



7. Тертышник В.М. Теория доказательств : учеб. изд. / В.М. Тертышник, С.В. Слинко. – Харьков : Арсис, 1998. – 256 с.

8. У Чернігові злочинець кинув гранату під ноги поліції: двоє поранених [Електронний ресурс] // Сайт Українського національного інформаційного агентства «Укрінформ» / 27 лютого 2017 року. – Режим доступу : <https://www.ukrinform.ua/rubric-regions/2183954-u-chernigovi-zlocines-kinuv-granatu-pid-nogi-policii-dvoe-poranenih.html>.

9. Шейфер С. Доказательственное значение задержания подозреваемого / С. Шейфер // Социалистическая законность. – 1972. – № 3. – С. 55–56.

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SOCIAL CONDITIONS FOR CRIMINALIZING ATTEMPTS TO COMMIT A CRIME

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SUMMARY

The article presents the results of an empirical research of the specifics of attempted to commit a crime as a socially conditioned phenomenon, which has its own specific characteristics, its own patterns of development, and mechanisms for influencing social conditions. It is proved that the responsibility for attempting to commit a crime is also socially conditioned and is connected with the achievement of the goal of punishment.

Key words: attempt to commit a crime, criminal responsibility, criminalization, social conditioning.

СОЦИАЛЬНАЯ ОБУСЛОВЛЕННОСТЬ КРИМИНАЛИЗАЦИИ ПОКУШЕНИЯ НА ПРЕСТУПЛЕНИЕ

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АННОТАЦИЯ

В статье изложены результаты эмпирического исследования особенностей покушения на преступление как социально обусловленного явления, которое имеет свои специфические характеристики, собственные закономерности развития и механизмы воздействия на социальные условия. Доказано, что ответственность за покушение на преступление также является социально обусловленной и соединена с достижением цели наказания.

Ключевые слова: покушение на преступление, уголовная ответственность, криминализация, социальная обусловленность.

Description of problems. In criminal law there is no doubt about the provision that a crime is considered not only as a legal phenomenon, but also as a socially determined one, which has its own specific characteristics, its own laws of development and mechanisms of influence on social conditions. [10, с. 6; 18, с. 5] In addition, it is not denied that the responsibility for a particular crime is also socially conditioned and combined with the achievement of the purpose of punishment.

That is why it is expedient to find out the reasons that led to the necessity of criminalizing an attempt to commit a crime.

Scientific background. The issue of social determinants of criminal liability for specific crimes in Ukraine was highlighted in scientific works by V.I. Borisov, O.O. Pashchenko, O.E. Radutnyi, M.G. Zaslavskaya, V.S. Grinchak, D.O. Garmash.

State of the study. In the doctrine of criminal law, attention was paid to the factors of social determinants of criminal liability for socially dangerous acts, stipulated by the norms of the Special Part of the Criminal Code. It seems possible, using the experience and results of research, to analyze the principles of the social determinants of criminal liability for attempt to commit a crime.

Aim and tasks of the article. It should be noted that the study of the principles of social conditionality of criminal responsibility for the attempt to commit a crime was almost not carried out in the science of criminal law. Although this issue is very important.

Main study. The social determinants and effectiveness of criminal legislation, its norms and institutions is a serious problem that can be investigated from different sides, in various aspects. But its main focus is to discover and study the



factors that influence the establishment of norms and institutions of criminal law and their effectiveness. Always paid due attention to the resolution of issues that caused the appearance or change of a specific criminal law. This is due to the fact that it is impossible to study legal norms without the specific social relations they regulate, from the particular situation in relation to which these norms were issued and in which they were applied.

By itself, the process of identifying the factors that trigger the emergence and change of the rules of criminal liability, is associated with objective difficulties. First, various authors call these factors differently, calling them the bases, principles, conditions, objectives, criteria.

Secondly, there is a discrepancy in determining their number. For example, P. S. Dageł distinguished between objective and subjective conditions of criminalization. Objective condition arises as a result of the interaction of several factors: the degree of social danger of the act, its prevalence, the impossibility of combating it with less repressive measures. Subjective conditions include awareness of the objective needs of society in criminalization and a certain level of social consciousness. One of the first attempted to determine the criteria for establishing criminal punishment P.A. Fefelov.

He highlighted two criteria: the increased social danger of the act and the availability of necessary conditions for the implementation of the principle of inevitability of punishment.

