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КРИМІНАЛЬНИЙ ЗАКОН ЯК ЗАСІБ ОХОРОНИ ПРАВ І СВОБОД ЛЮДИНИ В СУЧАСНОМУ СВІТІ

Анотація. *Ця робота є комплексним дослідженням проблем кримінального права як засобу захисту прав і свобод людини в сучасному світі. Актуальність теми роботи полягає у систематичних порушеннях конституційних прав і свобод людини та бездіяльності кримінального законодавства у таких випадках. Нині кримінальне право як засіб захисту прав і свобод людини у національному та міжнародному праві характеризується недосконалістю його адаптації до швидко мінливих суспільних обставин, що, відповідно, призводить до проблем у їх правовому захисті. Для цього в правовій сфері існують різні причини, наприклад, прогалини у правових положеннях, колізії правового регулювання та невідповідність норм законодавства існуючим суспільним відносинам у державі. Усе вищесказане визначає актуальність предмета даного дослідження. Таким чином, метою статті був комплексний аналіз теоретичних та прикладних питань, що стосуються засобів захисту прав людини та законних інтересів проти суспільно небезпечних посягань, а також формулювання науково обґрунтованих пропозицій щодо вдосконалення чинного законодавства України та практики його застосування у цій сфері. Зрештою, це дослідження виявило правові характеристики прав і свобод людини як на національному, так і на міжнародному рівнях. Засоби захисту прав були продемонстровані через приціл кримінального права. Крім того, у дослідженні проаналізовано форми впровадження міжнародної практики у національне законодавство України як засіб захисту прав і свобод людини в сучасному світі. Важливість результатів цього дослідження була виражена в подальшому дослідженні суміжних предметів, що стосуються цього питання, а саме історії розвитку стандартів кримінального права ЄС та історичного утвердження концепції прав людини та громадянина та законних інтересів. Крім того, матеріали цього дослідження можуть бути використані при підготовці навчальних матеріалів, методичних рекомендацій, а також у навчанні з різних галузей юридичної науки. Це, у свою чергу, дозволить належним чином використовувати кримінально-правовий захист прав і свобод людини без порушень з боку органів кримінального правосуддя*

Ключові слова: *кримінальне законодавство, права людини, міжнародна практика, кримінальне право, засоби правового захисту, публічно-правова охорона, заходи, засоби*

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CRIMINAL LAW AS A MEANS OF PROTECTING HUMAN RIGHTS AND FREEDOMS IN THE MODERN WORLD

Abstract. *This paper is a comprehensive study of the problems of criminal law as a remedy for human rights and freedoms in the modern world. The relevance of this subject lies in the systematic violations of constitutional human rights and freedoms and the inaction of the criminal law in such cases. Nowadays, the criminal law as a remedy for human rights and freedoms in national and international law is described by imperfection in its adaptation to rapidly changing social relations, which, accordingly, leads to problems in their legal protection. There are various reasons for this in the legal sphere, such as gaps in the legal provisions, conflicts of legal regulation and inconsistency of the rules of legislation with existing public relations in the state. All of the above determines the relevance of the subject matter of this study. Thus, the purpose of this study was a comprehensive analysis of theoretical and applied issues relating to the remedies for human rights and legitimate interests against socially dangerous encroachments, and the formulation of scientifically sound proposals for improving the current legislation of Ukraine and the practice of its application in this area. Ultimately, this study identified the legal characteristics of human rights and freedoms at both the national and international levels. The remedies for rights were demonstrated through the lens of criminal law. In addition, the study analysed the forms of implementation of international practice in the national legislation of Ukraine as a remedy for human rights and freedoms in the modern world. The significance of the results of this study was expressed in the further research of related subjects concerning this issue, namely the history of the development of EU criminal law standards and the historical establishment of the concept of human and citizen rights and legitimate interests. Furthermore, the materials of this study can be used in the preparation of educational materials, methodological recommendations, as well as training in various fields of legal science. This, in turn, will allow properly using the criminal law protection of human rights and freedoms without violations on the part of criminal justice bodies*

