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PROBLEMATIC ISSUES OF DETERMINING MISCONDUCT IN THE CRIMINAL LAW OF UKRAINE

The impetus for fruitful work on the reform of criminal and administrative-tort legislation was initiated by the Concept of reforming the criminal justice of Ukraine, approved by Presidential Decree of April 8, 2008 No. 311/2008, which among other things proposed to humanize criminal legislation defendants), to limit the scope of imprisonment sentences, replacing them with, for example, penalties. Divide criminal offenses into crimes and criminal offenses. One of the directions of introduction of the Institute of Criminal Offenses is the exclusion from the system of legal responsibility of administrative responsibility for the act or omission, which infringes on public order, property, rights and freedoms of citizens, established the procedure of administration and enforcement of such offenses as criminal offenses in the law on criminal liability. But such a path is unacceptable in advance because of the even greater criminalization of both the law and society as a whole [1].

On April 24, 2019, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Simplifying Pre-trial Investigation of Certain Categories of Criminal Offenses” was published in the Voice of Ukraine newspaper. The relevant Law comes into force on January 1, 2020. The most fundamental changes to the criminal law are the introduction of a criminal misdemeanour, which can be punished by a fine of not more than three thousand tax-free minimum incomes, or other punishment unrelated to imprisonment. It is also envisaged to pay off the criminal record immediately after serving the sentence that committed the crime. The imposition of responsibility for the offense led to a change in the classification of crimes according to the degree of gravity (Article 12), since in fact the offenses under the new Law refer to crimes of small gravity. In turn, crimes by severity will be divided into non-serious, serious and especially serious. Familiarity with the law allows to state that the formal renaming of the term "crime" to "criminal offense" in some cases seems unjustified [2].

No less serious disadvantage within the framework of the introduction of a criminal offense is the inconsistency of the provisions of criminal law, including the new institute, with the legislation on administrative offenses. In this regard, the conceptual problem of the existence of criminal offenses in the Code of Administrative Offenses, which by their nature is of a criminal nature, remains unresolved. The European Court of Human Rights has repeatedly emphasized this [3].

Decriminalization can be recognized as a process of establishing the grounds for loss of acts of public danger, recognizing the inappropriateness of criminal-law counteraction to such behaviour and abolishing their criminal punishment. The decriminalization of a criminal behaviour that previously provided for criminal liability may be either recognition of a crime other than a crime (administrative, disciplinary, civil or commercial, etc.), or even recognition of such behaviour as lawful. That is, the classification of individual crimes as so-called “minor acts” not only in no way resolves the issue of decriminalization of the current criminal law, but also contradicts the principle of systematicity of such a process.

To date, many scholars believe that a number of legal issues will arise with the passage of a separate law on criminal offenses [4].

Law enforcement practice will also be complicated, especially with regard to delineating different types of punishable acts.

Also, the introduction of criminal misconduct contradicts a number of provisions of the Constitution of Ukraine (for example, Articles 29, 30, 31, 34, 39, 60, 62, 92, etc.).

So, by introducing the concept of "criminal misconduct" in Ukraine, the Parliament will be forced to adopt a number of fundamental changes to the legislation of Ukraine. However, despite all the problems of introducing a criminal misconduct institute, this goal is justified, since the following factors indicate the urgent need to introduce criminal misconduct in Ukraine:

1. The humanization of criminal law by transforming certain non-serious crimes into criminal offenses.

2. Guaranteeing the judicial protection of a person's rights in criminal proceedings on the basis of the requirements of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. No other state body, except the court, can decide to apply these penalties to the person.

3. Realization of the requirements of the Constitution of Ukraine on the possibility of confiscation of property only on the basis of a court decision.

4. Implementation of the provisions of the Judicial Improvement Concept for the establishment of a fair trial in Ukraine in accordance with European standards for the future of only civil, administrative and criminal courts [5].

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COMBATING CORRUPTION IN GERMANY

Corruption is not a significant obstacle for businesses in Germany, and companies are unlikely to encounter bribery or other corrupt practices. Fraud and corruption risks are most prevalent in the construction and public procurement sectors. Germany has strong institutional and legal anti-corruption frameworks. The German Criminal Code applies to individuals – not companies – and makes it illegal to offer, pay or accept a bribe. Companies can be held civilly liable for corruption offenses committed by their representatives under the Act on Regulatory Offenses, with fines up to EUR 10 million and confiscation of all economic advantages obtained through bribery. Facilitation payments are prohibited, and small-value gifts and hospitality may be considered illegal depending on the intent, benefit, and value. Enforcement of foreign bribery has increased significantly in recent years, and a large number of prominent German companies and individuals from businesses have been successfully prosecuted [1].

There is a low risk of corruption when dealing with Germany’s judiciary. The judiciary is characterized by a high degree of professionalism and independence from political interference (ICS 2017). Over two-thirds of companies judge the independence of the judiciary to be fairly good or very good (JS 2017). Companies indicate that bribes and irregular payments in return for favorable judgments are rare (GCR 2015-2016). Few citizens consider bribery and abuse of power to be widespread in the German courts (Eurobarometer 2017). Companies report sufficient trust in the efficiency of the legal framework to settle disputes and challenge regulations (GCR 2017-2018). Only a fraction of judges indicate having