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CONTENT OF CRIMINAL LIABILITY FOR CRIMES IN THE FIELD OF LABOR PROTECTION

The article analyzes the issues of criminal liability for crimes in the field of labor protection. It has been found that the practice of investigating such crimes is still low in Ukraine, due to the high level of their latency.

The definition of the term «production safety» is given.

It is found that criminal violations of the general requirements of the legislation on labor protection are defined only in Article 271 of The Criminal Code of Ukraine. It has been established that persons with whom civil contracts have been concluded cannot be recognized as victims of the crime defined in Article 271 of The Criminal Code of Ukraine.

It is established that the actual harm to the victim's health, the fact of loss of life or the occurrence of other grave consequences and is the main criterion for the separation of criminal liability from other types of liability for violation of the requirements of the labor protection legislation.

Keywords: labor protection, criminal liability, criminal law.

Дараганова Ніна. Зміст кримінальної відповідальності за злочини у сфері охорони праці.

У статті проаналізовано питання кримінальної відповідальності за злочини у сфері охорони праці. Встановлено, що практика розслідування таких злочинів в Україні все ще низька, через високий рівень їх латентності.

Дано визначення поняття «безпека виробництва».

Установлено, що злочини за порушення загальних вимог законодавства про охорону праці визначені лише статтею 271 Кримінального кодексу України. З'ясовано, що особи, з якими укладено цивільно-правові договори, не можуть бути визнані жертвами злочину, визначеного статтею 271 Кримінального кодексу України.

Визначено, що фактична шкода здоров'ю потерпілого, факт загибелі людей або виникнення інших тяжких наслідків є основним критерієм відокремлення кримінальної відповідальності від інших видів відповідальності за порушення вимог законодавства про охорону праці.

***Ключові слова:** охорона праці, кримінальна відповідальність, кримінальне право.*

Relevance of the research topic. The rationality and efficiency of the organization of labor protection is one of the important factors of the driving and sustainable growth of the Ukrainian economy. At the same time, a sign of the present stage of development of Ukraine is the aggravation of problems related to safety. In addition, if during the inspections by the State Service of Ukraine on Labor in 2016 it was revealed 307 949 violations of the requirements of the legislation on labor protection (22), then in 2017 such violations were detected already 338 553 (13).

The problematic of this research is becoming more urgent nowadays, when it is urgent to carry out draft legislation on the harmonization of national legislation in the field of labor protection with international legal norms.

At the same time, an analysis of the state of industrial accidents over the last 10 years has shown that the number of recorded accidents in Ukraine is extremely high: 4 965 cases were registered in 2017, which is an increase of 4.2 % compared to 2016 (from 4 766 to 4 965) and an increase of 8.1 % compared to 2015 (of 4 592 to 4 965). And if in 2016, due to violations of the requirements of the legislation on labor protection, it was filed with the administrative court 726 claims for the suspension of production and works, then in 2017 for these reasons has already been suspended 2 919 production and works – that is four times more than in the previous year (Daraganova N. V., 2018, p. 1).

And considering criminal liability for crimes in the field of labor protection not only as a duty of the subject of crime to be responsible for criminal acts in this sphere, but also as a powerful mechanism aimed at helping to exercise of the citizens rights to labor protection, we believe that we have been elected the topic is topical and practically appropriate.

Formulation of the problem. Despite the obvious danger of crimes in the field of labor protection, as O. Taran rightly pointed out, the practice of investigating them is still small, due to the high level of latency of such crimes. Latency of accidents, including fatalities, is about 65 % (failure to notify law enforcement of such accidents; lack of investigations; accidents known only to the victim, etc.) (Taran O. V., 2010).

Today, it is essential to carry out scientific research on various aspects of criminal justice in the field of labor protection, which is the purpose of this publication – to investigate the nature and problems of criminal liability for crimes in the field of labor protection.

