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Criminal offences that infringe on the procedure for the execution of court decisions under the legislation of the Republic of Azerbaijan and Ukraine: Issues of legislative regulation

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■ **Abstract**. The relevance of this study is justified by the need to carry out a comparative legal study of the norms that ensure the protection of the interests of justice in the Republic of Azerbaijan and Ukraine in the field of implementation of judicial prescriptions as an important stage of the justice process as a whole. The purpose of this study was to implement a general description of criminal offences that encroach on the procedure for the execution of court decisions, according to the legislation of the Republic of Azerbaijan and Ukraine, as well as characteristics of those features that allow distinguishing the corresponding encroachments from other offences against justice and combining them into one category. This study employed a set of scientific methods: terminological, system-structural, formal logical, comparative legal. Based on the results of this study, it was established that the formalization of criminal offences, which encroach on the implementation of the principle of inevitability of legal responsibility, and the criminal law enforcement of court decisions in the Republic of Azerbaijan and Ukraine is an ongoing process. The conclusion was substantiated that the criminalization of a fairly wide scope of socially dangerous acts of this category implemented in the current criminal legislation of each of the States is conditioned upon the social need to ensure human rights and public interests in the field of implementing the tasks of justice. The provisions formulated in this paper will contribute to the search for more effective means of criminal law in the law-making and law enforcement of both the Republic of Azerbaijan and Ukraine

■ **Keywords**: criminal liability; object of crime; classification of crimes; criminal offences against justice; decisions

■ Introduction

Criminal law protection of public relations in modern society is determined by the nature, degree of public danger of social phenomena occurring in it, and the prevalence of such phenomena in a particular historical period of the life of the state and citizens.

Presently, the problems of defence and resistance to foreign military aggression have become especially relevant for the Ukrainian state. The issue of combating corruption phenomena, especially dangerous in the areas of strengthening Ukraine's defence capabilities, in the sphere of the functioning of the state apparatus, self-governing bodies, ensuring the vital activities of society in conditions of martial law, does not lose its urgency (Batyrgareieva, Babenko, & Kaija, 2019; Vasylevych *et al.*, 2021; Vozniuk *et al.*, 2021). The need to protect the values of society and the individual from dangerous offences, including those committed by organized criminal organizations, definitely does not disappear over time (Golovkin, & Marysyuk, 2019; Vozniuk, 2022).

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The European vector of development, the further development of the institutions of Ukraine as a rule of law, puts the task of executing court decisions at the level of national policy. The implementation of these areas of activity of state bodies and structures is based on the constitutional principle of mandatory execution of court decisions in the administration of justice (Item 9 of Part 3 of Article 129 of the Constitution of Ukraine[1]). In its legal doctrine, Ukraine consistently implements pan-European principles of the administration of justice. One of the steps towards this was the ratification of the Association Agreement between Ukraine and the European Union on September 16, 2014 by the Verkhovna Rada of Ukraine[2]. State institutions, civil society, the scientific community and law enforcement agencies are currently working to achieve the tasks of cooperation set out in the text of the Agreement, including in the field of justice.

The law-making and law-enforcement activities of the legal scientists of the Republic of Azerbaijan and Ukraine are consistent with such areas of implementation of the criminal policy. One of these areas is reflected in the norms of the criminal legislation of each of the two states, which make provision for liability for crimes (according to the criminal legislation of Ukraine – criminal offences[3]) against justice.

Despite a considerable number of studies covering the aspects of legal responsibility for criminal offences against justice, which, admittedly, are of scientific and practical importance, today there are many questions on certain categories of criminal offences of this group, which are still understudied.

Specifically, such issues can be called criminal liability for socially dangerous acts committed when implementing court orders. Legislation of both the Republic of Azerbaijan and Ukraine prescribes responsibility for committing criminal offences of this category.

The problems of justice protection based on comparative studies are investigated by a cohort of researchers who pay attention to the study of normative provisions on exemption from criminal liability based on an agreement between the accused and the prosecutor (Kamenskyi, 2020), the characteristics of the elements and signs of the composition of the evasion of court decisions (Nalutsyshyn, 2018), description of criminal law norms that make provision for responsibility for obstruction of justice and obstruction of sentencing (Yusubov, 2020), analysis and systematization of crimes and misdemeanours against administration of justice (Shepitko, 2017), etc. The range of issues that have been investigated by researchers, the published results indicate a considerable theoretical and practical significance of the scientific provisions formulated by these legal scientists.

