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CRIMINAL LAW AS AN INDICATOR OF UKRAINE'S EUROPEAN INTEGRATION: CONCEPTUAL PRINCIPLES OF HARMONISATION

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The article examines criminal law as an indicator of Ukraine's European integration, analysing its role within the broader legal reform framework aimed at aligning national legislation with the acquis communautaire of the European Union. Following Ukraine's recognition as a candidate country for EU membership, the harmonisation of criminal law has acquired strategic significance, serving both as a legal obligation and as a mechanism for strengthening the state's resilience to hybrid threats, armed aggression, and challenges to the rule of law. The paper traces the evolution of EU competence in criminal matters, focusing on Article 83 of the Treaty on the Functioning of the European Union (TFEU), which provides the normative foundation for harmonising criminal law across Member States. Special attention is devoted to the jurisprudence of the Court of Justice of the European Union (CJEU), which has developed an autonomous and coherent interpretation of key criminal law concepts such as ne bis in idem, proportionality, and the principle of ultima ratio. The study analyses landmark cases including Commission v. Greece (1989) and Gasparini and Others (2006), which articulated the principle of effective, proportionate, and dissuasive sanctions as a cornerstone of EU criminal law. It is argued that adaptation should not be reduced to a mechanical transplantation of EU norms but should involve the meaningful integration of European values and human rights standards into Ukraine's criminal justice system. The conclusion emphasises that the Europeanisation of Ukrainian criminal law constitutes not only a legal and political commitment but also a driver of internal legal modernisation, enhancing judicial dialogue, ensuring coherence in legal practice, and reinforcing Ukraine's integration into the common European area of freedom, security, and justice.

Key words: *European integration, criminal law, EU acquis, Court of Justice of the European Union, harmonisation, ne bis in idem, ultima ratio, rule of law.*

Соловйова Аліна. Кримінальне право як індикатор європейської інтеграції України: концептуальні засади адаптації

У статті розглядається кримінальне право як показник європейської інтеграції України, аналізуючи його роль у ширшій системі правової реформи, спрямованої на узгодження національного законодавства з acquis communautaire Європейського Союзу. Після визнання України країною-кандидатом на членство в ЄС, гармонізація кримінального права набула стратегічного значення, виступаючи як юридичним зобов›язанням, так і механізмом посилення стійкості держави до гібридних загроз, збройної агресії та викликів верховенству права. У статті простежується еволюція компетенції ЄС у кримінальних справах, зосереджуючись на статті 83 Договору про функціонування Європейського Союзу (ДФЄС), яка забезпечує нормативну основу для гармонізації кримінального права в державах-членах. Особлива увага приділяється практиці Суду Європейського Союзу (СЄС), який розробив автономне та узгоджене тлумачення ключових концепцій кримінального права, таких як ne bis in idem, пропорційність та принцип ultima ratio. У дослідженні аналізуються знакові справи, зокрема Комісія проти Греції (1989) та Гаспаріні та інші (2006), у яких сформульовано принцип ефективних, пропорційних та стримуючих санкцій як наріжний камінь кримінального права ЄС. Стверджується, що адаптація не повинна зводитися до механічного перенесення норм ЄС, а повинна включати змістовну інтеграцію європейських цінностей та стандартів прав людини в систему кримінального правосуддя України. У висновку наголошується, що європеїзація українського кримінального права є не лише правовим та політичним зобов›язанням, але

й рушійною силою внутрішньої правової модернізації, посилення судового діалогу, забезпечення узгодженості в судовій практиці та зміцнення інтеграції України до спільного європейського простору свободи, безпеки та правосуддя.

Ключові слова: *європейська інтеграція, кримінальне право, acquis ЄС, Суд Європейського Союзу, гармонізація, ne bis in idem, ultima ratio, верховенство права.*

After Ukraine became a candidate country for European Union (EU) accession, the adaptation of criminal legislation to the acquis communautaire became a strategic direction of legal reform. This direction is consistent with the provisions of the Constitution and laws of Ukraine, and also meets the requirements of the Association Agreement between Ukraine and the EU.

The process of Europeanization of Ukraine's criminal law began after the restoration of its independence, gained new impetus during the preparation and adoption of the current Criminal Code of Ukraine, and continues today through the introduction of numerous amendments and additions to the Criminal Code of Ukraine. This process has gained particular relevance recently, after the creation by the President of Ukraine on August 7, 2019 of the Commission on Legal Reform, which includes a Working Group on the Development of Criminal Law from among its members [1, c. 45].

