DOI: 10.46340/eppd.2021.8.6.11

Yuliia Alieksieieva-Danylenko
ORCID ID: https://orcid.org/0000-0002-6338-7869
Kharkiv National University of Internal Affairs, Ukraine

THE CRIMINAL INFRACTION AS A SPECIFIC TYPE OF CRIMINAL OFFENSES

Among the key problems of modern criminal legislation of Ukraine, and especially over the past two decades, a problem of liberalizing criminal liability, including decriminalization of certain types of criminal offenses, reducing criminal law sanctions for certain illegal acts occurs. The implementation of the principle of equitable punishment for a criminal offense has become a highly topical issue. Staying in institutions of confinement, a record of conviction and its consequences related to legal and social restrictions, as a rule, have a negative impact on the personality of the convicted person. Real deprivation of freedom leads not only to the deformation of a convicted person's personality, but also affects their future. This is primarily due to the fact that, most often, the very fact of a record of conviction for a criminal offense of any degree of gravity is perceived negatively by public consciousness, with corresponding consequences, such as the inability to get a job, ignoring (separating) such a person by the society, etc., which as a result often leads to repetition of a criminal offense. In recent years, there has been a steady trend of growth in the rate of those convicted of committing minor criminal offenses out of the total number of convicted persons. Thus, the modern structure of a record of conviction is characterized by the fact that almost every second person is convicted of a minor criminal offense. Hence, there was a need to impose an equitable punishment, which will contribute as much as possible to the reformation, but not to the deformation of the convicted person's personality. The new category of offenses – the criminal infraction occupies an intermediate link between an administrative offense and crimes and allows you to more accurately classify criminal offenses according to the degree of their public danger, differentiate in detail the punishment for the convicted person, in accordance with the principles of justice and humanism.

Keywords: criminal offenses, criminal infractions, legislation, punishment, social restrictions, convicted persons.

Introduction. In Ukraine, measures are being taken to humanize criminal legislation, which manifests itself in the form of decriminalization of criminal offenses, the introduction of elements of individual offenses from administrative prejudice, the use of a punishment alternative to deprivation of liberty and expanding the scope of application of the institution of exemption from criminal liability.

On July 1, 2020, the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Pre-trial Investigation of Certain Categories of Criminal Offenses» came into force[1], which, in particular, amended the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine. These amendments are related to the allocation of minor acts from the list of criminal offenses, for the commission of which the Law does not provide for the punishment in the form of deprivation of liberty and defines them as criminal infractions. The institution of criminal infractions currently remains not a sufficiently regulated legal category both in the theory of criminal law and in the practice of its implementation, which determines the urgency of additional research.

Literature Review. Theoretical issues related to the legal nature of the institution of the criminal infraction, the definition of general approaches to their legislative regulation, differentiation of offenses and other acts as a type of criminal offense, have already been studied by individual scientists, in particular,

[1] *Закон України Про внесення змін до деяких законодавчих актів України щодо спрощення досудового розслідування окремих категорій кримінальних правопорушень, 2019* (Верховна Рада України). *Відомості Верховної Ради України, 17*, 71.

A.A. Vasyliev, V.K. Hryshchuk, O.P. Horpyniuk, I.O. Zinchenko, O.M. Lytvynov, V.B. Kharchenko, V.P. Yemelianov, I.V. Krasnytskyi, O.S. Pyrozhenko, D.S. Azarov, N.O. Hutorova, O.O. Dudorov, K.P. Zadoia, V.I. Tiutiuhin, Ye.L. Streltsov, P.L. Fris, M.I. Khavroniuk, V.O. Navrotskyi, and others. The research of these scientists has made a significant contribution to the theoretical aspects of understanding the criminal infraction, but taking into account the regulation of this institution in the theory of criminal law and its application in practice, amendments in legislation, there is a need for additional consideration of the norms of the current legislation on criminal infraction.

The research objective is to study special characteristics of the criminal infraction as a specific type of criminal offenses.