The issue of criminal liability for offences against justice in the Republic of Azerbaijan and Ukraine, specifically for actions committed during the execution of court decisions, was considered by one of the authors of this paper using the comparative legal method rather fragmentarily (Ahmedov, 2018; 2019).

The problem under study continues to be socially important and requires further investigation. It is quite logical to say that such a search has both scientific and practical significance when forming the legislative provisions of each of the states.

All of the above proves the need to investigate this category of criminal offences under the legislation of the Republic of Azerbaijan and Ukraine.

The scientific originality of this paper lies in the fact that it describes the signs of some criminal offences committed in the plane of enforcement of court decisions, according to the legislation of the Republic of Azerbaijan and Ukraine, draws attention to the need to improve the criminal law norms regulating liability for criminal offences of the category under study, to increase their effectiveness in law enforcement. *The purpose of this study* was to analyse the problematic issues of criminal liability for crimes (criminal offences) that encroach on the procedure for execution of court decisions, according to the legislation of the Republic of Azerbaijan and Ukraine, and to form theoretically substantiated generalizations and recommendations on the improvement of the current criminal legislation of each of the states based on the conducted scientific research.

Materials and Methods

This study employed such scientific methods as terminological, system-structural, formal-logical, and comparative legal methods. The *terminological method* helped investigate the term "justice", "the original and immediate object of criminal offences against justice". *The system-structural method* was used for a comprehensive scientific analysis of the elements and signs of the composition of criminal offences against the procedure for execution of court decisions under the legislation of Ukraine and Azerbaijan and for further systematization of such offences. *The formal-logical method* was used to analyse the trends in the formation of criminal law norms regulating criminal

[1]Constitution of Ukraine: Law of Ukraine No. 254k/96-BP. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80.

[2]Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part. (2014, May). Retrieved from https://zakon.rada.gov.ua/laws/card/984_011.

[3]Law of Ukraine No. 2617-VIII "On Amendments to Some Legislative Acts of Ukraine Regarding the Simplification of Pre-Trial Investigation of Certain Categories of Criminal Offences". (2018, November). Retrieved from https://zakon.rada.gov.ua/laws/show/2617-19?lang=en#Text.

responsibility for the named offences in the legislation of each state.

The comparative legal method became the principal one in formulating the definitions of criminal offences against justice that harm the interests of justice at the stage of execution of court decisions, during their systematization and grouping, provided an insight into the features of criminal law protection at the stage of execution of court orders in the delivery of justice in the Republic of Azerbaijan and Ukraine, as well as the expediency of implementing the practices of the Republic of Azerbaijan and Ukraine into the criminal legislation of each of the states.

The theoretical framework of this study included the papers of Ukrainian and Azerbaijani scientists. This study used the provisions of legislative acts – criminal law norms that stipulate responsibility for criminal offences against justice in the Criminal Code of the Republic of Azerbaijan[1] and the Criminal Code of Ukraine[2], the Law of Ukraine "On the Judicial System and the Status of Judges"[3], the Law of the Republic of Azerbaijan "On Courts and Judges"[4].

Results

Criminal law norms that prescribe liability for criminal offences against justice form an independent institution of criminal law. Criminal liability for offences of this category is prescribed by Chapter XVIII of the Special Part of the Criminal Code of Ukraine[5] and Chapter 32 of the Special Part of the Criminal Code of the Republic of Azerbaijan[6].

In the legislation of Ukraine and the Republic of Azerbaijan, justice is interpreted as the activity of the court. The delegation of court functions, as well as the appropriation of these functions by other bodies or officials, is prohibited (Article 5 of the Law of Ukraine "On the Judicial System and the Status of Judges"[7]). The activity of the courts of the Republic of Azerbaijan is aimed exclusively at the delivery of justice. Entrusting the courts with other duties is inadmissible (Article 3 of the Law of the Republic of Azerbaijan "On Courts and Judges"[8]).

