

обумовлює труднощі тлумачення та подальшого застосування відповідних кримінально-правових заборони. Розв'язання вказаних проблем можливе в умовах комплексного реформування кримінального законодавства України.

Література:

1. Ладнюк В. Р. Кримінально-правова характеристика перешкоджання діяльності народного депутата України та депутата місцевої ради : дис. ... канд. юрид. наук : 12.00.08. Київ, 2020. 255 с.

2. Науково-практичний коментар Кримінального кодексу України / [А. М. Бойко, Л. П. Брич, О. О. Дудоров та ін.] ; за ред. М. І. Мельника, М. І. Хавронюка. [10-те вид., переробл. та доповн.]. Київ : Дакор, 2018. 1360 с.

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PECULIARITIES OF THE DEFINITION OF A VICTIM OF THE CRIME, WHICH IS PROVIDED BY PART 2 OF ART. 377 OF THE CRIMINAL CODE OF UKRAINE

ОСОБЛИВОСТІ ВИЗНАЧЕННЯ ПОТЕРПІЛОГО ВІД ЗЛОЧИНУ, ЯКИЙ ПЕРЕДБАЧЕНИЙ Ч. 2 СТ. 377 КРИМІНАЛЬНОГО КОДЕКСУ УКРАЇНИ

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According to the provisions of the Constitution of Ukraine [1], the Laws of Ukraine «On the Judiciary and the Status of Judges» dated June 2, 2016 No. 1402-VIII [2], «On the High Council of Justice» dated December 21, 2016 No. 1798 – VIII [3] the function of justice is carried out in Ukraine exclusively by the courts.

Persons who, in accordance with the law, administer justice in courts, shall have all human and civil rights and freedoms guaranteed by the Constitution of Ukraine and international legal acts. One of the human rights is guaranteed by Art. 27 of the Constitution of Ukraine [1] the right to life and health. The holders of the judiciary perform important procedural duties in the administration of justice and encroachment on their health in connection with the administration of justice by them will necessarily harm not only the holders of the judiciary themselves, but also the functioning of the judiciary.

Therefore, Part 2 of Art. 377 of the Criminal Code of Ukraine (hereinafter referred to as the CCU) provides for the criminal liability for intentionally inflicting beatings, light or moderate bodily harm on a judge, lay assessor or juror or their close relatives in connection with their activities related to the administration of justice [4]. But the current version of this article was adopted on February 23, 2014, before the current Law of Ukraine «On the judiciary and the status of judges» dated June 2, 2016 No. 1402-VIII [2] was adopted, from which the judicial reform, which is still ongoing in Ukraine, began, and the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding Simplification of Pretrial Investigation of Certain Categories of Criminal Offenses» dated November 22, 2018 No. 2617-VIII [5] came into force, according to which a large-scale reform of Criminal codex of Ukraine was carried out. Since Part 2 of Art. 377 of the Criminal Code [4] protects the health of judicial power holders from criminally unlawful encroachments, the question arises to what extent the list of protected parts of 2 Art. 377 of the Criminal Code [3] of persons corresponds to the modern list of holders of judicial power in the Ukrainian judicial system?

The crime provided for in Part 2 of Art. 377 of the Criminal Code, has a material composition. The main direct object of the crime under Part 2 of Art. 377 of the Criminal Code are social relations that ensure the independent administration of justice by the court [6, p. 69], the additional obligatory object of a crime under Part 2 of Art. 377 of the Criminal Code [4], are public relations guaranteed by the Constitution of Ukraine that ensure the physical integrity and health of a person.

The objective side of Part 2 of Art. 377 of the Criminal Code, described by the legislator as the intentional infliction of beatings, light or moderate bodily injuries on a judge, lay assessor or juror or their close relatives [4], here «infliction» is a process of damage to health, the consequences of this process are defined respectively as «beatings», «light bodily injury» and «moderate bodily injury» and a causal relationship between act and consequences.

Beating means repeated (two or more) blows to the body of the victim, which did not cause bodily harm, but caused physical pain. Bodily injury is an unlawful and culpable violation of the anatomical safety of tissues, organs

of the victim and their functions, arising as a result of the action of one or more external damaging factors.

