Journal of the National prosecution academy of Ukraine 4(32)'2013

Created
in November 18, 2005

Founder
National prosecution academy of Ukraine

Published 4 times a year

Index – 95295

State Registration Certificate –

КВ №13906-2879 ПР

The journal is included to the list of scientific publications by Decree of Presidium of Higher Attestation Commission № 1'05/2 on the 27th of May, 2009

Senior Editor
Yevgene Blazhivskyy

Recommended to publishing
By Board of Studies of National prosecution academy of Ukraine (Protocol № 2 from October 25, 2013)

Review of the articles
is carried out by members of editorial board of the journal

Address of editorial staff:
Melnikova Str. 81-b, 04050, Kyiv, Ukraine
Tel: (+38044) 206-00-51, 206-15-61
E mail: apu2005@ukr.net

УДК 343.166
ББК 67.9

CONTENT

***Lyudmyla GRYTSAYENKO*,**

Professor, Department of Administrative and Financial Law
National Academy of Prosecutors of Ukraine
Lawyer of a first class
Ph.D. of Laws, senior lecturer

APPROXIMATION OF UKRAINE LEGISLATION WITH THE LEGAL SYSTEM OF EUROPEAN UNION: LABYRINTHS OF TERMINOLOGY

It was analyzed in this article theoretical approaches to the process of approximation of Ukraine legislation with the legal system EU in European integration of Ukraine. The author of this article holds the following opinion, that the process of the approximation of national legislation of the third countries with the legal system EU should be classified as the adaptation of legislation and not a harmonization. The harmonization is an approximation process of legislation of the countries – members of EU.

There was given particular attention to the status on the Agenda of EU-Ukraine association about improvement of national legislation. Upon further analysis the author of this article concluded that legal integration of Ukraine supposes adaptation of national legislation towards different sources of laws: International law acts, acts of EU, conventions of the Council of Europe. It is also drawing a conclusion that actually the way of reforming one's legislation, Ukraine has to affirm the supremacy of law, appropriate and effective mechanisms of the Protection of Human Rights.

Ganna PODGORNA,

Head of the representation of the interests of citizens and the State prosecution in the courts of the city of Luhansk, Counselor of Justice

THEORETICAL ASPECTS OF THE REPRESENTATION OF THE INTERESTS OF CITIZENS AND THE STATE PROSECUTOR IN THE COURTS

Prosecutor in the courts of summary of Research projects of the Ukrainian law "on Prosecutor's Office".

Concluded that the draft law "on Prosecutor's Office" №0886-1 as of 17.04.2013 offers in art. 61 limit representational activities of the Prosecutor under civil code, commercial code, the code of administrative procedure of Ukraine, Criminal Procedure Code of Ukraine.

On the basis of art. 24 of the draft law of Ukraine "on Prosecutor's Office" to 02.08.2013 the Venice Commission, the author selects the founding mission of the General and special interests of the citizens and the State in the courts. Special grounds represent the interests of the citizens invited to include representation on the basis of age and legal capacity, States lack representation or improper implementation of the representation of the interests of the State by the notified body.

Common grounds to include damage caused by the Commission of a criminal offence or other socially dangerous act provided for the criminal act.

Given its own definition of "threat to the interests of the State" in the context of the representation of its interests as a likely possibility of occurrence of the harmful effects of either not perform certain actions by State bodies, local self-government bodies, foundations, social enterprises, institutions and organizations that enter into relations with the State's economic, political and social activities.

Zoya ZAGINEY (TROSTYUK),

Chief scientific worker of the Department of studying the issues of criminality in sphere of employment activit and corruption of Research Institute of National Prosecution Academy of Ukraine, Candidate of Law Sciences, Docent

SOME DISADVANTAGES OF RULE-MAKING EQUIPMENT SECTION XVII OF THE CRIMINAL CODE OF UKRAINE AND THEIR IMPACT ON THE INTERPRETATION OF CRIMINAL LAW

The article raises the question of the need for legislative drafting technique problems in the theory of criminal law. In particular, states that scientists remained neglected issue legislative vehicles of Section XVII of the Criminal Code of Ukraine «Crimes in service activities and professional activities related to the provision of public services». Especially not studied the impact of legislative deficiencies technology articles in this section on the interpretation of the relevant criminal law. As was pointed out that the relevant issues are relevant and timely. Stated that legislative deficiencies technology – a law-making errors. Such errors are technical and legal nature require correcting (corrective) interpretation of criminal law.