It is quite natural that the special public need to protect justice from illegal encroachments, to ensure an effective mechanism for legal counteraction to such manifestations of antisocial behaviour, also causes the constant attention of scientists, including Ukrainian and Azerbaijani legal scientists, to these adverse social phenomena.

As the authors noted above, Ukrainian researchers pay considerable attention to the characteristics of criminal offences against justice, specifically, those acts that encroach on ensuring the procedure for implementing court orders, based on the principles of comparative studies.

Thus, K.V. Yusubov (2020) considered the issue of criminal liability for non-compliance with court decisions under the laws of foreign countries; V.V. Nalutsyshyn (2018) investigated the signs that qualify non-execution of a court decision under the legislation of Ukraine and EU states; V.V. Shablystyi & O.V. Chorna (2020) describe foreign practices regarding the regulation of criminal responsibility for certain criminal offences that encroach on the order of execution of a guilty verdict.

Among Azerbaijani scientists, A.H. Rustamzadeh (2016) investigated the legal foundations of the functioning and activities of the supreme courts of the Republic of Azerbaijan and Ukraine, the analysis of problematic aspects in this area. In his study, Rustamzadeh concludes that the legislation governing the activity of the judicial system of the two states, namely the laws "On the Judicial System and the Status of Judges"[12] and "On Courts and Judges"[9], have their qualitative specifics that correspond to the national legal traditions of both the Republic of Azerbaijan and Ukraine (Rustamzade, 2016). The authors of this paper can fully agree with this opinion. Admittedly, it is necessary to discuss such specifics and features regarding a considerable number of legislative regulations in the field of application of both criminal and criminal procedural law of each of them.

Furthermore, the content of the term "justice" is also revealed in the definition of the generic object

[1]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[2]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[6]Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[3]Law of the Republic of Azerbaijan No. 310-1 "On Courts and Judges". (1997, June). Retrieved from https://www.legal-tools.org/doc/e1ab39/pdf/.
[4]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[5]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[6]Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[7]Law of the Republic of Azerbaijan No. 310-1 "On Courts and Judges". (1997, June). Retrieved from https://www.legal-tools.org/doc/e1ab39/pdf/.
[8]Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[9]Law of the Republic of Azerbaijan No. 310-1 "On Courts and Judges". (1997, June). Retrieved from https://www.legal-tools.org/doc/e1ab39/pdf/.

of a separate category of criminal offences. Such socially dangerous actions destroy the legally regulated delivery of justice in each of its aspects, hinder the activity of state bodies and structures involved in this area, and obstruct the protection of public interests in the enforcement of justice.

In the context of understanding justice as a generic object of criminal offences, proceeding from the title of Chapter XVIII of the Special Part of the Criminal Code of Ukraine[1], the authors of this paper support the opinion and consider it justified to cover the content of justice through a certain set of social relations that arise in the sphere of the exercise of judicial power (Vakulyk, 2018), as well as relations concerning the performance of functions by officials of law enforcement agencies and other categories of individuals as participants in judicial activities.

Considering the characteristics of certain types of criminal offences, and using the example of offences against justice, which include a sufficiently wide range of socially dangerous offences, and which have their characteristics, specific features of the composition of each of the offences, it is proposed to follow the prospective directions of the development of the criminal legislation of Ukraine as a whole (Shepitko, 2017). According to the characteristics of the generic object of these offences, the specific features and content of the direct objects of their composition, legal scientists offer their categorizations of the entire set of criminal offences, including those that can be committed in relation to any decisions taken by the court, with the imposition on a person of the obligation to perform them. There is also a variety of opinions regarding the name and grouping of this category of offences against justice.

Thus, along with other offences against justice, such types of them are distinguished as socially dangerous acts that encroach on social relations: from the implementation of the principle of inevitability of legal responsibility (Ahmedov, 2018); which ensure the proper execution of judicial acts and measures of a criminal-legal nature assigned by them (Baulin *et al.*, 2015; Miroshnychenko, 2012; Nalutsyshyn, 2018). It is already becoming a trend, as scientists note, to identify criminal offences against justice, which are aimed at ensuring the activities of the International Criminal Court (Shepitko, 2020), the European Court of Human Rights (Horbachova, 2017). The authors fully agree that the norms of the legislation of Ukraine, which determine the limits of responsibility for offences against justice, should develop towards coordination with international legal acts, with the practice of the European Court of Human Rights (Paliukh, 2020).