Analysis of recent research and publications. Many leading scientists of labor law, including L. Amelicheva, N. Bolotina, U. Beck, N. Hetmantseva, Y. Ivchuk, P. Izuita, O. Obushenko, G. Chanisheva and others, have paid attention to the issues of legal regulation of labor protection. However, in the science of criminal law, we are now seeing a near-vacuum in conducting research related to the field of labor protection.

In recent times, it is possible to note only the works of the above-mentioned scientist O. Taran, in which the author investigated the issues of crimes in the field of labor protection (Taran O. V., 2011).

Presenting main material. The constitutional principles of legal responsibility are defined, first of all, in The Constitution of Ukraine.

The Constitution of Ukraine establishes such norms-principles on legal responsibility as: the duty of everyone to strictly observe The Constitution of Ukraine and the laws of Ukraine, not to infringe on the rights and freedoms, honor and dignity of other people, and ignorance of the law does not absolve them from legal liability (Article 68); the individual nature of legal liability, as well as the fact that no one can be held twice liable for the same offense (Article 61); a person is presumed innocent of a crime and cannot be punished until his guilt has been duly proved and the sentence of a court has been established; no one is required to prove his innocence; the charges cannot be based on illegal evidence and assumptions (Article 62); a person is not responsible for refusing to give testimony or explanations about himself, family members or close relatives; the suspect and the accused and the defendant have the right to protection, and the convicted person enjoys all human and citizen rights, for with the exception of restrictions that are prescribed by law and imposed by a court judgment (Article 63) (8) etc.

Specification of these norms in the context of criminal liability for violation of the requirements of the labor protection legislation is set out in Section X of The Criminal Code of Ukraine and is considered by us to be a rather effective criminal legal means of effective labor protection in Ukraine.

There are five articles in this section that identify the following violations: 1) violation of the requirements of the labor protection legislation (Article 271), 2) violation of safety rules while performing high-risk work (Article 272), 3) violation breaking the rules of explosive plants or explosive plants (Article 273), 4) violations of nuclear or radiation safety rules (Article 274), 5) violations of rules concerning the safe use of industrial products or the safe operation of buildings and structures (Article 275) (10).

The public danger of these crimes is that deviations from regulations and established safety requirements at enterprises, mines, structures, agriculture, etc. may cause serious harm to the life and health of workers, outsiders, property, the environment (Dudorov O. O., 201, p. 432). All the above articles are aimed at ensuring the safety of the production process, however, only one – Article 271 of The Criminal

Code of Ukraine – defines criminal violations of the general requirements of the labor protection legislation.

The direct object of the crime under Article 271 of The Criminal Code of Ukraine is public relations to ensure safe of the labor protection. It should also be noted that in Section X of The Criminal Code of Ukraine (entitled «Crimes against production safety») the term «*production safety*» is not defined. In determining it, we should proceed from the following.

Standards of DSTU 2293: 2014 «Labor protection. Terms and definitions of basic concepts» in Section 4.10. the term «*labor protection*» is defined as the protection of employees from exceeding acceptable risk, and «*acceptable/tolerable risk*» is a risk reduced to such an extent that his industry, business combination, enterprise, institution, organization may allow (12).

The second component of the term «*production safety*» includes the term «*production*». This term defines the process by which people, connected by certain industrial relations, create the material goods necessary for society (Busel V. T., 2002, p. 108).

It should be noted that during the production activity the employees is (or may be) exposed to various dangerous or harmful production factors (mechanical, chemical, electrical, thermal, etc.). Their presence necessitates such conditions (conditions) as are necessary for protection of life, health, preservation of property, environment. This state of production is the safety of production – that is, such a technical condition, which neutralizes the possibility of a harmful impact on people, property and environment of dangerous and harmful production factors. Various legislative and regulatory acts are aimed at ensuring the safety of production, with the rules of criminal law aimed at safeguarding production safety relations from the most dangerous encroachments (9).

