оценить, с учетом требований времени, потребностей правоприменения, целесообразность дальнейшего сохранения того или иного взыскания, определить ориентиры использования его ресурса.

Выводы. Относительно предупреждения следует отметить, что своеобразие целевого назначения, оснований и последствий административной ответственности, в качестве реакции на совершение административных правонарушений с незначительной степенью общественной вредности, при наличии обстоятельств, смягчающих ответственность лица, которое в целом позитивно характеризуется, должно существовать взыскание с мощным воспитательно-превентивным характером, публичным эффектом. Таким взысканием, в случае модификации законодательных оснований, вполне может быть предупреждение, ресурс которого будет приведен в соответствие с требованиями реального правоприменения как адекватный вид государственной реакции на совершение определенной совокупности административных правонарушений, тем самым обеспечив эффективность существования предупреждения как вида современного административного взыскания.

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SOCIAL NATURE OF CRIMINALIZATION OF OFFENCES AGAINST THE AUTHORITY OF LOCAL GOVERNMENT BODIES OF UKRAINE

Olena DONCHENKO,
Associate Professor of General Legal Disciplines and International Law of Department of Economics and Law of Odessa I.I. Mechnikov National University

SUMMARY

The paper analyzes the social nature and factors of criminalizing of offences against the authority of local government bodies.

Key-words: criminalization, the authority of local government bodies, social conditioning, historical, criminological, legal, international, social and psychological factors.

REZUMAT

În articol este caracterizat obiectul şi factorii infracţiunilor împotriva autorităţii organelor de autoadministrare locală din Ucraina.

Cuvinte-cheie: criminalizare, organe de autoadministrare locală, condiţii sociale, istoric, criminologic, legal, internaţional, factori sociali şi psihologici.

Problem statement. The social conditioning is determined by the availability of conditions of criminalization of certain socially dangerous acts. Exactly upon the availability of such conditions it is possible to state the reasonableness and social necessity of penal prohibition of the correspon-ding act. Generally, the determination of grounds and limits of the criminalization is one of the most important and disputable matter in the science of the criminal law. But it is uncontroversial that scientifically reasonable and consciously applied general rules and criteria of an assessment of validity of the criminal new law are the principles of criminalization called to provide efficiency and social conditioning of criminal legal rules [1, p. 208]. Therefore, to set up a correspondence of every criminal legal rule to the needs of the society is of considerable importance.

Relevance. The determination of the conditions of criminal responsibility for offences against the authority of local government bodies is of great importance in view of the fact that in the native criminal legal history we can observe numerous unequal attitudes of a legislator to the criminal legal protection of the authority of local government bodies.

The social conditioning and efficiency of criminal legislation, its rules and institutes represent a wide problem that can be studied from different sides, in different aspects, and directions. But its principle direction, aspect is a disclosure and study of factors that influence the creation of rules and institutes of criminal legislation and its efficiency [2, p. 67].

There are different points of view regarding the general conditions of the criminalization in the theory of criminal law. In general, in this direction the scientific inquiry of scholars is very successful and the modern science of criminal law due to the researches of V. K. Gryshchuk, G.A. Zlobin, A. I. Korobieiev, V. M. Kudryavtsev, N.F. Kuznetsova, A. M. Yakovlev etc. is armed with sufficiently large set of factors, rules, and principles of assessment of act social danger level and reasons to refer it to penal acts [3, p. 76; 4, p. 75; 5, p. 1]. The modern scholars in their researches use different set of factors that determine establishment of criminal responsibility for any acts.

First of all, among the scholars there is no agreement of opinion concerning the name of these conditions. Some call them grounds [5, p. 62], others – principles [4, p. 71], third – criteria [6, p. 60; 7, p. 101-103], fourth – factors [8, p. 57]. The great majority of the scholars call them conditions. Besides the name the content of those conditions that are suggested by various scholars is different as well.

The objective of the study is to analyze principle factors that influence criminalization of offences against the authority of local government bodies. It should be noted that the conditions of criminalization of certain acts regarding the offences against the authority of local government bodies correspond to the general-theoretical conditions of the criminalization of socially dangerous acts. At the same time

they have certain peculiarities. That is, in fact, these conditions correlate as generic and specific or as general and individual. In these specific conditions the certain provisions of the general conditions will prevail, and the individual conditions will stand out less.

Presentation of basic data of the study. Considering a question of social conditioning of criminalization of offences against the authority of local government bodies, first of all, it seems necessary to determine a system of factors of establishment of penal prohibition or, according to A.I. Korobieiev, of criminalization of act, that is a process of identification of socially dangerous forms of individual behavior, acknowledgment of validity, possibility and appropriateness of criminal legal control over it [9 , p. 29].

