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THE EXPEDIENCY OF DECRIMINALIZING ILLEGAL ENRICHMENT

On February 26, 2019, the Constitutional Court of Ukraine declared the article on illegal enrichment (Article 386-2 of the CCU) unconstitutional and excluded it from the Criminal Code of Ukraine. This decision will entail such negative consequences as the closure of a large number of criminal proceedings against illicit enrichment, some high officials will receive the so-called «amnesty» and the like. But the main problem for Ukrainian citizens is that the decriminalization of this article throws the country back towards the European future.

Therefore, an updated article on illegal enrichment needs to be developed to improve criminal legislation on offenses in the field of official service.

It should be noted that the idea of the authors of the bill number 10110-2 looks quite objective and can make real qualitative changes. The idea itself is to render unlawful enrichment of the form of a continuing crime, that is to criminalize «Ownership, use of a person authorized to perform functions of the state or local self-government, assets of considerable size, the value of which significantly exceeds the income of a person derived from legal sources, the acquisition of ownership or transfer to any other person of such assets «. This idea is actively promoted by O. M. Kostenko, who considers the expedient disposition of the relevant article to be worded as follows: «Acting by a person authorized to perform state or local government functions, possession, use or disposal of assets in significant amounts that a person could not to acquire a lawful way, as well as possession, use or disposal of such assets, legalized through financial transactions or transactions to conceal illicit enrichment. [1]

Also, the opinion is stated in the bill number 10110-3. It consists in expanding the subject of the crime, in particular, it is proposed to mean assets or other property, income from them, as well as benefits, benefits, services or other benefits that are material or

monetary in nature (note 2 of Article 368-5 of the Criminal Code of Ukraine) [2].

The subject of the crime of the previous article on illegal enrichment (Article 368-2 of the Criminal Code of Ukraine) is precisely «assets of a considerable magnitude, the legitimacy of the grounds of which is not proved by evidence».

As follows from the disposition of Art. 368-2 of the CCU, the crime it has committed is always committed in relation to the relevant subject, and therefore belongs to the so-called substantive crimes. Proper understanding of the concept of the subject of crime in general and the investigated crime, in particular, is fundamental to criminal-law doctrine, law-making and legal practice.

In its scope, the notion of «assets», based on note 2 to Art. 368-2 CCU, includes cash, other property, as well as income from them. That is, in its quality, as a physical feature, the subject of the investigated composition of the crime has a property character.

The next type of assets as an object of illegal enrichment is referred to in the law as «other property», the concept of which is given in Art. 190 CCU and in international legal acts. Securities are a kind of thing (Article 177 of the Civil Code). The latter belong to the property (Article 190 of the Civil Code), which has a certain specificity. Thus, in the context of illegal enrichment, securities are covered by the term «other property».

Securities as a special kind of property may be subject to illegal enrichment. As capital, they bring incomes to owners, thereby, satisfy their needs. Accordingly, as things of the material world, securities can be acquired or transferred by the subject of the relevant social relations. In particular, criminal liability for unlawful enrichment occurs in the event of the acquisition or transfer of assets in the form of securities, in the absence of evidence of the legitimate grounds for acquiring them, regardless of whether the entity has received income or dividends from the sale of such securities. Since the very illegal process of obtaining securities is a violation of the procedure established by law for their acquisition of property. [3]

Regarding international experience, most European countries, as well as the United States, are still reluctant to criminalize the illegal enrichment as a separate criminal act. The reason for this is the violation of the principles of criminal justice and the constitutions of

many countries in the world regarding the presumption of innocence, the obligation to bring the accused to trial and the possibility not to testify against oneself.

The presumption of innocence as the fundamental principle covers the following requirements: investigation of a crime should not begin with the guilty assumption of a person; the fault of the person relying on the prosecution body (the burden of proof); the right of the accused to not testify against himself; The accused has the right to silence. Illegal enrichment automatically implies recognition of an official whose assets are significantly higher than official income, guilty.

But still there is an exception. For example, in the Criminal Code of Lithuania, where in Art. Article 189 of the Criminal Code stipulates: «who owned property of more than 500 MSL, knowing or possessing and able to know that these assets could not be acquired through legal income, shall be punishable by a fine, arrest or imprisonment for a term up to four years.»

So, despite the prevalence of recognizing the article about unlawful enrichment as unconstitutional, the one that violates the presumption of innocence, I believe that it should be in the Criminal Code of Ukraine: firstly, to improve the criminal law of our country in crimes in the field of official activity, which is one of the main conditions of Europe to Ukraine to increase the chances of joining the EU; and secondly, for the inevitability of criminal responsibility of high-ranking officials who were suspected of committing this crime.

List of references

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DETERMINATION OF THE SIZE OF MATERIAL DAMAGE DURING OFFICIAL NEGLIGENCE

In the vast majority of cases, the criminal law links the existence of a public danger to the act or omission of the offender of the envisaged Criminal Code of Ukraine with the nature of socially dangerous consequences, since such a sign is usually a criterion for distinguishing a crime from other types of unlawful conduct of disciplinary civil and administrative and administrative offenses and the fact of causing certain damage in the amount determined by law is a decisive sign of the objective side. A prerequisite for the presence of a criminal offense stipulated in Art. 367 of the Criminal Code of Ukraine is the infliction of substantial damage to the rights, freedoms and interests of individual citizens, or public or public interests, or the interests of legal persons, protected by law [1].

Significant damage is the violation of the rights and freedoms of man and citizen protected by the Constitution of Ukraine or other laws, the right to liberty and personal integrity and integrity of housing, election, labor, housing rights, etc., as well as undermining the authority and prestige of public authorities or local self-government bodies, violations of public security and public order, creating conditions and conditions. In resolving the question of whether the damage was significant, the number of injured citizens, the amount of moral damage or lost profit, etc., was taken into account, but the social aspect of such effects was based entirely on subjective evaluation criteria.

At the same time, the normative nature of the consequences should ensure accuracy in the interpretation of the criminal law when it is applied, since it defines the boundaries between socially dangerous consequences as signs of a crime and all other changes in the objective reality that arose as a result of the commission of a crime.