Determined that the major shortcoming legislative machinery of Section XVII of the Criminal Code of Ukraine is produced in violation of the legal theory requirements for placing new items (in case of criminalization of socially dangerous acts). In particular, as an example only by poor legislator century. 365-2 of the Criminal Code of Ukraine «abuse of power by persons who provide public services». After all, she was awarded the serial number Articles 365 of the Criminal Code of Ukraine «Excess of authority or official powers». While most related to this rule are the rules provided for in Articles 364 and 364-1 of the Criminal Code of Ukraine, which include responsibility for the abuse of power or position relevant officers. It is therefore concluded that the abuse of power by persons who provide public services is located at No. 364-2 of the Criminal Code of Ukraine.

The article analyzes the approach of the legislator to use casuistic list in formulating specific perpetrator in Articles 365-2 and 368-4 of the Criminal Code of Ukraine. Attention is drawn to its imperfections. First , in the absence of legislative definition of «public services». There is no need to duplicate a list of articles in both the disposition . To address this shortcoming, we consider it necessary to clearly define the term «public service», stop using the phrase «professional activities related to the provision of public services», replacing it with «professional activities of public services», in the article of the Criminal Code of Ukraine, where first mentioned such an offense , it is useful to distinguish a note of this article which predict who can be recognized as having carried out appropriate activities.

Revealed shortcomings in the formulation of the definition of «undue advantage». First, the legislator establishes the unknown through unknown because the legislation of Ukraine does not define the terms «benefits», «benefits» which are components of the definition of «undue advantage». Second, the detected conflict between the definition of this concept in note Articles 364-1 of the Criminal Code of Ukraine and the formulation of such a benefit criterion size (large , large and extra large) , which is enshrined in note Articles 368-2 of the Criminal Code of Ukraine. In the last part of the definition used the term «undue advantage», which was ruled by the legislator of the Law of Ukraine «On Prevention and Combating Corruption» and the criminal legislation of Ukraine. A note Articles 368-2 of the Criminal Code of Ukraine to bring into line with the definition of «undue advantage».

Analyzed formulation dangerous consequences in the form of substantial damage in Articles 364, 364-1 , 365, 365-1 , 365-2 , 366 of the Criminal Code of Ukraine. On this basis, the proposed revision wording dangerous consequences: «... it caused significant damage to the rights, freedoms and interests of specific individuals or legal entities or state and public interests protected by law». Based on the research concluded that the formulation of rules of Section XVII of the Criminal Code Ukraine there are significant drawbacks legislative instruments that affect their thinking and enforcement.

Mycola TURKOT,
Head of Department of the State prosecution
Of the National Academy of Prosecutors of Ukraine
Senior Counselor of Justice,
PhD in Law

THE TROOPS OF THE INTERIOR MINISTRY OF INTERNAL AFFAIRS UKRAINE AS A SUBJECT OF FIGHT AGAINST CRIMINALITY

The questions of funkcyonirovaniya of the military forming are examined in the article - internal troops of Ministry of internal affairs of Ukraine.

Historical examples of activity of guard are made in Old Russian principalities. An author pays regard to that circumstance, that defence of law and order in Kievan Rus was laid not only on combatants but also on free people.

In future on territory of Ukraine subdivisions of escort guard, which was engaged in escorting of prisoners in a court and to the places of imprisonment, were created, by public law enforcement, accompaniment of important state loads.

An author considers that, internal troops of Ministry of the Internal affairs of Ukraine are the military forming. which must have status of law enforcement authority.

