

violence in the conditions of martial law, it is determined that it is appropriate to hold regular preventive discussions with families who survived and left the temporarily occupied territories: families who lost close relatives; families in which close relatives are in the military, etc. That is, during martial law, it is quite important that general and specialized support services for victims take appropriate preventive measures to prevent domestic violence.

Keywords: *legal regime of martial law, domestic violence, administrative responsibility, forms of domestic violence, combating crimes.*

UDC 343.3

DOI 10.31733/2078-3566-2023-5-150-156



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THE ETYMOLOGY OF THE CONCEPT OF "DESECRATION" IN CRIMINAL LAW OF UKRAINE

Ірина Циб. ЕТИМОЛОГІЯ ПОНЯТТЯ «НАРУГА» У КРИМІНАЛЬНОМУ ЗАКОНОДАВСТВІ УКРАЇНИ. У статті досліджуються етимологічні витoki поняття «наруга» в кримінальному праві України. Автор вказує, що ґрунтовне та всеохоплююче дослідження будь-якого кримінально-правового явища потребує дослідження його етимологічних витоків. Таке дослідження сприяє накопиченню знань про сутність явища як такого, та його використання/застосування в залежності від демократичних та правових цінностей людства на кожному наступному етапі його розвитку. Наразі поняття «наруга» використовується у кримінальному законодавстві у двох статтях КК України – ст. 297 «Наруга над могилою, іншим місцем поховання або над тілом померлого» та ст. 338 «Наруга над державними символами». В той же час Кримінальний кодекс України не вказує, які дії слід вважати кримінально-караною наругою.

Дослідивши наявні у словниках визначення поняття «наруги» автор робить висновок, що вони не зовсім вдало співвідносяться із діями, які утворюють об'єктивну сторону кримінальних правопорушень, ознакою яких є «наруга». Саме поняття «наруга» має значну кількість синонімів, проте жоден з них не в змозі повністю охопити ті дії, які входять в поняття «наруга». Також робиться висновок, що використання в назві та диспозиції кримінального правопорушення, передбаченого ст. 297 КК України поняття «осквернення/оскверняти» є більш доцільним, оскільки воно охоплює як дії, які характеризуються поняттям «наруга» згідно словників української мови, так і дії, які утворюють об'єктивну сторону кримінального правопорушення, передбаченого ст. 297 КК України та дії, які закріплені у Законі України «Про поховання та похоронну справу».

Що стосується використання в назві та диспозиції кримінального правопорушення, передбаченого ст. 338 КК України поняття «зневага/зневаження», то автором робиться висновок про доцільність використання саме цього поняття, оскільки поняття «зневага» є протилежним за значенням поняттям поняттю «повага», а в Конституції України закріплено обов'язок громадян виявляти шану державним символам України, тобто поважати їх.

Ключові слова: *наруга, осквернення, зневага, повага, наруга над могилою, наруга над державними символами.*

Relevance of the study. A thorough and comprehensive study of any criminal phenomenon requires a study of its etymological origins. Such a study contributes to the accumulation of knowledge about the nature of the phenomenon as such and its use/application depending on the democratic and legal values of humanity at each subsequent stage of its

development. An accurate description of the characteristic elements of any legal phenomenon is carried out with the help of legal concepts. It is the legal concept that describes the content of the phenomenon, lists the signs of its identification and distinguishes it from similar phenomena.

At present, the concept of "desecration" is used in criminal law in two articles of the Criminal Code of Ukraine – in article 297 "Desecration of a grave, other burial place or the body of the deceased" and in article 338 "Desecration of state symbols". At the same time, the Criminal Code of Ukraine (hereinafter referred to as the CC of Ukraine) does not specify which acts should be considered criminal desecration.

Recent publications review. Certain problematic issues of "desecration" are reflected in the works of I. Bandurka, O. Bandurka, V. Holina, N. Horb, P. Hryshanin, I. Danshin, S. Denisov, V. Dziuba, A. Zelinsky, M. Korzhansky, O. Kostenko, L. Kuchanska, A. Landina, S. Lykhova, V. Lomako, V. Ludvik, P. Matyshevskiy, P. Mykhailenko, V. Navrotsky, V. Puliayev, P. Serdiuk, M. Khavroniuk, S. Yatsenko and others. However, despite a considerable number of scientific works, "insult" remains an under-researched phenomenon of criminal law.

