of crimes (art. 58); sentencing on the totality of crimes and sentences (Article 59); addition of punishments (Article 61); replacement of the unserved part of the punishment with a milder type of punishment (Article 73).

Analysis of the relevant norms allows to conclude that there are no fundamental differences in the legislative establishment of the need to take into account the provisions of Art. 51 of the Criminal Code of Ukraine and Art. 40 of the Criminal Code of Georgia. However, certain differences exist in terms of the purpose of punishment for the totality of crimes. Thus, the rules of sentencing for a set of crimes are defined in Part 1 of Art. 70 of the Criminal Code of Ukraine, where it is stated that the purpose of punishment is carried out by: 1) absorbing a less severe punishment by a more severe one; 2) the total addition of the penalties imposed within the limits defined by law; 3) partial addition of the penalties imposed within the limits defined by law.

The Criminal Code of Ukraine does not contain a clear requirement regarding the choice of the principle of sentencing for a set of crimes (except in cases where one of the crimes committed was life imprisonment). At the same time, the Plenum of the Supreme Court of Ukraine gives general recommendations, which are reduced to the need to take into account, along with the identity of the perpetrator and the circumstances mitigating and aggravating the punishment, the number of crimes included in the aggregate, the form of guilt and the motives for each of them, the severity of the consequences , type of aggregate and other [3, p. 265].

An analysis of the judicial practice of sentencing allows us to conclude that "the courts impose a final punishment by absorbing a less severe punishment more severely more often than by fully or partially adding punishments" [4, p. 266]. One of the options for the application of the principle of absorption of punishments in determining the final punishment for a set of crimes in the criminal law doctrine is the situation when the court imposed one of the most severe punishment for one of the crimes forming the aggregate. This position is argumented by the fact that "by establishing the principle of absorption, the law (Part 1 of Art. 70 of the Criminal Code) restricts its application to the observance of only one requirement: a punishment that absorbs another must be more severe, and the punishment that is absorbed is less strict. Since the absorption is not limited to the type of punishment, the application of this principle is possible with respect to punishments of both one type and different types "[5, p. 189-190].

In accordance with Part 1 of Art. 72 of the Criminal Code, when adding punishments for a set of crimes and a set of sentences, a less severe type of punishment is translated into a more strict type, based on the ratio established in this article. Established in criminal law science and tested in practice is an approach in which the choice of a stricter punishment is carried out firstly from its size - in case of assignment for crimes included in the aggregate punishments of one type, secondly - from "its place to the legislative list of punishments established in Article 51 of the Criminal Code in the case of the appointment of different types of punishments in such situations "[3, p. 191]. The same, or rather the same ratio, are the ratios of the types of punishments when they are transferred from the less strict to the more severe, established respectively in Art. 72 of the Criminal Code of Ukraine and Art. 61 of the Criminal Code of Georgia. However, this identity concerns only the transfer of such types of punishments as restriction of liberty, correctional work or restrictions on military service, socially useful labor (public work on the Criminal Code of Ukraine) to imprisonment. The Criminal Code of Ukraine expands the possibilities of the court when translating punishments and provides for options for transferring punishments not only to imprisonment, but also to such punishments as: detention in a disciplinary battalion, arrest, restriction of liberty (parts 2, 3, 4 of article 72 of the Criminal Code). An analysis of judicial practice shows that the Ukrainian courts, despite a fairly detailed regulation of the rules for the transfer of sentences, sometimes make mistakes when applying the provisions of Art. 72 of the Criminal Code. In certain cases, the local courts, in violation of the specified requirements of the law, appointed the final punishment of the defendants, translating the stricter type of punishment into a less severe one [6,

p. 360-361].

Both in the CC of Ukraine and in the CC of Georgia there is no clear regulation of the procedure for replacing the punishment with a lighter one, which gives rise to certain theoretical problems. For example, in the criminal law science there is no single vision of what kind of punishment a court may order according to Art. 69 of the Criminal Code of Ukraine. Some scientists believe that when assigning the main punishment not specified in the sanction of the relevant article (sanction of the article) of the Special Part of the Criminal Code, the judge must take into account the sequence of placement of the types of punishments in accordance with Art. 51 of the Criminal Code [7 p. 194]. A different position is also expressed, which boils down to the fact that "the law does not restrict the court's right to choose a lighter punishment and he decides this question at his discretion, taking into account the circumstances of the particular case and data on the perpetrator. Therefore, it can be any, but necessarily softer than the sanction defined by the sanction from the number of those provided for in art. 51 of the Criminal Code "[8, p. 276; 9, p. 797]. In fairness, it should be noted that the second approach is taken up by judicial practice and is widely used, especially when concluding plea bargains. For example, the sentence of the Irpensky Interdistrict Court of Kyiv Region dated January 29, 2014 PERSON_1 was found guilty of committing a crime under Part 2 of Art. 410 of the Criminal Code of Ukraine (the sanction of which provides for punishment in the form of imprisonment on lines from five to ten years) and a penalty agreed by the parties was imposed in the form of 3 (three) months of arrest in the guardhouse [10].