Keywords: *criminal legislation, human rights, international practice, criminal law, remedy, public legal protection, measures, means*

INTRODUCTION

Human rights are one of the most important concepts in law, a social value and at the same time a great asset and an invention of humankind. It is also a concept used both to designate a specific list of legislative provisions or international standards, and to determine the status of a particular individual in society [1]. Rights are one of the attributes of modern society and the state, a measurement of their "humanity". Furthermore, the concept of human rights has its own value dimensions, which complicates the identification of its content. Therefore, human rights are the main opportunities and guidelines necessary for a decent and free existence

and development of the individual. Today, people strive for the unhindered use of their legal rights and freedoms both in everyday life and in the case of bringing them to criminal responsibility. Notably this is a natural human desire to protect their rights and legitimate interests, to achieve the creation of a society based on the principles of justice and legality, the rule of law, the adoption of laws that would meet their needs. Ukrainian society is no exception, wherein great importance is paid to the legal mechanism for ensuring the constitutional rights of citizens in each sphere of their application [2]. The problem of protecting human rights and freedoms has existed for more than a decade. Civilised humanity has put it (the problem of protection) in the category of global ones that require a priority solution. The problem of criminal legal protection of persons is relevant in connection with numerous controversial issues arising during application of criminal law provisions relating to the protection of public relations in the state. The criminal legislation of Ukraine is not ideal. The level of control over its compliance does not create the full conditions for the protection of inalienable human rights, the number of socially dangerous acts against the individual is growing [3], and necessitates the improvement of criminal law provisions to improve the protection of persons [2]. It is necessary that national legislation be more effective and efficient in the fight against crime.

Criminal legislation makes provisions for the protection of fundamental (natural) human rights, namely their life, health, and freedom [4]. However, even though criminal legislation establishes responsibility for crimes against life and health, a person does not have adequate protection. Most criminal acts against the individual remain unpunished. Therefore, it is currently quite important to strengthen criminal responsibility for certain crimes, which is explained by the increase in crime, and therefore, indicates the ineffectiveness of the criminal law. An important problem is the fact that the dispositions of most articles do not contain a clear formulation of the signs of a crime, which complicates their practical application. Thus, the criminal legal protection of citizens needs to be improved, and criminal and criminal procedural legislation need to be harmonised with international standards. After all, the duty of the state to respect, promote, protect, and enable the exercise of rights is primary, and the duty of regional or international tribunals (courts) is auxiliary, coming into play mainly in cases where the state consciously or consistently violates legitimate rights. Everyone knows examples of how recourse to regional and international mechanisms has become necessary to recognise violations at the national level. Regional and international interests or assistance can be a trigger mechanism for protecting rights within a country, but this is done only when all internal opportunities have been used and exhausted [1]. That is why the existence of effective remedies for human rights in national law is of particular importance in the democratically developed countries of the world.

Criminal law protection of human rights is a rather complex phenomenon that requires a comprehensive, system-functional, conceptually new approach, which should be reflected in the new Concept of Criminal Law Protection of the Human Right to Life as an element of the National Programme for Ensuring and Protecting Human and Civil Rights and Freedoms. Underdevelopment of the specified aspects of the subject in the criminal law literature, as well as its research and practical significance determine the relevance of the subject under study. The main scientific and theoretical sources of this study, apart from the legislative framework, included the studies of researchers who actively develop the theory of human rights, mechanisms for ensuring them, and investigated national and international standards for the protection of human rights. These issues were addressed by D.L. Vasilenko [5], Kh.M. Gritsak [6], Yu.V. Kirichenko [7], P.G. Nazarenko & V.V. Bakuta [8], A.A. Punda [9], T.M. Slinko [10] and others. The generic and direct object of crimes against human and civil rights and freedoms were studied by such researchers as V.F. Sirenko [11], A. Kostyuchenko [12], S.G. Volkotrub [12] and others. However, a separate, complete, comprehensive study of the issues concerning the remedies for individual rights in criminal proceedings is not yet available in legal science. Although the urgent need for this has already arisen in the light of the activities of law enforcement and other authorised state bodies in this area.