At the same time, other criteria are also used to classify offences against justice of the type under study. Thus, according to the characteristics that characterize the subject of an offence, acts committed by convicted individuals and individuals in custody, as well as individuals who are not participants in criminal proceedings, are distinguished (Dudorov & Khavroniuk, 2014).

It is also worth supporting the opinion that the criminal law norms, which establish measures of responsibility for socially dangerous acts against justice, perform the protective function of both the entire judicial sphere, and have the task of ensuring the implementation of court orders in terms of the execution of court decisions, resolutions, and verdicts (this refers to criminal liability for acts prescribed by Articles 388, 393 of the Criminal Code of Ukraine)[2]. The content of such norms allows classifying the considered set of criminal offences according to the mechanism of causing damage to the object of the offence (Paliukh, 2019).

According to the Criminal Code of the Republic of Azerbaijan[3] (CC RA), the offences stipulated by Articles 303, 304, 305, and 306 of the CC RA are included in the list of crimes, the object of which are social relations, which regulate the procedure for the implementation of the decisions adopted and passed by the courts of the Republic of Azerbaijan. Having included the mentioned articles in one section of the CC RA, the legislator of the Republic of Azerbaijan at the same time classifies another criminal act, which consists in the violation of the normal activity of institutions for the execution of criminal punishments or institutions for the implementation of preventive measures (specifically, pre-trial detention centres), as encroachments on the administrative order and prescribes criminal liability for its commission under Article 317 in Chapter 34 of the CC RA "Crimes against the administrative order"[4]. According to the authors of this study, in this way, the relations that regulate the procedure for execution of court decisions in terms of serving the prescribed punishment are recognized as an additional, and not the main object of the composition of this crime.

The characterization of criminal offences against justice, manifested at the stage of the implementation of court decisions during their execution, according to the nature and content of the social danger of criminalized acts, as well as the content and characteristics of the features of the composition of

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[2]Ibidem, 2001.
[3]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[4]Ibidem, 1999.

each criminal offence, allow proposing the grouping of this category of their totality.

In particular, the authors propose to distinguish the compositions of criminal offences as follows: criminal offences where the content of the act lies in failure to comply with court acts as a whole; offences that make it impossible to implement the tasks of criminal repression, create obstacles and complicate the functioning of the penitentiary service, as well as the service of executive proceedings.

The specific features of public relations protected by the law on criminal liability in the sphere of ensuring the procedure for execution of court decisions determine the content of the direct object of each of the criminal offences of this category.

Thus, the main direct object of intentional non-performance of an agreement on reconciliation or admission of guilt can be called legal relations in the sphere of justice regarding ensuring the proper execution of court decisions ruled by the courts of Ukraine in a special procedure for criminal proceedings based on agreements; the normal operation of the penitentiary system bodies entrusted with the duty of enforcing the court sentence and serving the sentence imposed on the convicted individuals by such court ruling, is the main object of malicious disobedience to the requirements of the administration of the penal institution (Article 391 of the CCU[1]). Public safety acts as an additional object.

Deliberate failure of a convicted person to perform a reconciliation agreement or plea of guilt is recognized as a criminal offence in the disposition of Article 389-1 of the CCU[2]. This disposition can be considered a blanket one, since the description of the content and establishment of the signs of the composition of this offence is determined by the legal prescriptions of the norm of the criminal procedural legislation, prescribed in Part 5 of Article 476 of the CPC of Ukraine[3]. Deliberate avoidance of the execution of an agreement approved by the court without valid reasons for this, ignoring such an agreement forms the content of an illegal act and is the legal basis for recognizing the offence committed and bringing the guilty person to the responsibility defined by the legislation.

According to the nature of public danger, the content of public and personal values and goods protected by the law on criminal liability, as well as the content and characteristics of the elements of each criminal offence, which hinder justice in ensuring the implementation of court decisions, their totality can be divided into certain types.

