

Problematic Issues of Liability for Crimes Against Justice in the Criminal Law Doctrine

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Abstract. The study of problematic issues of responsibility for crimes and misdemeanours against justice becomes particularly relevant, considering the reform of judicial proceedings, and the discussion in the scientific community of the draft Criminal Code of Ukraine. The study applied a dialectical approach and the corresponding method, a systematic approach, methods of system analysis, technical and legal analysis, formal and logical, and sociological approaches. The purpose of this study is to formulate proposals on the structure of the division on responsibility for crimes, misdemeanours that encroach on the established procedure of legal proceedings, execution of court decisions, initial provisions on the regulation of the material basis of criminal liability for certain groups of encroachments on the established procedure of legal proceedings, execution of court decisions, approaches to criminal law protection of professional advocacy in the draft Criminal Code of Ukraine. As a result of the study, it was concluded that the criterion for systematisation of norms within the structural division of the draft Criminal Code of Ukraine on responsibility for encroachment on the established procedure for legal proceedings and enforcement of court decisions should be taken as a specific object of relevant crimes and misdemeanours. It is proposed to provide in the draft Criminal Code of Ukraine responsibility for interference in the activities of special victims – participants in relations on the implementation of legal proceedings and the execution of court decisions with differentiation of forms of such influence on the relevant victims depending on its intensity, which, accordingly, have different degrees of public danger. The expediency of placing in the structural unit of the draft Criminal Code of Ukraine on liability for crimes and misdemeanours against justice, the rules protecting social relations that ensure the activities of the defender, the representative of the person has been substantiated. At the same time, it is proposed to provide for a separate provision in the structural subdivision of the special part of the Criminal Code of Ukraine, where the object is social relations to ensure the socio-economic rights of a person, which would establish liability for intentional obstruction of a lawyer in the exercise of their lawful professional activity, in the absence of signs of criminal offences providing for liability for unlawful influence on a defender or representative. The provisions and proposals formulated by this study may be useful when developing the draft Criminal Code of Ukraine

Keywords: crime, misdemeanour, justice, legal proceedings, enforcement of court decisions, lawyer, defender, representative of a person, differentiation of criminal liability

Introduction

At a time when Russia's armed aggression against Ukraine continues, when real prospects for joining the European Union are finally opening up for the Ukrainian state, the issue of responsibility for crimes against Justice is becoming particularly relevant again. Ultimately, the priority reform among those that Ukraine should carry out as a condition for joining the EU is judicial reform, the main goal of which is to ensure the independence of the court. An independent court is a basis and foundation for the development of the state

in all key areas: the economy, the activities of law enforcement agencies, democracy, and many other spheres of life of the state and society. In this context, the study of liability for criminal offences against justice deserves the attention of criminal scientists. In this difficult time for Ukraine, researchers must work on their own front. In this context, it should be noted as a positive point that the working group on the development of criminal law of the commission on legal reform under the president of Ukraine has resumed

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work on the draft Criminal Code of Ukraine [1]. Therefore, it is advisable to consider the key issues of liability for criminal offences that encroach on legal proceedings, relations on the enforcement of court decisions, which are traditionally designated in legal science as crimes against justice.

Issues related to criminal liability for crimes against justice have been investigated by many Ukrainian researchers – N.Yu. Aliksieieva [2], V.V. Vlasiuk [3], N.V. Verbytska [4], R.V. Karhut [5], T.S. Losych [6], A.O. Moroz [7], M.V. Shepitko [8], and others. At the same time, the subject of the study was the problems of regulating the characteristics of individual crimes against justice, the problems of qualification of criminal offences against justice, and their punishability. These studies were conducted based on the current version of the Criminal Code of Ukraine [9].

Thus, N.Yu. Aliksieieva formulated a number of proposals on criminal liability for encroachments committed by witnesses, experts, translators, or in relation to them, in particular, on improving the sanctions of the relevant criminal law norms, regulating liability for bribery of these participants in legal proceedings, on excluding from the disposition of articles 384-386 of the Criminal Code of Ukraine the indication of the legal protection of the activities of the temporary investigative or special temporary investigative commission of the Verkhovna Rada of Ukraine [2].