Conclusions. In general, it should be noted the similarity of the punishment systems established in the criminal legislation of Ukraine and Georgia, as well as the main provisions governing a specific mechanism for implementing their systemically important features in imposing punishments and solving other issues related to criminal liability. Without aiming for the purpose of the study, the content of the types of punishments that have undergone significant changes compared to the earlier current legislation, we find general approaches to assessing the degree of severity of types of punishments in the system and determining the general principles of sentencing taking into account the ratio of different types of punishments in the system. Certain differences have also been established in the number of types of punishments provided for in the criminal codes of Ukraine and Georgia, the regulation of individual issues relating to the sentencing of a set of crimes and a set of sentences. Of particular scientific interest is the practice of applying Articles 53-59, 61, 73 of the Criminal Code of Georgia, in order to clarify the situation with compliance with the provisions of the above standards, since even detailed regulation of certain requirements at the legislative level, as Ukrainian law enforcement practice shows, is not always a guarantee of correct and reasonable application of the law in sentencing.

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Summary

The author has analyzed current issues of implementation of the properties of the system of punishments in the process of law enforcement. It is emphasized that the lack of a clear regulation of the procedure for replacing the main type of punishment with a milder type of it creates the problem of choosing a punishment from a plurality of milder types by which different theoretical approaches can be traced.

***Keywords**: system of punishments, types of punishments, signs of the system of punishments, replacement of punishment, milder type of punishment, sentencing.*

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GENESIS AND PROSPECTS OF THE DEVELOPMENT OF IDEAS ABOUT THE NATURE OF CRIMINALISTICS SCIENCE IN UKRAINE

Степанюк Р., Лапта С. ГЕНЕЗИС І ПЕРСПЕКТИВИ РОЗВИТКУ УЯВЛЕНЬ ПРО ПРИРОДУ НАУКИ КРИМІНАЛІСТИКИ В УКРАЇНІ. У статті розглянуто історичний аспект розвитку наукових поглядів щодо природи науки криміналістики в Україні. Підкреслено, що уявлення про неї як про виключно правову науку, що залишилось у спадок з часів тоталітаризму, призвело до відставання природничо-технічного напряму і відповідно негативно впливає на подальший розвиток криміналістичних досліджень. Запропоновано додатково вивчити можливість обґрунтування подвійної (юридичної та природничо-технічної) природи криміналістичної науки, у тому числі з урахуванням досвіду США та країн Європи.

***Ключові слова**: юридична наука, криміналістика, природа криміналістики, криміналістична техніка, розслідування злочинів.*

Formulation of the problem. The development of Criminalistics as an applied legal science largely depends on the tasks that it faces in connection with the activities of law enforcement agencies in the field of crime prevention. However, so far, Soviet theory of Criminalistics has dominated the national science. Consequently it is increasingly lagging behind the needs of the practice, and is incapable of performing its main function - servicing the criminal process by developing effective means, techniques and methods necessary for use in pre-trial investigation and legal proceedings.

In the modern period, almost all post-Soviet states are characterized by a crisis of Criminalistics. It is noted that this science has not yet been restructured on the rules of competition and only works by inertia in the interests of the preliminary investigation, "does not see" a court investigation, operates inquisitorial stereotypes. In fact, it does not offer practical guides to lawyers, prosecutors, and judges to working with evidence in court [1]. Unfortunately, there are some grounds for such an assessment of the state of Criminalistics in Ukraine.

Analysis of publications on the research topic. The issue of developing ideas about the nature of Criminalistics science in modern Ukraine was researched only fragmentarily, in particular, in the works of M.V. Danshin, V.A.Zhuravel, V.V.Yusupov, V.Y. Shepitko and some other authors. However, there remain a lot of discussion aspects in this problem, which requires further scientific research. In particular, it seems necessary to carry out a critical analysis of the existing scientific principles in the field of Criminalistics. And one of the first is the