Foundation for this purpose is a fact of implementation of functions internal troops on the guard of law and order, escorting of persons, convict a court for committing crime.

Position is grounded in relation to that Military service of law and order in composition Department of defense of Ukraine executes the function of execution of punishments, which not fully corresponds aims and tasks of Military Powers.

In this connection offered control function after execution of punishments to pass to the internal troops.

Oleksandr TOLOCHKO,
Pro-rector on educational work

of the National Prosecution Academy of Ukraine
State Counsellor of Justice of a third class
Candidate of Law, senior lecturer
Honored lawyer of Ukraine

PROSECUTOR PROCEDURAL ACTION IN CRIMINAL PROCEEDINGS: STRUCTURAL AND FUNCTIONAL ASPECTS

Questions of the theory and methodology of Criminal Procedure of the prosecutor conditioned a change in the social paradigm of criminal proceedings.

The article substantiates the role of science and functional structure of the prosecutor in the new criminal procedural law. And also considered how this question addressed in international regulations and laws of other countries.

The subject of of prosecutorial supervision over execution of laws by conducting inquest and pretrial investigations and prosecution laws CIS countries determine approximately the same, but there are some nuances.

In the legal literature is well recognized criminal procedural activities as regulated by the law of the investigating authorities, prosecutor and court perform tasks aimed at criminal proceedings.

The Criminal Procedural Code of Ukraine among prosecutors defines leaders prosecution, prosecution officials, prosecutors engaged in supervision of the observance of laws by authorities of pre-trial investigation, prosecutors engaged in procedural guidance and support prosecutions in court.

Structural analysis of the content of their procedural powers reveals next procedural functions of prosecutor in criminal proceedings: function procedural guidance pre-trial investigation, the function of supervision of the observance of laws by authorities of pre-trial investigation, the function of pre-trial criminal proceedings, the function of maintaining the prosecution prove the function of the court to maintain the position before the court or defences provisions of the judgment.

Iryna IAKOVETS,
candidate of jurisprudence,
senior research associate,
Research institute of studying
of problems of crime of a name
of academician V.V.Stashis
of National academy of legal sciences
of Ukraine, doctoral candidate

CONCEPT, THE MAIN STAGES AND REGULARITIES OF OPTIMIZATION OF PROCESS OF EXECUTION OF CRIMINAL PUNISHMENTS OF UKRAINE

The problems arising in the course of execution of criminal punishments, testify to need of scientists in the field of the criminal and executive right and practical workers of creation of new concepts of execution of criminal punishments. Existing development in this sphere doesn't give uniform option of permission of existing problems. For this reason the author of article offers own concept of the organization of process of execution of punishments on the basis of its optimization.

The previous scientific development of questions of execution of criminal punishments became scientific base for research of these problems. The category "optimization of process of execution of punishments" is offered to be understood, how its organization in such form, such methods and means which provide efficiency of activity of bodies and establishments of execution of punishments on achievement of goals. Optimization is an activity to which it is peculiar dynamic, procedural aspects.

Such main stages of optimization of process to execution of punishments are allocated: definition of the purposes and problems of process of execution of punishments; election of criteria optimization (criteria of efficiency) process of execution of criminal punishments; selection of means, forms and methods of the organization of this process; creation of preliminary conditions for realization of goals; realization of objectives; the analysis of the received results. Violation of the specified stadiynost (operations procedure) does impossible introduction of changes in process of execution of punishments as the exception of any stage doesn't allow to solve objectives in a complex, taking into account all circumstances and factors.

Antonina CHERNOBAY
Head of organizational department
Assistant professor of the Chair
over observance and application of laws
Senior Counsellor of Justice

TOPICAL ISSUES OF THE LABOUR RIGHTS REALIZATION ON PROTECTION OF PERSONAL DATA OF THE EMPLOYEE IN THE CONTEXT OF THE DRAFT LABOUR CODE OF UKRAINE, ITS CONSISTENCY WITH INTERNATIONAL STANDARDS AND THE APPLICABLE LAWS OF UKRAINE

The article is devoted to bringing the labor legislation of Ukraine in line with international and European standards for personal data protection, taking positive legislative experience of foreign states. In the times of world attention to human rights conventions and recommendations of the International Labour Organisation play very important role.