N.V. Verbytska, V.V. Vlasiuk, R.V. Karhut, T.S. Losych, A.O. Moroz investigated the problems of illegal influence on special victims – participants in legal proceedings, in particular, signs of relevant elements of criminal offences and issues of qualification of relevant offences. T.S. Losych investigated signs of the composition of a criminal offence “Threat or violence against a judge, people’s assessor, or juror”, formulated a position on the interpretation of the signs of the objective side of the elements of criminal offences under Article 377 of the Criminal Code of Ukraine, in particular, regarding the interpretation of the term “physical violence” [6].

A number of conceptual provisions on liability for encroachment on special victims-participants in legal proceedings were formulated by R.V. Karhut, V.V. Vlasiuk. In particular, R.V. Karhut, considering the experience of the Republic of Poland, substantiated the expediency of establishing responsibility for criminal acts that encroach on the established procedure for the performance of a judge’s powers [5].

V.V. Vlasiuk formulated a number of proposals for criminal legal protection of the activities of a defender or representative of a person, one of which was a conceptual proposal to provide for criminal legal protection of the activities of a defender or representative of a person in the section on encroachment on the authority of government bodies, local self-government bodies, citizens’ associations, and criminal offences against journalists, in the studies that provide for liability for encroachment on law enforcement officers, along with these special victims, unify signs of liability for criminal offences against persons who protect or represent a person by providing them with legal assistance [3].

A number of conceptual provisions concerning the establishment of criminal liability for crimes (criminal offences) against justice were formulated by M.V. Shepitko, in particular, regarding the object of these criminal offences, their system, development of approaches to establishing responsibility for certain groups of crimes against justice both in the current Criminal Code of Ukraine and in the draft Criminal Code of Ukraine [8; 10, p. 473-476].

Among foreign researchers, issues related to criminal liability for encroachment on legal proceedings were investigated by S.M. Calderon [11], K. Ryan, E. Girgenti, & L. Morehouse [12, p. 1645-1672], M. Harrington, & O. Jertian [13, p. 1427-1454], M. Dooner, K. Irwin, & A. Rickeman [14, p. 1293-1320], S. Mah, T. Hamsher, J. Hughes, & A. Moody [15, p. 1115-1142], D. Singh, E. de Santis, K. Gulite, & S. Rho [16, p. 1605-1643], D. St. John, H. Ahmed, A. Basner et al [17, p. 1073-1113], E. Hasen, M. Alagia, C. Jenets, & L. Miliotes [18, p. 1251-1292], S. Isra, Yuliandri, F. Amsari, & H. Tegan [19, p. 72-83]. These researchers considered the problems of responsibility for encroachment on justice, firstly, according to the legislation of the relevant foreign states, and secondly, often these studies focused on criminological aspects. At the same time, it is important to consider the above-mentioned and other problematic issues related to the establishment of responsibility for crimes and criminal offences against justice, and express the author’s vision for their solution in the context of the above-mentioned draft Criminal Code of Ukraine.

In particular, considering the problems of establishing responsibility for crimes and misdemeanours against justice in the draft Criminal Code of Ukraine, it is important to express a position on some conceptual issues. In this context, first of all, questions about the structure and content of the relevant structural division of the draft Criminal Code on responsibility for crimes and misdemeanours against justice deserve attention. Considering the content of the specified structural division (the version of the draft Criminal Code of Ukraine as of June 23, 2022 – the 8th book “Crimes and misdemeanours against justice”), separate consideration should be given to the question of approaches to establishing responsibility for certain groups of crimes against justice. In this context, attention should be paid to the issues of differentiation of liability for criminal offences related to illegal influence on participants in legal proceedings, public relations regarding the execution of court decisions (interference in activities, violence, etc.); issues of ensuring the completeness of legal protection in the criminal law of advocacy, including in the status of a defender, a representative of a person; the place of norms on liability for offences that encroach on the activities of a defender, a representative of a person, in the system of the special part of the Criminal Code of Ukraine. The formulation of proposals on these key issues would be important and useful for consideration in the development of the draft Criminal Code of Ukraine.