Infliction of bodily harm of varying severity is a type of physical violence that harms the physical integrity of a person and his health. Bodily injuries are classified according to severity in accordance with the Rules for the forensic medical determination of the severity of bodily injuries No. 6 of January 17, 1995 [7]. In this case, to qualify the act under Part 2 of Art. 377 of the Criminal Code [4] it is necessary to determine bodily injuries according to the severity to mild or moderate.

The subject of the crime, provided for in Part 2 of Article 377 of the Criminal Code [4], has a universal age of reaching criminal responsibility – 16 years in the event of a beating or a slight bodily injury, or the exceptional age of reaching criminal responsibility – 14 years in the case of a medium-gravity bodily injury.

The subjective side of the crime, provided for by Part 2 of Art. 377 of the Criminal Code [4] consists of mandatory features: guilt in the form of direct intent and a special purpose in creating obstacles for a judge, lay assessor or juror to carry out their lawful activities in the administration of justice.

Victims of a crime under Part 2 of Art. 377 of the UCU [4] are divided into three categories. The first category includes a judge – a citizen of Ukraine, who is appointed as a judge, holds a full-time judicial position in the court of Ukraine and administers justice on a professional basis in accordance with Part 1 of Art. 52 of the Law of Ukraine «On the judiciary and the status of judges» dated June 2, 2016 No. 1402-VIII [2].

The second category includes a juror – this is a person who, in cases determined by the procedural law, and with his consent, decides cases in the court together with the judge or is involved in the administration of justice in accordance with Art. 63 of the Law of Ukraine «On the judiciary and the status of judges» dated June 02, 2016 No. 1402-VIII [2].

The people's assessor belongs to the third category of victims. The position of a people's assessor was liquidated by the Law of Ukraine «On Amendments to the Civil Procedure Code of Ukraine (on consideration of cases with the participation of jurors)» dated February 9, 2017 No. 1847-VIII [8].

Since the existing in the disposition of Part 2 of Art. 377 of the Criminal Code [4] list of victims of a crime under Part 2 of Art. 377 of the Criminal Code [4], is clearly outdated and lags behind the current state of Ukrainian legislation in the field of judiciary, the author proposes to cite Part 2 of Art. 377 of the Criminal Code [4] in accordance with the current Ukrainian legislation in the field of the judiciary by excluding the people's assessor from the list of victims of the crime under Part 2 of Art. 377 of the Criminal Code [4], in the disposition of Part 2 of Art. 377 of the Criminal Code [4].

References:

1. Конституція України. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (дата звернення 16.05.2023 року).
2. Закон України «Про судоустрій і статус суддів» від 02.06.2016 р. № 1402-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text> (дата звернення 16.05.2023 року).
3. Закон України «Про Вищу раду правосуддя» від 21.12.2016 р. № 1798-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1798-19#Text> (дата звернення 16.05.2023 року).
4. Кримінальний кодекс України від 05.04.2001 р. № 2341-III URL: <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=2341-14> (дата звернення 16. 05. 2023 року)
5. Закон України «Про внесення змін до деяких законодавчих актів України щодо спрощення досудового розслідування окремих категорій кримінальних правопорушень» від 22.11.2018 р. № 2617-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2617-19> (дата звернення 16.05.2023 року).
6. Карпова Н. Ю. Кваліфікація злочинів проти правосуддя: курс лекцій: навчальний посібник. Київ: Юринком Інтер, 2019. 180 с.
7. Правила судово-медичного визначення тілесних ушкоджень: затверджені наказом МОЗ від 17.01.1995 р. № 6. URL: <http://zakon4.rada.gov.ua/laws/show/z0255-95> (дата звернення 16.05.2023 року)
8. Закон України «Про внесення змін до Цивільного процесуального кодексу України (щодо розгляду справ за участю присяжних)» № 1847-VIII від 09.02.2017 р. URL: <https://zakon.rada.gov.ua/laws/show/1847-19#Text> (дата звернення 16.05.2023 року).