It seems possible for the analysis of the social conditionality of responsibility to attempt to commit a crime use the system of principles of criminalization, developed by a team of authors, namely, P.S. Dageł, G.A. Zlobin, S.G. Kelina, G.L. Krieger, V.M. Kudryavtsev, T.I. Minaeva, O.M. Yakovlev. They singled out the social and socio-psychological principles of criminalization. These principles demonstrate the social necessity and political feasibility of criminal responsibility. These authors also singled out the systemic – legal principles of criminalization. These principles stipulate the requirement that the norms of criminal law do not contradict the norms of other branches of law.

The social and socio-psychological principles of criminalization include: 1) the principle of social danger; 2) the principle of the relative prevalence of the

act; 3) the principle of the coherence of the positive and negative consequences of criminalization; 4) the principle of criminal-political adequacy of criminalization.

The systemic-legal principles of criminalization include:

1) the general legal system requirements for criminalization: a) the principle of constitutional adequacy; b) the principle of system-legal consistency of criminalization (decriminalization) of a particular act; (c) the principle of international-legal necessity and the admissibility of criminalization; (d) the principle of compliance with the process of prosecution;

2) criminal-legal system principles of criminalization: a) the principle of the absence of gaps in the law and the absence of excessive prohibition; b) the principle of certainty and unity of terminology; v) principle of completeness of the composition of the crime; d) the principle of proportionality of the sanction and the saving of repression.

The social and socio-psychological principles:

The principle of social danger. The essence of the committed act is determined by its social danger. Analysis of this principle demonstrates what is legitimate the criminalization of only such an act, whose social danger is sufficiently high from the point of view of criminal law.

Social danger is the ability of an act to cause significant damage to public relations protected by a criminal law, or the ability to create a real threat of causing such damage.

M.I. Bazhanov wrote that social danger can be determined by: 1) the values of social relations (object); 2) the severity of the consequences; 3) way of action; 4) the motive of the act; 5) form and degree of guilt. We fully agreeing with its position and try to substantiate it in relation to an attempt to commit a crime.

The object of criminal law protection is the most important for the interests of the state and society social relations, which criminal encroachment can cause significant harm.

It must be emphasized, that the object of the attempt to commit a crime completely depends on the object of the completed crime, which the subject intended to commit (for example, in an attempt to commit kill – the object is human life, in attempted to commit robbery – property).

Establishing the place of the object of a particular crime in the system of priorities of criminal law allows to determine the compliance of protection with the conditions and trends in the development of modern society. For example, the legislator, protecting the most important social relations from the criminal encroachment, establishes the end of certain crimes on the stage of attempt to commit a crime (for example, encroachment on the life of the state's or public figure).

In this examples, the legislator uses the construction of an attempt to commit a crime to formulate a specific completed crime. Legislator uses such construction only for the most dangerous acts in order to intensify the struggle with them in the early stages and in order to prevent a mitigation of the punishment for the committed, referring to Part 3 and 4 of Art. 68 of the Criminal Code of Ukraine.

The severity of the consequences as an indicator of social danger in an attempt to commit a crime has its own specifics. First of all, because the crime does not end: either all acts are not committed or the foreseeable consequences do not occur. Thus, the consequences of an attempt to commit a crime are creation of a real threat of harm to social relations (for example, a guilty made a shot at the victim, but the bullet did not hit) or consequences are causing real harm, but not the one that the offender intended to inflict (for example, guilty, intending to kill the victim, only injuring the victim).

Thus, it should be emphasized that the social danger of an attempt to commit a crime is usually less than a complete crime. This is due to the volume and nature of the damage caused by an attempt to commit a crime. This is confirmed by the position of the legislator, which in part 3 of Art. 68 of the Criminal Code of Ukraine establishes a mandatory reduction in the punishment for the attempt to commit a crime in comparison with the committed crime.

Determining the size and nature of the damage caused can distinguish between an attempt to commit a crime from a misdemeanor (a crime stipulated in art. 185 of the Criminal Code of Ukraine – theft, from the offense, stipulated by Part 3 of Art. 51 of the Code of Ukraine on Administrative Violations- Small-scale theft), as well as from socially harmless acts (for example, ill-mannered behavior from hooliganism).



The way of action determines the form and content of the act, its intensity and harm. Scientists determine the intensity of a criminal offense as a criterion for assessing social danger. The size of the harm caused by the crime depends on the intensity of the criminal offense.

To assess the social danger of an attempt to commit a crime an important role plays a way to commit a crime. The specifics of an attempt to commit a crime is the absence of consequences or non-fulfillment of all acts that constitute the objective side of a particular crime. Therefore, the use of one way or another in an attempt to commit a crime may indicate the size and nature of the harmful consequences that did not come about due to circumstances beyond the control of the perpetrator.