Materials and Methods

To achieve the above goals and objectives, first of all, it is necessary to analyse the provisions of the draft Criminal Code of Ukraine, in particular, the structural division, which establishes responsibility for crimes and misdemeanours against justice, and develop proposals for the most appropriate structure of this division. At the same time, it is necessary to apply the method of system analysis, which provides for a comprehensive disclosure of the essence of the object as a system. Systematisation of norms on responsibility for crimes and misdemeanours against justice within the relevant structural division of the draft Criminal Code of Ukraine should be carried out on the basis of classification according to essential features that reveal the essence of the relevant concept.

It also seems appropriate to propose approaches to establishing responsibility for certain groups of crimes

against justice. In particular, this refers to a group of criminal offences related to illegal influence on participants in legal proceedings, public relations regarding the execution of court decisions. In this context, this study considers the issue of differentiation of liability for criminal offences related to illegal influence on such persons (interference in activities, violence, etc.). Special attention should also be paid to the investigation of the issue of criminal law protection of advocacy, namely, whether the relevant activity is sufficiently protected by means of criminal law, and the issue of criminal law protection of the activities of a defender, a representative of a person, in particular, the place of norms on liability for encroachment on the activities of these persons, in a special part of the Criminal Code of Ukraine. In general, investigating these and other issues related to the establishment of criminal liability for certain types of acts, first of all, the dialectical approach and the corresponding method should be applied, which provides for the clarification or establishment of such a type of legal responsibility for the relevant acts, reflects the objective needs of society and subjective ideas about the desired criminal law regulation. Guided in this case by the dialectical method, and applying the sociological method, in March-April 2020, an anonymous written survey was conducted by the investigative bodies of the national police, prosecutors in the Lviv Oblast, forensic experts of the Lviv Research Institute of Forensic Examinations, lawyers, state executors of departments of the State Executive Service of Lviv on issues related to the establishment of criminal liability for encroachment on their professional activities. Among other things, the questionnaire for each of the above-mentioned groups of respondents, considering the specifics of their professional activities, contained questions about whether they encountered interference or other illegal influence in their activities; in connection with what aspects of their professional activities and in what form such influence was carried out, if any.

Regarding the forms in which encroachments on witnesses who have suffered in court proceedings are most often committed, a summary of the materials of judicial practice for 2019-2021 has been made.

In addition, a functional approach should be applied when considering the problems of establishing responsibility for the above-mentioned groups of crimes against justice. M.I. Panov noted that the essence of the functional approach in scientific research is to isolate the object that is being studied as a whole, divide this object into elements (components), and establish a functional relationship between these components, and between the components and the whole. At the same time, the researcher calls the main structural elements of the functional approach in criminal law study – the tasks and functions of criminal law [20, p. 15-16]. Therefore, the phenomenon under study should be considered from the standpoint of fulfilling the tasks and functions of criminal law.

In addition, when studying the problems of differentiation of responsibility for criminal offences related to illegal influence on participants in legal proceedings, public relations on the execution of court decisions, in particular, when analysing the relevant criminal law norms, the method of technical and legal analysis is subject to application, the main techniques and means of which are criminal terminology, legal construction – the composition of a criminal offence. In particular, this method is subject to application in the study

of forms of illegal influence on the above-mentioned persons, which are provided for in the norms of the current Criminal Code of Ukraine, the draft Criminal Code of Ukraine.

When studying the problems of criminal law protection in the professional activity of lawyers, it is necessary to apply a systematic approach that provides for logical and structural coordination of the provisions of the criminal law, ensuring the completeness of criminal law regulation, and coordination of the provisions of the criminal law with the provisions of international legal acts. In addition, the methodological tools that should be used in the study of the problems of the criminal legal protection of legal activity include the formal and logical method of technical and legal analysis.

Results and Discussion

It was mentioned above that the draft Criminal Code of Ukraine provides for a separate book – the 8th book “Crimes and misdemeanours against justice”, which highlights the following sections: “Crimes against the foundations of justice” (8.1), “Crimes and misdemeanours against the promotion of justice and the activities of law enforcement agencies” (8.2), “Crimes and misdemeanours against the enforcement of a court decision” (8.3).

