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CRIMINAL OFFENCES AGAINST ELECTION RIGHTS: PROBLEMS OF THEIR AGGRAVATING AND EXTRA AGGRAVATING VESTIGES

It is considered that aggravated body of crime contain vestiges that reflect augmented public danger of committed crime, make an influence on its qualification and enhance the punishment, whereas extra aggravated body of crime reflect much augmented public danger of committed crime, make an essential influence on its qualification and substantially enhance the punishment. So far researches of Ukrainian scientists pay practically no attention to these problems either in details or in complex concerning crimes against election rights (art. 157-160 of Criminal Code of Ukraine).

For example, analysis proves that according to titles and dispositions of simple bodies of crimes under art. 157 and 158-2 of Criminal Code of Ukraine such crimes could be committed either during elections or at the time of plebiscite. However just member of election commission could be recognized as special subject of the named crimes, but not member of plebiscite commission or member of plebiscite initiative group. The same goes for other special subjects – candidate for elections and his authorized delegate, representative of political party or its local office as well as its authorized delegate, observer at elections or plebiscite. Meanwhile committing a crime against election rights by these persons increase such crimes' public danger likewise; indeed these subjects using their empowerment also can interfere in free elections by abusing their power, destroying documents, presenting false information etc. This legislative gap should be closed by making amendments to art. 157-160 of Criminal Code of Ukraine envisaging equal list of special subjects.

Another aggravating (extra aggravating) vestige of these crimes is committing them by group of people under previous concert.

But it is well known that committing a crime by organized group is even more dangerous. Why ever just one relevant crime (under art. 159-1 of Criminal Code of Ukraine) contains such vestige, but not other crimes against election rights? Moreover, even in the named article such vestige («by organized group») is named on the level with «group of people under previous concert», e.g. they are considered as equal by the lawmaker's logic. But it defies terms of art. 28 of Criminal Code of Ukraine; according to it these forms of complicity are different by the public danger (organized group is always more danger than group of people under previous concert). Therefore it is proposed to amend art. 157, 158, 158-1, 158-2, 159-1 та 160 of Criminal Code of Ukraine by envisaging a crime committed by group of people under previous concert as an aggravating vestige, and a crime committed by organized group as an extra aggravating vestige.

Only one crime against elections rights – under art. 157 of Criminal Code of Ukraine – stipulates physical violence, threat, destroying and damaging of property as an aggravating vestige. But it is not reasonable to have these characteristics simply listed in one part of the article because that means they are simply considered equal to each other. It's a huge mistake to similes so different kinds of vestiges as physical violence, threat by such violence and detriment to the property. The way to correct such defect is to draw a clear distinction between physical, psychological and material damage, e.g. to foresee them as aggravating and extra aggravating vestiges independently with regard to the kind and level of violence and damage. It is also reasonable to envisage such vestiges for some other crimes against election rights (art. 158, 158-1 and 158-2 of Criminal Code of Ukraine).

Finally, only one crime against elections rights – this time under art. 158 of Criminal Code of Ukraine – stipulates the impossibility of election results establishing or nullification of election results as an extra aggravating vestige. The problem here is that other relevant crimes are to inflict the same consequences. Some Ukrainian researchers have already proved the necessity for lawmakers to correct this defect as soon as possible (taking into consideration notable increase of these crimes in our country during last years and qualitative changes in modus operandi) and add such extra aggravating vestige firstly to art. 158-1 and 160 of Criminal Code of

Ukraine. In addition it stands to mention that for understanding the meaning of terms «impossibility of election results establishing» and «nullification of election results» (as well as relevant procedure) judges and law enforcement personnel are to address to laws «On elections of President of Ukraine», «On elections of people's deputies of Ukraine», «On local elections» and «On All-Ukrainian plebiscite». But these legislative acts contains only definition of «expression of will results», but not «election results». Naturally, these terms are used as synonyms in practice, but is it an analogy of legislation (statutory banned according to art. 3 of Criminal Code of Ukraine) or not? The only way to solve this legal problem is to bring criminal legislation terminology in line with election legislation (definitely, the latter is primarily to former).

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THE CONCEPT OF CRIMINAL LAW IN THE DOCTRINE OF CRIMINAL LAW

In the theory of criminal law, criminal-law regulation is determined in different ways. Within the framework of criminal legal regulation of social relations, a mechanism of creation and implementation of criminal legislation functions. This, on the one hand, obliges to find out the place of processes of creation and implementation of criminal legislation in criminal legal regulation of social relations, and also provides an opportunity to establish the correlation of these phenomena and their interconnection. On the other hand, this fact provides an opportunity to use the doctrine of the mechanism of criminal legal regulation for the development of the theory of the mechanism for the creation and implementation of criminal legislation. This is especially true given the lack of substantive work on the mechanism of creation and implementation of criminal law in science of criminal law, in contrast to the works of scientists, which considered only the criminal-legal regulation of social relations.