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FORMATION OF THE LATEST APPROACHES TO THE DOCTRINAL PROVISIONS OF CRIMINAL LAW POLICY ON COMBATING CRIMES AGAINST PROPERTY DURING MARTIAL LAW

The article examines the issues of forming the latest approaches to the doctrinal provisions of criminal law policy with regard to combating crimes against property during martial law. It is indicated that criminal law policy on crimes against property is a sphere of human and social life, the purpose of which is to guide social development by defining common goals and agreed areas of property protection by criminal law means. Unfortunately, today, in the context of the armed conflict, we have to reconsider approaches to the doctrinal provisions of the criminal law policy on combating crimes against property. However, it is worth noting that the legal doctrine of modern Ukraine had clearly defined concepts, structure, tasks, principles and levels of such policy even before the war.

It is stated that the few works of scholars devoted to this issue do not allow us to get a holistic view of this legal phenomenon. However, given that Ukraine has undertaken to adapt its legal system to the legal system of the European Union, this process, in our opinion, should begin first of all with the scientific and theoretical development of the relevant legal structures, and first of all, those which need to be improved within the national legal theory. The above explains the relevance and urgent need to develop doctrinal provisions of criminal law policy on crimes against property.

The author concludes that despite the increased liability for property crimes under martial law, there is still a tendency to commit property crimes, in particular, theft and robbery. Accordingly, the above again raises the issue of the expediency of revising the approaches to the doctrinal provisions of criminal law policy on combating crimes against property.

***Key words*:** *crimes against property, theft, crime, criminal offence, martial law, armed conflict, counteraction, criminal law policy.*

Волкова Ю. А. Формування новітніх підходів до доктринальних положень кримінально-правової політики щодо протидії злочинам проти власності під час дії воєнного стану

У статті досліджено питання формування новітніх підходів до доктринальних положень кримінально-правової політики щодо протидії злочинам проти власності під час дії воєнного стану. Вказано, що кримінально-правова політика щодо злочинів проти власності – це сфера життєдіяльності людини і суспільства, мета якої – орієнтація суспільного розвитку шляхом визначення загальних цілей

і погоджених напрямів захисту власності кримінально-правовими засобами. Нажаль сьогодні в умовах збройного конфлікту ми маємо переглядати підходи до доктринальних положень кримінально-правової політики щодо протидії злочинам проти власності. Проте варто вказати, що у правовій доктрині сучасної України й до війни були вітсутні чітко сформовані поняття, структура, завдання, принципи та рівні такої політики.

Констатовано, що поодинокі праці науковців, присвячені названій проблематиці, не дозволяють отримати цілісне уявлення про назване правове явище. Однак з огляду на те, що Україна узяла на себе зобов'язання адаптувати власну правову систему до правової системи Європейського Союзу цей процес, на нашу думку, має бути розпочатий насамперед з науково-теоретичної розробки відповідних правових конструкцій і передусім тих з них, які потребують удосконалення у межах вітчизняної правової теорії. Саме викладеним і пояснюється актуальність та нагальна необхідність розробки доктринальних положень кримінально-правової політики щодо злочинів проти власності.

Зроблено висновок, що незважаючи на посилення відповідальність за злочини проти власності в умовах воєнного стану продовжує мати місце тенденція до вчинення майнових злочинів, зокрема крадіжок та грабежів. Відповідно наведене знов актуалізує питання доцільності перегляду підходів до доктринальних положень кримінально-правової політики щодо протидії злочинам проти власності.

***Ключові слова*:** *злочини проти власності, крадіжка, злочин, кримінальне правопорушення, воєнний стан, збройний конфлікт, протидія, кримінально-правова політика.*

Introduction. Let's start with the question of what the concept of politics includes. Most researchers note that the specificity of politics is related to the ability to ensure the integrity of society, coordinate different interest groups, and effectively regulate social relations. The content of the policy can be disclosed by formulating its essential features: 1) politics is the sphere of power relations, relations regarding power, its organization, distribution between different groups of interests, determination of the direction of activity of the state and its institutions; 2) politics is a way of organizing social life based on the integration of heterogeneous interests, their coordination on the basis of a common interest that unites all members of society; realization and dominance of the general interest as opposed to the private needs of individuals, groups, etc.; 3) Politics is the activity of elites and leaders to guide and manage the processes of social development at all levels with the help of state institutions [1].

Politics as a social phenomenon is a multifaceted, dynamic phenomenon that forms the main directions of development in the legal and other spheres of social existence of society and the state. The formation of such directions of development in the legal sphere allows to determine its main priorities, streamline law-making activities, and, accordingly, ensure the creation of an effective mechanism of legal regulation. This can be achieved through the formation of a legal policy, which is designed to balance and streamline legal life.