Emphasising the correctness of combining in one book the norms on liability for encroachment both on the established procedure of legal proceedings and the execution of court decisions, since these groups of relations are inextricably linked, although they have a different legal nature, it should be noted that in this context the name of the corresponding book needs to be changed. In view of the range of protected public relations, it was more accurate to designate it as “Crimes and misdemeanours against the order of legal proceedings and enforcement of court decisions”, since the concept of “justice” does not fully cover the entire range of public relations belonging to the generic object of the relevant group of offences. In particular, this refers to relations regarding the execution of court decisions, and the performance of other functions of the court (except for justice) in the framework of legal proceedings [21, p. 190-193, 209-210].

M.V. Shepitko noted that one of the trends that will affect the development of crimes against justice is the establishment of their system (division into groups). The researcher suggests identifying chapters in the structure of the relevant section of the criminal law that provide for liability for crimes against justice, based on the system proposed by him. Accordingly, M.V. Shepitko suggests identifying the following groups of crimes against justice: 1) in the administration of justice; 2) ensuring the administration of justice; 3) aimed at ensuring the results of the administration of justice [22, p. 131].

At the same time, traditionally, the construction of a special part of the Criminal Code of Ukraine – its division into structural parts – is based on such a criterion as the object of a criminal offence. In this context, the study proposes a classification that would allow building a more or less coherent system of criminal offences that encroach on the established procedure for judicial proceedings and enforcement of court decisions, which are designated in the criminal law as crimes against justice. According to the criterion (feature) of the specific object of the composition of a criminal offence, these criminal offences can be classified into the following groups: 1) that encroach on the procedural guarantees of the rights and legitimate interests of a person in legal proceedings (the subject of criminal offences of this

group is a special official who is a participant in relations on the implementation of legal proceedings); 2) that encroach on the guarantees of independence and inviolability, other guarantees of the activities of officials who are participants in relations on the implementation of legal proceedings, the execution of court decisions, and defenders, representatives of the person (the subject of criminal offences of this group, as a rule, is general, because according to the mechanism of encroachment on the object of a criminal offence, encroachments are committed from outside public relations protected by criminal law); 3) encroach on relations to ensure the receipt of reliable evidentiary and other information that has legal significance in court proceedings and during the execution of court decisions (the subject of these criminal offences are persons who are legally assigned certain duties to facilitate legal proceedings, the execution of court decisions); 4) encroach on relations regarding the timely disclosure and termination of criminal offences; 5) encroach on the procedure for the execution of court decisions established by law [21, p. 292-296].

Based on this, it seems appropriate to allocate the following sections within the framework of the book of the 8th draft of the Criminal Code of Ukraine:

- “Crimes and misdemeanours against procedural guarantees of the rights and legitimate interests of a person in legal proceedings”, which provide for liability for relevant crimes and misdemeanours, the subject of which is officials participating in relations on the implementation of legal proceedings;
- “Crimes and misdemeanours against guarantees of independence and inviolability of officials, defenders, representatives of a person in legal proceedings, during the execution of court decisions”, which include norms on liability for interference with the activities and encroachment on the personal goods of the special victims concerned in connection with their lawful activities in the proceedings and in respect of the enforcement of court decisions;
- “Crimes and misdemeanours against timely detection and suppression of crimes and misdemeanours”;
- “Crimes and misdemeanours against the established procedure for obtaining reliable evidentiary and other information that has legal significance in legal proceedings and enforcement proceedings”;
- “Crimes and misdemeanours against the order of execution of court decisions”.

Considerations should also be made regarding *the establishment of liability for criminal offences committed by illegally influencing participants in relations on the implementation of legal proceedings and relations on the execution of court decisions*. In the current Criminal Code of Ukraine, this group of criminal offences should include the following articles: 376-379, 386, 397-400 of the Criminal Code of Ukraine.

The draft Criminal Code of Ukraine proposes to provide for liability for interference in the activities of a judge, an investigating judge (Article 8.1.5), a prosecutor, an investigator, a detective, an inquirer, a defence lawyer, a representative of a person, a forensic expert, an employee of the state executive service, a private executor (Article 8.2.3) “including through violence against their close person or threats to them.” Based on the principle of differentiation of criminal liability, it seems that the following three types of acts have different degrees of public danger: a) interference without threat; b) interference with threat; c) interference with the use of violence. In addition, the threat of infringement

of the rights and legitimate interests of a person, on the one hand, and the threat of murder, on the other hand, have different degrees of public danger. When it comes to violence, acts that have caused different harm to a person’s health have different degrees of public danger. It seems that the rule under consideration needs to be improved in this context. Responsibility for interfering in the activities of these special victims by means of violence should be provided for in separate norms, and differentiated depending on the intensity of violence used against the victim.