According to the characteristics of the subject, these criminal offences prescribed by various articles of the Criminal Code[4], which are committed during execution of court decisions, form the following subcategories:

1) Criminal offences committed by officials of state and non-state bodies and legal entities (Parts 2 and 3 of Article 382 of the CCU)[5];

2) Criminal offences committed by individuals charged with the obligation to execute a court decision (Article 388 of the CCU)[6];

3) Criminal offences committed by individuals who are participants in proceedings with a special legal status during the implementation of judicial proceedings and who are obliged to execute a personalized court decision (Articles 389, 389-1, 389-2, 390 of the CC[7], and others).

At the same time, the authors note that the very definition of the category of those persons who are subjects of criminal liability in case of non-performance of personalized court decisions is a task with an ambiguous decision.

Thus, when considering issues regarding the subject of criminal offences prescribed in Articles 389 and 390 of the CCU[8], researchers consider it appropriate to recognize as such only a person sentenced to criminal punishments not related to deprivation of liberty (in the form of restriction of liberty in Article 389 of the CCU[9] or deprivation of liberty in Article 390 of the CCU[10]; Article 305 of the CC RA[11]). As noted, one cannot be the subject of the crimes prescribed in Articles 389 and 390 of the CCU[12], an individual for whom the types of punishment specified in these articles of the Criminal Code have been replaced based on other court decisions (Zahinei, 2018), (e.g., by a court decision to replace the unserved part of the punishment in the form of deprivation of liberty with another type of punishment). L. Ostapchuk is convinced that the subject of evasion from serving a sentence not related to deprivation of liberty can only be an individual who possesses a set of characteristics of a special subject, i.e., an individual

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[2]Ibidem, 2001.
[3]Ibidem, 2001.
[4]Ibidem, 2001.
[5]Ibidem, 2001.
[6]Ibidem, 2001.
[7]Ibidem, 2001.
[8]Ibidem, 2001.
[9]Ibidem, 2001.
[10]Ibidem, 2001.
[11]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[12]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-II.

against whom a guilty verdict (decision) of the court was issued (Ostapchuk, 2019).

And this position, according to the authors, is well-reasoned. After all, the unambiguous interpretation of any legal terms, the accuracy in covering the content of the signs of all the elements of any criminal offence ensures the effectiveness of the implementation of criminal law norms and the implementation of the principles of legality and justice in law enforcement practice.

Depending on *the category of a court decision* in a certain area of justice, criminal offences that encroach on the procedure for execution of court decisions may be committed regarding the following types:

1) verdict, decision, resolution, court ruling that has entered into legal force in criminal, administrative, economic, civil proceedings (Article 306 of the CC RA[1]; Article 382 of the CCU[2]). That is, the subject of an act, the responsibility for the commission of which is prescribed in these articles, can be court decisions of any kind of all courts of both Ukraine and the Republic of Azerbaijan;

2) the decision of the European Court of Human Rights, the decision of the Constitutional Court of Ukraine and the opinion of the Constitutional Court of Ukraine (Part 3 of Article 382 of the CCU[3]);

3) decision, ruling, court order on the seizure of property, on confiscation of property (Article 303 of the CC RA[4]; Article 388 of the CCU[5]);

4) agreement on reconciliation or plea of guilt (Article 389-1 of the CCU[6]);

5) verdict, court ruling on the appointment and further serving of a sentence (Articles 304, 305, and 317 of the CC RA[7]; Articles 389, 390-393 of the CCU[8]);

6) resolution of the district, district in the city, city, or municipal court (judge) on the imposition of an administrative fine in the form of community service (Article 389-2 of the CCU[9]);

7) restrictive measures prescribed by Article 91-1 of the CCU, restrictive orders, programs for offenders applied by the court (Article 390-1 of the CCU[10]);

8) court ruling on choosing a preventive measure – custody (Article 393 of the CCU[11]);

9) court ruling on transfer to a specialized medical institution (Article 394 of the CCU[12]);

10) court ruling on the establishment of administrative supervision (Article 395 of the CCU[13]).

There is a general mandatory condition as a basis for bringing a particular subject to criminal responsibility for non-compliance with each of the listed types of court decisions. The decision should contain a specified obligation to perform certain actions (serving a certain type of criminal sentence, staying in a specialized medical institution, etc.), a ban on performing the actions specified in the court decision (a ban on alienation of property that has been seized or is subject to confiscation, etc.).

The requirement specified in the court decision concerns an individually defined person who is required by the relevant court decision to act in a certain way.

