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ЕФЕКТИВНІСТЬ КРИМІНАЛЬНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ОХОРОНИ І ЗАХИСТУ ГІДНОСТІ В УКРАЇНІ: ПИТАННЯ СОЦІАЛЬНОЇ ЗУМОВЛЕНОСТІ

Анотація. У статті здійснено спробу дослідження ефективності кримінально-правового забезпечення охорони і захисту гідності в Україні. Вирішення такої проблеми стало можливим через звернення уваги на питання соціальної обумовленості криміналізації діянь, які посягають на гідність людини. Важливим є те, що автором встановлено чинники соціальної зумовленості криміналізації таких діянь. Особливу увагу було приділено необхідності криміналізації в Україні образи та наклепу як злочинів проти гідності особи. Такий висновок автором було зроблено через аналіз національного, іноземного та міжнародного законодавства. Проведений вище аналіз чинників дає підстави для висновку про наявність соціальної зумовленості для встановлення кримінальної відповідальності за такі посягання на гідність людини як наклеп та образа, що істотно підвищить ефективність забезпечення правової охорони та захисту гідності людини, сприятиме подальшому утвердженню її прав і свобод на шляху євроінтеграції України. Не зважаючи на те, що честь та гідність людини названі в ст.3 Конституції України серед благ людини, які визнаються найвищими соціальними цінностями в Україні, а в назві третього розділу Особливої частини КК є слова «честь» і «гідність», в цьому розділі таких складів злочинів немає. Крім цього, на відміну від попередніх кримінальних кодексів, появилось в його назві слово «честь», застосування якого видається некоректним щодо наведеного вище сучасного розуміння гідності людини в доктрині філософії права та теорії права. Отже, назва цього розділу ширша за її зміст, кримінальна відповідальність за посягання на згадані цінності відсутня. Автором вказано на наявність соціальної зумовленості для встановлення кримінальної відповідальності за такі посягання на гідність людини як наклеп та образа, що істотно підвищить ефективність забезпечення правової охорони та захисту гідності людини, сприятиме подальшому утвердженню її прав і свобод на шляху євроінтеграції України.

Ключові слова: злочини проти гідності, соціальна зумовленість, ефективність кримінально-правового забезпечення охорони гідності, дифамація, образа, наклеп.

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EFFECTIVENESS OF CRIMINAL LAW SUPPORT OF DIGNITY PROTECTION AND SECURITY IN UKRAINE: QUESTIONS OF SOCIAL CONDITIONALITY

Abstract. *The article attempts to study the effectiveness of criminal law support of dignity protection and security in Ukraine. The solution of such a problem was made possible by paying attention to the questions of the social conditionality of the criminalization of acts that infringe upon human dignity. It is important that the author established the factors of social conditionality of the criminalization of such acts. Particular attention was paid to the need for criminalization of insult and slander as a crime against the dignity of the individual in Ukraine. Such a solution to the problem was made possible by the study of national, foreign and international legislation. The author has established the existence of social conditionality to establish criminal liability for such encroachment on human dignity such as slander and insult, which will significantly increase the effectiveness of legal protection and protection of human dignity, and will also contribute to the further assertion of rights and freedoms towards Ukraine's European integration.*

Keywords: crimes against dignity, social conditionality, effectiveness of criminal law ensuring the protection of dignity, defamation, insult, slander.

INTRODUCTION

In legal literature, when analyzing criminal law problems, the term "guard" and "protection" is commonly used, although the etymological content of them seems to be different. "Guard" means to protect from the danger someone, anything, from the threat of attack (encroachment – VK), an attempt, to guarantee the inviolability of someone, something. "Protect" – to defend, to protect someone, anything from attack, assault, blow, hostile, dangerous, etc. actions [1]. The difference between them is that the concept of "protect" reflects the statics of social relations, provided by the rules of material criminal law. These norms contain the command, volitional regulations of the state, expressed in models of the corresponding behavior of the subject in a concrete situation: a prohibition, duty, permission (granting of right), promotion, exercising the same protective function of criminal law [2]. The concept of "protect" reflects the dynamics of social relations, when a person performs the corresponding criminally wrongful act. For example, preparing for a crime, attempting an offense or completing a criminal offense [3]. This is the implementation of a legislative model of command, a voluntary prescription on the behavior of the subject in a specifically defined situation. In the above cases, the rules of substantive criminal law, figuratively speaking, "come alive", and are applied by the competent authorities of the state. In this version, in addition to the rules of substantive criminal law, criminal procedure