Motive is the driving force of human action. The motive helps to reveal the person's mental attitude to the crime she committed. Motives are divided into low (mercenary, revenge) and those that are not low (compassion, pity). Low motives are an indicator of a higher level of social danger.

The form and degree of fault. Public danger is an objective manifestation of the essence of an attempt to commit a crime. Social danger is also conditioned by the form of guilt. More socially dangerous are acts committed with direct intent. Direct intent indicates that a person has a clear idea of the social danger of an act committed by him, the foreseeing of the criminal consequences of such an act and the desire for their onset.

Taking into account, that in the course of an attempt to commit a crime the objective side is incomplete (the consequences do not come or do not commit all acts), the subjective side is essential for the criminalization of the act.

Criminalization of an attempt to commit a crime is possible precisely because its subjective side is completely completed – the person has a premeditated intention to commit a particular crime. This causes a significant level of social danger of an attempt to commit a crime. The absence of direct intent excludes the qualification of the offense as an attempt to commit a crime.

The principle of the relative prevalence of an act. The essence of this principle is that a socially dangerous act is realistically possible. Such an act is a mani-

festation of certain general tendencies and regularities. This act is not accidental and has a sign of repetition.

According to the results of the study of statistical data, we can note the tendency to reduce the quantity of attempt to commit a crime. This indicates a reduction in the effectiveness of the social mechanism of stopping criminal activities. That is, criminals more often manage to realize their criminal intention in full. These trends indicate that criminals are becoming more brutal and skilled, more trained and professional.

The principle of proportionality of the positive and negative effects of criminalization.

The essence of this principle is that the establishment of criminal punishment of the act is permissible only when the positive results of the application of criminal law will significantly exaggerate the inevitable negative effects of criminalization.

The negative consequences of criminalizing an attempt to commit a crime is to restrict the rights of the perpetrator (for example, property and personal), moral suffering (conscience, condemnation of society).

The positive effects of criminalizing an attempt to commit a crime are a mandatory reduction in the punishment for an attempt to commit a crime, differentiation of responsibility depending on the type of attempt to commit a crime, non-use of life imprisonment for an attempt to commit a crime, the possibility of voluntary denial as the basis for exemption from criminal liability, correction of guilty person, prevention of the commission of crimes in the future by a person who has attempted to commit a crime, prevention of the commission of crimes in the future by other persons.

Principle of criminal-political adequacy of criminalization. Scientists emphasize that this principle is the most important among socio-political principles. The essence of this principle is that the processes of criminalization and decriminalization should reflect the general policies of crime prevention in the state and in the world.

Criminalization reflects the objective conditions of social life by establishing the punishment of the most dangerous socially dangerous acts.

The optimal effectiveness of criminal

legislation can only be achieved if each of its norms will conform to the principles of humanism, democracy, progressive nature of the criminal policy of the state.

The highest categories of socio-political assessment of each legal norm are the provisions of the Constitution of Ukraine. Therefore, the description of the principle of criminal-political adequacy of the criminalization of an attempt to commit a crime seems necessary to begin with an analysis of the norms of the Constitution of Ukraine.

The basic law consolidates those rights that are vital and socially necessary for an individual and the normal functioning of society, the state.

Article 3 of the Constitution of Ukraine stipulates that a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value.

Consequently, the existence of legislation regulating the most important social relations, necessitates the establishment of liability for attacks on them.

The second, after the constitutional, principle of a socio-political assessment of the adequacy of the criminalization of an attempt to commit a crime is contained in the norms of international treaties and conventions ratified by Ukraine. These regulations contain provisions that attempt to commit a crime as socially dangerous and punishable. Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948 (Article 3, paragraph d), Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of September 7, 1956 (Part 1, Article 3, Section II); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of March 21, 1950 (Article 3); International Convention Against the Taking of Hostages of December 17, 1979 (paragraph A part 2 of Article 1); Convention for the Suppression of Unlawful Seizure of Aircraft of December 16, 1970 (Article 1); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of September 23, 1971. (paragraph A part 2 of Article 1); Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 14 December 1973 (Article 2); Convention on the Physical Protection of Nuclear



Material of March 3, 1980 (paragraph F part 1 of Article 7); European Convention on the Suppression of Terrorism of 27 January 1977 (paragraph F of Article 1) – all of them contain provisions according to which an attempt to commit a crime is a punishable act.

Thus, it is obvious that the criminalization of an attempt to commit a crime corresponds to both the state and international policy of protection of the most important social relations.

And if social and socio-psychological principles reflect the necessity and expediency of criminalizing acts, then the next group of systemic – legal principles of criminalization is a certain rule of law change.

Systemic – legal principles of criminalization are.

