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TERMS OF THE AIR CODE OF UKRAINE AND PROVISIONS OF CRIMINAL LAW

The article highlights the issue of the relationship of air and criminal law of Ukraine. The attention is paid to the controversial moments, when the legal requirements of the Air Code of Ukraine do not correspond with the theory of criminal law. The author criticizes certain provisions of the Air Code of Ukraine from the standpoint of the doctrine of criminal law.

The presence of the specific connection among the branches of law of the state is the objectively existing fact that doesn't require the substantiation. It is difficult to name the subject of the jurisprudence where the first topics don't highlight issues of the relationship of the particular branch of law with other branches or applied legal science. Named aspect of the existence of certain field of law derives from the nature of the entire legal system of the state.

Taking the example of criminal law we note that it has a close relationship not only with the related fields of law and science (so-called criminal cycle (direction)) – the criminal procedural law, penal law, criminology, criminalistics, forensic medicine and psychiatry, but also with such branches of law as civil, commercial, labor, finance and other. It's not necessary to give examples because it is obviously for any professional in the field of law.

One of the evidences of the interdisciplinary connections is the legal norms with so-called blanket disposition in criminal law. It is provisions of criminal law, where the references to the provisions of other areas of law, which reveal in detail the content of criminal behavior, are made apparently or latent. However, there are also situations, when the rules of other areas of law include a reference to the requirements of the Criminal Code of Ukraine. In this case, the authors of the legislation or other regulations agree provisions of "their" branch of law with the norms of the law of Ukraine on criminal responsibility.

We can make the assumption that, as a rule, the authors of the draft laws consider that such coordination isn't so complicated because it applies directly to the Criminal Code of Ukraine. By the way, an insidious trap can hide there – mechanical using of the terms and terminological phrases of criminal law without proper awareness of their doctrinal content. Finally, it can lead to the significant distortions of the content and, as a result, impede or make impossible application of such legal norms.

The reasoning given below is only the first superficial view of the author at the difficult and interesting issue of the interbranch connections of criminal and air law that isn't sufficiently studied in the modern legal literature.

The Air Code of Ukraine, adopted 19.05.2011, [1] establishes the legal basis of the secure activity in the field of aviation. In terms of legislative technique, the Air Code authors' approach to the introduction of the first article, which contains

definitions of the terms used in this legal act, is undoubtedly a positive step. Among explanations of the terms and their meaning there are those that are related to the criminal law. The authors of the Air Code of Ukraine have used, in particular, the terms "bodily injury", "deadly effect", "death", "victim", "disaster" and other. But their explanations are not always perfect.

One of the terms causing the question is the concept of "bodily injury with fatal consequences", which is widely used in the Air Code of Ukraine. For example, p. 100 part 1 of Art.1 of the Air Code of Ukraine determines: "bodily injury with fatal consequences is the damage, which person obtained in the aviation accident that led to his death within 30 days after the event". Paragraph 2 p. 49 part 1 of Art.1 of the Air Code of Ukraine provides that "in the event of bodily injuries, due to which death occurred within 30 days from the time of aviation events, they are classified (probably, in original the term "qualified" should be used here – S.B.) as bodily injuries with fatal consequences".

We consider that the expression "bodily injuries with fatal consequences" is a pleonastic turn of phrase. This conclusion can be reached on the basis of the interpretation and clarification of the correlation of the mentioned dangerous consequences by doctrine of criminal law that is supported by the current criminal law and other legislation.

The rules of forensic determination of the bodily injuries severity (approved by the Ministry of Health of Ukraine № 6, January 17, 1995) determine that from the medical point of view bodily injuries – are a violation of the anatomical integrity of tissues, organs and their functions, which arises as a consequence of one or more external damaging factors – physical, chemical, biological, mental (Art. 1.2 of the Rules). According to the Criminal Code of Ukraine there are three degrees of injuries severity: heavy, moderate severity and light (which, in its turn, is divided into two types – Art. 125 of the Criminal Code of Ukraine).

The death of the victim is a special dangerous consequence that is separated from bodily injuries by legislation. It should be noted that from a medical point of view death as a result of unlawful behavior can be caused only by disturbance of the anatomical integrity of tissues, organs and their functions, which arises as a consequence of one or more external damaging factors – physical, chemical, biological, mental by causing some injuries.

Only in one case, criminal law directly connects two socially dangerous consequences within the one corpus delicti. It is intentional grievous bodily injuries and death of the victim that is caused by them (Part 2 of Art. 121 of the Criminal Code of Ukraine). However, in this situation the legislator, firstly, bases on the organic relationship existing between intentional grievous bodily injuries and death of the victim and, secondly, focuses on the intentional character of the grievous bodily injuries. If death of the victim occurs as a result of the negligence associated with the violation of certain safety regulations (for example, flight safety or other security at the air transport), the consequences should be formulated by the legislator as "the death of the victim" instead "bodily injuries with fatal consequences," although the physical mechanism of death causing, of course, includes the bodily injuries. Thus, we conclude that the indication of the bodily injuries is unnecessary – it would be sufficient to note "the victim's death" or "death of human" and so on.

As we have already mentioned, par. 2 p. 49 part 1 of Art.1 of the Air Code of Ukraine provides that "in the event of bodily injuries, due to which death occurred within 30 days from the time of aviation events, they are classified as bodily injuries with fatal consequences". A literal interpretation of this provision leads to the conclusion that the victim's death occurred on the 31st day or later will not be considered as the bodily injuries with fatal consequences.

Is this normative approach, establishing a causal relationship (the phrase "due to which" points to this) of the death with the bodily injuries on the basis of the time period between the injury and death, correct?

Domestic science of criminal law has long believed that it is impossible to establish any abstract terms for the issue of a causal relationship. The point is that the character of the injury and the features of the victim's body could be so specific that we cannot consider the abstract terms in such cases at all. The only task of the court during the solving of the issue on causality is the clarification of the fact whether the bodily injury evoked health disorder or death or not.

If it is obviously proved that the injury inflicted to the victim is the cause or at least one of the major causes of the victim's health deterioration or death the subject must be found guilty for these consequences. It isn't matter for solving issue on responsibility whether such consequences have happened immediately or after some period of time (even very long). And on the contrary, if the causality isn't proved in the case it excludes responsibility of the subject for the victim's health deterioration or death even these consequences coincided in time with infliction of bodily injuries.

Conclusions. As to body injuries the issue of causality has two aspects: 1) is the victim's health deterioration or death the outcome of subject's action? 2) And is the period of time between them important? Thus, in some cases, the victim's health deterioration or death happens immediately after infliction of the bodily injuries but the time gap can be measured in hours, days, weeks and even months.

Is it possible to establish the certain maximum of time for the recognition of causality? It seems that it's impossible. The nature of the caused damage, characteristic of the organism is so unique that we can't concenter any scientific basis for establishing some general abstract terms.

References

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