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ДО ПИТАННЯ ПРО ЗЛОЧИНИ ПРОТИ КОНСТИТУЦІЙНИХ ЗАСАД НАЦІОНАЛЬНОЇ БЕЗПЕКИ ЗА ЗАКОНОДАВСТВОМ УКРАЇНИ ТА СКАНДИНАВСЬКИХ КРАЇН

TO THE QUESTIONS OF THE CRIMES AGAINST NATIONAL SECURITY UNDER THE LEGISLATION OF THE SCANDINAVIAN COUNTRIES AND UKRAINE

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У статті досліджуються питання щодо юридичних конструкцій злочинів проти конституційних засад національної безпеки за законодавством України та Скандинавських країн. Зауважується, що глобалізація сучасного світу робить актуальним вивчення законодавчого досвіду, включаючи кримінально-правову сферу, іноземних держав. Вивчення іноземного законодавства необхідне не лише для орієнтації у процесах світової економічної, політичної та культурної інтеграції та об'єднання, але перш за все для вдосконалення національного кримінального права. Робиться висновок, що у зв'язку з суверенітетом держав скандинавської групи, а також з різними соціальними умовами суспільств, крім певних загальних спільних рис кримінальної відповідальності за посягання на конституційні основи державної безпеки, є також певні особливості. Вивчення таких особливостей необхідне, оскільки знання кримінально-правової системи іншої держави необхідне для протидії глобальній злочинності в сучасній ситуації.

Встановлено, у більшості КК Скандинавських країн вказується на насильницький спосіб вчинення таких злочинів. Зокрема, у ст. 1 глави 12 КК Фінляндії передбачено кримінальну відповідальність за посягання на конституційні засади суверенітету Фінляндії шляхом насильства або погрози насильством або шляхом військового чи економічного тиску. Зроблено висновок, що за своєю юридичною конструкцією склади злочинів такого виду є формальними складами. Авторкою обґрунтовано, що вартим до запозичення є досвід деяких Скандинавських країн щодо криміналізації на рівні із посяганнями на державного чи громадського діяча, також посягань, вчинених щодо членів їх сімей, якщо такі посягання вчинені у зв'язку з їх державною чи громадською діяльністю. На основі аналізу кримінального законодавства України та Скандинавських країн, авторкою сформульовані авторські поняття злочинів проти конституційних засад національної безпеки, які не є однаковими у законодавстві та кримінально-правовій доктрині України та Скандинавських країн.

Ключові слова: кримінальне право, кримінальне правопорушення, злочин, конституційні засади, національна безпека, порівняльно-правове дослідження.

The article examines the issues of legal constructions of crimes against the constitutional principles of national security under the laws of Ukraine and the Scandinavian countries. It is noted that the globalization of the modern world makes it important to study the legislative experience, including criminal law, of foreign countries. The study of foreign law is necessary not only for orientation in the processes of world economic, political and cultural integration and unification but above all for the improvement of national criminal law. It is concluded that in connection with the sovereignty of the Scandinavian countries, as well as with different social conditions of societies, in addition to certain general common features of criminal liability for encroachment on the constitutional foundations of state security, there are also certain features. The study of such features is necessary because knowledge of the criminal justice system of another state is necessary to combat global crime in the current situation. It has been established that in most of the Criminal Code of the Scandinavian countries, a violent way of committing such crimes is indicated. In particular, in Art. 1 of Chapter 12 of the Criminal Code of Finland criminalizes infringement of the constitutional foundations of Finland's sovereignty by violence or threat of violence or by military or economic pressure. It is concluded that, in terms of their legal structure, the corpus delicti of this type are formal corpus delicti.

The author has substantiated that the experience of some Scandinavian countries in criminalization at the level with attacks on a state or public figure, as well as attacks committed against their family members, if such attacks are committed in connection with their state or public activities, is worth borrowing.

Based on the analysis of the criminal legislation of Ukraine and the Scandinavian countries, the author formulated the author's concept of crimes against the constitutional foundations of national security, which are not the same in the legislation and criminal law doctrine of Ukraine and the Scandinavian countries.

Key words: criminal law, criminal offense, crime, constitutional principles, national security, comparative legal research.

The globalization of the modern world makes it relevant to study the legislative experience, including the criminal law area, of foreign states. The study of foreign legislation is necessary not only for orientation in the processes of world economic, political and cultural integration and unification but above all for improving the national criminal law. Nowadays, in the latest conditions of globalization processes, really more attention is paid to the need to improve the entire national legal system, each of its branches, including the field of criminal law by conducting in-depth comparative studies [1]. However, the study of the problems of criminal law protection of the constitutional principles of national security is not possible without fundamental constitutional and legal works. At one time, a significant contribution to the study of sovereignty, constitutional and legal mechanism, constitutional and legal status was made by L.M. Streltsov [2]. Comparative legal research conducted in this direction is also gaining relevance. It is comparative research that allows solving the most important scientific and practical problems.