1. MATERIALS AND METHODS

This study was not limited to classical methods and methods of legal cognition, because its subject and object are ambiguous and combine different spheres of the legal plane. It has been repeatedly proven that legal science can be perceived as an independent unit of study in the world of science, based on independent philosophical, historical, and methodological subsystems. The methodology of this study constitutes a multi-level system, which includes principles, approaches, and methods that combine the tools of the classical (principles of development, interrelation of phenomena, consistency, determinism) and non-classical (the principle of pluralism, tolerance, discourse, complementarity) methodology. In accordance with the latter, the axiological, anthropological, comparative, systemic, and functional approaches were used, which determined the main strategy of this study. The main method was the dialectical one, which was used in the course of the entire study and was the basic one in all components of the research. In particular, it was applied upon identifying

the history of the emergence of human rights and their further classification, as well as the development of the terminology, the explication of the development features of the problems concerning remedies for rights and the historical excursion. The study used the method of ascension from the abstract to the concrete to establish the varieties of human rights and freedoms and methods of legal science. Theoretical analysis was used to investigate the experience of understanding approaches, highlighting the structure of methodology, etc.

Theoretical synthesis was used to designate the methodology of legal science as a full-fledged phenomenon. Furthermore, an entire set of logical methods was applied, including classification (upon creating a complete classification and structuring rights and freedoms, and approaches in modern legal science), extrapolation, induction and deduction, analogy, abstraction, comparison. The latter of these methods was one of the key research methods in this study, since the subject of the analysis covers not only the issues of Ukrainian criminal law, but also of the European Union countries in their multifaceted comparison. Thus, a comparative legal method of cognition was used in the study of the specific features of the regulation of values (human rights and freedoms) in the legislation of Ukraine, the European Union regulations, as well as the outline of the value of human rights in different legal cultures. The structural and functional method was used to identify individual structural elements, methods and tools of protection, to establish the presence or absence of a connection between them. The Aristotelian method was used in the analysis of theoretical developments, the current legislation and the practice of its application, which relate to remedies for the rights and legitimate interests of citizens, and also allowed identifying the shortcomings and discrepancies in the current legislation and scientific approaches to the subject under study, as well as proposing certain changes and amendments to the legislation so as to improve it in terms of remedies for human rights and legitimate interests. Furthermore, the hermeneutic method was used to interpret the essence and content of the main definitions that describe criminal and constitutional processes and the stages of their development. The historical legal method was used in the study of historical stages, as well as the study of the establishment and development of certain natural human rights and their regulation at the legislative level. The theoretical basis of this study included the scientific papers of Ukrainian and foreign scientists concerning the criminal law as the main remedy for human rights and freedoms in the world.

2. RESULTS AND DISCUSSION

The issues of human rights and freedoms and society at the modern level of life constitute the most important problem of the internal and external policy of all states of the world community. The state of affairs in the sphere of ensuring the rights and freedoms of the individual and their practical implementation is the criterion according to which the level of democratic development of any state and society in general is determined. By choosing the path of independent development and consolidating it in the Constitution, Ukraine confirmed its desire to develop and strengthen a democratic, social, legal state, one of the main principles of which is to ensure the rights and freedoms of human and citizen. A confirmation for this was the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms by Ukraine [6]. It goes without saying that the protection and understanding of human rights ultimately depends on developments and mechanisms at the national level. Laws, policies, procedures, and mechanisms in place at the national level are key to the implementation of human rights in each country. Therefore, it is extremely important that human rights form part of the national constitutional and legal systems, that justice professionals are trained in the application of human rights standards, and that human rights violations are condemned and punished. National standards have a more direct impact, and national procedures are more accessible than at the regional and international levels [2].