The scientific novelty of the study. The introduction of amendments to the current legislation of Ukraine in the aspect of criminal offenses contributes to their division into criminal infractions and crimes. In addition, there is a new subject of criminal procedure activity such as the inquirer, new types of evidence in the investigation of a criminal infraction, and so on. Thus, there is a need to study and improve the current regulatory and legal norms aimed at applying liability to a person who has committed a criminal infraction.

Results. With the adoption of the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Pre-trial investigation of Certain Categories of Criminal Offenses», a new concept was introduced in the Criminal Code of Ukraine, namely the criminal infraction. In Part 2 of Article 12 of the Criminal Code of Ukraine, it is defined that the criminal infraction shall be an act (action or inaction) provided for by this Code, for the commission of which the primary punishment is provided in the form of a fine in the amount of no more than three thousand non-taxable minimum incomes of citizens or other punishment not related to deprivation of freedom[1].

Before the adoption of the above-mentioned Law in the Criminal Code of Ukraine, there were more than 90 elements of criminal offenses of minor gravity, for the commission of which there is no punishment in the form of deprivation of freedom, which means that all of them with the adoption of this Law and the introduction of the amendments to the Criminal Code of Ukraine became criminal infractions.

The issue of the criminal infraction has been discussed by legal scientists for more than half a century. Back in the 60s of the last century, N.F. Kuznietsova pointed out the need, when classifying acts according to the degree of public danger, to combine criminal offenses of minor gravity and a number of criminal offenses of medium gravity into a single group. On that basis, it was proposed to divide socially dangerous acts into crimes and criminal infractions, which pose a significantly lower public danger. This measure would make it possible to continue differentiating criminal liability.

The experience of legalizing minor criminal offenses according to the type of criminal infractions also exists abroad, in particular, in the United States, Germany, Poland, Latvia, Sweden and other countries. In most states, criminal codes differentiate criminal acts into two or three categories, and the most insignificant criminal offenses are often defined as criminal infractions.

I.V. Kovtun suggested that the introduction of the institution of the criminal infraction, although it can bring the national legislation on criminal liability closer to the legislation of the European Union countries, requires further refinement at the conceptual level, taking into account modern achievements in the science of criminal, procedural criminal and administrative law, as well as trends in humanization of the legislation of Ukraine on criminal liability[2].

V.I. Borysov, V.I. Tiutiuhin, L.M. Demidova suggested that the introduction of the criminal infraction in the national legislation of Ukraine must also cover the tasks that it performs. Among these primary tasks, scientists have identified the following: humanization and optimization of criminal legislation; improvement of criminal procedure legislation by introducing a simplified procedure for pre-trial investigation and judicial review of materials of criminal proceedings on criminal infractions; mitigation of criminal punishment by improving sanctions for committing criminal infractions; introduction into the legislation of Ukraine of recommendations of the European Court of Human Rights and international standards in the field of combating crime[3].

The term «criminal infraction» successfully emphasizes the specifics of criminal offenses, for which other measures of public influence can be imposed than the traditional criminal punishment. These acts, while remaining generally criminal offenses, are at the same time preventive in nature, giving the convicted person

[1] *Кримінальний кодекс України, 2001* (Верховна Рада України). *Відомості Верховної Ради України, 25-26*, 131.
[2] Ковтун, І. В. (2014). Проблема запровадження у законодавство України інституту кримінального проступку. *Науковий вісник Дніпропетровського державного університету внутрішніх справ*, *2*, 230-240.
[3] Борисов, В. І., Тютюгін, В. І., Демидова, Л. М. (2016). Кримінальний проступок: концептуальні засади запровадження до національного законодавства. *Вісник асоціації кримінального права України*, *2 (7)*, 129-142.

a real chance for reformation. Thus, it is assumed that the criminal infraction occupies an intermediate «middle ground» between administrative and criminal illegal acts.

