

INTENTIONAL INTRODUCTION OF DANGEROUS PRODUCTS INTO CIRCULATION ON THE UKRAINIAN MARKET (RELEASE TO THE UKRAINIAN MARKET): CRIMINAL LAW CHARACTERISTICS BASED ON FOREIGN EXPERIENCE

УМИСНЕ ВВЕДЕННЯ В ОБІГ НА РИНКУ УКРАЇНИ НЕБЕЗПЕЧНОЇ ПРОДУКЦІЇ (ВИПУСК НА РИНОК УКРАЇНИ): КРИМІНАЛЬНО-ПРАВОВА ХАРАКТЕРИСТИКА НА ОСНОВІ ЗАРУБІЖНОГО ДОСВІДУ

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У статті на підставі зарубіжного досвіду надано кримінально-правову характеристику умисного введення в обіг на ринку України (випуск на ринок України) небезпечної продукції. Вказано, що рівень добробуту населення України безпосередньо залежить від багатьох чинників, одним з яких є сфера споживання, яку умовно можна поділити залежно від виду продукції на харчову та нехарчову. Оскільки наша держава приділяє посилену увагу життю й здоров'ю людини, визнає її найвищою соціальною цінністю, необхідно зосередитися на питанні контролю споживчої сфери, яка регулюється багатьма законами, а також Кодексом України про адміністративні правопорушення і, звичайно ж, Кримінальним кодексом України.

Автор констатує, що споживаючи небезпечну продукцію, людина ризикує не лише своїм здоров'ям, а й навіть життям, але через неоднозначність трактування положень чинного законодавства не може повною мірою захистити свої законні права та інтереси. Це пов'язано з тим, що продавці такої продукції фактично є посередниками, і саме з огляду на це вони намагаються уникнути кримінальної відповідальності, перекладаючи провину на виробника. Однак продавці також вчиняють дії, які становлять загрозу для людини так само, як і саме виробництво. До таких дій належать, зокрема, умисна фальсифікація дати виготовлення, неналежне зберігання та поводження з продукцією, а також продаж продукції, яка завідомо для продавця є зіпсованою.

Підкреслюється, що, за оцінками експертів, збитки в Україні від фальсифікації, обігу небезпечної та невідповідної продукції та інших видів недобросовісної конкуренції становлять мільйони гривень щорічно. При цьому винні у розповсюдженні небезпечної продукції фактично не притягуються до відповідальності та не зустрічають жодних перешкод у своїй протиправній діяльності.

Ключові слова: злочин, кримінальне правопорушення, умисне введення в обіг, ринок України, небезпечна продукція.

Based on the foreign experience, the article provides a criminal law characteristic of intentional introduction of dangerous products into circulation on the Ukrainian market (release to the Ukrainian market). The author points out that the level of well-being of the Ukrainian population directly depends on many factors, one of which is the sphere of consumption, which can be conditionally divided into food and non-food products depending on the type of product. Since our state pays special attention to human life and health and recognises it as the highest social value, it is necessary to focus on the issue of controlling the consumer sphere, which is regulated by many laws, including the Code of Ukraine on Administrative Offences and, of course, the Criminal Code of Ukraine.

The author states that by consuming dangerous products, a person risks not only his/her health but even life, but due to the ambiguity of interpretation of the provisions of current legislation, he/she cannot fully protect his/her legitimate rights and interests. This is because the sellers of such products are actually intermediaries, and it is with this in mind that they try to avoid criminal liability by shifting the blame to the manufacturer. However, sellers also commit actions that pose a threat to a person, just like manufacturing itself. Such actions include, in particular, deliberate falsification of the date of manufacture, improper storage and handling of products, and sale of products that the seller knows to be spoiled.

It is emphasised that, according to experts, losses in Ukraine due to falsification, circulation of dangerous and non-compliant products and other types of unfair competition amount to millions of hryvnias annually. At the same time, the perpetrators of the distribution of dangerous products are not actually held liable and do not face any obstacles in their illegal activities.

Key words: crime, criminal offence, intentional introduction into circulation, Ukrainian market, dangerous products.