Article 8.2.4 of the draft Criminal Code of Ukraine establishes liability for obstructing the activities of the prosecutor’s office or law enforcement agencies, in particular, for the following acts: deliberately false notification of the prosecutor or law enforcement agency about the commission of a crime; if a person, being a suspect or accused, has slandered another person in committing a crime; bribery of a participant in criminal proceedings who is not an official; falsification, destruction or damage of evidence in criminal proceedings [1]. These acts have different degrees of public danger, or some of them, under certain conditions, may not acquire such a property as public danger at all (for example, bribery of a participant in criminal proceedings who is not an official). In addition, it should be noted regarding the encroachment on a witness, victim, specialist, translator – if it is committed by a common subject – the draft Criminal Code of Ukraine establishes liability only for illegal influence on these persons in order to prevent the performance of their duties in the form of bribery (bribery of a participant in criminal proceedings who is not an official (part 3 of Article 8.2.4)), at the same time there are no norms that would establish responsibility for more socially dangerous forms of influence on these persons (obstruction of access to the relevant authorities to fulfil their duty, coercion by threats or violence). Although Article 4.4.7 of the draft Criminal Code of Ukraine (section 4.4 “Crimes against personal freedom and dignity of a person”) establishes liability for forcing by threat or violence against the injured person or his close person to commit or not to commit a certain action, at the same time in the case under consideration (when the victims are participants in the proceedings) refers acts that pose the highest public danger, since they simultaneously encroach on several objects that, in addition to the freedom and dignity of a person and (or) their mental integrity, health, there is also an established procedure for legal proceedings and (or) execution of court decisions. In this case, the latter act as the main direct object.

Notably, the legislator in Article 4.4.7 “Coercion” listed articles that contain special norms in relation to Article 4.4.7, among which Article 8.2.8 “Violation of the right to defence” is indicated, although, probably, in this case, Article 8.2.9 “Coercion during investigative actions” should have been indicated. Moreover, coercion by threat and coercion by violence have different degrees of public danger, as noted above, and the fact that threats, depending on the harm caused to what goods of the person the perpetrator threatens, can have different degrees of public danger. Responsibility for these acts requires differentiation.

It should be noted that the generalisation of judicial practice shows that encroachments on witnesses, victims, and other participants in proceedings in connection with their participation in legal proceedings are not isolated in practice. Similar facts of illegal influence occur within the

framework of public relations regarding the implementation of enforcement proceedings. Thus, in particular, in March-April 2020, a survey of state performers was conducted. One of the questions in the questionnaire was whether respondents in their practical activities encountered facts of illegal influence on an expert, appraiser, specialist, or translator involved in enforcement proceedings, in order to persuade them to refuse to give an opinion, a report on the assessment of property, or to give a deliberately false conclusion, a report on the assessment of property. Among the state executors who noted that they had encountered such facts in their activities, another question in the questionnaire was about the form in which such influence was taken, – 12.5% said it was in the form of bribery; the remaining 87.5% said it was other forms of influence. Also during the same period, a survey of forensic experts was conducted, where one of the questions of the questionnaire was the question of, whether there have been cases of interference in the professional activities of respondents, obstruction of such activities related to the performance of their functions as an expert in legal proceedings. Among the experts who noted that there were cases of such interference, 33.3% of respondents noted that such acts were in the offer or promise of illegal benefits, while 66.7% of respondents noted that this was in other forms of illegal influence [21, p. 373-374].