It should be noted that by the beginning of the XXI century practically all states had national law with an inherent legal system. However, the law as a regulator of people's behavior in society has evolved over the centuries under the influence of both internal and external factors, therefore each national legal system has common features with the national legal systems of other states, which allows them to be divided into "legal families" and "legal groups".

Despite the fact that the Scandinavian countries are part of Western Europe, their legal systems differ from both "continental tradition" systems and "common law" systems. An analysis of the modern legal systems of the Scandinavian countries shows some commonality of Scandinavian and Romano-Germanic law. First of all, it manifests itself in the similarity of the sources of legal regulation. In the Scandinavian countries, the law is the main source of law, and the courts formally cannot, while resolving a specific dispute, create legal norms. This matter reveals the most significant difference between the Scandinavian and common law systems.

The Scandinavian legal system commonly includes the law of the five Nordic countries such as Denmark, Finland, Iceland, Norway, and Sweden.

For a long time, there has been close legislative cooperation

between the Nordic countries, however, the ongoing development of European legislation has influenced the Scandinavian legal system and some of its major concerns [3, p. 15].

Like most acts of the criminal law of European legal traditions, the Danish criminal law is literally referred to as the "punishment code", but for ease of understanding, due to the prevailing customs of scientific circulation, we will retain the name "criminal code" familiar to domestic lawyers. In general, Danish criminal law is characterized by a commitment to the sociological direction of jurisprudence.

The Danish Penal Code was adopted in 1930 and came into force in 1933. It is not the exclusive source of criminal law. Many other laws contain provisions containing criminal prohibitions (for example, the Law on the Environment). The analogy of the law is recognized (allowed). Despite its geographical location in continental Europe, Danish law recognizes judicial precedent as a source, which brings it closer to British common law.

There are offences against the Independence and Safety of the State in the Chapter 12 of the Danish Penal Code.

According to article 98 of the Danish Penal Code any person who, by foreign assistance, by the use of force, or by the threat of such, commits an act aimed at bringing the Danish state or any part of it under foreign rule or at detaching any part of the state shall be liable to imprisonment for any term up to life imprisonment.

According to article 100 of the Danish Penal Code any person who by public statements incites enemy action against the Danish state or who brings about an evident danger of such action shall be liable to imprisonment for any term not exceeding six years. Any person who by public statements incites intervention by a foreign power in the affairs of the Danish state or who brings about an evident danger of such intervention shall be liable to a fine or to imprisonment for any term not exceeding one year.

The same penalty shall also apply to any person who, for the purpose mentioned in Subsection (1) above, organizes extensive sabotage, suspension of production or traffic, as well as to any person who partakes in such an act, conscious of its purpose.

Denmark is a constitutional monarchy. The head of state is the king. According with the 1953 Succession Act, royal power is inherited by male and feminine lines. According to the 1953 Constitution the king has very broad powers (appoints and dismisses the government, approves laws, has the right to dissolve parliament, is the supreme commander and others) and does not answer anyone.

Under Chapter 13 of the Criminal code of Denmark [6] has been enshrined the criminal responsibility for the offences against the Constitution and the Supreme Authorities of the State. Thus, according to article 111 of the Criminal code of Denmark, any person who commits an act aimed, by foreign assistance, by the use of force, or by the threat of such, at changing the Constitution or making it inoperative shall be liable to imprisonment for any term extending to life imprisonment.

Moreover, under article 112 of this Code, any person who commits an act directed against the life of the sovereign or of the constitutional regent shall be liable to imprisonment for not less than six years. The existence of such a rule of law is completely justified. As we know, Denmark, from the point of view of the state system, is characterized by the presence of a constitutional monarchy.

All in all, according to article 113 any person who interferes with the safety or independence of the Parliament or otherwise commits any act aimed, by the use of force or the threat of such, at extorting any resolution from the Parliament or preventing it from freely exercising its activities shall be liable to imprisonment for any term not exceeding six years or, in particularly aggravating circumstances, to life imprisonment. The same penalty shall apply to any person who similarly interferes with or exercises coercion against the sovereign or against the constitutional regent or against the ministers, the Constitutional Court or the Supreme Court.

Thus, articles have a logical structure of division into dispositions and sanctions. Depending on the nature of the act and the complexity of its description, the article may begin either with the definition of penalties or with a description of the signs of a criminal act. The description of the act is based on the characteristics of the person to be punished. All this taken together determines the fact that the articles are presented too verbose and difficult for the law enforcement officer.

There are two articles in the First Section of the Criminal Code of Ukraine, which named crimes against the fundamentals of national security of Ukraine. On the one hand, according to article 109 must be punished the actions aimed at forcible change or overthrow of the constitutional order or the seizure of state power. On the other hand, under the statements of article 110, should be punished encroachment on the territorial integrity and inviolability of Ukraine [4].

To my mind, there are two main corpus delicti against the constitutional principles of the national security under the legislation of Ukraine. They are enshrined in article 109 (Actions aimed at violent change or overthrow of the constitutional order or seizure of state power) and article 110 (Encroachment on the territorial integrity and inviolability of Ukraine).