As for the international practice and regulation of the remedies for human rights and freedoms in the world, states have come together to develop certain agreements on human rights issues. These agreements establish objective standards of behaviour for states, assigning them certain responsibilities towards people. They can be of two types: legally binding or optional [14]. A binding instrument, often referred to as a treaty, convention, or covenant, is a voluntary obligation of states to respect human rights at the national level. States individually undertake to implement these standards through ratification or accession. States can make reservations or declarations in accordance with the 1969 Vienna Convention on the Law of Treaties, which exempts them from certain provisions of the document, while the idea is that as many states as possible should sign them. However, this mechanism can sometimes be abused and used as a pretext for denying basic human rights, allowing the state to "escape" international control in certain areas [15].

However, human rights have also become legally binding at the national level. International human rights standards have inspired states to include such standards in national constitutions and other legislative acts. They can also provide remedies for human rights violations at the national level. On the contrary, a non-binding document is, in fact, merely a declaration or a political agreement of states that all attempts will be made to

ensure compliance with a set of rights, but without any legal obligations to do so. In practice, this usually means the absence of any formal implementation mechanisms, although there may be serious political obligations regarding their availability. In accordance with the requirements of this Convention, human rights and freedoms constitute an absolute value, form an integral part and belong to everyone from birth. In any society, they are an important institution regulating the legal status of a person, establishing the boundaries of intrusion into their privacy and guarantees for the protection and implementation of their rights and freedoms. Therefore, ensuring them is one of the main functions of the state. It is no accident that the central place in the constitutions of modern states is given to the rights and freedoms of human and citizen. Thus, the Constitution of Ukraine [16], adopted by the Verkhovna Rada of Ukraine on June 28, 1996, the provisions of which are norms of direct action, proclaimed that a person, their life, health, honour and dignity, inviolability and security constitute the highest social value. It puts human rights at the centre of the national policy. The Constitution establishes that the state is responsible for its activities to the individual. The assertion and maintenance of human rights and freedoms is its main duty and the link between the state and its society.

To ensure the possibility of enjoying all human and civil rights and freedoms, the state must provide a mechanism for the implementation of the rights and freedoms guaranteed by the Convention on the Protection of Human Rights and Fundamental Freedoms. The situation regarding human rights in Ukraine is not the same – albeit a certain progress in some areas, some serious problems remain. The adoption of many provisions of the Convention is still pending. Therefore, in practice, actual (real) human rights often do not meet European requirements in this area. As for the subject under study, namely the role of the criminal law in ensuring human rights through the provisions of the Criminal Code of Ukraine, it is necessary to consider the current two general theoretical problems. The first is a problem that has a somewhat axiological nature and goes beyond the boundaries of criminal law, but at the same time is closely related to it. This refers to the classification of human rights and freedoms and the determination of the place of natural rights in this system. A derivative of this issue is the question of determining the place of crimes that make provision for criminal liability for violation of natural rights in the system of current criminal legislation. In the science of constitutional law, the vast majority of researchers [2; 17; 18] divide the constitutional rights and freedoms of a person and a citizen into the following types:

- personal (civil, physical) – the capabilities of a person which facilitate physical and biological existence, the satisfaction of all necessary needs for a person's self-fulfilment;
- political – the capabilities of a person and a citizen to take part in public and state life through state authorities and local self-government bodies, political parties; public, trade union organisations taking part in elections or referendums, due to the activities of the media, etc.;
- economic – the capabilities of a person and a citizen to take part in the distribution of material goods, the right to property, including intellectual property, to entrepreneurial activity, to work, to its safe conditions, to fair and timely payment, to strike;
- social – the capabilities of a person and a citizen to ensure appropriate social living conditions;
- cultural (intellectual, spiritual) – the capabilities of a person and a citizen to enjoy educational, cultural, and artistic benefits, the right to freedom of technological, and artistic creativity, to protect intellectual and industrial property, the right to profess a particular religion or not to profess any religion and conduct atheistic propaganda, etc.