Thus, the data of the conducted survey and the data of the conducted generalisation of judicial practice, indicate that most often illegal influence on witnesses and experts in criminal proceedings are carried out by bribery, preventing the appearance of pre-trial investigation bodies or in court, and by threats (threat of violence, destruction or damage to property, disclosure of information that can harm the rights and interests of the victim or their close relatives). In addition, sometimes such influence is also carried out through the use of violence against these categories of victims, illegal influence due to acquaintance with the accused, friendship, and family ties (5.6% of respondents). The latter of the above acts (illegal influence due to acquaintance with the accused, friendship, family ties), considering the fact that they themselves do not pose an increased public danger, which would lead to the establishment of criminal liability for them in a separate special norm, should be qualified, if there are appropriate grounds, as incitement to commit other criminal offences, including against justice. Thus, it seems appropriate to provide in the draft Criminal Code of Ukraine, in the book on crimes and misdemeanours against legal proceedings and the execution of court decisions, a separate norm on liability for various forms of influence (depending on its intensity) on the subjects of relations on the implementation of legal proceedings, enforcement proceedings, differentiating criminal liability depending on the intensity of such impact. Such an approach would allow differentiating criminal liability for the relevant acts by providing for appropriate norms of punishment for acts in the sanctions, considering their public danger.

Among the important issues related to liability for criminal offences of the group under consideration is the question of *criminal law protection of the activity of a defender, representative of a person, or lawyer's activity*.

In the current Criminal Code of Ukraine, these norms are provided for in articles 397-400 of the Criminal Code of Ukraine. From the content of the dispositions of the relevant norms, it should be concluded that the object of the relevant

criminal offences goes beyond the object of crimes against justice, because, according to the literal interpretation of the mentioned norms, they should also be applied when interference in the activities of a defender, a representative of a person, intentional destruction or damage to their property, encroachment on life, threat or violence was committed in connection with the provision of legal assistance and outside the legal proceedings and relations for the enforcement of court decisions. In this aspect, the draft Criminal Code of Ukraine (Article 8.2.3) formulates these norms in a similar way, in particular, it provides for liability for interference in the activities of a defender, a representative of a person [1].

Researchers in the field of criminal law suggested ways to solve the above-mentioned issue. In particular, V.V. Kudryavtcev proposed to determine in the dispositions of the norms provided for in articles 398-400 of the Criminal Code of Ukraine, the motives and purpose of encroachment on the legitimate activity of providing legal assistance in the course of legal proceedings [23, p. 164-166]. O.F. Bantyshev proposed articles that ensure the interests of both the activities of a defender, a representative of a person, and their personal interests, the safety of their life and health, – allocate in a separate section – “Crimes against the normal activity of a defender or representative of a person” [24, p. 174]. V.V. Vlasiuk proposed to unify the signs of liability for criminal offences against persons who protect or represent a person by providing them with legal assistance, and to provide for it in the section on encroachment on the authority of state authorities, local self-government bodies, citizens' associations and criminal offences against journalists, in articles that provide for liability for encroachment on law enforcement officers, along with these special victims. At the same time, the researcher proposed to consider the criteria (grounds) for allocating responsibility for encroachment on the above-mentioned persons in these articles – special signs of injured persons (defender and representative of the person), and their activities [3, p. 4]. This position cannot be agreed with, given that the activities of a defender, a representative of a person in most cases are carried out within the framework of legal proceedings, and therefore, are covered by the generic object of crimes against justice. At the same time, it should be noted separately about the legal protection of professional activities of lawyers. Article 397-400 of the Criminal Code of Ukraine, and Article 8.2.3 of the draft Criminal Code of Ukraine, provide for norms that are designed to ensure legal protection of legal activity only in cases where a lawyer provides legal assistance, while being in the status of a defender or representative of a person. These rules do not protect professional advocacy in cases where the lawyer does not carry out it in the status of a defender or representative of a person. The analysed draft of the Criminal Code of Ukraine also does not contain any other special norms aimed at legal protection of the professional activity of a lawyer.

In international legal acts that define international standards on guarantees of professional advocacy, it is noted that it is necessary to ensure in the national legislation of states guarantees of professional activity of a lawyer, which relate to all areas of their activity (not just legal proceedings). In particular, international legal acts provide for the following provisions concerning guarantees of the lawyer's activity:

- ensuring that lawyers can perform their professional duties without intimidation, obstacles, or inappropriate

interference (paragraph 2 of the main provisions on the role of lawyers adopted by the 8th UN Congress on the Prevention of Crimes and Treatment of Offenders (1990) [25]; paragraph a) of the Charter of core principles of the European legal profession (2006) [26];

- ensuring the prerequisites for the absolute independence of a lawyer in the performance of their professional tasks and the absence of any influence on them, primarily related to their personal interest or external pressure (paragraph 2.1.1 of the Code of Conduct of European Lawyers, adopted at the plenary session of the Council of Bar Associations and legal societies of Europe (1988) [27];