Depending on the content of the obligations formulated by the court, an illegal act of the subject in non-compliance with court decisions can be formed either by inaction (failure to implement the measures prescribed by law and defined in the court decision, necessary for the implementation of such decisions, which the person was obliged to implement), or by committing actions prohibited in the court decision itself or follow from the content of such prohibitions.

Thus, non-performance of a court sentence in terms of serving the sentence imposed by the court is the commission of actions that constitute evasion of certain types of punishments, namely: not related to deprivation of liberty (Article 389 of the CCU[14]), in the form of restriction of liberty and deprivation of liberty (Article 390 of the CCU[15] and Article 305 of the CC RA[16]), as well as escape from a place of deprivation

[1]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[2]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[3]Ibidem, 2001.
[4]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[5]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[6]Ibidem, 2001.
[7]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[8]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[9]Ibidem, 2001.
[10]Ibidem, 2001.
[11]Ibidem, 2001.
[12]Ibidem, 2001.
[13]Ibidem, 2001.
[14]Ibidem, 2001.
[15]Ibidem, 2001.
[16]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.

of liberty or from custody (Article 393 of the CCU[1] and Article 304 of the CC RA[2]) and some other acts.

A common feature of each of the criminal offences that violate the procedure for implementing the tasks of justice in the field of implementing decisions, sentences, rulings, court decisions, and implementing a court decision on serving a sentence is a conscientious deliberate refusal to execute a court decision by an individual who is obliged to comply with the rules of certain behaviour or abstinence from them, or authorized to perform certain actions to ensure its implementation.

At the same time, it is necessary to pay attention that the content of the criminal act prescribed in Article 382 of the CCU[3] and Article 306 of the CC RA[4], may be represented by the non-performance of the above-mentioned court decision, as well as by the obstruction of such execution by the person obliged to this judicial step.

Discussion

The process of law-making is constant and continuous. Changes in social life raise questions about the level of efficiency and assessment of the effectiveness of legislative norms, and the legislators of both the Republic of Azerbaijan and Ukraine always pursue the goal of maintaining such a content of the normative base of the current legislation that would be able to ensure the implementation of the tasks of justice. At the same time, two areas of legislative activity can be observed: criminalization of socially dangerous acts and decriminalization of those social phenomena that have lost their danger as criminally punishable acts.

Carrying out a comparative legal analysis of the current Criminal Codes, the authors state that the legislation of Ukraine, compared to the legislation of the Republic of Azerbaijan, in the norms of the Criminal Code[5] criminalizes a wider range of socially dangerous acts in the field of judicial activity, committed at the stage of implementation of court decisions in all forms of administration of justice.

Consolidating in the criminal law regulations certain components of criminal offences prescribed, in particular, by Articles 389-1, 391, 392, and 395 of the CCU[6], as well as several others, corresponds to the principles of legal criminalization of widespread socially dangerous acts, and aims to ensure effective protection of justice by influencing the criminal law content in general, and effective enforcement of court decisions in particular.

The criminal legislation of the Republic of Azerbaijan does not criminalize such actions as evasion of a punishment not related to deprivation of liberty (Article 389 of the CCU[7]), and the above-mentioned intentional non-performance of an agreement on reconciliation or on the admission of guilt; malicious disobedience to the requirements of the administration of the correctional institution; actions that disorganize the work of correctional institutions; escape from a medical institution and violation of the rules of administrative supervision.

It is generally recognized that criminalization is a complex law-making process of implementing criminal repression of the state, conditioned upon a considerable number of socio-economic, legal, and other factors. And such a process reflects the needs of society in the means of criminal legal protection of social and personal values. However, protection can be implemented by measures of state coercion that differ in the degree and nature of repression. The necessity and conditioning of criminalization is also related to the intensity of the manifestation of certain socially dangerous acts in a particular historical period, the degree, and nature of their social danger.

According to the authors, the above-mentioned actions, for which there is no responsibility in the criminal legislation of the Republic of Azerbaijan, contain signs of the formal composition of the offence, while creating a potential danger of the possibility of harming justice at the stage of applying for the execution of certain types of court decisions. It is the assessment of the level of such danger, inevitability, or probability of causing danger, together with these factors, which give grounds to raise the question of the need for their criminalization by the legislators of a particular state.