In this regard, it is necessary to study the etymological origins of the concept of "desecration" in Ukrainian criminal law.

The article's objective is to examine the etymology of the concept of "desecration" in the Criminal Law of Ukraine.

Discussion. Academic explanatory dictionaries of the Ukrainian language define desecration as:

- 1) intolerable ridicule;
- 2) malicious ridicule of someone or something [1, 2].

We believe that the definitions of desecration given in the dictionaries do not quite successfully correlate with the acts that form the objective side of criminal offences, a feature of which is "desecration".

For example, the scientific and practical commentary to Article 297 of the Criminal Code of Ukraine and other educational sources on criminal law of Ukraine state that desecration may be committed by desecrating a grave, making contemptuous inscriptions, drawings, symbols or other images on monuments or grave structures or on an urn containing the ashes of the deceased. Desecration also occurs when digging up a grave, damaging a niche in the wall, an urn with ashes, desecrating a coffin, damaging a monument, tombstone, memorial inscriptions, pictures, fences, etc.[3; 4, p. 588; 5, p. 368]. Desecration is an offensive attitude, a demonstration of contempt for the burial place or the ashes of the deceased [6].

In the Law of Ukraine "On Burial and Funeral Business", desecration of a grave is defined as the unauthorised creation of inscriptions, drawings, symbols or other images on cemetery structures used for the burial ceremony and commemoration of the dead, tombstones, crypts, urns with ashes, graves or other burial places, or the unauthorised damage, excavation, destruction or other interference with cemetery structures used for the burial and commemoration of the dead, tombstones, fences, crypts, urns with ashes, tombstones, fences, crypts, urns with ashes, graves or other burial places, or use them for purposes not provided for by the legislation in force, or unauthorised use of cemetery facilities used for the ceremony of burial and commemoration of the dead, tombstones, crypts, urns with ashes, graves or other burial places, or commit other acts intended to disrespect the family or public memory of the deceased, to demonstrate a disrespectful attitude towards the burial place and social, religious principles and traditions in this area [7].

It is rather difficult to agree with the opinion that digging up a grave, making offensive inscriptions or other actions constituting the objective side of the criminal offence under Article 297 of the Criminal Code of Ukraine are, by their very nature, actions consisting of intolerable mockery or malicious ridicule.

As for desecration in the context of Art. 338 of the Criminal Code of Ukraine, desecration means a rude, insulting attitude, malicious ridicule, actions aimed at humiliating those values that other members of society treat with respect (for example, tearing down a flag or coat of arms, destroying or damaging them, using them for other purposes, making obscene inscriptions or drawings on them, distorting the text or music of the anthem, disseminating its text with distortion of its meaning and significance, other actions that reveal a person's disrespectful attitude to state symbols[4, p. 706; 5, p. 431]. As we can see from the above example, scholars believe that desecration of state symbols can also consist in "evil mockery".

Without going into a detailed analysis of this provision, as this will be done when analysing the objective side of criminal offences characterised by desecration, we only note that it would be more appropriate to replace the term "evil ridicule" with the term "mockery".

It should also be noted that the term "desecration" has a rather extensive list of synonyms. For example, in the dictionary of synonyms, words close to "desecration" are:

- 1) ridicule;
- 2) to mock;
- 3) to spit in the soul;
- 4) to insult;
- 5) to injure;
- 6) ridicule;
- 7) ridiculed;
- 8) to mock;
- 9) mock;
- 10) mocking;
- 11) (great) shame;
- 12) disgrace [8; 9, p. 228].

In the Great Explanatory Dictionary of the Modern Language, synonyms for "desecration" include shame, disgrace, dishonour, dishonour, blasphemy, shame, shameful, disgrace, disgracefulness, shame [3].