norms are applied, and further – the rules of criminal executive [4]. One more thing, in the case of a person's conviction, the rules of administrative law are applied. In general, in this option, the regulatory function of criminal law is exercised concerning relations that arise between a person who commits or has committed an offense and a state represented by its competent authorities. Therefore, the effectiveness of criminal law protection and protection of human dignity must be carried out qualitatively at both levels, each of which has its own specifics.

Specialist in the field of criminal law O. Protynyak [5], N. Savinova [6], O. Hramtsov [7] and others addressed the problem of guard legal enforcement and protection of human dignity. At the same time, these studies are not sufficient to establish the effectiveness of criminal law enforcement of guard and protection of dignity in Ukraine, as well as to address the issues of social conditionality.

The purpose of the article is to establish the effectiveness of criminal law enforcement of guard and protection of dignity in Ukraine through studying issues of social conditionality.

1. MATERIALS AND METHODS

The system of positive (effective) law of the state should contain comprehensive legal guaranteed of human dignity based on international law. Providing of the protection and the guard of human dignity is systemic, if all elements of the legal system are involved in harmony. In this regard, the situation in Ukraine not all guarding and protecting rights to maximize effective enforcement of human dignity are fully exploited. Without proper scientific substantiation, the civil law means are considered the main in the guard and protection of human dignity. At the same time, the question about social conditionality of criminal law guard and protection of human dignity arises.

The metrological significance of event causation of social phenomena has the categories of objective and subjective factors. In the broadest sense, the objective factor includes historical preconditions, interethnic and interstate relations, natural conditions, existing social relations and connections between people. In human activity, such components of the objective factor as politics, law, interethnic and external interstate relations, the state of objects of nature may be involved. All of them are interconnected and interdependent.

The socio-political and spiritual activity of people forms the component of subjective factor. Generally, definitive factors of it are moral, emotional-psychological and ideological factors [8]. All components of consciousness are involved in the structure of the subjective factor. Purposeful and systematic activity of people makes them a driving force. In the mechanism of action of the subjective factor, not only humans' conscious activity is involved, but also spontaneous manifestations of human abilities and passions. In such organic and harmonious combination, objective and subjective factors manifest themselves as dialectically contradictory and inextricably interacting

sides of the phenomena of social development. Fully these general approaches are inherent in the activities of finding out the social conditionality of criminalization such acts against human dignity as slander and insult.

2. RESULTS AND DISCUSSION

2.1 Factors of social conditionality of criminalization of acts that violate human dignity

The scientific study of the complex of long-standing problems of the social conditionality of criminal law guard and protection of human dignity, as well as any other socially significant values, gives, first of all, the answer to the question if there are social circumstances (factors) that confirm the necessity of prohibition of slander and insults under the threat of punishment, and if so, what should be the theoretical and applied model of the norm (norms) of the law on criminal liability.

In the doctrine of criminal law, there is no generally accepted understanding of the circumstances leading to the criminalization of human actions. They are called differently, in particular: grounds, principles, criteria, conditions, reasons; grounds and principles; prerequisites and grounds, factors, etc. There are reasons to think that they should be called factors (circumstances) that predetermine the criminalization of certain socially dangerous acts, that is, criminal liability for these acts performance [9].

Regarding the social conditionality of criminalization of acts that violate human dignity, in particular slander and insult, the following are the most significant factors: 1) the social danger of acts that encroach human dignity; 2) the relative prevalence of these encroachments; 3) the expediency of counteracting this encroachment by means of criminal law; 4) the coherence of their criminalization with the norms of international law; 5) the conformity of their criminalization with the Constitution of Ukraine; 6) legislative practice to counteract this encroachment in European states; 7) traditions of the Ukrainian legislative practice to counteract this encroachment..