The level of well-being of the population of Ukraine directly depends on many factors, one of which is the sphere of consumption, which can be conditionally divided depending on the type of product into food and non-food. Since our state pays special attention to human life and health, recognizes it as the highest social value [1], it is necessary to focus on the issue of control of the consumer sphere, which is regulated by many laws, as well as the Code of Ukraine on Administrative Offences and, of course, the Criminal Code of Ukraine [2].

By consuming dangerous products, a person risks not only his health, but even his life, but due to the ambiguity of the interpretation of the provisions of the current legislation, he cannot fully protect his legal rights and interests. This is because the distributors of such products are actually intermediaries, and it is by referring to this that they try to avoid criminal liability by shifting the blame to the manufacturer. Although sellers also commit actions that pose a threat to the person, as well as the manufacture itself. Such actions, in particular, are deliberate forgery of the date of manufacture, improper storage and processing of products, sale of products that are known to the seller to be spoiled.

Crimes in the sphere of economic activity are socially dangerous and illegal acts that encroach on the economic

system, causing damage to social relations that consist of the production, distribution, exchange and consumption of goods and services.

According to experts' estimates, in Ukraine, due to falsification, admission to the circulation of dangerous and non-compliant products and other types of unfair competition, losses reach millions of hryvnias annually. At the same time, persons guilty of distributing dangerous products are not actually responsible and do not experience any obstacles in their illegal activities.

In connection with Ukraine's aspiration to join the EU, it is necessary to adapt the legislation of Ukraine to the EU legislation, in connection with which it is expedient to consider foreign experience in regulating norms aimed at combating crimes in the field of economic activity.

The analysis of similar crimes in the criminal codes of the European Union countries has shown that, unlike Ukraine, the main object of the crime of production of dangerous products is human safety and health, these crimes are placed by European legislators not in the section "Crimes in the field of economic activity", but in the sections on the protection of human life and health and punishment for such crimes is much more severe than in Ukraine. For example, Article 276 "Production

of or trade in products harmful to human health or life" of the Criminal Code of the Republic of Lithuania is located in Chapter 38 of the Special Part of the Criminal Code of the Republic of Lithuania "Crimes and Criminal Offenses against the Environment and Human Health". Under Part 1 of Art. 276 Liability arises for acts that endanger human life and health – production for the purpose of sale of food products from knowingly unsuitable, harmful to human life and health raw materials, or if these products contained harmful additives, as well as sale or sale of such products in any other way. Part 2 provides for liability for the same acts, but criminal liability arises if their use resulted in death or serious harm to human health. For the act provided for in Part 1 of Art. Article 276 provides for punishment in the form of a fine, restriction of liberty, or arrest, or imprisonment for up to two years. A more severe penalty is up to eight years in prison for the qualified type of this act [3].

Article 202 of the Criminal Law of the Republic of Latvia "Failure to ensure the quality of goods and services" contains in the disposition the *corpus delicti*, which consists in the intentional manufacture and sale of goods or the provision of paid services that do not meet quality requirements and cause damage to the consumer, as well as his property and the environment. The social danger of this crime lies in the encroachment on the safety of human life and health in the field of ensuring the quality of goods and services. This act is punishable by imprisonment for up to five years or arrest or a monetary fine with or without deprivation of the right to engage in certain types of entrepreneurial activity for up to five years [4]. Article 203 provides for liability for non-compliance with the safety of goods and services, if this act has caused significant damage to the health of the consumer, his property or the environment. This act is punishable by imprisonment for up to six years or a monetary fine with or without deprivation of the right to engage in a certain type of entrepreneurial activity for a term of two to five years. These articles are found in Chapter XX "Criminal Acts against Public Security and Public Order".

Article 165 § 1 of the Criminal Code of the Republic of Poland provides for the liability of a person who endangers the life and health of many people (i.e. these are also crimes against collective security) or property on a large scale and acts in the following ways: causes an epidemiological threat or spreads an infectious disease or an infectious disease of animals and plants, manufactures or puts into circulation substances harmful to health, food products or other consumer goods, as well as pharmaceuticals that do not meet the quality conditions, causes damage or stopping of public equipment, especially equipment that provides water, light, heat, gas, energy, or equipment that protects against the occurrence of public danger, or equipment designed to eliminate public danger, violates, interferes with or otherwise acts on the accumulation or transmission of information, acts in a different way in particularly dangerous situations. The penalty for this crime is imprisonment for a term of six months to eight years [5].