The development of this field over the last 30 years shows that criminal law is no longer on the periphery of the process of European integration. Although some authors link the integration of criminal law – as a "core state competence" – to the concepts of "new intergovernmentalism", "intensive transgovernmentalism" or "new institutionalism", none of these theories sufficiently explains the institutional and political developments in the field of criminal law after the Lisbon Treaty. Paradoxically, it is precisely in this field, traditionally associated with high costs for the sovereignty and national identity of the Member States, that the complex deepening of integration initiated by the EU institutions has taken place, covering new material areas and subjects [2, c. 47].

The criminal law competence of the European Union is structured in such a way as to ensure the protection of key public interests that constitute the foundation of the European legal order. Firstly, the protection of the internal market is ensured through the possibility of imposing criminal sanctions in accordance with Articles 83(2) and 114 of the Treaty on the Functioning of the European Union (TFEU) [3], as well as through the adoption of acts aimed at combating market abuse.

Secondly, the security of Union citizens is guaranteed by Article 83(1) TFEU, which defines a list of particularly serious crimes with a cross-border dimension. This provision is further specified in secondary legislation, in particular Directive (EU) 2017/541 on combating terrorism [4].

Thirdly, in the field of environmental protection, the introduction of criminal law measures is enshrined in Directive 2008/99/EC on the protection of the environment through criminal law, which establishes liability for acts that cause significant damage to the natural environment [5].

Finally, the financial interests of the European Union are protected under Article 325 TFEU and detailed in Directive (EU) 2017/1371 (the so-called PIF Directive) [6], which establishes criminal liability for offences relating to the use and protection of the EU budget.

The above-mentioned structure of the Union's criminal law powers is based primarily on the provisions of Article 83 TFEU, which establishes a regulatory framework for the harmonisation of criminal law in the Member States. In particular, paragraph 1 of this article stipulates that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish, by means of directives, minimum rules on the definition of criminal offences and penalties in the areas of particularly serious crime with a cross-border dimension. Such crimes directly include inter alia, terrorism, trafficking in human beings, sexual exploitation of women and children, illicit trafficking in drugs and arms, money

laundering, corruption, counterfeiting of means of payment, cybercrime, and organised crime.

The Council, acting unanimously with the consent of the European Parliament, may also expand this list in line with crime trends.

V. Tulyakov rightly points out that European criminal law resonates with the criminal law of the Member States if there is a specific connection with the freedoms granted to its internal market. This is clearly seen in the disputes requiring a decision by the Luxembourg Court. With the development of the European Union, the areas of its competence have been expanded thanks to the so-called dialogue of judges on the basis of the provisions of the Treaties [7].

The use of criminal law in the EU is based on the principles of ultima ratio, proportionality, legality, and the protection of human rights (the EU Charter of Fundamental Rights) [8]. EU case law emphasizes that criminalization without proper proof of a real public danger is unacceptable [9, 10].

The conditions of full-scale armed aggression of the Russian Federation have necessitated the urgent updating of criminal law instruments, while requiring compliance with European standards of proportionality, human rights and the principle of ultima ratio. Armed aggression actualizes the criminalization of war crimes, collaborationism, ecocide, cyberattacks, but such criminalization must be consistent with the European legal order. As stated in the conclusions of the EU Council (2024), the future of criminal law should be based on three guidelines: compliance with generally recognized principles; protection of fundamental human rights; internal consistency of legislation [11].

Law of Ukraine of February 23, 2006 No. 3477-IV «About execution of decisions and application of practice of the European Court of Human Rights» governs the relations arising in connection with obligation of the state to perform decisions of the European Court of Human Rights on cases against Ukraine; with need of elimination of causes of infringement by Ukraine Conventions on human rights protection and basic freedoms and protocols to it; with implementation in the Ukrainian legal proceedings and administrative practice of the European standards of human rights; with creation of premises for reduction of number of statements in the European Court of Human Rights against Ukraine [12].

