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CONCEPT OF ACTION OF CRIMINAL LIABILITY

The law on criminal liability is considered valid if it came into force. When it comes to the law on criminal liability, it means that this law has come into force and can be applied in practice. But for the practice of combating crime, greater importance is not potency, not its ability, but reality. From this moment on, the question passes into the practical implementation and the application of the law. Then it is visible how it is applied, implemented, how it operates and if it works at all. In the act of law of criminal liability implemented the principle of inevitability of criminal liability and punishment. This question is extremely important, fundamental and relevant. In this regard, the issue of the law on criminal liability becomes of particular importance. It should be the main in the whole criminal policy of the state, especially in the fight against crime, as part of a more general legal principle - the equality of all citizens before the law.

The analysis of legal practice of the last decade shows too many gross and substantial violations of these principles. Even the adoption of the new criminal and criminal procedural codes of Ukraine has not affected such a situation, although a lot of new things have been declared. Of course, like a life, law can't always be in a static state. Therefore, new criminal law is being adopted, existing ones are changed. The application of criminal procedural

rules in practice does not stand up to any criticism. The negligence and harmfulness of many norms of the CPC of Ukraine was spoken during the period of its discussion and adoption. But the life has put everything in its place and now it is currently prepared a whole series of changes to this code, as the current state of affairs destroys not only justice, but also the law-enforcement system as a whole. Where in the world there is such an example that the crime in another law is called differently.

In the Criminal Code of Ukraine, the whole section (III), which has the same name, is dedicated to the crime, its types and stages. But in the Criminal Procedure Code of Ukraine we are talking about criminal offense. Which was not in the Criminal Code of Ukraine until recently and only now there were several articles, which refers to a criminal offense. The law should not have ambiguous notions of the interpretation of the same phenomenon. This leads to disrespect for the law, its neglect, faith in such a law, its application and compliance. Citizens have a sense of permissiveness, crime is growing, although at first glance, it's like simple things. The legislator makes a violation in the part of the classification of crimes and in the legislative assessment of a crime (Article 11) and an act that contains signs of a crime (Articles 45, 47, 74, 75 of the CC) due to its confusion.

Since the law (Article 11) defines the notion of a crime as "a socially dangerous act (action or inaction)" envisaged by this Code, then it is an act containing elements of a crime. Then why in other articles give another definition? In practice, this second definition should be understood as a legislative definition of not a crime that gives rise to the release of the person who committed it from criminal liability. Such a conclusion is unfounded, since such a definition is given in the articles providing for exemption from criminal liability.

There are many questions about the law on criminal liability. Is a crime an act that contains signs of a crime? If so, why then is such dualism in defining the notion of crime, since it is a simple formality. The law provides for the possibility of release from

criminal liability subject to the commission of a crime (Article 97 of the CC). But what is it then, if not a crime? If the law only provides for the possibility of dismissal, it is clear that a living person may be released, and may not be released (Part 1 of Article 47 of the Criminal Code - "the person who first committed a minor crime or middle crime may be released from the criminal responsibility ... "). That is, a person may be released from criminal responsibility who has committed a crime that contains signs of a crime, and may be prosecuted for this act. As you can see, the question of whether an act is a crime and how the law provides for this crime is not solved by the legislator, but by the person who applies it. This is a gross violation of the important principle of criminal law: "nullum crimen sine lege", according to which criminal liability could be possible and legitimate only for acts prescribed by the law of criminal liability directly, for directly named acts, defined by law. The prosecution without a direct indication of a crime is a lawlessness and arbitrariness. The same violation will occur if a person can be prosecuted for the same crime and can't be prosecuted. If the persons applying the law (law enforcers) decide on the crime, not the crime and criminal punishment of a certain act assigned to their competence, does not make it possible to conclude on the law and evaluate its validity. If to analyze the practice, then no act of the law is an act, and the act is a failure of the law. To date, there are many examples, when a worker who has caused the corresponding damage is prosecuted, and an official, a criminal, who stole from the state budget tens of millions of hryvnias, keeps stealing at his workplace.

The created anti-corruption structures are not capable of combating corruption as it was declared before their creation. It goes to the absurd clarification of relationships with each other. It reacted painfully by society and citizens have many questions about the professionalism and appropriateness of such bodies and their further funding at the expense of taxpayers. This is what we are talking about because it is our present. From this practice we need to resolutely and permanently refuse. Partial action or partial inability of the law on criminal liability threatens the society with explosive

growth of crime, massive abuse of high officials by its official powers, corruption, causing great economic and moral harm to society. All these phenomena form a chain reaction, since they are well-known. They become negative guidelines for social behavior, assessments, and considerations. Under the circumstances when the number of unknown cases of evasion from criminal liability exaggerates the number of known cases of prosecution, many citizens have an incentive to break the law. The validity of the law on criminal liability and its preventive effect at the same time begin to fall catastrophically. Then they begin to commit crimes that are called to fight it. An example of this can be the numerical practice of bringing to criminal liability not only ordinary citizens, but also different rank of civil servants, representatives of judicial and law enforcement agencies. This negative rudiment is a remnant of the Soviet party system, where the law had been violated by senior officials of the state [2].

The current system of combating crime, where a large number of high-ranking officials can be redeemed by money, is no exception. It turns out that the whole social groups (strata) of people came out of the force of the law on criminal liability. And how many other such cases is unknown? The foregoing indicates that the law on criminal liability should have guarantees of action, validity and implementation. To count on law enforcers, that the law will act, to be executed is a false calculation. Legislation on criminal liability, it is not an abstract category, and therefore there should be appropriate rules aimed at ensuring its act and implementation. It is not enough to proclaim a criminal prohibition, to establish and adopt a certain criminal law. The most important thing is to ensure that this rule operates, is used, every time its act is committed. The legal community supports the idea of ensuring the effectiveness of the legislation on criminal liability.

So, the effect (validity) of the law on criminal liability is the legal, public and procedural security of the law enforcement by all law enforcement agencies, the investigation, the prosecutor's office

and the court settled by the principle of the inevitability criminal responsibility of each person for her act committed.

To fulfill these requirements, the law on criminal liability should be such a perfect system of legal norms, rules, institutions that would ensure its self-realization, had exclude pauses, breaks, ineffectuality of the law.

The inevitability of criminal liability and the inevitability of punishment for a crime shouldn't only be proclaimed on paper or in some other way. It is not enough just a proclamation. Application and execution - this is the most important for the law. That is sense ensuring the constitutional rights and freedoms of man and citizen, society and state.

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