One of the first attempts to determine criteria of establishment of criminal responsibility was made by P.A. Fefelov. He distinguished two criteria: of increased social danger of act and availability of necessary conditions for implementation of principle of unavoidability of punishment [7, p. 101-105]. In order for a decision to be adopted on establishment of criminal responsibility for a particular act, P.A. Ferfelov suggested to clarify approximately the following questions: what causes an increased level of social danger of this violation; what kind of popularity it has; how it has been controlled prior the moment the criminal responsibility was established and why it was not efficient; what is the ration between this crime and legal consciousness that is, if the public opinion from the point of view of ratio between methods of persuasion and enforcement is ready for the struggle against these violation to be held by means of measures of criminal and legal enforcement; what consequences there will be, if this criminal legal rule is established. Can it be implemented?

Other scholars define in their researches more various factors of criminalization of one or another act. For example, V. I. Osadchyy distinguishes criminological, regulatory, international, and historical factors of social conditioning of criminal law protection of law enforcement activities [8, p. 72-73].

As is seen from above, the criminalization of various anti-social acts defines different sets of factors of criminalization. The narrowness of the research doesn't enable us to justify the eligibility of establishment of responsibility for crime against the authority of local government bodies from the perspective of all factors known to science, and therefore, we consider it rational to be limited to the analysis of historical, social and psychological, regulatory, criminological and international factors.

1. *Historical factors* define the genesis and tendencies of development of the legislation on criminal responsibility for offences against the authority of local government bodies.

History of the criminal law protection of representatives of local government bodies begins on the times of Kievan Russia. In the law instruction sheet of that time Ruska Pravda there was entrenched a responsibility for offences against the representatives of local government bodies of princely era [10, p. 40-82]. From the middle of the XIV century along with the inclusion of Ukrainian lands into the Grand Duchy of Lithuania the local government in the cities developed in the form of community (viytivstvo) and obtained protection by the criminal law rules fixed in the Lithuanian charters 1529, 1566, 1688 [10, p. 112-144].

Following the execution of the agreement between Ukraine and Muscovy in 1654 the development of the local government was defined by the development of the Russian government. In the first half of the XVIII century Russia turned into the Empire that was accompanied by the considerable changes in the system of its authorities and local government bodies. Criminal legal protection of local government bodies was carried out by means of codified sources of that time – Codes about punishments criminal and corrective [11] and the Criminal code [12].

In the period of formation of Ukrainian State of 1917-1921 the provision was made for creation of local government bodies at the level of communities, districts (volost), settlements, the cities, districts, and other units. These bodies were invested with broad powers including to issue binding decrees and circular orders that were aimed at the ensuring of their usual activity by criminal legal means [13, p. 25].

The Soviet government did not acknowledge a local government, so there were no specific rules in the criminal codes of the Soviet period on criminal responsibility for offences against the authority of local government bodies [14]. Partially, such relationships were protected at a level of relations in the field of management.

Unfortunately, this trend existed during the formation of the Criminal Code of Ukraine in 2001. The regeneration of local government in Ukraine is encouraged by another attempt to increase the role of councils as local body of state authority by improving their structure. The criminal law shall not stand aside this problem and shall focus its efforts on appropriate criminal legal protection of the authority of local government bodies by means of the provision in the Criminal Code of particular criminal legal rules that will protect life, health, property of the representatives of such bodies and provide them with the proper conditions for their activities. All together the mentioned above determines the historical factor of social conditioning of protection of the authority of local government bodies by criminal legal measures.

2. *Criminological factors* determine a danger of offences against the authority of local government bodies, and the popularity of such acts. These factors include several conditions of criminalization of acts – social danger of act and its relative popularity. Let us consider each of these conditions.

A) The modern scholars qualify the presence of social danger act that requires penal prohibition as the main basis of criminalization [15, p. 95].

Social danger as a material sign of offence consists in that the act either causes harm or relations that are protected by the law on criminal liability, or includes real possibility of causing such damage. This is an objective property of an offence, a real violation of relations existing in society.

To disclose of the content of social danger means to analyze its qualitative and quantitative characteristics. The quantitative characteristic is a level of social danger, and the qualitative one is a nature of social danger. The criterion of determination of social danger nature is, first of all, importance, significance of an object that is offended by a criminal act; the nature of social danger, in its turn, depends on the nature and extent of the caused damage. Thus, the nature of social danger is determined by the sphere of social life and relations procedure that is offended by a crime.

