

Національний університет «Одеська юридична академія»

Робоча група з питань розвитку кримінального права
Комісії по правовій реформі при Президентові України

Робоча група з питань кримінального та кримінального процесуального права
Науково-консультативної ради при Голові Верховної ради України

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Кафедра кримінального права НУ «ОЮА»

Одеський місцевий осередок ГО «Всеукраїнська асоціація кримінального права»

Завдання кримінального права в умовах надзвичайного стану

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«Завдання кримінального права в умовах надзвичайного стану». Матеріали міжнародної науково-практичної конференції, присвяченої 25-річчю утворення Національного університету «Одеська юридична академія». Одеса, 9 грудня 2022 року. Укладачі: Є.Л. Стрельцов, В.П. Кедик. Відп. редактор Є.Л. Стрельцов. Одеса: ПРЦ НАПрН України, НУ «ОЮА», 09.12.2022. – 214 с.

У збірнику представлені тези доповідей та повідомлень, які були оприлюднені на міжнародній науково-практичній конференції «Завдання кримінального права в умовах надзвичайного стану», присвяченій 25-річчю утворення Національного університету «Одеська юридична академія», яка відбулась 9 грудня 2022 року на базі Південного регіонального центру Національної академії правових наук України та кафедри кримінального права Національного університету «Одеська юридична академія». Збірник розрахований на науково-педагогічних працівників, докторантів та аспірантів, магістрантів та студентів, практичних працівників, всіх, кого цікавлять сучасні проблеми кримінального права.

Відповідальний за випуск:
д.ю.н., професор Є.Л. Стрельцов

Тези друкуються в авторській редакції. Відповідальність за зміст поданого матеріалу несуть автори.

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CRIMINAL LAW IN THE STATE OF EMERGENCY (A CONFERENCE PRESENTATION)

A state of emergency is a special politico-economic and legal situation that involves the introduction of a special, so-called specific legal regime in the entire territory of the state or in its individual regions, which provides additional powers to the state and its bodies to take necessary measures and to limit to a certain extent rights and freedoms of citizens, organizations and institutions operating on its territory.

This is a very complex socio-legal situation, which needs, on the one hand, to streamline and limit various social processes in various spheres of life, which is objectively determined by an emergency situation. On the other hand, the introduction of such measures should not violate the rights and freedoms of citizens, organizations and institutions.

Therefore, there are understandable difficulties dealt with the understanding and interpretation of the concept of the “state of emergency” in specific conditions, its correlation with the concepts of “martial law”, “quarantine restrictions”, which are introduced, for example, in connection with an epidemic, with the critical infrastructure’s objects operation mode etc. Are these essentially different regimes that are introduced in a specific state (group of states), or is a “state of emergency” a more general concept that by and large covers all other types of special legal regimes? How do the concepts of “martial law”, “wartime”, “military situation” agree with each other within a more specific legal direction?

There is legislation in Ukraine that regulates provisions related to the introduction and observance of a state of emergency, martial law, and quarantine restrictions. However, these normative acts were adopted in conditions of, so to speak, fairly calm social situation in the state or at the beginning of the development of complex events. The social situation becomes more complex when such events become significant and permanent, which objectively requires further development and improvement of the legal provisions that regulate it. There is such legislation at the international and foreign levels, but how does it “harmonize” with national legislation? This is also a problem that needs attention.

The study of this is important both from the standpoint of the readiness of the entire legal system to regulate such a situation and the development of the sectoral law in such conditions, in particular criminal law.

This, in turn, formulates a number of important questions, in particular: how should criminal legislation, criminal legal theory, and the practice of applying this legislation develop in modern conditions? What tasks are considered necessary to be solved by criminal legislation, criminal legal theory, and criminal legal practice today? Which traditional functions of criminal law should dominate today: protective or preventive, or any new ones? Which areas do require protective functions of criminal law, and which - the preventive ones? What should be paid attention to when improving criminal legislation: dispositions, or sanctions, or qualifying features, or the content of the criminal law norm as a completed concentrated expression of the specific content of a prohibited socially dangerous act? How should this be qualitatively reflected in the legislative technique? The list of such topical issues can be continued. At the same time, understanding the importance of this branch of legislation in the protection of the most important social values, how to prevent criminal legislation from being “made” the main, in general, the so-called “only” means of overcoming the state of emergency. How to reasonably combine “therapeutic” and “surgical” measures to influence a serious social “disease”? It has already been repeatedly declared that with all “respect” for criminal legislation, with an understanding of all its

“punitive” possibilities, it is important, necessary, but “only” one of the components in the general complex of measures that the state must employ in emergency conditions.

Undoubtedly, a difficult situation from the point of view of a real assessment of socially dangerous acts that take place in modern conditions may (must) be subject to criminal law “influence”. Such actions, groups of such actions, as social practice has already shown, can manifest themselves in different directions. These are, for example, actions that directly violate established legal restrictions, or act as “separate” socially dangerous consequences of such violations, or “accompany” such socially dangerous violations having “other” external manifestations. These can also be actions that, figuratively speaking, do not so much violate legal restrictions as, to some extent, are determined by them. For example, there are already cases of significant violations of economic processes that occur due to the illegal “use” of established rules. A certain specificity of such actions can be “determined” not only directly by the actions, but also by the category of subjects who commit them, which also needs to be taken into account.