Despite a considerable number of synonyms for the concept of "desecration", none of them can fully cover the actions that are included in the concept of "desecration". Moreover, the concept of desecration is itself synonymous with the concept of zealotry. For example, the Consolidated Dictionary of Outdated and Infrequently Used Words uses the term "zelzhivost", which is synonymous with shame, disgrace, dishonour, insult, contempt, offence, slander, defamation, insult and the term "desecration". In turn, "zelzhyty" means to scold or shame [10].

In the literature, the term "zelzhivost" has usually been used to describe acts that are now referred to as "libel". Thus, in the case XXX. "Restoration of the dishonoured honour" by O. Levytskyi, it is stated that the courts of the Hetmanate very often had to consider cases of "setting offensive words", "zelazhennia in touching the honour", i.e. slander, all kinds of defamation. Often these were extremely petty, extremely bizarre cases, often the insult was mutual, often there was no insult at all, but one way or another the court had to consider the strength of cases of defamation of honour. So the case reads: "I have received a large "green card" on my honour. Please, let this Zhuk prove the theft to me, and I will explain my actions. The judges ordered him to "answer for this greenback". But what could he say when he had a hangover and could not remember yesterday's adventures" [11].

The next source says that "Also, after her husband's departure for Warsaw, a friend and neighbour came to Fedora and told her the rumours that, firstly, Napolski had taken several important documents from her box before the trip, and, secondly, that after the Sejm he intended to go to his brothers who lived in the Bug district, gather people there, and secretly return with them to Volyn to do "zelzyvist" to his wife, that is, to falsely disgrace her and her whole family" [12].

Another source uses the term "zelzhyvost" to refer to such actions as inciting hatred by spreading false information. For example, "...Mrs Hanna was accused of setting her husband against his brother, of pointing the finger at Mr Ivan's health, and that Mr Ivan would take revenge for this insult and 'zelzhyvost'. That same morning, passers-by flocked to the town in groups, reading aloud and some even writing down insulting poems about Mr Ivan's wife's infidelity" [13].

In some sources, the term "zelzhyvist" was also used to refer to acts similar in meaning to sexual violence or rape. "Fedora called Lavryn to her place and ordered her to torture him into telling her, out of fear, that the plan was to attack Adam Rudavsky's estate and kill the owner, and to 'zelzhyvost' (dishonour) his wife" [14].

Thus, as we can see, the term "zelzhyvost" was used to describe a significant number of acts that violated a person's honour and dignity. However, such acts do not in any way cover those acts that are included in the modern concept of "desecration". Thus, the concept of "zealotry", as well as its derivative concept "desecration", is not entirely appropriate for use in criminal offences under Articles 297 and 338 of the Criminal Code of Ukraine.

Continuing the analysis of explanatory and academic dictionaries of the Ukrainian language, we note that the concept of "desecration" is frequently used in the Ukrainian

language. In particular, this concept is used in the title and the wording of Article 179 of the Criminal Code of Ukraine "Illegal maintenance, desecration or destruction of religious shrines", as well as in Part 2 of Article 297 of the Criminal Code of Ukraine. Given that this concept is used in Part 2 of Article 297 of the Criminal Code of Ukraine, i.e. in the criminal provision whose characteristic is "desecration", we can assume that the legislator identifies the concepts of "desecration" and "defilement".

To desecrate is to harm or disrespect a sacred or special place or thing [15]. In the Practical Dictionary of Synonyms of the Ukrainian Language the word "defilement" means to desecrate, to defile; (less often) to disgrace, to tarnish [9, p. 266].

In the 20-volume Dictionary of the Ukrainian Language, the word "defilement" is used in the following meanings

- 1) to violate the purity, sacredness of someone or something; to defile;
- 2) to mock something high, pure. To humiliate, disgrace, stain;
- 3) to disgrace (by unworthy actions, behaviour, covering oneself, one's honest name, family, etc. with shame) [16].

In the dictionary of synonyms, the synonyms for "defilement" are:

- 1) desecrate;
- 2) defile;
- 3) disgrace;
- 4) stain;
- 5) defile [8].