A comprehensive study on international legal regulation of relations arising in connection with the processing of employee's personal data proves urgent need to establish adequate mechanism of their protection in the national legal practice.

The Labour Code of Ukraine should fix one of the new labor rights – the right to privacy and protection against invasion of privacy, provide a legal mechanism to protect the principles of personal data of the employee taking into account provisions of the International Labour Organisation Code of Practice on the protection of personal data of employee; workers' rights to get complete information about the personal data and the processing of those data, rights to free access to these data and a copy of any document containing the personal data of the employee, exclusion or correction of incorrect or incomplete personal data.

Workers' data protection from abuses by employers, other individuals and organizations are the subject of special attention of international legal regulation. Employees and candidates for the post should be guaranteed freedom to decide whether or not to provide personal information to the employer, ie to control information about themselves. This freedom can be restricted only to the legitimate interests of employers and the state.

Victor TREPAK,
associate Professor Chair of Criminal Law and Criminology Ivan Franko National University of Lviv, colonel of the Security Service of Ukraine

SOME PROBLEMS OF REALIZATION SEPARATE NORMS OF ANTI-CORRUPTION LEGISLATION

The theoretical and applied problems, arising out of the usage of certain norms of anti-corruption legislation are studied in the article; the ways of their solving altogether with propositions for legislation improvement are suggested. The anti-corruption enforcement practice is analyzed and the reasons for inefficiency of certain norms of anti-corruption legislation are showed.

Cancellation of the well ascertained criminal law concept of "bribe" and the introduction of the term " undue benefit" in its replacement is a novelty of anti-corruption legislation.

In Ukraine in the Criminal Code respective crime traditionally was called "Receiving a bribe".

New disposition of article 368 of the Criminal Code sets up separate responsibility of official person for acceptance of an offer or promise to give undue benefit to him or to a third party (previously responsibility was determined in article 172-3 of the Code of Ukraine on Administrative Offences) and separate responsibility for direct receiving of undue benefit by official person ("receiving a bribe" in the previous version of article 368 of the Criminal Code).

Thus, unification of administrative and criminal law, made by the legislator, on the one hand, optimizes anti-corruption practice in Ukraine, on the other hand - will reduce the number of persons to be brought to criminal responsibility under part 1 of article 368 of the Criminal Code.

After adoption of the new version of part 1 of art. 368 of the Criminal Code, pre-trial investigation shall be conducted, the totality of evidence (which constitute facts at issue) shall be collected, and indictment shall be drawn up in each case. Thus, proceedings will be unreasonably delayed owing to simple misdemeanor. The solution to this situation can be the adoption of the Law of Ukraine "On criminal offenses", in which part 1 of the article 368 of the Criminal Code shall be included as a separate article, and in this case the law-enforcing bodies will be able to apply a simplified procedure for preliminary investigation as foreseen by Chapter 25 of Criminal Procedural Code of Ukraine, which will only increase the quality of the investigation proceedings of this category of cases, and hence the effectiveness of anti-corruption practice.

The other quite anticipated problem would be increase of investigation of corruption cases, which would be closed because of insignificance. Indeed, given the logic of the new version of art. 368 of the Criminal Code, responsibility for receiving undue benefit occurs regardless of its size. However, this situation creates all the conditions for abuse by law-enforcement bodies in the classification of the offense, as in some cases obtaining undue advantage in a certain amount (such as, for example, 100 hryvnias) will be considered as a crime, when in other cases, depending on position of law-enforcer, proceedings will be closed because of insignificance.