Legal policy is a multi-level legal formation that includes: 1) ideas, principles, goals, tasks that make up a certain conceptual basis of policy in the field of law, and their absence destroys the process of building a system; 2) legal and political conditions prevailing in a certain period of time; 3) strategies and tactics of legal development; 4) means of legal policy.

Task statement. The purpose of the article is to research the issue of the formation of the latest approaches to the doctrinal provisions of the criminal law policy regarding countering property crimes during martial law.

Research results. Improvement of legal policy should lead to changes and encourage the development of social reality. In turn, legal science should "not only describe, comment on and

systematize legal phenomena and processes, but also logically "calculate" the probabilities of improvement and transformation of legal reality, foresee the possibilities of its development". The main goal of the legal policy of the state is the stable effective development of the legal system.

An important component of legal policy is combating crime, which is designed to reduce its level and ensure a state that meets the needs of protecting society from crime [2]. State policy in the field of combating crime consists of types, the characteristic features of which are determined by the tasks, subject and methods of achieving the results necessary for society. Such types are: criminal law, criminal procedure, criminal executive and criminological policies.

The concept of "criminal law policy" is used and interpreted ambiguously in the specialized literature. In legal science, there are different views on the question of what the term itself should sound like: "criminal policy" or "criminal law policy". Most of the modern authors for the definition of policy related to the formation of a system of norms of substantive criminal law, the definition of the boundaries of criminal and non-criminal, the problems of the effectiveness of the application of substantive criminal law, etc., the term "criminal law policy" is used [3].

A stable, predictable, and effective criminal law policy of the state is reflected in the Criminal Code, fixing its directions, [4] which are formed on the basis of the grouping of objects of criminal encroachments (the criterion for such a division is the generic object of the crime) and are determined by the level of significance of the social relations regulated by them.

P.L. Fris singles out the directions according to the spheres of criminal law policy, among others highlighting the criminal law policy in the field of combating crimes against property [5]. We cannot fully agree with the above formulation, since any direction is in the sphere of a certain defined group of social relations. The direction of criminal law policy determines its purposeful action. The sphere of application of the policy characterizes the very circle of social relations through which the direction of criminal law policy passes. Criminal law policy on combating crimes against property is a direction of criminal law policy, the actions of which are in the field of public property relations and are aimed at protecting social relations inherent in property relations from socially dangerous encroachments by means of criminal law.

The model of criminal law policy on combating crimes against property, as the basis of its doctrine, should include the following components: object, subject, subjects, purpose, scope, vectors, and principles. Its development is due to the following factors: 1) today there is no unified systematic approach to property protection; 2) the requirements for improving the effectiveness of property protection are growing, considering its extension to individual objects of protection; 3) there is no algorithm for improving property protection in the context of globalization and virtualization of the world in the postmodern era.

Appreciating property as the highest value, and, accordingly, objects in need of criminal law protection, criminal law policy on combating crimes against property is designed to create a system of political and legal measures aimed at protecting property from socially dangerous encroachments. Criminal law policy on combating crimes against property should be perceived as a policy, the system of measures of which ensures the proper development, timely implementation, and effective implementation of the norms of substantive criminal law aimed at protecting property from socially dangerous encroachments.

The object of criminal law policy on combating crimes against property is the security of those social relations from socially dangerous encroachments, which are covered by the action of such policy. Of course, the scope of criminal law policy on combating crimes against property is not limited to social relations in the property sphere. The range of such relations is much wider.

Objects of property are in a state of continuous interaction with other objects and subjects, and such interaction is accompanied by the emergence of new forms and types of criminal encroachments. Therefore, the process of searching for and acquiring new knowledge about crimes in the property sphere and the most effective measures to ensure the protection of property by criminal law means is of great importance.

In order to develop or create a program of certain measures that meet the requirements of our time, first of all, it is necessary to understand the definitions. The correct definition of the essence of the concept of property is an important prerequisite for its successful and full-fledged existence.

In the legal literature, the interdisciplinary nature of the institution of property is recognized. Since property is an object not only of civil, but also of labor, administrative, financial, criminal legal relations, this category is general law, and, accordingly, its concept should be the same for the legal system. Unfortunately, today property, as an integral component of the domestic legal system, is torn apart by sectoral sciences and domestic legislation. In order to prevent the splitting of the integrity of this concept, it is necessary to strive for so that its content is interneural. Heterogeneous understanding of this category is the main obstacle to improving criminal law legislation aimed at protecting property, eliminating conflicts in criminal law and developing modern criminal law policy in the field of combating crimes against property.