Article 350 of the Criminal Code of the Republic of Bulgaria provides for liability for the manufacture of food products intended for general use, in such a way that they form substances dangerous to health, as well as for the sale or distribution of such food products or beverages. This act is punishable by imprisonment for up to five years. The article is located in Section III "Crimes against Public Health", Chapter XI "General Dangerous Crimes" of the Special Part of the Criminal Code of the Republic of Bulgaria [6].

Article 440 of the Italian Penal Code provides for a penalty of three to ten years in a house of correction for changing and adulterating food. Anyone who falsifies food intended for trade in a way that is dangerous to public health shall be punished. The article is located in Chapter II "On Generally Dangerous Crimes Committed by Deception" [7].

Chapter 20 "Offences Endangering the Public" of the Danish Penal Code contains Article §187 according to which any person who adds poison or other substances to products intended for sale or general use in order to endanger the health of others, if the product is used in accordance with the purposes for which it is intended, or which, if such products have been so spoiled, that their consumption or use for their intended purpose is harmful to health, subjects them to processing in such a way as to conceal their spoiled condition, or which, concealing its interference, offers for sale or otherwise attempts to distribute products which have been subjected to the processing referred to in subparagraphs 1) and 2) above, shall be imprisoned for any period not exceeding ten years.

Title VII "Offences Endangering the General Safety of Persons or Property" of the Dutch Penal Code contains Article 174, according to which a person who sells, offers for sale, delivers or transfers goods free of charge, knowing that they are harmful to life or health, and conceals it, shall be liable to a term of imprisonment not exceeding fifteen years or a fine of the fifth category.

If the death of a person occurs as a result of this act, the offender is subject to life imprisonment or a term of imprisonment not exceeding twenty years or a fine of the fifth category. Article 175 of the Dutch Criminal Code provides that a person who, through negligence or negligence, sells, delivers or distributes goods harmful to life or health, if the buyer or recipient of such goods is not aware of their harmful nature, shall be subject to a term of imprisonment or imprisonment not exceeding six months or a fine of the fourth category. If the result of such an action is the death of a person, the offender is subject to a term of imprisonment or imprisonment of not more than one year or a fine of the fourth category. According to Article 176 of the Criminal Code of the Netherlands, after conviction for any of the offenses defined in this section, the offender may be deprived of the right to engage in the professional activity in connection with which he committed the crime. After the conviction of any of the offences defined in Articles 174 and 175, the judge may order the publication of the judgment [9].

Chapter twenty-eight "Generally Dangerous Criminal Acts" of the German Criminal Code contains Article § 314 "Generally Dangerous Poisoning", according to which imprisonment for a term of one to ten years is imposed on anyone who poisons water in framed springs, wells, water pipes or drinking water storage facilities, or objects intended for public sale and public use, or mixes substances harmful to health in them. or sells, offers for sale or otherwise introduces the circulation of poisoned objects or objects with mixed substances harmful to health [10].

The analysis of the criminal codes of the European Union countries demonstrates that the protection of personal safety of human life and health from criminal encroachments is at a slightly higher level and certain provisions can be perceived by the domestic legislator.

The main factor justifying the establishment and preservation of criminal liability for the deliberate introduction into circulation on the Ukrainian market (release to the Ukrainian market) of dangerous products is public danger. Public danger, as a sign of a criminal law act, means that an action or inaction causes or may cause significant harm to social relations, therefore, the absence of social danger of action or inaction or its negligible nature can only lead to the occurrence of insignificant damage, which is caused not by any actions, but only by those whose nature determines the property of the object itself [11, p. 179].

The nature of the social danger of the crime provided for in Art. 227 of the Criminal Code of Ukraine, should be formulated precisely depending on the definition of objective elements and signs of the crime, in particular, the object, subject, socially dangerous act (action or inaction) and the place of the crime.