Regarding the essence of the criminal infraction, polar positions are expressed in the legal literature. Therefore, B.Ya. Havrylov and E.V. Rohova refer the criminal infraction to a type of criminal offense. In their opinion, in comparison with criminal offenses, the criminal infraction has a lower degree of public danger and entails a less severe punishment, excluding a criminal record[1]. The authors identify a number of signs of the criminal infraction that require comment, the meaning of the first sign is reduced to the justification of the criminal infraction as a type of criminal offense. They actually identify the criminal infraction with criminal offenses, recognizing in it the presence of all significant signs of a criminal act: public danger, guilt, prohibition by the criminal law and threats of punishment.

The second sign, from the point of view of these researchers, is that the criminal infraction has a lower degree of public danger compared to a crime. This sign clearly contradicts the previous one. Being a type of the criminal act, the criminal infraction cannot have other qualitative and quantitative parameters of public danger that go beyond the understanding of the public danger of criminal offenses.

The third sign concerns the specifics of the legal consequences of committing a criminal infraction. The criminal offense should provide for the possibility of applying a certain criminal punishment, excluding a record of conviction.

Based on the above, it can be concluded that the criminal infraction is a special type of criminal offense, which differs from both administrative offenses and criminal offenses themselves. Its specific character lies in the relatively low level of public danger, which makes it necessary to determine a special regime of liability.

Since the criminal infraction is based on a preventive nature, the sanctions for criminal infractions should also be special, namely, mixed: half-punishment, half-measures of public influence. It provides for a new type of exemption from criminal liability for committing a criminal infraction – this is the application of other measures of a criminal legal nature. They can be understood, for example, as a set of court fines and community service, or as a set of other types of punishments that are not related to the isolation of the convicted person from the society. These can be a fine, deprivation of the right to hold certain positions or engage in certain activities, community service and corrective labor.

However, for the application of this type of exemption from criminal liability, the following conditions are established: 1) the criminal infraction must be committed for the first time and belong, as a criminal offense, to the category of small or medium gravity; 2) the damage caused by the criminal infraction must be compensated.

The current Criminal Code of Ukraine defines the criminal offense (Part 1 Article 11), which is divided into the following types: crime and criminal infraction. Thus, the criminal offense acts as a generic concept in relation to the crimeand the criminal infraction. So, for example, if a person has committed a criminal offense under Part 1 of Article 185 of the Criminal Code of Ukraine, then such an act is the criminal infraction, and if under Parts 2-5 of Article 185 of the Criminal Code of Ukraine, it is the crime. This is quite important for the criminal legal consequences of committing a criminal offense. In turn, the crime and the criminal infraction must differ in the type and degree of punishment.

I.V. Krasnytskyi and O.P.Horpyniuk delivered a pointful remark that the formal renaming of the crime to the criminal offense in some cases seems unjustified (in particular, in Article 107 of the Criminal Code of Ukraine, because conditional early release can be applied only to minors who have served a certain share of the assigned term of imprisonment for a minor, grave or especially grave crime; the possibility of conditional early release for committing a criminal offense is not provided)[2].

As it has already been stated, the Legislator in Part 2 of Article 12 of the Criminal Code of Ukraine fixed the concept of the criminal infraction. In addition, they made amendments to the definition of the severity of the committed criminal offense. Part 3 of Article 12 of the Criminal Code of Ukraine defined that crimes are divided into minor, grave and especially grave crimes[3]. Now offences of medium gravity are criminal infractions.

---

[1] Гаврилов, Б. Я., Рогова, Е. В. (2016). Уголовный проступок: концепция развития (мнение ученого и практика). *Публичное и частное право*, *4*, 7-45.

[2] Красницький, І. В., Горпинюк, О. П. (2019). Запровадження кримінальних проступків: аналіз змін до законодавства. *Кримінальне та кримінальне процесуальне законодавство у контексті реформи кримінальної юстиції: матеріали науково-практичного семінару (31.05.2019 р., м. Львів)*. Львів: Львівський державний університет внутрішніх справ, 17-21.

[3] *Кримінальний кодекс України, 2001* (Верховна Рада України). *Відомості Верховної Ради України, 25-26*, 131.

Thus, criminal offenses according to the degree of gravity are divided into: 1) criminal infractions; 2) minor crimes; 3) grave crimes; 4) especially grave crimes.

The Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Pre-trial Investigation of Certain Categories of Criminal Offenses» also touched upon changes regarding the conduct of criminal procedural activities, highlighting its new subject – the inquirer, who conducts the investigation of criminal infractions. Paragraph 4-1 of Part 1 of Article 3 of the Criminal Procedure Code of Ukraine specifies the concept of the inquirer – an official of the inquiry unit of the National Police body, security body, body that monitors compliance with the tax legislation, the State Bureau of Investigation body, in cases established by this Code, an authorized person of another division of these bodies, authorized within the competence provided for by this Code, to carry out pre-trial investigation of criminal infractions[1].

At the stage of preliminary investigation, the bodies of inquiry perform a specific role. In the investigation of criminal infractions, law enforcement bodies are state bodies that receive information about the commission of a criminal offense. Due to the specifics of their work, they are obliged to immediately respond to the fact of violation of the law, take preventive measures, including those of a criminal procedural nature, that is, act as an investigative body.

A preliminary investigation includes two forms, such as an inquiry and a preliminary investigation. The first type of activity is performed by the bodies of inquiry, and the second – by investigators. The inquiry is divided into two types: 1) in proceedings in which the preliminary investigation is not necessary (independent investigation); 2) in proceedings with the mandatory pre-trial investigation (auxiliary activities of special bodies in relation to the investigator). Regardless of whether the investigative bodies perform independent or auxiliary work for investigators, there are no significant differences in the procedural forms of activity of these bodies.

When investigating criminal proceedings, the bodies of inquiry take the necessary operational search, investigative and other measures provided for by the Criminal Procedure Law in order to identify criminal offenses and identify those responsible.

According to Part 3 of Article 38 of the Criminal Procedure Code of Ukraine inquiry is carried out by inquiry units or authorized persons of other divisions: a) National Police bodies; b) security bodies; c) bodies that monitor compliance with the tax legislation; d) bodies of the State Bureau of Investigation; e) The National Anti-Corruption Bureau of Ukraine[2].

The head of the inquiry body is legally granted the following powers:

– they have the right to assign the inquirer to check the report on criminal offenses and make decisions based on the results obtained;

– if there is a reason, the head of the inquiry unit may withdraw investigation materials from one inquirer and transfer them to another;

– they can cancel the decision of the inquirer which is recognized as illegal;

– exercise other powers provided for by this Code (Article 39-1 of the Criminal Procedure Code of Ukraine).

The inquirer is entitled to independently conduct investigative and other procedural actions, except in cases where the permission of the chief, judge or prosecutor is required. If there is a need to conduct operational search activities, the inquirer may give the operational bodies an order that is mandatory for execution. The Inquirer is obliged to obey the instructions of the prosecutor and the head of the body of inquiry.

The period of inquiry is one month, but if necessary, the inquirer can extend it with the consent of the prosecutor.

The amendments made to the Criminal Procedure Code of Ukraine also affected evidence in criminal proceedings. Procedural sources of evidence in criminal proceedings on criminal infractions, in addition to the provisions of Article 84 of the Criminal Procedure Code of Ukraine, can also be explanations of persons, the results of medical examination, the conclusion of a specialist, indications of technical devices and technical means that have the functions of photo and film shooting, video recording, or means of photo and film shooting, video recording. Such procedural sources of evidence may not be used in criminal proceedings concerning a crime, except on the basis of a decision of the investigating judge, which is decided at the request of the prosecutor (Article 298-1 of the Criminal Procedure Code of Ukraine)[3].

[1] *Кримінальний процесуальний кодекс України, 2013.* (Верховна Рада України). *Відомості Верховної Ради України, 9-10, 11-12, 13*, 88.

[2] Там само.

[3] Там само.

The legislator distinguishes sources of evidence by types of criminal proceedings, that is, those that can be used in the investigation of crimes, or those that are used in the investigation of criminal infractions. But if we compare the provisions of Article 84 of the Criminal Procedure Code of Ukraine, it becomes unclear which sources of evidence can be applied to a particular type of the criminal offense. Therefore, there is a need to supplement Article 84 of the Criminal Procedure Code of Ukraine and make appropriate adjustments to specify the types of criminal offenses to which relevant sources of evidence can be applied.