Therefore, the term «*production safety*» means the protection of the work process of a person from exceeding the acceptable/acceptable risk. This is a state of human labor activity in which the influence on the worker of dangerous and harmful production factors is either eliminated or it does not exceed the maximum permissible parameters (Daraganova N. V., 2013, p. 48–52).

The study of the norms of Article 271 of The Criminal Code of Ukraine shows that criminal responsibility for this article comes not simply for violation of the requirements of legislative and other normative legal acts on labor protection by an official of an enterprise, institution, organization or citizen – subject of business activity (violations of such requirements may lead to disciplinary and administrative liability). Criminal liability for violation of the requirements of the legislation on labor protection can only be in the case of: 1) violations that caused harm to the health of the victim; 2) violations that caused the death of people or the occurrence of other grave consequences.

However, unlike other articles of section X of The Criminal Code of Ukraine (for example, Article 272 of The Criminal Code of Ukraine, which defines a criminal act which, in violation of safety rules during the performance of work with high risk, created the risk of death of people or the occurrence of other grave consequences or caused harm) Article 271 of The Criminal Code of Ukraine does not provide for criminal liability for creating a threat of death or other grave consequences in violation of the requirements of legislative and other normative legal acts on labor protection – the social danger of this crime is caused by the actual harm to the employee’s health or the occurrence of other grave consequences. The perpetrator, according to the rules of this article, is an official of an enterprise, institution, organization or citizen – a business entity who not only violates the right enshrined in the Constitution of Ukraine for the proper provision of labor protection, but this violation has led to such grave consequences, as damage to the health of the employee or even to his death.

The victim of this crime is a hired employee – a person who is the subject of an employment relationship and has a permanent or temporary legal relationship with the employer (owner of the enterprise, institution, organization; owner-authorized body; citizen – the subject of business activity).

The legal definition of the term «*employee*» is provided in several pieces of legislation. In particular, Article 1 of the Law of Ukraine «On Professional Development of Workers» (from January 12, 2012) establishes that an employee is a natural person who works under an employment contract at an enterprise, institution and organization regardless of the form of ownership and type of activity or an individual, which uses hired labor in accordance with the law. Similarly, this term is defined in other legislative acts, for example, in the Law of Ukraine «On labor protection» (Article 1) (15).

In addition, part three of Article 30 of the Law of Ukraine «On labor protection» provides that schoolchildren and students who undergo labor and vocational training (industrial practice) at enterprises under the guidance of their staff are subject to the labor protection legislation in the same manner that and employees of the company. In addition, part three of Article 30 of the Law of Ukraine «On labor protection» provides that schoolchildren and students who undergo labor and vocational training (industrial practice) at enterprises under the guidance of their staff are subject to the labor protection legislation in the same manner that and employees of the company.

Persons with whom civil contracts are concluded (for example, a contract of a contract under which the contractor undertakes at his own risk to perform certain work at the client’s request and the customer agrees to accept and pay for the work performed (Article 837 of The Civil Code of Ukraine (20)), to our view, they cannot be recognized as victims of the crime defined in Article 271 of The Criminal Code of Ukraine. The above is evidenced by the analysis of the current legislation, and above all the Law of Ukraine «On Labor Protection», The Labor Code of Ukraine (7) and

The Civil Code of Ukraine. Thus, according to the norms of Article 2 of the Law of Ukraine «On Labor Protection», its effect extends only to legal and natural persons who, in accordance with the law, use hired labor (employers) and all workers (employees).

This conclusion is confirmed by the practice of industrial accident investigations (11).

The objective side of a crime, defined by Article 271 of The Criminal Code of Ukraine, provides for a mandatory set of at least the following features: 1) act to violate the requirements of legislative and other regulations on labor protection; 2) the existence of the consequences stipulated by the norms of Article 271 of The Criminal Code of Ukraine in the form of causing harm to the health of the victim, death of people, other grave consequences; 3) the causal link between the violation of these requirements of the law and the consequences that have come (Daraganova N. V., 2018, p. 322–324).