In the process of gradual harmonisation of criminal law, it is worth mentioning the activities of the Court of Justice of the European Union in this area. Initially, the competence of the Court of Justice of the European Union in the field of criminal law was significantly limited, since criminal jurisdiction traditionally belonged to the exclusive competence of the Member States. However, after the entry into force of the Treaty of Lisbon (2009), the Court received full jurisdiction to interpret and review acts adopted within the area of freedom, security and justice, including issues of EU criminal policy. The Treaty amended both the Treaty on European Union (TEU) and the Treaty establishing the European Community, the latter being renamed the Treaty on the Functioning of the European Union (TFEU). Significantly, the Court of Justice's jurisdiction in criminal matters now derives primarily from the TFEU, which integrates judicial cooperation in criminal matters into the Union's legal order. The Treaty amended both the Treaty on European Union (TEU) and the Treaty establishing the European Community, the latter being renamed the Treaty on the Functioning of the European Union (TFEU). Significantly, the Court of Justice's jurisdiction in criminal matters now derives primarily from the TFEU, which integrates judicial cooperation in criminal matters into the Union's legal order.

Article 19(1) TEU provides that "The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed," thereby establishing the Court's general jurisdiction over all areas of EU law, including criminal matters once incorporated into the Treaties [13]. Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.

Additionally, according to the article 267 TFEU the Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of the Treaties; (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union" [14].

This mechanism explicitly enables national criminal courts to refer questions concerning the interpretation of EU criminal law to the CJEU, ensuring uniform application and coherence of legal standards across Member States. The harmonisation of criminal law takes place not only through directives or regulations, but also through the interpretation by the Court of the provisions of the founding treaties and secondary legislation. As already mentioned above, the development of the area of freedom, security and justice requires common minimum standards, which are found in the judgments of the Court.

The conceptual foundation of the principle of effective, proportionate, and dissuasive sanctions – aimed at ensuring the fulfilment of Member States' obligations within the European Union – was first formulated by the Court of Justice of the European Communities in the case Commission v. Greece (the so-called "Greek Maize" case, 1989) [15]. In this decision, the Court found that according to the Commission, the Member States are required by virtue of Article 5 of the EEC Treaty to penalize any persons who infringe Community law in the same way as they penalize those who infringe national law. The Hellenic Republic failed to fulfil those obligations by omitting to initiate all the criminal or disciplinary proceedings provided for by national law against the perpetrators of the fraud and all those who collaborated in the commission and concealment of it. It should be observed that where Community legislation does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, Article 5 of the Treaty requires the Member States to take all measures necessary to guarantee the application and effectiveness of Community law [16]. Thus, while it is for the Member States to determine the type and level of criminal penalties, they are obliged to ensure that infringements of EU law are subject to sanctions equivalent to those applicable to similar infringements of national law. In addition, such sanctions must meet the criteria of effectiveness, proportionality and dissuasiveness. The principle of effectiveness has since gained particular importance as a legal basis for the EU's competence in the field of criminal law.

This expansion of powers has enabled the Court to develop a coherent and autonomous interpretation of criminal law concepts.

The principle of ne bis in idem, as affirmed by the Court of Justice of the European Union in Criminal proceedings against Giuseppe Francesco Gasparini and Others (Judgment of 28 September 2006, Case C-467/04) [17], binds the courts of a Contracting State only to the extent that it prevents a defendant whose case has been finally adjudicated in another Contracting State from being prosecuted a second time for the same material acts. This interpretation underscores the transnational scope of the principle within the European legal order, ensuring respect for the finality of judicial decisions and the protection of individuals against double jeopardy across Member States.

Such judicial interaction fosters a vertical dialogue between the Court of Justice and national courts, thereby ensuring the unity and coherence of judicial practice and preventing divergences in the application of criminal law throughout the European Union.

Thus, the process of European integration of Ukraine's criminal law is not only a legal obligation defined by international agreements and the conditions of membership in the European Union, but also an important tool for increasing the state's resilience to modern challenges, in particular hybrid threats and armed aggression. Harmonization of criminal legislation with the EU acquis contributes to the formation of uniform standards of criminal policy based on the principles of effectiveness, proportionality and deterrent effect of sanctions, which ensure the real establishment of the rule of law. At the same

time, adaptation should not be reduced to the mechanical borrowing of norms or sanctions developed in the EU legal space. It should occur through a deep understanding of the content of European principles, such as legality, predictability, proportionality of punishment, prohibition of double prosecution (ne bis in idem) and effective protection of human rights. These principles acquire particular importance in the context of martial law, when the state must ensure a balance between public security and compliance with legal and humanitarian standards. Thus, the adaptation of Ukraine's criminal legislation to EU law is not only a step towards political and legal integration, but also a component of the process of internal modernization of the national legal system. It creates the prerequisites for greater trust in the judiciary, strengthens interaction between Ukrainian and European law enforcement institutions, and establishes European legal culture as the basis for the future rule of law in Ukraine.

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