Therewith, the authors agree that when investigating certain issues of the necessity, validity, and possibly compulsion of criminalization, it is appropriate to discuss the morality of the criminalization procedure itself as a legal phenomenon (Cornford, 2017). The criterion of morality has a completely evaluative content. It is present in the description of certain criminal law phenomena, first of all, it is deservedly used in characterizing the features of certain concepts, definitions related to the legal term

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[2]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[3]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[4]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[5]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[6]Ibidem, 2001.
[7]Ibidem, 2001.

"composition of a crime (composition of a criminal offence)", to the description of a considerable number of criminological terms. At the same time, the use of the moral criterion in the study of factors and grounds for criminalizing manifestations of socially dangerous behaviour of a person is quite unusual.

Morality, according to the authors, being realized in a humane attitude, including towards convicted individuals, can also be introduced by penalization – wide inclusion of the maximum list of different types of punishments in a considerable number of sanctions. This will help convicts not to become a subject of evasion of those punishments that an individual cannot serve for various reasons. For instance, as L. Ostapchuk points out, a fine can achieve the purpose of its appointment only if its severity is combined with the real possibility of execution (Ostapchuk, 2018).

In addition, the authors would like to draw the attention of lawyers to the fact that the criminal procedural legislation of the Republic of Azerbaijan[1] does not contain rules regarding the procedure for concluding an agreement on reconciliation or on the admission of guilt by the convicted. Clearly, under these conditions, the criminalization of such an act, as implemented by the legislator of Ukraine, is impossible.

Importantly, there is no consensus in the scientific community regarding the validity and expediency of such criminalization. Thus, V. Navrotskyi (Navrotskyi, 2016), as well as V. Kuznetsov and M. Seyploki (2011), believe that the establishment of criminal liability for entering into plea agreements harms certain principles of criminal legal qualification, such as accuracy, completeness, and legality and some others, is a manifestation of false criminalization, and therefore should be excluded.

D.V. Kamenskyi (Kamenskyi, 2020) has a slightly different argument, but in support of the position regarding the decriminalization of the said act. The legal scientist is convinced that the failure of the convicted individual to comply with the agreement on reconciliation or confession of guilt does not require the application of criminal liability measures. In the scientist's opinion, it will be sufficient to refer to the provisions of Part 3 of Article 476 of the Criminal Procedural Code of Ukraine[2] prescribing the procedure for criminal procedural response to non-performance of an agreement. Having cancelled the concluded agreement, the court may return to the consideration of the case at the trial stage or send it for pre-trial investigation. And the passing of a guilty verdict with the appointment of punishment, as a legal response to non-compliance with the reconciliation agreement, will sufficiently ensure the implementation of the principles of criminal repression in such conditions (Kamenskyi, 2020).

The above argument is somewhat convincing. However, the authors note that the legal norm that criminalizes deliberate non-performance of the agreement on reconciliation or confession of guilt was included in the Criminal Code of Ukraine as a legal implementation of obligations that Ukraine must implement on the way to reforming the criminal and criminal procedural legislation of Ukraine based on pan-European principles for the implementation of criminal repression.

The reform is aimed at the effective implementation of restorative justice as a way to ensure human rights without the use of criminal repression. First of all, the implementation of restorative justice programs is an effective step in implementing criminal liability against

And the authors of this study are convinced that the criminalization of deliberate non-performance of a reconciliation agreement by a convicted individual or a plea of guilt is a positive step in ensuring effective counteraction to evasion from the execution of a court decision in such its manifestations.

Another issue that the authors would like to address, and which requires a broader investigation, is the proposal to decriminalize malicious disobedience to the requirements of the administration of the penitentiary institution (Article 391 of the CCU)[3]. Among human rights defenders and lawyers, there is a discussion concerning the expediency of maintaining criminal liability for the said act, which is also reflected in law-making (Puzyrov, Sokorynskyi, & Bodnar, 2019). Thus, the Verkhovna Rada of Ukraine registered a draft law on the decriminalization of the offence prescribed in Article 391 of the CCU[4] (Draft Law No. 9228 dated October 19, 2018). There is no such criminal law prohibition in the criminal legislation of the Republic of Azerbaijan.