The general – legal requirements of criminalization are that the law on criminal liability in its content and form should be consistent with the general principles of the entire system of law and not to contradict any of them.

This rule of criminalization (decriminalization) finds expression in the following principles: a) the principle of constitutional adequacy lies in the fact that the rules of criminal liability must comply with the general principles of law (principles of humanism, justice, equality of citizens, unity of rights and duties of citizens, etc.); b) the principle of system-legal consistency of criminalization (decriminalization) of a particular act is to find out that the norms that are criminalized (decriminalized) do not contradict the existing norms of other branches of law; c) the principle of international – legal necessity and the admissibility of criminalization is revealed in the clarification that the norms that are criminalized (decriminalized) do not contradict the existing norms of international obligations in the fight against crime; d) the principle of procedural feasibility of prosecution means that before deciding on the criminalization of an act it is necessary to clearly identify the legality and adequacy of the means of proving the commission of the crime, and to assess the potential for disclosure of criminal acts that are socially dangerous.

Criminal – legal system principles of criminalization – these are the limitations that exist in the current criminal law system to include (exclude) certain elements from it. These principles are: a) the principle of the absence of gaps in the law

and the absence of excessive prohibition is that the criminalization (decriminalization) of a socially dangerous act has not created gaps in the law or the conflict of norms; b) the principle of certainty and unity of terminology means that the criminalization must be carried out in certain language terms; v) principle of completeness of the composition of the crime is revealed through the indication in the law of all objective and subjective features of a socially dangerous act that is criminalized, and in relation to an attempt to commit a crime indicates an incompleteness of the objective side; d) the principle of proportionality of the sanction and the saving of repression means that the punishment corresponds to the social danger of an act that is criminalized.

Conclusions. After analyzing the chosen system of grounds for criminalizing an attempt to commit a crime, it seems possible to conclude that such a criminalization of an attempt to commit a crime is necessary and justified. First of all, this is due to the fact that an attempt to commit a crime is an act that infringes on the most important social relations, the value of which is recognized as national legislation, in particular, the Constitution of Ukraine, and the norms of international law. Secondly, although the level of public danger of an attempt to commit a crime is lower than the finished crime, the presence of a fully formed subjective side (direct intent and a certain goal) indicates a high intensity and harmfulness of an attempt to commit a crime. Many international law also highlights the social danger of an attempt to commit a crime and the need for punishment. As for the rules for changing legislation in the criminalization of an attempt to commit a crime, it must be emphasized that the inclusion of an attempt to commit a crime on the rules of criminal liability and fixing his punishment fully complies with the norms and principles of both criminal law and related branches (constitutional, international).

List of literature:

1. Бажанов М.И. Уголовное право Украины. Общая часть: конспект лекций / М.И. Бажанов. – Днепропетровск: Пороги. 1992. – 168 с.
2. Безуглый С.Н. Ответственность за неоконченное преступление по уголовному законодательству Рос-

сийской Федерации: проблемы теории и практики : дисс.. канд. юрид. наук : 12.00.08 / С.Н. Безуглый ; Белгородский государственный национальный исследовательский университет. – Белгород, 2017.

3. Борисов В.И. Злочини проти безпеки виробництва: поняття та види. Кримінальна відповідальність за порушення правил ядерної або радіаційної безпеки : монографія / В.І. Борисов, О.О. Пашенко. – Х. : Видавець СПД ФО Вапнярчук Н.М., 2006. – 244 с.

4. Волков Б.С. Мотив и квалификация преступлений / под ред. Ф.Н. Фаткуллина – Казань : КГУ, 1968. – 164 с.

5. Гринчак С.В. Порушення встановленого законом порядку трансплантації органів або тканин людини: підстави кримінальної відповідальності : дис... канд. юрид. наук : 12.00.08 / С.В. Гринчак ; Національна юридична академія України ім. Ярослава Мудрого. – Х., 2007.

6. Дагель П.С. Условия установления уголовной наказуемости / П.С. Дагель // Изв. Вузов. Правоведение. – 1975. – № 4. – С. 68–72.

7. Заславська М.Г. Кримінальна відповідальність за неналежне виконання обов'язків що до охорони життя та здоров'я дітей: соціальна обумовленість та склад злочину : дис... канд. юрид. наук : 12.00.08 / М.Г. Заславська ; Національна юридична академія України ім. Ярослава Мудрого. – Х., 2006.

8. Защита прав человека и борьба с преступностью: Документы Совета Европы. – М. : Спарк, 1998. – С. 135.

9. Конституційне право України : Конспект лекцій / За ред. Тодики Ю.М. – Харків, 1997. – С. 51.