The main direct object of the crime provided for in Art. 227 of the Criminal Code of Ukraine, we propose to recognize the established procedure for carrying out economic activity, designed to prevent the release of dangerous products to the Ukrainian market, and additional objects, in particular, the consumer's right to product safety, human life and health, the environment, and property. The subject of the crime is dangerous products, i.e. products [12, p. 238], which do not meet the requirements for their safety established by regulatory legal acts. The objective side of the crime provided for in Art. 227 of the Criminal Code of Ukraine, consists in the introduction into circulation (release to the market of Ukraine) of dangerous products, committed on a large scale. A mandatory feature of the objective side of the crime provided for in Art. 227 of the Criminal Code of Ukraine, there is a place where the crime was committed – the market of Ukraine [13, p. 615, 619, 621].

Therefore, we believe that the nature of the social danger of the crime provided for in Art. 227 of the Criminal Code of Ukraine, consists in violation of the procedure for carrying out economic activity established by regulatory legal acts, in terms of prohibiting the introduction into circulation on the market of Ukraine (release to the market of Ukraine) of products that do not meet the requirements for its safety.

Any crime entails dangerous harmful consequences, which consist in causing damage to the object of criminal law protection. In other words, the consequences of the crime, namely the real harmful changes that occur in the object protected by the criminal law as a result of the criminal act [14, p. 14].

The degree of social danger of a crime always consists in causing damage to the object of criminal law protection or creating a real threat of its infliction, even in crimes in which socially dangerous consequences are not a mandatory feature of the objective side of the crime (crimes with the so-called formal composition), which include the crime provided for in Art. 227 of the Criminal Code of Ukraine. That is, although socially dangerous consequences are not a mandatory feature of the corpus delicti of this crime, the degree of social danger of the crime always consists in causing damage to the object of criminal law protection or creating a real threat of its infliction. The crime provided for in Art. 227 of the Criminal Code of Ukraine, there is directly (directly) caused damage or the creation of a real threat of its infliction to the object of criminal law protection, in large amounts, that is, exceeding 500 tax-free minimum incomes of citizens.

Thus, the social danger of the crime provided for in Art. 227 of the Criminal Code of Ukraine, consists in violation of the procedure for carrying out economic activity established by regulatory legal acts, in terms of the prohibition of putting into circulation on the market of Ukraine (release to the market of Ukraine) of products that do not meet the requirements for its safety, which directly (directly) causes damage to the object of criminal law protection or creates a real threat of its infliction, in large amounts, that is, exceeding 500 tax-free minimum incomes of citizens.

It turns out that according to the Criminal Code of Ukraine, the priority generic objects of criminal law protection are peace, security of mankind and international legal order, the foundations of national security of Ukraine and military law and order. As for the life and health of a person, his honor and dignity, inviolability and security, which are proclaimed by the Constitution of Ukraine as the highest social value, they do not occupy the main places in the above list.

Mass poisonings are resonant, unlike individual cases, which are most often not taken into account at all. Every average Ukrainian became a victim of the harmful effects of dangerous products, both food and non-food, but due to insufficient control and attention to this problem on the part of the legislator, they had little chance of protecting their rights and interests.

Thus, the real threat to human life and health is the introduction into circulation (release to the Ukrainian market) of dangerous products even without the onset of socially dangerous consequences and the achievement of a specific amount of material damage. Therefore, the establishment of formal corpus delicti under Article 227 of the Criminal Code of Ukraine, will make it possible to bring a person to criminal responsibility directly for committing an act without specifying the consequences, which will not allow manufacturers and distributors of dangerous products to avoid punishment for their criminal actions, because it is through socially dangerous activities that the main harm to the life and health of the population is caused.

With regard to the specific Article 227 of the Criminal Code of Ukraine "Intentional Introduction into Circulation on the Market of Ukraine (Release on the Market of Ukraine) of Dangerous Products", on the basis of the analysis carried out, I consider it appropriate to finalize this article on the example of the criminal legislation of the European Union, to transfer the article to another section of the Criminal Code, for example, to Section II "Criminal Offenses against the Life and Health of a Person", to strengthen the responsibility for imprisonment in in case of causing harm to human health.

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