Analysing public relations and the rules that govern them, one can conclude that each of the above rights (within the framework of the structural element of public relations) constitutes an object of crimes stipulated in criminal legislation. The authors of this study cannot but agree that this stage contains inaction and human rights violations that are improperly regulated. After all, the law on criminal liability as an element of the Concept of Criminal Law Protection of Human Rights reflects the main idea of the policy concerning remedies for human rights and is designed to ensure comprehensive, complete, and priority protection of natural human rights. Being a regulatory act adopted by the authorised state body, it contains legal provisions establishing the grounds and principles of criminal liability for socially dangerous encroachments on human rights, defines the range of socially dangerous acts that constitute crimes against human rights and the penalties that are stipulated for their commission. However, the presence of already existing provisions allows operating the term "protection", and not only "remedy". The protective function should be recognised as one of the main functions of criminal law. This function lies in protecting the enforceable interests by establishing a criminal law prohibition and implementing the provisions of the criminal law in case of a crime. Thus, the authors of this study concluded that in criminal law it is advisable to touch upon the stage of protection (i.e., the stage of legitimate exercise of rights and freedoms) and the stage of remedying, citizens' rights are violated, when the violated right is subject to restoration, the creation of conditions that compensate for the loss of the right, on

the one hand, and bringing the perpetrators to justice, on the other hand. If this refers to a human right, then in the vast majority of cases of its loss, remedy is manifested only in bringing the perpetrators to justice [19-21].

A detailed analysis of the criminal law provisions allows specifying the object of the crime, its subject, the objective and subjective side, as well as the subject of the illegal act. Such specific features increase the chances of bringing the guilty person to criminal responsibility, as well as improve the statistics of the qualitative application and operation of the criminal law in the country and the world. Moreover, the national justice system, which comprises the competent executive authorities during the pre-trial investigation and the court itself, actively uses the criminal law, but already at the stage of protecting human rights [12]. Notably, in general, the intensification of the application of the European Convention and the decisions of the European Court by national courts corresponds to the trend of the growing role of national courts in the functioning of international law, the expansion of the interrelation between international and national law. By applying the provisions of international human rights, national courts affirm international standards in this extremely important area, which is an acceptable experience for the country [8]. The state should not only refrain from interfering in the enjoyment of a person's rights and freedoms, but it is also obliged to provide such person with appropriate protection and remedies. In addition, the Constitution recognises the right of everyone to protect their rights and freedoms, the rights and freedoms of others from encroachments, including from encroachments of government officials or other officials [22].

Consequently, security of human rights lies in providing the relevant subject with effective remedies in case such rights are violated. This is logical, because the effective operation of any right can only be discussed in the presence of a valid remedy for it. Therefore, the structure of the remedy should be displayed as follows: the regulated right to such remedy, because only consolidation of the rule of law in the Constitution of the state and other regulations would allow the protection of legitimate interests without violating, at the same time, the boundaries of the legal field; the mandatory existence of alternative forms of legal remedies, which are defined as complexes of special procedures regulated by law, carried out by law enforcement agencies; compulsory remedies. In any case, all possible remedies for human rights are included in this mechanism, and the very possibility of protection serves as the basis, generating this mechanism, and the created system of bodies and organisations functions for the enjoyment of this right. That is why the effectiveness of the remedies for individual rights, the conditions of which are guarantees of human rights, is important. These guarantees give rise to the actions of legal institutions, as well as opportunities for individuals to remedy their rights when criminal proceedings are initiated either by the state or by other persons of public and private law. Importantly, there is a possibility of protection both from an equal subject of law in terms of position and status, and from a higher subject, such as the state, which itself creates these provisions of criminal law. Therefore, the essence of this mechanism is that a particular right can always be protected, regardless of who violated it [23; 24].