Conspiracy to commit acts by forcible change or overthrow of the constitutional order or seizure of state power is defined through two important aspects: 1) conspiracy is an agreement of two or more persons to commit these acts; 2) the conspiracy is manifested in the coordination of specific actions, distribution of roles, and so on. For criminal-legal assessment of a certain message as a public call to forcible change or overthrow of the constitutional order or to seize state power, there is a need to study such features of the act as the method and place of the message, technical means used, the content of the message. The conclusion on the existence of public appeals should be made in each case on the basis of an analysis of the materials of a particular proceeding.

Article 110 of the Criminal Code of Ukraine contains three parts: part one - signs of the main corpus delicti, and parts two and three - signs that aggravate (especially burden) responsibility for this crime. This section considers the signs of the objective side of only the main corpus delicti.

Qualifying features of the crime are its commission: 1) a representative of the authorities; 2) repeatedly; 3) by prior agreement of a group of persons; 4) and a combination of appropriate actions with incitement to national or religious hatred. Particularly qualifying features of a crime are the occurrence as a result of its commission of such socially dangerous consequences as the death of people or other serious consequences. Here, the death of people means the death of two or more persons, and other serious consequences - the death of one person, causing one, two, or more persons serious injuries, the onset of a large material damage, destruction, or damage border engineering structures or other important facilities, the occurrence of riots, rupture, or significant deterioration of diplomatic relations with another state.

The Constitution of Ukraine declares that the protection of the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security are the most important functions of the state, the business of the entire Ukrainian people. Violation of the procedure established by the Constitution of Ukraine for the creation and protection of the constitutional order may pose a threat to the foundations of the national security of Ukraine. Therefore, for modern conditions, one of the main directions of the criminal law policy of Ukraine is the fight against crime, in particular, with crimes against the foundations of the national security of Ukraine.

The generic object of this crime is characterized by a complex, complex structure and includes public relations to pro-

tect the foundations of the national security of Ukraine. These are social relations that ensure the very existence of Ukraine as a sovereign, independent, democratic, social, and legal state. The object of this crime should be considered public relations to protect the foundations of national sovereignty.

Such a species object helps to reveal the socio-political essence of the protected articles. 110 of the Criminal Code of Ukraine relations, which in turn is important for the correct determination of the socially dangerous nature of the actions provided by this rule, the correct solution of the question of the qualification of this crime, separation from related crimes. The main direct object of the crime is national security in the political sphere, which consists in the absence of the threat of violation of the territorial integrity of Ukraine established by the Constitution, laws of Ukraine and international legal acts and the procedure for determining its territory. The objective side of the investigated crime is manifested in the following forms: actions committed to change the borders of Ukraine; actions taken to change the state border of Ukraine; public appeals to commit such actions; dissemination of materials calling for such actions.

The subjects of crimes of encroachment on the territorial integrity and inviolability of Ukraine, as shown by the study of judicial practice and analysis of crimes of this category, are individuals, sane persons who have reached 16 years of age by the time of the crime. The subjective side of the crime is characterized by guilt in the form of direct intent. Each of the actions referred to in Art. 110 of the Criminal Code of Ukraine, provides for the presence of the perpetrator or perpetrators of a special purpose - to change the boundaries of the territory or state border of Ukraine in violation of the procedure established by the Constitution of Ukraine. The motives of the crime do not matter for qualification. Qualifying features of a crime are its commission: 1) by a representative of the authorities; 2) repeatedly; 3) by prior agreement of a group of persons; 4) and a combination of appropriate actions with incitement to national or religious hatred.

Inconsistent legislative decisions on the definition of qualified types of crimes under Articles 109 and 110 of the Criminal Code have been established.

These problematic aspects are especially acute in view of the prospects for the start of activities of Ukrainian public authorities in the temporarily uncontrolled territory. Insufficient definition of the law on criminal liability, especially for crimes against the foundations of sovereignty, will create grounds for abuse of criminal law. Such abuses, in turn, will make it impossible to fully restore state power in the temporarily uncontrolled territories and will form new potentials for conflict.

Thus, the main directions of improving the current legislation on criminal liability for crimes against the foundations of the sovereignty of the Ukrainian people include 1) specification of the wording of criminal prohibitions to minimize the dangers of abuse at the law enforcement level of criminal law regulation; 2) legislative systematization of qualified forms of investigated crimes.

Moreover, encroachment on territorial integrity and Ukraine's inviolability can cause significant damage constitutional order and other components of the national security will distance our state from the achievements of modern ideals of the state and society, and therefore there is an encroachment on these benefits the most dangerous both for the state and for society and each of its members.

Thus, in conclusion, it should be noted that in connection with the sovereignty of the states of the Scandinavian group, as well as with different social conditions of societies, in addition to certain universal common features of criminal responsibility for encroachments on the constitutional foundations of state security, there are also certain features. The study of such features is necessary since knowledge of the criminal legal system of another state is necessary in order to counter global crime in the current situation.

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