The level of social danger is determined by the severity of consequences or, in other words, by the extent of caused damage that depends on the form, guilt, motive, goal for committing criminal act, place, situation of its committing, and other subjective and objective elements of a crime. The sanction that is set by a legislator is considered by legal expression of the level of social danger of peculiar kind of crimes.

The social danger of offences against the authority of local government bodies is largely defined by the nature and importance of public relations that are the main and additional direct object of crime.

B) The further condition is a relative popularity of act. It includes not only number and place in the structure of criminality of strictly criminal offences against the authority of local government bodies. Relative popularity of acts related to the violation of the authority of local government bodies includes common social peculiarities of observance of rights and human liberties and a citizen in Ukraine, life, health, honor, and human dignity, property.

As mentioned above, there is a provision in the legislation for criminal responsibility for „ encroachment of state or public buildings and constructions" (Article 341 of the Criminal Code of Ukraine), „resistance to representative of authority when he is on duty" (Article 342 of the Criminal Code of Ukraine), „capture of a person as a hostage or holding of a person as a hostage " (Article 349 of the Criminal Code of Ukraine), „threat of homicide, causing bodily harm or destruction or property damage in generally danger way in relation to official or his relatives or in relation to citizen who carries out his public duty; bodily blows or causing trivial injury, moderately severe bodily harm or great bodily harm to official or in relation to citizen who carries out his public duty in connection with the official or public activities as well as for the committing of such acts in relation to their relatives" (Article 350 of the Criminal Code of Ukraine), „failure to fulfill legal requirements of local counselor, delaying actions in their work, submission of misleading information to them" (Article 351 of the Criminal Code of Ukraine) and „destruction and damage of property" (Article 352 of the Criminal Code of Ukraine), but people are not almost convicted under these articles, largely, because these articles are imperfect and do not cover in full all cases of violation of the authority of local government bodies.

Therefore, due to the mentioned above, we can understand the significant popularity of violations the authority of local government bodies in Ukraine. These violations have both criminal and non-criminal nature differing by causing of damage to property, to health, human life. For that reason, there is a conditioning of criminal legal protection of the authority of local government bodies and there appears a necessity of criminalization of some new offences against the authority of local government bodies in Ukraine, like of offences against the honor and dignity of representative of local government bodies.

In this case, it is necessary to proceed on the basis that the popularity of act is a relative concept. Its quantitative indicators can vary depending on many factors, and, primarily, on the type of offence.

The need for the existence of criminal protection of the authority of local government bodies is determined by the modern crime rate in Ukraine (or a level of popularity of social undesirable acts). If we start to analyze the crime rates in the sphere of protection of the authority of local government bodies, we will see that this kind of crimes takes the lowest place in the common structure of crimes and has insignificant percentage. However, we can observe a rather low number of registered crimes investigated [16, p. 18-22], the level of its social danger is very significant due to the fact that, as a rule, a great number of people take part in such acts, such acts are connected with additional sphere of property, violation of relations in the sphere of property, violence to life and health, violation of public order etc. Therefore, the need for the existence of criminal legal protection of freedom of religion is determined by the criminal factor, as well.

3. *Regulatory factors* reflect the conditioning of criminal legal protection of the authority of local government bodies by constitutional regulations and other laws.

These regulations are contained in over 20 Articles of the Constitution of Ukraine and they can be systematized in the groups as follows:

1. Regulations in which the principles of constitutional system, democracy, equality of all forms of property are entrenched, local government is guaranteed.

2. Regulations that regulate activity of local government on ensuring of rights and freedoms of a citizen, in particular:

3. Regulations that entrench legal, organizational, material, and financial principles of local government, they, in particular, concern:

4. Regulations in which the legal guarantees of local government are entrenched.

Along with the Constitution of Ukraine the laws of Ukraine, decrees of the President of Ukraine and the Cabinet of Ministers of Ukraine, the local government bodies` decisions and acts adopted by local referendums make up the system of regulatory legal acts governing the organization and functioning of local government in Ukraine.

The provision concerning the need of protection of the authority of local government bodies is entrenched in the corresponding modern regulatory legal acts. Among such acts a specific place is held by the Law of Ukraine "About local government in Ukraine" dated May 2, 1997 [17] that, in fact, is a "framework" law on these questions. Exactly, under this law other laws shall be developed and passed that regulate particular questions of functioning of local government, for example, laws of Ukraine "About duty in local government bodies" [18], "About bodies of self-organization of individuals" [19], "About Ukrainian-wide and local referendum" [20] etc.

The mentioned above gives grounds to make a conclusion that the protection of the authority of local government bodies is not a temporary phenomenon, and it is the long and systematic process that is based both on the activity of subjects of law-enforcement authorities and on the activity of all members of civil society.