As international experience shows, the effectiveness of mechanisms for the protection of human and civil rights and freedoms depends on the level of development of legal principles and institutions of democracy, the state of the economy, the means of distributing life benefits, the law-making atmosphere in society, the level of legal education and culture of the population, the degree of public consent, the presence of certain elements in the system of functioning of state power [25]. Indeed, the mechanism has various remedies that need to be investigated and analysed not only in theory, but also in practice. Each of the institutions protects rights differently, and sometimes one needs to turn to each of them to restore a violated or disputed right. The mechanisms of addressing all bodies may not always be simple and effective, so their essence should become the subject of separate study. But for the provisions of international treaties to really work, it is not enough just to call them part of internal law [25]. Generally recognised provisions of international law by their nature are not valid in themselves, they are perceived by the legal system not as regulatory provisions, but as norms-principles. The only way to implement them is to issue an appropriate legislative act aimed at fulfilling the international legal provision. Consequently, the national legal system presupposes the direct impact of duly ratified provisions of international treaties along with national legislation, but the priority of the latter is that it provides the means for the enjoyment, protection and remedying of human rights.

The analysis of judicial practice has shown that nowadays the activity of the state through its competent authorities to ensure law and order and fight crime is very relevant. Due to the turbulent events of the anti-terrorist operation, the consequences of which are an increase in the turnover of illegally imported weapons, the internal uncontrolled migration of persons serving sentences has led to a considerable increase in the number of criminal and administrative offences in percentage terms compared to previous years, namely offences against human life and health. In turn, the corresponding factors of crime growth, according to the authors of this study, oblige the highest political figures of the state to design a policy aimed not only at the development of public services, but also at combating crime, directing efforts and resources towards reform of the entire law enforcement system. This can happen through legislative activity, tougher penalties, active

informative activities, an increase in the number of solved criminal offences, rapid response to violations and facts of committing illegal actions, and much more. This is the proof that there is no such thing as the uniform implementation of conventional standards and rules of national law. The perception of fundamental human rights and freedoms protected by criminal law is influenced by three main issues: constitutional mechanisms, legal traditions and culture, as well as practical circumstances. Although the provisions of many conventions are still in force and relevant, there is a very real risk that they will be bypassed or, at least, diluted to increase the effectiveness of the fight against crime, protecting the legitimate interests of a person.

CONCLUSIONS

The effectiveness of the state's activities in the field of criminal justice lies in the fact that it not only proclaims human rights, but also provides the necessary mechanism for their real implementation. This mechanism covers the process, starting from the moment of creating conditions for the proper exercise of a person's rights, after which it is transformed into the protection of the rights of each person, and in case of violation or threat of violation of these rights. The mechanism of ensuring rights should be considered as a dynamic system of legal means implemented through the activities of state bodies, authorised persons. It is due to this activity that the implementation, protection and remedying of the rights of every person takes place. Based on the information analysed, nowadays, the main tasks of the state should be the creation of effective remedies for human rights and freedoms, systematisation and improvement of legislation; strengthening of the principles of civil society and reinforcement of the state legal system; improvement of the practice of law-making, the right to implement and monitor the implementation of the law; raising the level of legal culture, legal awareness of citizens and overcoming legal nihilism.

Thus, there are many definitions of human rights in theoretical and practical legal science. They are defined in different terms, but the most accurate and justified is the understanding of human rights as opportunities implemented both personally and in relationships with other persons, private and public, and provide for the existence of a certain space of freedom, the boundaries of which are determined by the corresponding spaces of freedom of other rights holders. The construction “human rights” can and should be used as a universal one to denote all relevant opportunities. Regardless of the racial or religious definition of an individual, the criminal law undertakes to be an effective instrument for the protection, and later for the remedying of all human rights and freedoms throughout the world. That is why research in this branch serves as the basic source of its application in practice by the relevant persons.

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