Alexander BUTOVYCH,
Senior Researcher of Research on Crime Problems
in performance management and corruption
of the Research Institute of the National Academy
of Prosecution of Ukraine,
Doctor of Law, Senior Counselor of Justice

EXPERIENCE OF CRIMINAL LAW OPPOSITION AGAINST CORRUPTION CRIMES IN FRANCE

The article analyzes the problem of criminal responsibility for corruption offences in France. The ways of improving Ukrainian criminal legislation in this part are proposed. A study has been made through the prism of conformity the criminal law norms on corruption offences with the Council of Europe's Criminal Law Convention in both countries France and Ukraine.

It is concluded that in the building process of modern France opposition to corruption has always been of great importance. It should be noted that criminal responsibility for corruption crimes had already been foreseen in the classic

Napoleonic Code of 1820. The Criminal code of France of 1992 has established radically different articles directed against corruption crimes by means of criminal law opposition. At the same time, these relevant norms has become as a basis in the process of making the Council of Europe's Criminal Law Convention.

In the Criminal Code of France that norms are grouped in the Title III of Chapter II of Section III which is called «Breaches of the duty of honesty». This section defines 16 different types of corruption crimes that may be grouped as below: corruption as an achievement provision of any advantage to himself or other person by means of an illegal conspiracy; use of official position to his own interests for receiving profits or any other valuables (bribery); use his influence to make a decision with the purpose to achieve or provide any advantage (trafficking influence); favoritism (advantage); interference in a business operation with his own interest.

To the bribery the Criminal Code of France includes the following offenses: acceptance of any improper sum by an official under (in) the guise that provided by law; passive corruption and illegal taking of taxes. It is defined that criminal responsibility for active bribery provided for by the Criminal Code of France in the Section I "Active corruption and trafficking influence committed by private persons" of the Chapter III "Offences against the public administration committed by private persons". Owing to ratification the UN convention in France by law, 13 November 2007 the list of corruption crimes had been expanded. Both active and passive bribery of foreign or international public officials had become punishable and also bribery of judges and officials of international courts.

To abuse of power in the French Criminal Code included abuse of power against management and trading in influence on individuals.

We found that the criminal law of France is not installed liability for illegal enrichment. It is more acceptable than the criminalization of such acts in the Criminal Code of Ukraine.

Specific corruption offense under the Criminal Code of France is favoritism or advantage, which is that the proper subject of crime has or will attempt to deliver to another person any undue advantage by acts contrary to law or regulation

It is concluded that France's anti-corruption legislation, including criminal, is an effective means of fighting corruption. Certain provisions that are set out in the Criminal Code of the State, may be used to improve the criminal law against corruption crime under the laws of Ukraine, including the proper implementation of international law into domestic law.

Mykola BORTUN,
Associate Professor of the Department of supervision
of observance of laws by bodies that conduct pre-trial investigation

CONDUCTING REMOTE INTERROGATION OF A WITNESS, VICTIM, OTHER PARTICIPANTS IN THE CRIMINAL PROCEEDINGS

Criminal Procedure Code of Ukraine has greatly expanded the possibilities of the investigator and the prosecutor in the investigation of criminal offenses. One of them is the possibility of investigator and prosecutor to remote interrogation of a witness and victim. Issues of remote interrogation of a witness, victim, other participants in the criminal proceedings in the criminal process is investigated by many researchers including: N.Karpov, W. Muradov, B.Strilets, O.Tolochko, S.Shyrina, V.Shepitko. L.Scherbyna M.Yakymchuk and others.

The relevance of this topic is that of deciding on the remote interrogation, the investigator, prosecutor should provide the general requirements of Article 2 of the Criminal Procedure Code of Ukraine, which has not been practiced by law enforcement agencies of Ukraine, and therefore are difficult.

Krystyna KURSKA,

Postgraduate student organization of work and management in the prosecution of the National Academy of Prosecution of Ukraine, lawyer 2 rank

OBJECT AND SUBJECT SUPERVISION OF THE OBSERVANCE AND APPLICATION OF LAWS IN THE USE AND PROTECTION OF WATER RESOURCES

Scientific content of this article is the disclosure of the concepts object and the subject of Public Prosecutions. This is due to various factors arising during the prosecutor supervisory authorities in various spheres of social life.