It is important not only to focus exclusively on the present. It is necessary to try to predict how the criminal situation and the state's reaction will develop in the near and distant future? What actions will “retain” their “constancy”, which will “develop” or “fade”, what new manifestations of socially dangerous actions may appear in such conditions, what “expression” everything will have in social life in the post-war period, which, hopefully should arrive soon. How should all this find its “reflection” in the tasks of modern criminal legislation of Ukraine? All such questions form direct tasks for criminal law science, both at the “personal” level and at the level of cooperation with other legal sciences, primarily of the criminal law direction. In any case, no matter how unfortunate it looks, in my opinion, we are at the beginning of a long way of researching complex modern problems of the establishment and existence of special legal regimes, their reflection in legislation and practice.

These are complex, in many ways, new problematic issues that all categories of modern lawyers are concerned with. A significant part of them was dealt with in more than 80 scientific papers, which were submitted to the conference “Tasks of Criminal Law in the State of Emergency”, held on December 9, 2022, on the basis of the Southern Regional Center of the National Academy of Sciences of Ukraine and the department of criminal law of National University “Odesa Law Academy”. Given the understandable difficulties, the conference was held offline in the truncated composition, which once again emphasizes the idea of *immortalitas scientia*. Despite the difficult circumstances, during the preparation and holding of the conference, we were in close contact with almost all the authors who had made their contributions while in Ukraine or abroad.

Overall, the organizing committee received contributions from: the head of the Working Group on the Development of Criminal Law of the Commission on Law Reform under the President of Ukraine, Dr. Law habil., Prof. Yu.V. Baulin, academician of the National Academy of Legal Sciences of Ukraine; Chairman of the Working Group on Criminal and Criminal Procedural Legislation of the Scientific Advisory Council under the Chairman of the Verkhovna Rada of Ukraine, Dr. Law habil., Prof., Corresponding Member of the National Academy of Legal Sciences of Ukraine Muzyka A.A.; heads of the following departments of Ukrainian universities: Dr. Law habil., Prof. Veresha R.V., Department of Criminal and Administrative Law of the Academy of Advocacy of Ukraine; Dr. Law habil., Prof. Lykhova S.Ya., Department of Criminal Law and Criminal Procedure of the National Aviation University; Dr. Law habil., Prof. Zhytnyi O. O., Department of Criminal Law Disciplines of Kharkiv V.N. Carazin National University; Dr. Law habil., Prof. Konopelskyi V. Ya., Department of Criminal Law and Criminology of Odessa State University of Internal Affairs; PhD in Law, Prof. Musienko A.V. Department of Civil Law and Criminal Law of the State University of Infrastructure and Technologies; Dr. Law habil., Prof., Corresponding Member of the National Academy of Legal Sciences of Ukraine Tishchenko V. V., Department of Criminology at National University “Odesa Law Academy”; PhD in Law, Prof. Stupnyk Y.V., Department of Criminal Law and Criminal Procedure of Uzhhorod National University; Dr. Law habil., Prof., Kharitonov S.O., Department of Criminal Law Policy of the Yaroslav Mudryi Law University; Dr. Law habil., Prof., Chuvakov O.A., Department of Criminal Law, Criminal Procedure and Criminalistics of Odesa I. I. Mechnikov National University. We also received a contribution from our German colleague Dr. Law habil., Prof. Bernd Heinrich, a head of the Department of Criminal Law, Criminal Process Law and Copyright of the Eberhard-Karls University of Tübingen; Dr. Law habil., Prof. Voznyuk A.A., a head of the scientific laboratory on crime prevention problems of the National Academy of Internal Affairs.

Contributions were presented by Ukrainian scholars, representatives of the Southern School of Criminal Law, who have currently been on research internships at foreign universities: Dr. Law habil., Prof. Sotula O.S. and Dr. Law habil., Prof., Corresponding Member of the National Academy of Legal Sciences of Ukraine Tulyakov V.O. We also received papers from colleagues of different Ukrainian universities and colleagues of the Criminal Law Department at Odesa Law Academy. It should separately be noted that prospective young scholars - post-graduate students, selected master's students joined the conference with their presentations. It should also be emphasized that two 2nd-year bachelors students of the Faculty of Prosecution and Investigation (Criminal Justice) of Odesa Law Academy also prepared their presentations, which indicates that they too have already come under the natural "influence" of criminal law.

The conference presentations were mainly dedicated to general and more specific problems of the application of criminal law in the conditions of martial law, the qualification of criminal offenses committed today. At the same time, Prof. Bernd Heinrich focused on the criminal-legal assessment of various socially dangerous acts committed during the COVID-19 pandemic, which continues to be relevant for Europe.

In general, based on the results of the conference, there were designed recommendations which aimed at further development of criminal law theory, improvement of criminal legislation and its practical implementation in today's difficult conditions. The conference materials will be released in a separate electronic collection.

Yevgen L. Streltsov

Prof., Prof. Hon. Dr. Law habil., Doctor of Theology,
corresponding Member of the National Academy of
Legal Sciences of Ukraine,
head of the Department of Criminal Law at NU "Odesa Law Academy"
scientific secretary of the Southern Regional Center of the NA of LS of Ukraine,
member of the Working Group on the Development of Criminal Law of the Law Reform Commission
under the President of Ukraine;
member of the Scientific Advisory Council under the Chairman
of the Verkhovna Rada (Parliament) of Ukraine