

SUBJECT OF CRIME UNDER THE EUROPEAN UNION CRIMINAL LAW

The consistent and convincing steps of Ukraine aimed at European integration encourage our government to reassess many positions in public life, politics, economics, etc., to bring them in line with the best European standards. It is not exception in this respect the law, including criminal, which must match the positive European heritage. The important point, in our belief, is clarifying the question of who can commit crimes (criminal offenses), that is their subject (perpetrator, offender, violator).

In legal literature it is emphasized on the following fundamental points: first, in European law there is no a single coherent system of criminal legal norms, but the group of leading European experts involved in the creation of adequate regulation (including current ongoing work on the preparation of the European Criminal Code – “Corpus Juris”); secondly, such projects at present are not yet implemented, as well as the abstract ideas of establishing common to all states of the European Union (hereinafter – EU) systems of criminal law entail a large number of issues that are quite difficult to give a definite answer [1, p. 499]. Overall “Corpus Juris” is a draft of legislature document, EU Model Criminal Code, that: a) based on the provisions of the basic pan-European regulations, in particular the EU Constitution; b) aimed at protecting economic (financial) interests of the EU; c) the leading role in the differentiation of crimes (criminal offenses) gives the relevant subjects [2]. The latter fact requires more detailed consideration.

Thus, already Chapter I “Criminal Law (Special Part)” of “Corpus Juris” fundamentally emphasizes that all crimes (criminal offenses) are divided into two groups depending on who commits them:

a) those who committed by any person (fraud affecting the financial interests of the European Communities and assimilated offences (Art. 1); market-rigging (Art. 2); money laundering and receiving (Art. 3); conspiracy (Art. 4));

b) those who committed by officials (corruption (Art. 5); misappropriation of funds (Art. 6); abuse of office (Art. 7); disclosure of official secrets pertaining to one’s office (Art. 8)).

Chapter II “General Criminal Law” of “Corpus Juris” includes provisions for a general characteristic of the criminal law, including provisions regarding the subject of crime.

According to Art. 11 “Individual criminal liability” of “Corpus Juris” any person may be held responsible for the offences defined above (Articles 1 to 8) as a main offender, inciter or accomplice: a) as a main offender if he commits the offence by himself, jointly with another person or organization (Art. 13) or by means of an innocent agent; b) as an inciter if he knowingly provokes a natural person or organization (Art. 13) to commit the illegal act; c) as an accomplice if he knowingly helps a natural person or organization (Art. 13) to commit the illegal act. The maximum penalty for the accomplice shall not exceed three quarters of the penalties under Art. 14.

As for the features of criminal liability of the head of business or persons with powers of decision and control within the business – public officers, it is stated in Art. 12 of “Corpus Juris”. So, if one of the offences under Articles 1 to 8 is committed for the benefit of a business by someone acting under the authority of another person who is the head of the business, or who controls it or exercises the power to make decisions within it, that other person is also criminally liable if he knowingly allowed the offence to be committed (1). The same applies to any public officer who knowingly allows an offence under Articles 1 to 8 to be committed by a person under him (2). If one of the offences under Articles 1 to 8 is committed by someone acting under the authority of another person who is the head of a business, or who controls it or exercises the power to make decisions within it, that other person is also criminally liable if he failed to exercise necessary supervision, and his failure facilitated the commission of the offence (3). In determining whether a person is liable under (1) and (3) above, the fact that he delegated his powers shall only be a defense where the delegation was partial, precise, specific, and necessary for the running of the business, and the delegates were really in a position to fulfill the functions allotted to them. Notwithstanding such a delegation, a person may incur liability under this articles on the basis that he took insufficient care in the selection, supervision or control of his staff, or in the general organization of the business, or in any other matter with which the head of business is properly concerned. Where liability is incurred under this article, the maximum penalty shall be half the penalty prescribed under Art. 14.

Article 13 “Criminal liability of organizations” of “Corpus Juris” states that the offences defined above in Articles 1 to 8 may be committed by corporations, and also by other organizations which are recognized by law as competent to hold property in their own name, provided that the offence is committed for the benefit of the organization by some organ or representative of the organization, or by any person acting in its name and having power, whether by law or merely in fact, to make decisions. Where it arises, the criminal liability of an organization does not exclude that of any natural person as main offender, inciter or accomplice to the same offence.

However, we should not forget that the “Corpus Juris” is still a virtual legal act, legislative benchmark for all EU states.

So it is clear that in the criminal law of the EU in the context of the subject of crime (perpetrator) the important place belongs not only to regulations of the relevant Criminal Codes, but over European legislation, including which is in the form of draft laws (models). For Ukraine in this respect is seen promising reconciliation and further development of matters relating to the age of the perpetrator, liability of corporations (entities), specification of range and status of specific subjects, punish those responsible, their release from criminal liability and more.

List of references

1. Корнієнко В. В. Особливості кримінального права ЄС: теоретико-правовий аспект / В. В. Корнієнко // Форум Права. – 2011. – № 1. – С. 496-500.
2. European Union Code for Conducting Criminal Procedures Known as Corpus Juris (The Embryo of a Future European Criminal Code) [Електронний ресурс]. – Режим доступу до кодексу : <http://www.euroscep.dircon.co.uk/corpus.htm>.
3. Савченко А. В. Модельний Кримінальний кодекс ЄС: загальні засади розуміння / А. В. Савченко // Модернізація Конституції України та вдосконалення правоохоронної діяльності / За наук. ред. проф. В. Л. Федоренка; матеріали підсумкової наук.-практ. Конф. ННІЗН НАВС (м. Київ, 25 квітн. 2014 р.). – К. : «Видавництво Ліра-К», 2014. – С. 69-75.