Today, one of the most effective legal means to ensure the legality of the use and protection of water resources and activities can be considered as organs, namely the implementation of the supervision of the observance and application of laws.

A proper definition of the essence of concepts of the object and the subject of any government and administration allows to define the limits of their competence and authority to individualization places in the state mechanism, the tasks assigned to them under the law.

The author gives the factors that affect the state of pollution, depletion and degradation the water resources. There are object, subject and beyond the Dnipro supervision of environmental prosecutor (who acts as regional) and inter-regional environmental prosecutors. These competencies include questions relating to the Dnipro river and its reservoirs, Dnipro-Bug estuary and their protection zones, coastal protection strips. In view of the foregoing it can be stated that the greater will be determined subject supervision of the observance and application of the laws, the

more objectively and fully provided for in the legislation will limit the use of environmental prosecutors office.

Therefore, disclosure of the contents of the object and the object concepts supervision of the observance and application of laws in the use and protection of water resources contributes to the definition of competence Dnipro environmental prosecutor's office, which consists in carrying out its activities within the Dnipro river and its reservoirs, Dnipro-Bug estuary, their protection zones and coastal protection strips.

***Maxim MELNICHENKO*,**

Deputy Attorney in Podolsk district of Kyiv
graduateNational Academy
of Prosecution of Ukraine , Counsellor of Justice

CONCEPT AND TYPES OF CRIMES AGAINST ACQUISITION OF EVIDENCE IN CRIMINAL PROCEEDINGS UNDER THE CRIMINAL CODE OF UKRAINE

The papers analyzes theoretical generalizations of essential features and the definition of "crimes against the acquisition of evidence in criminal proceedings" and alsoestablishment and general characteristics of the socially dangerous acts that belong to this group of crimes.

Describing the essential features of this type of crime, it is concluded that the title of section XVIII of the Criminal Code of Ukraine "Crimes against justice" includes not only the work of the court , but the police and those who contribute to its implementation. The author proposes not to change the name of the section , as is suggested in the theory of criminal law.

It has been determined that forensic scientists distinguish between offenses against justice those who violate the procedural order of receipt of evidence or impinge on relationships that ensure reliable evidence and true opinions in the case. But somehow refined their name,"crimes against acquisition of evidence". Among them a special place is occupied by those who violate the procedure for obtaining evidence in criminal proceedings. After all, it concerns the most dangerous offenses - criminal (crimes and criminal offenses). Therefore, among the crimes against the acquisition of evidence will isolate crimes against the acquisition of evidence in criminal proceedings. The procedure for obtaining evidence may be violated not only the people who designed it to provide in accordance with the Code of Ukraine , but also other members of the criminal proceedings, which shall comply with the relevant legal procedures for obtaining evidence and involved in the investigation (investigation) acts in a manner consistent CPC of Ukraine. This procedure is also impaired and those individuals who impede appearance of a witness, victim, expert in court, pre-trial investigation, compel them to refuse to give evidence or opinion, as

well as giving false testimony or opinion, or bribe the witness, victim or expert in the same order and threatening to commit specified actions in revenge for earlier testimony or data output.

It has been determined that the target of crimes against the acquisition of evidence in criminal proceedings is the order of social relations that provides reception of evidence in criminal proceedings.

In a view of the foregoing the author proposed a definition "crimes against the acquisition of evidence in criminal proceedings": provided for by Article XVIII of the Criminal Code Ukraine deliberate socially dangerous act committed by an investigator, prosecutor, employee unit that carries out investigative operations , investigating judge , judge, suspect, accused, witness, victim, expert, interpreter, designed to breach of public relations that provides reception of evidence in criminal proceedings. These include: the compulsion to testify (Article 373 of the Criminal Code of Ukraine), knowingly false testimony of a witness or victim, or deliberately false expert opinion and mistranslation during the pre-trial investigation or in court (Article 384 of the Criminal Code of Ukraine) , the refusal of a witness to refusal to testify, or an expert or interpreter to perform their duties in court or during the pre-trial investigation (Article 385 of the Criminal Code of Ukraine) and prevent appearance of a witness , victim , expert, forcing them to refuse to give evidence or opinion (Article 386 of the Criminal Code of Ukraine).