- ensuring the lawyer's criminal and civil immunity from prosecution for statements concerning the case, in good faith performance of their duty, performance of their duties in a court, tribunal, other legal or administrative body (paragraph 20 of the Main Provisions on the Role of Lawyers Adopted by the 8th UN Congress on the Prevention of Crimes and Treatment of offenders (1990); ensuring the exclusion of the possibility for a lawyer to be punished or threatened with its use, the possibility of prosecution, sanctions for actions committed in the performance of their professional duties in accordance with standards and ethical norms (paragraph 16 of the Main Provisions on the Role of Lawyers adopted by the 8th UN Congress on the Prevention of Crimes and Treatment of Offenders (1990), section a) of the Charter of core principles of the European profession of lawyers (2006);

- the duty of the authorities to take measures to adequately protect lawyers in cases where the security of lawyers in connection with the performance of their professional duties is under threat (paragraph 17 of the Basic provisions on the role of lawyers, adopted by the 8th UN Congress on the Prevention of Crimes and Treatment of Offenders (1990).

Therefore, based on the provisions of these international legal acts, the activities of lawyers should be provided with special guarantees. At the same time, the guarantees of professional activity of lawyers should concern both non-interference in their professional activities in various aspects (the lawyer's duty to preserve the confidentiality of the client's cases, independence, freedom of the lawyer to conduct the case, etc.), and ensuring his personal safety in connection with their activities. Therefore, it seems that the restriction of the criminal legal protection of professional advocacy only in those cases when a lawyer has the status of a defender, a representative of a person, as provided for, based on the provisions of articles 397-400 of the Criminal Code of Ukraine, does not comply with the provisions of international legal acts, does not fully protect the professional activity of a lawyer.

Generalisations of empirical data obtained as a result of a survey of lawyers confirm the need to supplement criminal law in order to create prerequisites for more complete criminal legal protection of advocacy. In particular, according to a survey of lawyers conducted in March-April 2020, the overwhelming majority of lawyers answered in the affirmative to the question of whether there were cases of interference in the legal activity, obstruction of such activities related to the performance of the function of a defender, a representative of a person: such cases were present against them; 30.3% of lawyers said that no such acts were committed against them. When asked whether there were cases of interference in their advocacy activities that are not related to the performance of their functions as a defender, representative of a person, but are related to other types of professional advocacy (for

example, providing explanations on legal issues, consultations, drafting applications, complaints, procedural and other legal documents; legal support for the activities of individuals and legal entities, the state), 36.4% of lawyers said that there were such cases; the majority (63.6%) gave a negative answer to this question [21, p. 266]. Thus, for the most part, such encroachments are committed in connection with the performance by a lawyer of the functions of a defender, a representative of a person, but cases of interference in activities during the implementation of other types of legal activity are also relatively common. Therefore, these issues need to be resolved in the Criminal Code of Ukraine.

Considering the above, it is advisable to introduce into the structural draft of the Criminal Code of Ukraine norms that would protect the activities of a defender, a representative of a person in connection with the performance of their relevant functions in court proceedings, during the execution of court decisions, at the same time, it was noted above – with the differentiation of forms of such illegal influence carried out by the legislator. At the same time, in the structural subdivision of the special part of the Criminal Code of Ukraine, where the object is public relations to ensure the socio-economic rights of a person (in the current Criminal Code of Ukraine – this is section 5, in the draft Criminal Code of Ukraine under consideration – section 4.8), it seems appropriate to provide for a separate article, which establishes responsibility for intentionally obstructing the implementation of legal professional activities by a lawyer, violation of the guarantees of their activities defined by law and professional secrecy in the absence of signs of criminal offences that constitute illegal influence on the defender or representative of a person (in the current Criminal Code of Ukraine – articles 397-400).

CONCLUSIONS

The above gives grounds to formulate the following statements.