Therefore, the analysis of the above listed regulatory legal acts gives grounds to draw a conclusion that their target is not only protection of the highest human social values, but also protection of the authority of local government bodies. As we can see, protection of the authority of local government bodies is determined by the regulatory factor.

4. *International factors* show practice of solving of criminal legal protection of the authority of local government bodies by the rules of international law and legislation of foreign countries. The independent role in the social conditioning of the criminal legal protection of the authority of local government bodies plays an international factor. Thus, the need of protection the authority of local government bodies is internationally fixed in the European Charter of Local Government [21]. A special role in the proper protection of local government plays Ukraine's desire to follow the path of European integration and the need to reform local government. Certainly, this involves not only change and improvement of the duties and requirements that will refer to local government officials, but also the relevant legal framework and protection.

According to Article 11 of the European Charter of Local Government, local governments bodies have the right to use means of legal defense to ensure the free exercise of their powers and respect for such principles of local government that are entrenched in the Constitution or national legislation.

The criminalization of offences against the authority of local government bodies is also determined by the international legal experience of the need and allowability of such criminalization. The analysis of the foreign

legislation is testimony to the fact that social danger offences against the authority of local government bodies are defined as crimes and involve criminal responsibility. Such responsibility is established either in criminal codes or by particular laws.

As a result, of comparison of the criminal laws of Ukraine providing for offences against the authority of local government bodies to relevant provisions of the criminal laws of other European countries, we can say that, in general, there is a unified approach to the definition of criminal offences against the authority of local government bodies. They are entrenched in the Criminal Code of Ukraine kinds of offences as encroachment of state or public buildings and constructions, resistance to representative of authority when he is on duty, threat of homicide, causing of bodily injuries or destruction and damage of property in regard to officials or his relatives, failure to fulfill legal requirements of local counselor, delaying actions, submission of misleading information to them are present in the criminal legislation of almost every European country. This shows the consistency of Ukrainian criminal legislation with European one concerning this issue.

Besides, it should be noted that according to Article 3 of the Criminal Code of Ukraine, the provision of the law on criminal responsibility is based on the Constitution of Ukraine and on the generally recognized principles and rules of international law. That is the law of criminal responsibility shall correspond to the provisions that are contained in the international treaties the Verkhovna Rada of Ukraine gave its consent to. Consequently, the need to perform duties under the ratified international treaties gave occasion to the condition for the criminalization of offences against the authority of local government bodies.

5. *Social and psychological factors* show a need of criminal legal protection of the authority of local government bodies as a method for stabilization of peace in society. These factors include several conditions of the criminalization of acts, more specifically, proportionality of positive and negative effects of criminalization and criminal political adequacy of criminalization. Let us consider these conditions.

A) The principle of proportionality positive and negative effects of the criminalization means that the positive results of use of act of criminal law prevail over those negative social effects that obligatory come from the criminalization of particular acts [12, p. 220-224]. The criminalization involves certain negative effects like deterioration of state of family members of such person etc. And that is why the criminal responsibility shall be applied as a last method, when other measures of influence are ineffective or inadequate: When an act is characterized by such a level of social danger that determines the need of criminal legal prohibition of its committing. Failure to observe the latter can lead to the unreasonable criminalization when a crime is determined as an act that is not characterized by sufficient nature and degree of hazard for criminalization, besides, the use as an argument of inefficiency of current legal measures of relevant problem solving [22, p. 94].

Criminalizing offences against the authority of local government bodies, a legislator certainly establishes certain negative effects on the criminal legal rule, for example, property restrictions for a guilty and his family, various restrictions of personal freedom. But together with this, despite the negative effects of criminalization, we should acknowledge that offences against the authority of local government bodies cause considerable damage in various spheres of social life and society needs proper protection against such offences. And this need is socially conditioned. Social benefit of criminal legal protection against the offences against the authority of local government bodies undoubtedly prevails over the negative effects of criminalization of such acts.

B) The next condition of criminalization is its criminal and political adequacy. It is safe to say, the violation against the authority of local government bodies as a phenomenon is mainly negatively perceived by society. Taking into account this fact, scarcely, anyone would like to be restricted in the right to occupy a certain position in local government bodies or, on the contrary, to suffer damage to health or property in connection with discharge of such functions. Consequently, criminal legal prohibition for violation against the authority of local government bodies completely corresponds to social consciousness and public opinion.