Conclusions. One of the most important areas for improving measures of criminal legal influence is the differentiation of liability for criminal offenses that do not pose a great public danger (of minor gravity). The historically formed intersectoral differentiation of public responsibility into criminal and administrative responsibility is a positive achievement of the codification process and allows us to respond quite effectively to changes in the nature and severity of antisocial behavior by criminalizing the most dangerous manifestations.

The main ideas of introducing the institution of the criminal infraction are to: 1) more accurately classify criminal offenses according to the degree of their public danger; 2) differentiate the punishment for the convicted person as much as possible, making it the most just and humane; 3) release those convicted of minor or medium-gravity criminal offenses who committed them for the first time from the vicious institution of criminal record, which has a negative impact on the future of a person, most often forcing persons to commit new criminal offenses.

As for the procedural aspect of the investigation of criminal offenses, the norms of the current legislation require certain adjustments. Currently, some norms of the Criminal Procedure Code of Ukraine contain conflicts, which causes corresponding difficulties in the investigation of criminal infractions.

References:

1. *Zakon Ukrainy Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo sproshchennia dosudovoho rozsliduvannia okremykh katehorii kryminalnykh pravoporushen, 2019* [Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine Concerning Simplification of Pre-trial Investigation of Certain Categories of Criminal Offenses, 2019] (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoyi Rady Ukrayiny* [Information of the Verkhovna Rada of Ukraine], *17*, 71. [in Ukrainian].
2. *Kryminalnyi kodeks Ukrainy, 2001* (Verkhovna Rada Ukrainy) [Criminal Code of Ukraine, 2001 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoyi Rady Ukrayiny* [Information of the Verkhovna Rada of Ukraine], *25-26*, 131. [in Ukrainian].
3. Kovtun, I. V. (2014). Problema zaprovadzhennia u zakonodavstvo Ukrainy instytutu kryminalnoho prostupku [Problems of Implementing in Legislation of Ukraine of the Institute of Criminal Misdemeanor]. *Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav* [Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs], *2*, 230-240. [in Ukrainian].
4. Borysov, V. I., Tiutiuhin, V. I., Demydova, L. M. (2016). Kryminalnyi prostupok: kontseptualni zasady zaprovadzhennia do natsionalnoho zakonodavstva [Criminal Misdemeanor: Conceptual Bases of Introduction in the National Legislation]. *Visnyk asotsiatsii kryminalnoho prava Ukrainy* [Bulletin of the Association of Criminal Law of Ukraine], *2 (7)*, 129-142. [in Ukrainian].
5. Gavrilov, B. Ja., Rogova, E. V. (2016). Ugolovnyj prostupok: koncepcija razvitija (mnenie uchenogo i praktika) [Criminal Infraction: The Concept of Development (Opinion of a Scientist and Practitioner)]. *Publichnoe i chastnoe pravo* [Public and Private Law], *4*, 7-45. [in Russian].
6. Krasnytskyi, I. V., Horpyniuk, O. P. (2019). Zaprovadzhennia kryminalnykh prostupkiv: analiz zmin do zakonodavstva [Introduction of Criminal Infractions: Analysis of Changes in Legislation]. *Kryminalne ta kryminalne protsesualne zakonodavstvo u konteksti reformy kryminalnoi yustytsii:* materialy naukovo-praktychnoho seminaru (31.05.2019 r., m. Lviv) [Criminal and Criminal Procedure Legislation in the Context of Criminal Justice Reform: Materials of Scientific Practical Seminar (31.05.2019, Lviv)]. Lviv: Lviv State University of Internal Affairs, 17-21. [in Ukrainian].
7. *Kryminalnyi protsesualnyi kodeks Ukrainy, 2013* (Verkhovna Rada Ukrainy) [Criminal Procedure Code of Ukraine, 2013 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoyi Rady Ukrayiny* [Information of the Verkhovna Rada of Ukraine], *9-10*, 11-12, 13, 88. [in Ukrainian].