The public danger of encroachments on human dignity, their prevalence manifested itself especially during the period of the hybrid war against Ukraine. In the mass media, for example, so-called fake, false information, which contains defamatory, offensive attacks against the President of Ukraine, the Prime Minister of Ukraine, ministers, other public officials is systematically and purposefully distributed in order to undermine their authority in the eyes of the public, to weaken the belief in the effectiveness of the social reforms being implemented and in the European future of Ukraine. Slander and insult have become commonplace means of sorting out the relations between politicians of different levels, the realization of a competitive confrontation between business entities in the economic sphere, the construction of accounts between individual citizens in the service relationships and at the domestic level. Apparently, the limits of normative freedom in the information sphere are unjustifiably wide, it lacks righteousness [10]. All this undermines the normal, civilized moral and psychological state of social relations, promotes the implementation of hostile technologies to weak-

en the Ukrainian state and society. Given the above circumstances, as an attack on human dignity slander and insult are an increased public danger.

The expediency of counteractions to slander and the insult by criminal means is obvious, since the application of only civilian remedies is clearly insufficient, both for the general and for the special prevention of their commitment.

The criminalization of slander and insult is consistent with the norms of international law, the Constitution of Ukraine, the legislative practice of counteracting these attacks in European states, the traditions of Ukrainian historical legal practice.

2.2 Human dignity under protection of national, interethnic and international regulatory legal acts

In international law, human dignity has been an object of protection for a long time. In international law, human dignity has been the subject of protection for a long time. Thus, in the Universal Declaration of Human Rights (1948) there has been a repeated appeal to the dignity of human. In particular, its preamble proclaimed that recognition of human dignity is the foundation of freedom, justice and universal peace throughout the world; and article 1 states that all people are born free and equal in dignity and rights. According to article 5 of the declaration, no one should be subjected to torture or cruel, inhuman or degrading treatment or punishment. The principled provisions on human dignity have also been consolidated in the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the OSCE legal acts; and they were specified, clarified in the decisions of the European Court of Human Rights.

In the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966), it has been stated, in particular, that all rights derive from the dignity inherent to a human.

A new confirmation of international legal protection of human dignity was the Charter of the European Union (2000). In Article 1, it is unequivocally proclaimed that human dignity is untouchable; it must be respected and protected. Consequently, there are grounds to claim that, in international law, human dignity is a source of human rights, a black letter law, and this must be taken into account when developing legislative mechanisms to ensure the protection of its untouchability in Ukraine.

The Constitution of Ukraine organically embodies all the achievements of international legal science and practice in protecting human dignity. The key is article 3, which proclaims that human dignity belongs to the highest social values. According to the Constitution, all people are free and equal in their dignity and rights (article 21), every person has the right to respect for his dignity (article 28), the use of property cannot prejudice the rights, freedoms and dignity of a person; the duty of everyone is not to encroach the rights and freedoms, honor and dignity of others (article 68). Consequently, the above provisions of the Constitution, including criminal law, as the main

law of the state, serve as a legal basis for the comprehensive guard and protection of human dignity [11; 12].

An important precondition for Ukraine's integration into the European Union is to harmonize Ukrainian legislation and to bring it to European standards. A lot has been made, however, the European legislation on the guard and protection of human dignity by means of criminal law has not been noticed in a proper way. For instance, Germany Criminal Code provides for liability, in particular, for the offense of Federal President (paragraph 90), the offense (paragraph 185), the defamation (paragraph 186), discredit (paragraph 187), defamation or discredit against politicians (paragraph 188), the offense of honor of the dead (paragraph 189); the Dutch – for the offense (paragraph 266b, 267), the defamation (paragraph 266c, 267a, 268-275); the Swiss – for the offense (paragraph 177), the defamation (paragraph 173,174), the offense of honor of the dead (paragraph 175); Sweden – for the offense (paragraph 3), the defamation (paragraph 1.2), the offense of honor of the dead (paragraph 4); Spain – for the offense (paragraphs 209-210), the defamation (paragraphs 206-207); Austria – for the offense (paragraph 115), the defamation (paragraph 111), the public insult of a constitutional representative body, federal armed forces, a federal body (paragraph 116); Poland – for the offense (article 216), the insult to religious feelings (article 196), the public insult of a person or group of persons in connection with their national, ethnic, racial or religious affiliation (paragraph 196), the insult of the Polish people or the Republic of Poland (article 133), the public insult of the President (paragraph 2 of article 135); France – for the ridicule in order to violate the dignity of human (paragraph 226-4-1), the offense of a person who is in the public service (paragraph 433-5). Attention is drawn to the fact that the Criminal Code is not the only source of French criminal law. In addition, other French laws provide criminal liability. Thus, the Freedom of the Press Act provides for criminal liability for insult and defamation (chapter 4 of the Law). In particular, in accordance with paragraph 26 of this Law, the offense of the President of France is punishable by imprisonment for a term of three months to one year and a fine of 300 to 300 thousand francs [13].