Therefore, the criminalization of offences against the authority of local government bodies also corresponds to principal trends of policy of a country. In accordance with the administrative reform in Ukraine, government bodies are vested and will be vested with more powers. Of course, it may lead to a certain abuse on the part of representatives of these bodies, but, for sure, it will lead to the increase of offences against the representatives of local government bodies with relation to the discharge of their duties. Therefore, the problem of criminal responsibility for offences against the activity of the representatives of local government bodies and adequate protection of the representatives of such bodies requires an immediate solution. The state wants to protect its representatives against the negative effects that can cause harm to health, life, property in connection with the discharge of duties. Exactly for the elimination of such negative effects we need criminal and legal influence of the state and exactly in this direction we need to develop policy concerning the criminalization of offences against the authority of local government bodies.

Therefore, basing on the theoretical researches of grounds of criminalization, the social conditioning of criminalization of acts offending against the authority of local government bodies is determined by a number of circumstances:

• the first, the presence of historical background – historical factors;

• the second, large popularity of offences against the authority of local government bodies in society in these latter days – criminal factors;

• the third, the need to provide and regulate such relations in a country by means of legal rules entrenched in the Ukrainian legal acts that, in return, are the guarantee of protection of the authority of local government bodies in a country, in general – regulatory factors;

• the fourth, the need to protect the authority of local government bodies that is entrenched in the international legal acts ratified by Ukraine having undertaken an obligation to follow them – international factors;

• the fifth, the introduction of penal prohibition against acts offending the authority of local government bodies is determined also by its high level of social danger that is explained by the importance and significance of an object of criminal and legal protection and by the nature and size of damage that may be caused to social relations, proportionality of positive and negative effects of criminalization and criminal and political adequacy – social and psychological factor.

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PECULIARITIES OF DETERMINATION OF THE FEATURES OF OBJECTIVE ASPECTS OF CRIME „IMPROPER PERFORMANCE OF PROFESSIONAL DUTIES WHICH CAUSED INFECTION WITH HUMAN IMMUNODEFICIENCY VIRUS OR ANY OTHER INCURABLE DISEASE"

Oksana GRYN,
Associate Professor of General Legal Disciplines and International Law of Odessa I. I. Mechnykov National University

SUMMARY

This paper analyzes the objective of establishing evidence of crime "improper performance of professional duties, which resulted in infection with human immunodeficiency virus or other incurable disease."

Key-words: act, omission, professional duty, improper performance of professional duties, infection with HIV or any other incurable disease, the causal relationship.

REZUMAT

În articol sînt analizate problemele caracteristicii de drept a victimei infracțiunii „Executarea necorespunzătoare a atribuțiilor de serviciu care au dus la infectarea cu virusul imunodeficienței umane (HIV) sau cu altă maladie incurabilă".

Cuvinte-cheie: victimă, virusul imunadeficienței umane (HIV), altă maladie infecțioasă incurabilă, periculoasă pentru viața omului, compensarea pagubei.

Problem statement. The objective need of current practices of prevention of crimes in the sphere of the professional activity of medical workers associated with causing specific kinds of personal injuries causes the necessity of a detailed study of such elements, their qualifying features, criteria, distinguishing them from other elements of crimes from the perspective of current conditions and scientific achievements. At that it should be noted that the problems of criminal responsibility for improper performance of professional duties, which caused infection with HIV or any other incurable contagious disease have not yet been profoundly studied.

Relevance. Based on the content of disposition of legal rule of part 1, Article 131 of the Criminal Code of Ukraine, the objective aspect of this crime lies in improper performance of professional duties by the medical, pharmaceutical or other workers resulted from negligent or careless attitude to such duties, which caused infection of a person with HIV or any other incurable contagious disease, being dangerous for human's life. To ensure proper understanding of the crime's disposition, determined by legislator, first of all it is necessary to study the content of the definitions according to each separate element of conceptual framework, used in the criminal law for statement of objective aspect of crime.

Issues connected with the characteristic of the features of objective aspects of the examined crime were not shown in separate scientific works. However, some features were studied and revealed in the works of P.P. Andrushko, M.I. Bazhanov, O.F. Bantyshev, V.O. Glushkov, O.O. Dudorov, M.Y. Korzhansky, V.V. Stashys, O.Y. Svetlova.

In particular, the definition of improper performance of professional duties was shown in detail in the scientific literature. For example, P.P. Andrushko gives the following definition of improper performance of professional duties – it's either inaction of the person, when he/she doesn't perform the actions, being within his/her professional duties at all or performs such actions not in their full scope or not observing the rules, governing such actions [1, p. 324]. M. Y. Korzhansky understood improper performance of professional duties as their negligent or careless performance [2, p. 171-172]. O.F. Bantyshev, V.O. Glushkov define improper performance of professional duties as their careless, that is negligent performance or even person's direct omission concerning performance of his/her professional duties [3, p. 68].