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**THE CRITERIA OF CRIME DISJUNCTION THAT IS  
PROVIDED UNDER THE ARTICLE 391 OF THE CRIMINAL  
CODE OF UKRAINE FROM MALICIOUS VIOLATION OF  
ESTABLISHED PROCEDURE FOR SERVING A SENTENCE**

According to the amendments to the Article 133 of the Criminal Executive Code of Ukraine dated on September 6, 2016 № 1487-VIII 2016 the notion “the malicious violator of the sentence serving security” was excluded and provided the following title “malicious violation of the established procedure for serving a sentence”. Regarding to the last version of the Article one should draw attention on the fact that the list of actions of the convicted who are recognized as “malicious” was reduced and is exhaustive.

It should be emphasized that the disjunction of such crime body as the malicious disobedience to the penal enforcement administration’s orders and the malicious violation of the established procedure for serving a sentence provided by the Article 133 Criminal Executive Code of Ukraine is an argumentative issue among the scientists. The scientists have not developed clear disjunction criteria for the crime provided by the Article 391 of the

Criminal Code of Ukraine from a malicious violation of the established procedure for serving a sentence which is essentially a disciplinary offense that affects adversely the practice of applying the criminal norm.

Evaluating the issues given above we consider it necessary to distinguish the following criteria for the delineation of the crime provided for by the Article 391 of the Criminal Code of Ukraine from a malicious violation of the established procedure for serving the sentence provided by the Article 133 of the Criminal Executive Code of Ukraine as following:

The Article 133 of the Criminal Executive Code of Ukraine provides for an exhaustive list of the security violations by the convicts which are recognized as malicious violations of the established order of serving sentence, whereas the disposition of the Article 391 of the Criminal Code of Ukraine contains an indication only of the violation of the security requirements by the convicts without specifying the type of such violations or their exhaustive list (the criterion of classifying violations as malicious);

The Article 391 of the Criminal Code of Ukraine provides an indication of disciplinary prejudice as a mandatory feature of the actus reus of the crime, namely, the commitment by the convicted the violation of the security requirements within a year after serving a disciplinary penalty in the form of transfer to a chamber-type accommodation, a solitary confinement cell or transfer to a more strict punishment regime, while in the Article 133 of the Criminal Executive Code of Ukraine there is no such indication (the criterion for indicating disciplinary prejudice);

The Article 133 of the Criminal Executive Code of Ukraine provides for the recognition of the violation of the established serving the sentence order which is based on the committing the individual violation of the security from the list stated in the article, while the Article 391 of the Criminal Code of Ukraine provides for the commitment of at least three violations of the security requirements for which he will be subjected to more serious disciplinary measures and the commission of the another violation of

the regime after their serving which is recognized as malicious disobedience. (the criterion for the systematic violations).

Perpetration of the actions comprised by the Article 391 of the Criminal Code of Ukraine leads to criminal liability and the commission of a malicious violation of the established procedure for serving the punishment provided for in the Article 133 of the Criminal Executive Code of Ukraine, disciplinary liability (the criterion of the responsibility level).

Recognition of a violation committed by a convicted person as malicious according to the Article 133, Criminal Executive Code of Ukraine is not a prerequisite for bringing a convicted person to criminal liability under the Article 391 of the Criminal Code of Ukraine (the criterion of the violation maliciousness as the condition for bringing to responsibility);

Carrying out the actions stipulated by the Article 391 of the Criminal Code of Ukraine which consider an increased public danger and the provisions of the Article 133 of the Criminal Executive Code of Ukraine include only a list of gross violations of the security requirements committed by the convicted which are considered malicious (the criterion of the public danger level of the committed action).