Maxim RYABENKO,
Head of the Investigation Department
of the Prosecutor's Office in Kyiv,
a doctoral candidate at the National Academy
of Prosecution of Ukraine, Counselor of Justice

BEGINNING OF COMPETENCY OF A PERSON, WHO PROVIDES PUBLIC SERVICES AS A SPECIAL SUBJECT OF CRIME

The paper researches the problem of beginning of competence of a person, who provides public services that give sufficient ground to consider this (the) person as a special subject of crimesunder Articles 365-2 and 368-4 of the Criminal Code of Ukraine. Based on the analysis of the regulatory legislation of Ukraine there was defined the time when something begins or is begun beginning of competence of persons engaged in professional activities related to the provision of public services that are listed in the disposition of the first parts of articles 365-2 and 368-4 of the Criminal Code of Ukraine: auditor, notary, valuer, expert,arbitrazh manager, independent middleman, member of laborarbitrazh and arbitral judge begins. It is stated that such competence begins from the moment:

- for an auditor–from the momentwhen agreement entered into between auditor (audit company) andpurchaser (in case of audit) or an agreement, written or oral requestfrom the purchaser to the auditor (audit firm) (in case of other audit services);

- for a notary (both public and private) –from the moment when the persons are requested him to commit (perform) the relevant notarial acts;

- for a valuer - from the momentwhen agreement entered or resolution of a court onappointing the appropriate expertise to assess the property (if an assessment is done by the subject of valuation activity – economic entity) orfrom the moment when issuing an order to the chief (if valuation is carried out by the agencies of State power or by the agencies of local self-government);

- for an expert who provides forensic expertise- from the moment whenfiling of pleadings (letter) by the purchaser (legal entity or natural person) to conduct expert research;

- for an expert who provides environmental expertise - from the moment of announcement the application about its carrying;

- for an expert who provides scientific and technical expertise from the moment when agreement for the examinationentered, which is recognized as the main document regulating the relationship between customer and organizer in the scientific and technical expertise spheres;

- for an arbitrazh manager - from the moment enactment by the economic court decision (ruling) to assign a person to occupy arbitration administrator position;

- for an independent middleman–from the moment of a written order of the Chairman of the National Mediation and Conciliation or head of the relevant department to participate in the conciliation commission , which during the day , he shall notify the parties of the employment contract (conflict);

- for a member of labor arbitrazh–from the moment with the signing of a joint agreement on the formation of labor arbitration ;

- for the arbitral judge - from the moment his appointment or election to settle a dispute.

Victor YAROSH,
prosecutor of the Prosecutor's Office of Mykolaiv,
competitor of the National Academy of Prosecution,
lawyer of the second class

CURRENT ISSUES OF DETERMINATION CRIMINAL SANCTIONS

Defining the concept of «criminal penalties» should take into account modern trends in criminal law doctrine. They settle on the following: respect for fundamental rights and freedoms of man and citizen; transformation of the principle of inevitability of criminal responsibility in the principle of inevitable reaction from the

state on a socially dangerous wrongful act; achieving the goal of re-socialization of convicts; implementation of restorative justice in Ukraine. Substantiates the position according to which criminal penalties - is part of the criminal law, showing the reaction of the state to a socially dangerous act.

Taking into account the understanding sanctions as a direction having legal fixation that is obligatory for execution and maintained by the compulsory force of the state, due to reasons of application and repressive coercion criminal legal sanctions are divided into punishment, release of punishment and its execution, immunity from punishment, coercive actions of educational and medical character, compulsory treatment. As to legal consequences that follow the commitment of a social dangerous act sanctions are divided into negative (restrictions) and positive (stimulation). Also we can define sanctions of criminal legal character and other methods of influence.