Throughout history, the path to understanding the concept of property in law has been ambiguous. In prerevolutionary jurisprudence, the right of property was regarded as the complete domination of a person over a thing. The founders of the Soviet legal school were characterized by an economic view of property. It was generally recognized in the specialized literature that economic property relations, which acquired legal regulation, became property relations [6].

Pre-revolutionary criminal law focused not on the protection of the nature of property rights, but on the various ways of exploiting it. Having agreed on the objects of protection, pre-revolutionary criminal law adapted the institution of property to them. In the same way, the variety of subjects (owner, tenant, creditor, etc.) was simplified, each of which had an independent legal status and an individual relationship to property.

Thus, pre-revolutionary criminal law protected the rights of not the legal, but the actual owner, user and manager of property. This approach to property was the basis of the pre-revolutionary theory of crimes against property. In this theory, property (like the owner himself) was an abstract concept. As a result, the institution of ownership was simplified. Pre-revolutionary jurists identified the owner with the owner, and property with property. Possession replaced both the right of ownership and other property rights.

The system of Soviet criminal law preserved the uncertainty of the position of the institution of property. In the theories of Soviet criminal law, emphasis was placed on property. This was due to the fact that, from the point of view of Marxism, property is a certain form of social relations regarding the appropriation and possession of material goods.

With the development of economic turnover, relations regarding property have become much more complicated. There was a new look at acts that caused property damage, but did not fall under the category of "crimes against property", but the above did not lead to a revision of the basic definitions.

Modern domestic legal science still continues to feel the powerful influence of the Soviet legal ideology. Many of the legal concepts (including the concept of property protection) continue to live in Ukrainian legal science. We are convinced that these theories and concepts cannot find a place in the legal theory of the country, which has proclaimed itself a democratic, legal and social state, so the revision and formation of new modern approaches is extremely necessary.

In a state that proclaims the protection of property, the economic (property) and legal (property rights) content of property must not be separated. They exist in inseparable unity [7]. Today, most countries in the world adhere to this concept.

Confirmation of the above can be found in the French Civil Code in Art. 544, where the following definition is proposed: «La propriete est le droit de jour et disposer des choses...» [8]. The term «*La propriete*» is translated as "property" and "ownership".

A similar approach is observed in the civil law of Spain. In Art. 348 of the Spanish Civil Code, the definition of property rights: «La propriedad es el derecho de gozar в diesponer de una cosa...» [9]. The term «*La propriedad*» translates as "property" and as "right of ownership" [10].

In the Argentine Civil Code, the term "El dominio" is used to refer to property rights: «Art. 1882. El dominio es el derecho real que otorga todas facultades de usar, gozar

в disponer de una cosa...» [11]. The term «*El dominio*» translates as power, domination, possession [12].

A similar conclusion is given by the analysis of the relevant civil law norms of Italy. The third book of the Civil Code contains rules on the right of property [13]. The term «*la proprieta*» translates as property.

The civil laws of the State of California and the Province of Quebec also do not distinguish between property and ownership. According to Art. 654 of the California Civil Code, property rights are to be understood as follows: «The ownership of a thing is the right of one or more persons to possess and use it to the exlusion of others» [14]. A similar provision is contained in Art. 947 of the Quebec Civil Code: «Ownership is the right to use, enjoy and dispose of property fulli and freely...» [15]. The terms «ownership», «property» are translated as "property", "right of ownership", "property" [16] and do not coincide with the Ukrainian concept of property [17]. A similar approach can be found in the codes of Portugal (Art. 1305) and Switzerland (Art. 641).

Based on this, we can assume that in the civil law and legislation of many countries of the world there is no clear distinction between property and property rights. The European doctrine also includes the concept of "property rights" in the term "property", as if it presupposes an understanding of "property rights". Hence, property is understood in a broad sense.

Analyzing the practice of the European Court, in the context of the European Convention, the concept of "property" is constantly expanding. This, of course, is facilitated by the position of the European Court, which constantly repeats that "property" within the meaning of the Convention and its Protocol is an autonomous phenomenon that is in no way related to the national understanding and has an interpretation independent of the national one [18].

Today, Ukraine has come close to the need to adapt the current legislation to the norms of the European Union (EU). The development of criminal law policy and the harmonization of Ukrainian legislation, including criminal law policy on crimes against property, with the basic principles of EU law is a necessary element in this area. In addition, the above is actualized by the presence of an armed conflict, which also actualizes the above.