10. Марцев А.И. Преступление как социальное явление / А.И. Марцев // Актуальные проблемы борьбы с преступностью и правоприменительной практики. – Красноярск, 1998. – С. 6.

11. Орехов В.В. О социологических исследованиях в уголовном праве / В.В. Орехов // Весник ЛГУ. – 1991. – Сер. 6. – Вып. 1(№ 6). – С. 67– Сер. 6 : Философия, политология, теория и история социализма, психология, право.

12. Основания уголовно-правового запрета: криминализация и декриминализация / отв. ред. В.Н. Кудрявцев, А.М. Яковлев. – М. : Наука, 1982. – 304 с.



13. Панов В.П. Международное уголовное право / В.П. Панов. – М. : Инфра-М, 1997. – 320 с.

14. Радутний О.Е. Кримінальна відповідальність за незаконне збирання, використання та розголошення відомостей, що становлять комерційну таємницю: монографія / О.Е. Радутний. – Х. : Ксілон, 2008. – 202 с.

15. Рапог А.И. Проблемы субъективной стороны преступления: учеб. пособие / А.И. Рапог. – М. : МЮИ, 1991. – 92 с.

16. Советское уголовное право. Часть общая : учебник / под ред. В.Д. Меньшагина, Н.Д. Дурманова. – М. : Госюриздат, 1962. – 450 с.

17. Спиридонов Л.И. Социология уголовного права / Л.И. Спиридонов. – М. : Юрид лит., 1986. – 240 с.

18. Тоболкин П.С. Социальная обусловленность уголовно-правовых норм / П.С. Тоболкин. – Свердловск, 1983. – С. 5.

19. Феофелов П.А. Критерии установления уголовной наказуемости деяний / П.А. Феофелов // Сов. гос-во и право. – 1970. – № 11. – С. 101–105.

20. Филимонов В.Д. Криминологические основы уголовного права / В.Д. Филимонов. – Томск : Изд-во Томского ун-та. 1981. – 209 с.

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УДК 342.9

ADMINISTRATIVE AND LEGAL ENFORCEMENT MECHANISM OF PROPAGATION OF SAFETY OF ROAD TRANSPORT

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SUMMARY

The article is devoted to the problems of concepts and elements of administrative and legal enforcement mechanism of propagation of safety of road transport. The analysis of the legal literature, researching the concept of administrative and legal enforcement mechanism of propagation of safety of road transport, was carried out. The author's definition of the concept of «mechanism of propagation of safety of road transport» is formulated. The structural elements of administrative and legal enforcement mechanism of propagation of safety of road transport was characterized. It is pointed out that there is no definition of the propagation of safety of road transport in the legislation of Ukraine, as well as its goals, tasks, functions, and subjects.

Key words: road safety, propaganda, preventive measures, prevention of road accidents, administrative and legal enforcement mechanism of propagation of safety of road transport.

АДМИНИСТРАТИВНО-ПРАВОВОЙ МЕХАНИЗМ ОБЕСПЕЧЕНИЯ ПРОПАГАНДЫ БЕЗОПАСНОСТИ ДОРОЖНОГО ДВИЖЕНИЯ

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АННОТАЦИЯ

Статья посвящена проблематике понятия и элементов административно-правового механизма обеспечения пропаганды безопасности дорожного движения. Осуществляется анализ юридической литературы, по исследованию понятия административно-правового обеспечения пропаганды безопасности дорожного движения. Сформулировано авторское определение понятия «механизм административно-правового обеспечения пропаганды безопасности дорожного движения». Характеризуются структурные элементы административно-правового механизма обеспечения пропаганды безопасности дорожного движения. Указывается на отсутствие в законодательстве Украины определения пропаганды безопасности дорожного движения, ее целей, задач, функций, а также субъектов.

Ключевые слова: безопасность дорожного движения, пропаганда, профилактика, предупреждение дорожно-транспортных происшествий, административно-правовой механизм обеспечения пропаганды безопасности дорожного движения.

Formulation of the problem. Taking into account the modern transformation processes and increased number of road traffic accidents in our country, the problem of ensuring road safety became one of the most acute social problems in Ukraine. That is why the introduction of reasonable measures to improve the organization and increase the level of road safety, effective preven-

tion of road traffic injuries (hereinafter – RTI) becomes of particular importance. Amendments to the sanctions of articles on violation of the Rules of the road are often made by the legislation of Ukraine. In most cases, such sanctions are more stringent than previous ones. However, in our opinion, insufficient attention is paid to the issue of preventive measures, in particular, the propagation of road safe-