The authors of this study consider it necessary to note that the public danger of the crime prescribed in Article 391 of the CCU[5], lies in the content of the committed acts, in causing damage to relations protected by the law on criminal liability in the field of execution of court decisions, obstructing the execution of the sentence, thereby preventing the achievement of the goals of punishment. Malicious disobedience violates the normal activities of penitentiary institutions, which deprives these institutions of the

[1]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[2]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[3]ICriminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[4]Ibidem, 2001.
[5]Ibidem, 2001.

opportunity to ensure the execution of a court decision, which leads to the impossibility of ensuring the principle of inevitability of criminal liability and punishment. Therefore, today there is no reason to agree with such decriminalization.

Conclusions

The performed comparative analysis of individual components of criminal offences gave the authors the opportunity to characterize the features of the generic object of criminal offences that encroach on the order of execution of court decisions, to group this category of actions according to certain characteristics of the composition of the offence and thus to claim that the purpose of this study has been fulfilled. At the same time, the results of this study suggest that the criminal legislation of Ukraine and the Republic of Azerbaijan, which prescribes liability for criminal offences against justice, contains both common and distinctive features, which are reflected in the approaches of the legislators of each of the countries to criminalize individual manifestations of antisocial behaviour, in the construction of particular criminal law norms. The recorded features are explained by the specifics of the historical stages of development of the Ukrainian and Azerbaijani peoples, the specific features of the political, economic, and social structure of each of the states.

The authors of this paper stated that among criminal offences against justice, it is advisable and logical to distinguish separate categories of acts, namely those that encroach on public relations for the implementation of the principle of inevitability of criminal repression, cause harm to relations that ensure the implementation of a judicial act; proper execution of decisions, sentences, rulings, court decisions in the implementation of all types of legal proceedings (constitutional, criminal, civil, economic, administrative), the activities of bodies and structures for the implementation of enforcement proceedings, including the implementation of decisions of the European Court of Human Rights, as well as the enforcement of court decisions on the imposed punishment.

A comparison of the legislation of Ukraine and the Republic of Azerbaijan regarding the effective criminal legal protection of judicial activity in the field of proper execution of any court decisions proves that the criminal legislation of Ukraine includes a larger list of criminal offences of this category compared to the legislation of the Republic of Azerbaijan.

The authors believe that further scientific search in the field of determining the factors of possible criminalization of actual socially dangerous phenomena caused by the processes of public life in both states should not stop.

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Кримінальні правопорушення, які посягають на порядок виконання судових рішень, за законодавством Азербайджанської Республіки та України: питання законодавчої регламентації

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■ **Анотація**. Актуальність статті обґрунтована необхідністю здійснення порівняльно-правового дослідження норм, які забезпечують охорону інтересів правосуддя в Азербайджанській Республіці та Україні у сфері впровадження в життя судових приписів як важливого етапу процесу правосуддя загалом. Метою статті є здійснення загальної характеристики кримінальних правопорушень, які посягають на порядок виконання судових рішень, за законодавством Азербайджанської Республіки та України, а також характеристика тих ознак, які дозволяють виокремити відповідні посягання серед інших правопорушень проти правосуддя та об'єднати їх в одну категорію. У статті використано комплекс наукових методів, а саме: термінологічний, системно-структурний, формально-логічний, компаративістський. За результатами здійсненого дослідження констатовано, що формалізація складів кримінальних правопорушень, які посягають на реалізацію принципу невідворотності юридичної відповідальності, та кримінально-правове забезпечення обов'язковості судових рішень у Республіці Азербайджан та Україні є процесом, що триває. Обґрунтовано висновок про те, що здійснена в чинному кримінальному законодавстві кожної з держав криміналізація достатньо широкого кола суспільно небезпечних діянь цієї категорії обумовлена соціальною необхідністю забезпечення прав людини та суспільних інтересів у царині реалізації завдань правосуддя. Сформульовані в статті положення сприятимуть пошуку більш ефективних засобів кримінально-правового характеру в законотворенні та правозастосуванні як Республіки Азербайджан, так й України

■ **Ключові слова**: кримінальна відповідальність; об'єкт злочину; класифікація злочинів; кримінальні правопорушення проти правосуддя; ухвали