The modern domestic science of civil law considers property in two senses: in a narrow sense – as a set of things and in a broad sense – as a set of things, property rights and obligations. This approach has led to the fact that the legislator introduced an ambiguous approach to the concept of property with regard to Section 6 of the Special Part of the Criminal Code.In cases of understanding in a broad sense, this is directly enshrined in the dispositions of the articles (in Article 190 of the Criminal Code, not only property is called the subject, but also the right to it). In the dispositions of other articles (Articles 185, 186, 187 of the Criminal Code), the legislator does not give any instructions regarding an extended interpretation, so the concept of property should be used in a narrow sense. This causes the main problems of qualification.

Now, more than ever, there is an urgent need to revise, improve and form a new approach to the universal interintegral concept of property, which does not suppress existing and emerging relations, but is able to cover their diversity as widely as possible. When defining the concept of property, it is necessary to proceed from the peculiarities of the protection enjoyed by criminal law relations, etc. If absolute protection, resistance to encroachment by third parties can be recognized as primary, then the objects of property should be all objects that society wants and is able to protect by criminal law means. Consolidation of property as an object of protection from criminal encroachments allows to cover both a static state (refraining from illegal actions) and active behavior of subjects (use of rights, fulfillment of duties).

This in no way reduces the role of other elements (components). However, as in every system (and criminal law policy on combating crimes against property is an appropriate system characterized by all the features of the system), something must be the main, determining, so to speak, driving force. In this system, this function is performed by the concept of property.

The analysis of the concepts of understanding the concept and content of property allows us to draw several important conclusions. Property is an autonomous phenomenon that should be interpreted regardless of its national understanding [18] and include three components: the first is

every day (social) perception at the level of common sense, in which property is something (material) that belongs to anyone. The second is legal, in which property includes property, property rights, and property rights. The third is economic, or rather political, as a systemic category, where property is not a person's relation to any object, and relations between people regarding the appropriation (alienation) of this object. Moreover, appropriation and alienation are categories that express an objective contradiction between the two sides of the content of property, and therefore, with the liquidation of alienation, both appropriation and, accordingly, the property relations themselves are eliminated. All three components have criminal law features: in the first case, property acts as an object of criminal encroachment; the second and third are the object at which the crime is directed.

Based on a broad interpretation of the concept of property, the object of criminal law policy on combating crimes against property should be understood as social relations that form a state of security from:

1) socially dangerous encroachments on property;
2) socially dangerous encroachments on property rights;
3) socially dangerous encroachments on property rights.

These objects should be reflected in the provisions of Section VI of the Special Part of the Criminal Code of Ukraine, taking into account the trends in the development of modern public life, which necessitates the extension of the ownership regime to intangible objects as well.

Conclusions. With the beginning of the war, martial law was introduced, and later laws were adopted that amended the Criminal Code of Ukraine (hereinafter referred to as the Criminal Code of Ukraine), increasing criminal liability for a number of crimes under martial law.

In particular, from March 7, 2022, Law No. 2117-IX amended the Criminal Code of Ukraine to strengthen liability for crimes under Art. 185, 186, 187, 189, 191 of the Criminal Code of Ukraine, committed under martial law. These are the main property crimes that have always made up a significant part of all criminal statistics in Ukraine – theft, robbery, robbery, extortion, as well as embezzlement and seizure of property by abuse of office.

For example, theft – Part 1 of Art. 185 of the Criminal Code of Ukraine was previously considered not a crime, but a criminal offense, and it was punishable by a fine of 17 thousand hryvnias to restriction of liberty for up to 5 years. Only in the case of theft repeatedly or by prior conspiracy by a group of persons (Part 2 of Article 185 of the Criminal Code of Ukraine), with entry into a dwelling or other property (Part 3 of Article 185 of the Criminal Code of Ukraine) or on a large, especially large scale (Parts 4, 5 of Article 185 of the Criminal Code of Ukraine) – punishment in the form of imprisonment was provided.

Today, theft committed under martial law or a state of emergency is a particularly qualified crime. Committing theft under martial law is immediately qualified under Part 4 of Art. 185 of the Criminal Code of Ukraine, which is punishable by imprisonment from 5 to 8 years.

Similar changes on March 8, 2022 are provided for robbery, robbery, extortion, as well as embezzlement and seizure of property by abuse of office (corruption crime), which are committed under martial law or a state of emergency. All these crimes are qualified immediately under Part 4 of the relevant article (186, 187, 189, 191 of the Criminal Code of Ukraine) as especially qualified.

Despite the increased responsibility for crimes against property under martial law, there continues to be a tendency to commit property crimes, including theft and robbery. Accordingly, the above again actualizes the issue of the expediency of revising approaches to the doctrinal provisions of criminal law policy on combating crimes against property.

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