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## **INTRODUCTION OF CRIMINAL MISDEMEANOR INSTITUTE TO THE CRIMINAL LIABILITY LAW AS A CURRENT PROBLEM**

Since the term «a criminal misdemeanor» was introduced to the Criminal Procedure Code of Ukraine (hereinafter - the CPC of Ukraine) in 2012, more questions than answers regarding this category of offenses have remained unanswered. The main problem is that the term «a criminal misdemeanor» exists only as a norm of procedural law that cannot be applied in substantive law regulations due to the absence of this institute. In the meantime, the scientific society has generated different and opposite opinions concerning this issue.

There is, therefore, a pressing necessity to assess the possibility of introducing the term «a criminal misdemeanor» to the Law on criminal liability. It is important to compare the views of scientists and outline the directions for further research.

The issues concerning «a criminal misdemeanor institute» introduction into domestic legislation have been scrutinized by: A. Baida, Y. Hrodetskyi, V. Tuliakov, A. Kaplina, N. Mitritsan, G. Pimonov, V. Tatsyi, M. Khavroniuk and others. However, most of the proposals were not taken into account by the legislature.

In accordance with Chapter X (Final regulations) of the CPC of Ukraine, the regulations relating to the criminal proceedings that involve misdemeanors will be enacted simultaneously as soon as the law of Ukraine on misdemeanors comes into force [2]. This implies that the legislative act aimed to regulate the misdemeanors separately from the Criminal Code of Ukraine should be adopted. In fact, this regulation, as set forth in CPC of Ukraine, is not executed in practice and does not find support among scientists.

In particular, the draft law «On Amendments to Certain Legislative Acts of Ukraine introducing misdemeanors» was registered by Verkhovna Rada of Ukraine. It was submitted by such deputies of Ukraine as A. Kozhemiakin and others. The explanatory note to this bill states that it is inappropriate to unify misdemeanors in a separate Code or criminal misdemeanors law because the general terms of this bill would reword the terms of the General Part of the Criminal Code of Ukraine [3]. In authors' opinion, such legal regulation will neither follow the principle of criminal law unification nor make possible the minimization of standards, specifications and guidelines.

However, in our view, if the draft law №2897 is adopted, we will have the consequences when the Criminal Code standards and amendments to the CPC of Ukraine come in collision as the legislator pointed out the necessity for the exis-

tence of criminal misdemeanor institute.

According to the concept of the legislator the conviction for committing a criminal misdemeanor will not have such a negative legal consequences as a criminal record. But the criminal record itself is the sign of criminal liability that makes it different from other types of liabilities. In addition, the law draft is aimed to decriminalize some offenses gradually, but together with the introduction of administrative offenses in terms of misdemeanors to the Criminal Code, they will be considered to be criminal offenses. Thus, on the contrary, they will be criminalized. In the meantime, the draft law is aimed to distinguish «a criminal misdemeanor» from related categories of offenses (crime or administrative offense). So, the question that has to be answered is whether it is reasonable to define misdemeanors «criminal» or not?

The Criminal Law Department of National University «Odessa Law Academy» believes that the problem of a criminal misdemeanor should be solved in the context of the Criminal Code of Ukraine. In particular, the term «a criminal offence» and its types (crime and a criminal misdemeanor) should be defined in the General part of the Criminal Code of Ukraine. It is necessary to specify the basis for criminal liability and make legislative changes in the types of crime. The special part of the Criminal Code also needs to be reviewed. The changes related to the criminal misdemeanor introduction to the criminal law of Ukraine have to be made [1].

Contrary to these ideas, the legal specialists who work at Yaroslav Mudryi National Law University insist on introducing the misdemeanor institute as a new type of legal liability that is different from the administrative and criminal ones. These ideas are reflected in «The concept of misdemeanor implementation via the adoption of the Law (Code) of Ukraine on misdemeanors» [4].

Khavroniuk M. and Khavroniuk A. also stand for “not including them in the existing Criminal Code as this cannot be considered as the best possible way because it would require substantial and unjustifiable revision of the Criminal Code and create confusion in the structure of its norms and institutions ... it would result in unjustified criminalization of a large amount of actions that have negative impact on the crime rate in society. As a result, it would increase statistical indicators artificially that undoubtedly leads to bad judgment about the political situation in the country [p. 429-431; 5].

In view of the above said it can be concluded that there are such current problems of criminal misdemeanor introduction into the criminal liability law as: 1) unnecessary amendments of the Criminal Code of Ukraine; 2) the introduction of a new type of legal liability, which is allied between administrative and criminal ones; 3) inconsistency between the draft Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine introducing misdemeanors» (reg. number 2897 of d/d06.03.2015) and the legal requirements of the CPC of Ukraine that provides a basis for the law adoption on criminal misdemeanors. The directions for future research include developing legal arguments to support the implementation of criminal misdemeanor institute to the criminal liability law with regard to the needs and

powers of pretrial investigation bodies of National Police.

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2. Кримінальний процесуальний кодекс України від 13.04.2012 № 4651-VI [Електронний ресурс]/Верховна рада України – Режим доступу: <http://zakon3.rada.gov.ua/laws/show/4651-17>

3. Проект Закону «Про внесення змін до деяких законодавчих актів України щодо запровадження кримінальних проступків» №2897 від 19.05.2015 р. [Електронний ресурс]/Верховна рада України – Режим доступу: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=55214](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55214)

4. Тацій В.Я. Концепція впровадження проступку шляхом прийняття Закону (Кодексу) України про проступки (проект для обговорення) / Василь Тацій, Володимир Тютюгін, Оксана Капліна, Юрій Гродецький, Антон Байда // Юридичний вісник України. – 2014. – 24-30 трав. (№ 21). – С. 12–13 ; 31 трав.-6 черв. (№ 22). – С. 12–13 ; 7-13 черв. (№ 23). – С. 12–13.

5. Т.І. Созанський, М.М. Сенько Кримінальний кодекс України - 10 років очікувань. Тези Збірник праць. - Львів, 2011.- 494с.

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## **АКТУАЛЬНІ ПИТАННЯ КЛАСИФІКАЦІЇ ЗЛОЧИНІВ ПРОТИ ГРОМАДСЬКОЇ БЕЗПЕКИ**

У статті 3 Конституції України задекларовано, що безпека людини визнається однією з найвищих соціальних цінностей нарівні з її життям і здоров'ям, честю і гідністю, а також недоторканністю. Отож, протидія злочинам, що посягають на безпеку людей, є одним із найбільш пріоритетних напрямів діяльності правоохоронних органів. Разом із цим у Кримінальному кодексі України (далі – КК України) об'єктом кримінально-правової охорони визнані різні види безпеки, зокрема, громадська безпека, безпека виробництва, безпека руху та експлуатації транспорту, національна безпека. Загальну безпеку людей ототожнюють з громадською безпекою або суспільною безпекою. Як слушно зауважує В. П. Тихий, розробка численних і складних питань відповідальності за окремі злочини проти громадської безпеки не може бути плідною, якщо не має в своїй основі загальнотеоретичного підґрунтя [1, с 39], до якого, на наш погляд, слід віднести і питання класифікації злочинів проти громадської безпеки.

В. О. Навроцький за об'єктом злочини проти громадської безпеки поді-