The above selective analysis of the legislative criminal law practice of European states proves the expediency of using norms of criminal law for the guard and protection of human dignity.

Criminal law means of guard and protection of human dignity is inherit in historical legislative practice of Ukraine [14]. In the Soviet period, three criminal codes were in force; they provided liability for such encroachments upon human dignity as slander and insult. Thus, in chapter 5 of USSR Criminal Code of 1922 “Crimes against human life, health, will and dignity” there are following types of crime: insult by action, word or in written (article 172); insult in widespread or publicly displayed printed works or images (article 168), defamation as an essential element of a crime and libel in printed or spread in other way (article 169) – aggravating circumstances. USSR

Criminal Code also provided liability for such actions. In the section 3 of its Special part "Crimes against human life, health, will and dignity" there are also two types of crime: 1) defamation as an essential element of a crime, its aggravating circumstance is in printed or spread in other way, in anonymous letter, as well as committed by the person previously convicted for such actions, especially its aggravating circumstance – defamation combined with accusation in state crime or other severe crimes (article 125); 2) offense (article 126).

CONCLUSIONS

Latest codification of criminal legislation, in conditions of independence of Ukraine, was marked with the sign of democratization, humanization, and intensification of human rights. It completed the process of bringing criminal law norms to the ripen interests and necessities of social development, made them qualitative effective guardian tool and regulation of social relations with the ability to develop. Criminal Code of 2001 turned out to be of a new, higher order. After becoming an objective reality it has acquired a status of priority object of scientific research, in the process of which its most important positive characteristics, discussion approaches were determined. In particular, attention was paid to a certain lack, incompleteness of system-forming connections between the Criminal Code and the Constitution, that is, it refers to criminal law and protection of human dignity. Thus, despite the fact that the honor and dignity of human are named in Article 3 of the Constitution of Ukraine as the human goods, which are the highest social values in Ukraine, and in the title of the third section of the Special Part of the Criminal Code there are the words "honor" and "dignity", there are no such crimes in this section. In addition, unlike the previous criminal codes, the word "honor" appeared in its name, but the use of it appears to be incorrect in relation to the above-mentioned modern understanding of human dignity in the doctrine of the philosophy of law and the theory of law. Consequently, the title of this section is wider in its content; there is no criminal responsibility for encroachments on these goods.

It should be noted that human dignity, in cases when it is recognized as a victim, is an additional object of the corresponding crimes. For example, crimes against life and health, the will of a person, crimes against sexual freedom and sexual integrity of a person, crimes against property, etc. It is also necessary to draw attention to the fact that a person with high prosocial attitudes can perceive any crime as an attack on her dignity.

The above analysis of the factors gives grounds for the conclusion that there is a social conditionality for establishing criminal liability for such attacks on human dignity as slander and insult, which will significantly increase the efficiency of ensuring legal guard and protection of human dignity, will contribute to further consolidation of its rights and freedoms on the way of European integration of Ukraine .

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Suggested Citation: Hryshchuk, V. K. (2019). Effectiveness of criminal law support of dignity protection and security in Ukraine: questions of social conditionality. *Journal of the National Academy of Legal Sciences of Ukraine*, 26 (1), 89–97.

Submitted: 12/01/2019

Revised: 21/01/2019

Accepted: 24/03/2019