The resocializative sanctions introducing is the current tendency of world and national law. Such sanctions are enable to guarantee protection of basic human rights and freedoms.

Mariia VINTSYSLAVSKA,
post-graduate student of the department
of notarial and executive process and advocacy

ACTUAL PROBLEM OF PARTICIPATION OF PROSECUTORS IN ENFORCEMENT PROCESS

One of the priority directions of the prosecutor today is his participation in the enforcement process. This part of the prosecutor has been the object of attention of many researchers and experts - practitioners. A particular interest in this regard provokes the works of M. M Govoruha, S. O. Malahov, A. I Perepelytsya, M. V. Rudenko, V. I. Solodkiy, S. Y. Fursa, S. V. Sherbak. However, problems that occur both in theory and practice of enforcement decisions points to the fact that the role of the prosecutor in the enforcement process needs to be expand. The purpose of this article is to find the optimal form of participation of the prosecutor in the enforcement proceedings in order to protect the rights and interests of citizens (individuals) and legal entities.

Thus, among scholars and practitioners there is no consensus as to whether a prosecution commit the supervision after the law of bodies of executive services. Until recently, these issues remain unresolved and there are different concepts of scientists on this. Some scholars believe that the subject of public prosecutions "... does not include the supervision of laws by bodies of state executive service, and introduction of a documents of prosecutors reaction is actually the prosecutors invasion in the activities of the state executive service [4, c. 37-40]. Others, however,

believe that "... the prosecutor in the enforcement proceedings has dual position, on the one hand, is the ability to oversee the legality of acts and actions of the state executive, and others participants in enforcement proceedings, as well as those involved in enforcement actions, legal entities of all forms of property and citizens who are debtors, on the other hand - reference (on the basis of executive document) to the executive service with a statement of the enforcement proceedings, in case of representing the state or citizen in court "[5 , c. 21]. The Constitution of Ukraine, in Article 121 clearly defined the power of prosecution, among those the supervision of laws in the enforcement of decisions is lacking. In addition, in the law of Ukraine "On Enforcement Proceedings" such norms are absent, because by the Law of Ukraine "On Amendments to the Laws of Ukraine" On State Executive Service "and" On Enforcement Proceedings "[6] was excluded the norm about the supervision of prosecutor, and modified the control over the legality of the enforcement proceedings. This decision was due to the fact that "... the situation was unacceptable, according to which the same body appears in enforcement proceedings as a body that supervises the legality on enforcement process and as an agents of the parties..." [7, p. 107-111]. This view is quite reasonable because there is a problem combining procedural functions by prosecutor as a person who is a paticipant of the executive process and functions of the body that supervises after the law in enforcement process.

The above mentioned demonstrates the need to review the concept of the place of the prosecutor in the enforcement process and expand his powers in this process. We believe that the role of the prosecution in enforcement proceedings should not be limited only by representation of citizens' interests. We are agreed with the author R. O. Liashenko who rightly observes that "... the prosecution is endowed by state with significant powers, that can make a positive impact on the state executive service and protect people whose rights are violated by unlawful actions of a state executives and other authorized persons "[9, p. 148]. In order not to violate the principle of procedural alignment one should clearly delimitate the jurisdiction of the prosecutors in representing the citizens or the state in court and in the enforcement process and the competence of the prosecutor in supervising the legality of the enforcement proceedings in civil, commercial and administrative cases. Thus, according to the author, the subject of this review should be the supervision of laws by bodies that carry out the enforcement of judgments and other bodies (officials), compliance with laws regulations, adopted by the state executive service, and supervising the execution of judgments of the European Court of Human Rights.

Thus, summing up all the above, the author believes that the most optimal role of the prosecutor in the enforcement process in two ways:

1) as a subject of the enforcement process;

2) as the entity that supervises the legality of the proceedings in law enforcement process.

It is for this model of the prosecutor in the enforcement process, with a clear division of the competence between the prosecutors may provide the most complete

protection of rights, freedoms and interests of persons involved in the enforcement proceedings.