It should be noted that O. Dudorov and R. Movchan add another fourth feature – the crime scene (21, p. 438). In our opinion, this sign is a characteristic element of action in the form of violation of the requirements of legislative and other normative-legal acts on labor protection.

So, firstly, a crime under Article 271 of The Criminal Code of Ukraine is an act in the form of violation of the requirements of legislative and other normative legal acts on labor protection – non-compliance or improper observance of the requirements of safety and hygiene of work and industrial environment, which can be done both through action and inaction. At the same time to the general requirements, include rules governing labor safety issues in all spheres of production. These issues are primarily regulated by The Labor Code of Ukraine, The Civil Protection Code of Ukraine (6), the Law of Ukraine «On Labor Protection», the Law of Ukraine «On Pesticides and Agrochemicals» (16) etc. Violations of special rules of safety (they concern the performance of works with high risk and operate at explosive enterprises or in explosive workshops, violations of the rules of nuclear or radiation safety, safe use of industrial products or safe operation of buildings and structures) are not covered by Article 271 of The Criminal Code of Ukraine. As the Supreme Court of Ukraine explained, these violations require qualification under Articles 272-275 of The Criminal Code of Ukraine (17).

Secondly, the consequence of this crime is the presence of such consequences as: 1) causing harm to the health of the victim (part 1 of Article 271 of The Criminal Code of Ukraine) – this term covers cases of causing light or moderate injury to a person; 2) causing death or other grave consequences (part 2 of Article 271 of The Criminal Code of Ukraine). The term «*death of people*» means the infliction of death on one or more persons, and the concept of «*other grave consequences*» – causing grievous bodily harm to at least one person or moderate severity of bodily harm to two or more persons (2, p. 51).

The third feature of a crime under Article 271 of The Criminal Code of Ukraine is the existence of a causal link between the violation of the above requirements of the law and the consequences that have arisen. The establishment of this connection should also take into account the fact that in many cases the development of a causal connection has a complicated character – it can be mediated by the action of mechanical, physical, chemical, natural factors, the actions of the victim or third parties, etc. (if to resolve the issue the presence of causation requires scientific, technical or other specialized knowledge, then appoint an examination).

According to scientists, the peculiarities of this type of crime are that the establishment of the fact of violation of the requirements of the legislation on labor protection by a responsible official or a specific contractor does not always testify to the fact of their commission of a crime. The presence of the event and the composition of the crime in each case is established only if there is a causal link between the violation and the harmful consequences and a full and comprehensive investigation of all the circumstances of the case (Taran O. V., 2011, p. 48).

The subject of this crime is an official of an enterprise, institution, organization irrespective of the form of ownership or citizen – the subject of entrepreneurial activity, on which the legislation, in the broad sense of the term (law, order, official instruction, etc.) impose obligations to provide compliance with the requirements of labor protection legislation.

In defining the concept of an official under Article 271 of The Criminal Code of Ukraine, we consider, first of all, to proceed from the concept of an official, which was introduced in Note 1 to Article 364, paragraph 1 and paragraph 2, of The Criminal Code of Ukraine.

The subjective character of the crimes defined in Article 271 of The Criminal Code of Ukraine is manifested mainly in the form of negligence. We consider that the above conclusion can be drawn from the consideration of the general practice of consideration by the courts of criminal cases on crimes related to violation of the requirements of the legislation on labor protection (14).

Conclusion. Thus, criminal liability for violation of the requirements of legislative and other normative-legal acts on labor protection according to the requirements of Article 271 of The Criminal Code of Ukraine arises only if as a result of this violation caused harm to the health of the victim or caused death of people or the occurrence of other serious consequences. It is the actual harm to the victim's health, the fact of loss of life or the occurrence of other grave consequences and is the main criterion for the separation of criminal liability for violation of the requirements of the labor protection legislation from other types of liability, primarily administrative, for the breach of the requirements of the labor protection legislation.

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