In the Electronic Dictionary/Digital Lexicon of the Ukrainian Language, the word "defilement" means to bring shame on oneself, one's honest name, family, etc. by unworthy actions, behaviour. The dictionary also provides an extensive list of synonyms for the word "defilement":

- 1) to dishonour (less commonly); the same as disgrace;
- 2) to dishonour, to take away a good name; to disgrace, to disparage;
- 3) to stain, defile, disgrace, dishonour someone or something;
- 4) to disgrace, to cover with shame (2nd sense); to dishonour; to disgrace;
- 5) disgrace, defame, stain (adj.);
- 6) to pollute, to deprive of moral purity, to disgrace someone or something; to defile;
- 7) to tarnish (less commonly), to disgrace, to debase, to weaken; to defile;
- 8) to disgrace, humiliate, dishonour by unworthy, shameful actions;
- 9) to defame (colloquially), to cover with shame, to stain;
- 10) to compromise, to put in a bad light; to damage the good name of someone or something;
- 11) to disgrace oneself, one's name, one's family, etc., by unworthy actions, behaviour, to cause a bad opinion, moral condemnation, to cover oneself with shame; to disgrace;
- 12) disgrace (less common) is the same as dishonour;
- 13) dishonour (less common) to disgrace, disgraceful;
- 14) to disgrace, to disgrace by one's actions, behaviour, etc;
- 15) disgrace to cover with shame, disgrace;
- 16) paskudit (colloquially) to put someone or something in a bad light, to disgrace, to blacken;
- 17) to dishonour, to disgrace someone, something with something;
- 18) to defame, to defame something worthy of respect [17].

From the above it can be concluded that the use of the concept of "defilement" in the title and provision of the offence under Art. 297 of the Criminal Code of Ukraine is more appropriate, since it covers both actions which, according to the dictionaries of the Ukrainian language, are characterised by the concept of "desecration" (the concept of "desecration" is a part of the whole – the concept of "defilement") and actions which constitute the objective side of the criminal offence under Art. 297 of the Criminal Code of Ukraine and acts stipulated in the Law of Ukraine "On Burial and Funeral Services". With regard to the use of the concept of "desecration" in the title and wording of Article 338 of the Criminal Code of Ukraine, we note that this concept partially covers the actions that constitute the objective side of the said offence. However, in our opinion it would be more appropriate to use the concept of "Disdain".

The concept of "Disdain" is the opposite in meaning to the concept of "respect". "Respect is a feeling of honour, a favourable attitude based on recognition of someone's merits, high positive qualities of someone or something. Contempt is a feeling of contempt, a

lack of respect for someone. Indifference to someone or something, lack of care, concern for someone or something [18]. Disdain – to show contempt, disrespect for someone or something; the opposite of respect; to insult someone, to humiliate someone’s dignity; to neglect something, not to give it due attention, not to attach importance to it [18].

Article 65 of the Constitution of Ukraine enshrines the obligation of citizens to show honour to the state symbols of Ukraine, i.e. to respect them. In such circumstances, it would be appropriate to use the same root term "Disdain" in the title and disposition of Article 338 of the Criminal Code of Ukraine, a criminal law provision that establishes liability for failure to fulfil this obligation. According to Article 24 of the Constitution of Ukraine, citizens have equal constitutional rights and freedoms and are equal before the law. There shall be no privileges or restrictions based on race, skin colour, political, religious or other beliefs, gender, ethnic or social origin, property status, place of residence, language or other characteristics. Thus, the obligation to "respect" state symbols applies to all citizens without exception. Article 1 of the Criminal Code of Ukraine states that the Criminal Code of Ukraine is aimed at ensuring legal protection of human and civil rights and freedoms, property, public order and public safety, the environment, the constitutional order of Ukraine from criminal offences, ensuring peace and security of mankind, as well as preventing criminal offences.

The Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of citizen Yuriy Kostenko regarding the official interpretation of certain provisions of subparagraphs 1, 2 of paragraph 1 of the Law of Ukraine "On Amendments to the Law of Ukraine "On Perpetuation of the Victory in the Great Patriotic War of 1941-1945 regarding the procedure for the official use of copies of the Victory Flag" states that the state symbols of Ukraine are inextricably linked by their content to its state sovereignty. Ukraine is a sovereign and independent, democratic, social and legal state. Ukraine’s sovereignty extends to its entire territory. The state symbols are a confirmation of the existence of the state, its sovereignty and are aimed at strengthening its authority, in particular during solemn events and official ceremonies. The state establishes the procedure for the use of state symbols and an appropriate system of their legal protection, which ensures respect (emphasis added) and dignity of state symbols [19].

As we can see, the Constitutional Court of Ukraine, when interpreting the provisions of the Basic Law relating to state symbols, also uses the concept of "respect" rather than the concept of "desecration", which is another argument in favour of using the concept of "contempt" in the title and disposition of Article 338 of the Criminal Code of Ukraine.

Conclusions. So, in conclusion, we can say that the definitions of the concept of "desecration" available in dictionaries do not quite successfully correlate with the acts that form the objective side of criminal offences, a characteristic of which is "desecration". The concept of "desecration" itself has a considerable number of synonyms, but none of them is able to fully cover the acts that are included in the concept of "desecration".

We believe that it is more appropriate to use the term "defilement" in the title and provisions of the criminal offence under Article 297 of the Criminal Code of Ukraine, since it covers both the actions characterised by the term "desecration" according to the dictionaries of the Ukrainian language and the actions constituting the objective side of the criminal offence under Article 297 of the Criminal Code of Ukraine, as well as the actions stipulated in the Law of Ukraine "On Funeral and Burial Activities".

We also consider it more appropriate to use the concept of "Disdain" in the title and disposition of the criminal offence under Article 338 of the Criminal Code of Ukraine. Thus, the concept of "Disdain" is the opposite in meaning to the concept of "respect". The Constitution of Ukraine establishes the obligation of citizens to honour the state symbols of Ukraine, i.e. to respect them. In these circumstances, it would be appropriate to use the same root word "contempt" in the title and wording of Article 338 of the Criminal Code of Ukraine, a criminal provision that establishes liability for failure to comply with this obligation.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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Submitted 20.11.2023

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ABSTRACT

The article examines the etymological origins of the concept of "desecration" in Ukrainian criminal law. The author points out that a thorough and comprehensive study of any criminal law phenomenon requires a study of its etymological origins. Such a study contributes to the accumulation of knowledge about the essence of the phenomenon as such and its use/application depending on the democratic and legal values of humanity at each subsequent stage of its development. Currently, the concept of "desecration" is used in criminal law in two articles of the Criminal Code of Ukraine – article 297 "Desecration of a grave, other burial place or the body of the deceased" and article 338 "Desecration of state symbols". At the same time, the Criminal Code of Ukraine does not specify which acts should be considered criminal offences.

Having examined the definitions of the concept of "desecration" available in dictionaries, the author concludes that they do not fully correspond to the acts that constitute the objective side of criminal offences, a characteristic of which is "desecration". The concept of "desecration" itself has a considerable number of synonyms, but none of them is able to fully cover the acts included in the concept of "desecration". The author also comes to the conclusion that the use of the term "defilement" in the title and provisions of the criminal offence under Article 297 of the Criminal Code of Ukraine is more dictionaries of the Ukrainian language and the actions which constitute the objective side of the criminal offence under Article 297 of the Criminal Code of Ukraine and the actions which are regulated by the Law of Ukraine "On Funeral and Burial Business".

As for the use of the concept of "contempt/disrespect" in the title and provisions of the criminal offence under Article 338 of the Criminal Code of Ukraine, the author concludes that it is appropriate to use this concept, since the concept of "contempt" is the opposite in meaning to the concept of "respect", and the Constitution of Ukraine establishes the obligation of citizens to show honour to the state symbols of Ukraine, i.e. to respect them.

Keywords: *indignation, desecration, contempt, respect, desecration of a grave, desecration of state symbols.*