1. Based on the proposed classification according to the specific object of criminal offences that encroach on the established procedure for legal proceedings and execution of court decisions, it seems appropriate within the framework of the structural division of the draft Criminal Code of Ukraine, which would establish responsibility for these crimes and misdemeanours, to distinguish the following sections: “Crimes and misdemeanours against the procedural guarantees of the rights and legitimate interests of a person in court proceedings”; “Crimes and misdemeanours against the guarantees of independence and inviolability of officials, defenders, representatives of the person in court proceedings, during the execution of court decisions”; “Crimes and misdemeanours against the timely disclosure and suppression of crimes and misdemeanours”; “Crimes and misdemeanours against the established procedure for obtaining reliable evidentiary and other information that has legal significance in legal proceedings and enforcement proceedings”; “Crimes and misdemeanours against the procedure for executing court decisions”.

2. It seems appropriate to provide in the above-mentioned structural subdivision of the draft Criminal Code of Ukraine responsibility for unlawful influence on special victims – participants in relations on the implementation of legal proceedings, execution of court decisions, providing for the differentiation of forms of such influence on the relevant victims depending on its intensity, which, accordingly, have

different degrees of public danger, in particular, for interference without the threat of violence; interference with the threat of violence; interference with the use of violence.

3. It would be justified to place in the structural subdivision of the draft Criminal Code of Ukraine on responsibility for crimes and misdemeanours against justice (against the established procedure for legal proceedings and enforcement of court decisions) norms that would protect the activities of a defender, a representative of a person within the framework of these relations (legal proceedings, enforcement of court decisions). At the same time, in the structural division of the special part of the

Criminal Code of Ukraine, where the object is public relations to ensure the socio-economic rights of a person (in the draft Criminal Code of Ukraine – section 4.8), it seems appropriate to allocate a separate article, which would provide for liability for acts that constitute deliberate obstruction of the lawyer's legitimate professional activity, violation of the guarantees of their activities defined by law and professional secrecy, in the absence of signs of elements of criminal offences that provide for liability for illegal influence on the defender or representative of a person in legal proceedings and within the framework of relations for the execution of court decisions.

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Проблемні питання відповідальності за правопорушення проти правосуддя в доктрині кримінального права

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Анотація. Дослідження проблемних питань відповідальності за злочини і проступки проти правосуддя набуває особливої актуальності з огляду на реформу судочинства, а також обговорення в наукових колах проекту Кримінального кодексу України. У процесі цього дослідження було застосовано діалектичний підхід і відповідний йому метод, системний підхід, методи системного аналізу, техніко-юридичного аналізу, формально-логічний, соціологічний. Метою цього дослідження є формулювання пропозицій щодо структури підрозділу про відповідальність за злочини, проступки, які посягають на встановлений порядок судочинства, виконання судових рішень, вихідних положень щодо регламентації матеріальної підстави кримінальної відповідальності за окремі групи посягань на встановлений порядок судочинства, виконання судових рішень, підходів щодо кримінально-правової охорони професійної адвокатської діяльності в проекті Кримінального кодексу України. У результаті проведеного дослідження було зроблено висновки про те, що критерієм систематизації норм у межах структурного підрозділу проекту КК України про відповідальність за посягання на встановлений порядок судочинства і виконання судових рішень, треба брати видовий об'єкт відповідних злочинів і проступків. Запропоновано передбачити в проекті КК України відповідальність за втручання в діяльність спеціальних потерпілих – учасників відносин щодо здійснення судочинства і виконання судових рішень з диференціацією форм такого впливу на відповідних потерпілих залежно від його інтенсивності, що, відповідно, мають різний ступінь суспільної небезпеки. Обґрунтовано доцільність розміщення у структурному підрозділі проекту КК України про відповідальність за злочини, проступки проти правосуддя норм, які б охороняли суспільні відносини, що забезпечують здійснення діяльності захисника, представника особи. Водночас запропоновано у структурному підрозділі Особливої частини КК України, де об'єктом є суспільні відносини щодо забезпечення соціально-економічних прав особи, передбачити окрему норму, де було б встановлено відповідальність за умисне перешкоджання адвокату в здійсненні його законної професійної діяльності, за відсутності ознак кримінальних правопорушень, що передбачають відповідальність за протиправний вплив на захисника чи представника. Сформульовані у цій статті положення та пропозиції можуть бути корисними для врахування під час розробки проекту Кримінального кодексу України

Ключові слова: злочин, проступок, правосуддя, судочинство, виконання судових рішень, адвокат, захисник, представник особи, диференціація кримінальної відповідальності