ESSENCE OF THE CRIMINAL LEGAL PROTECTION OF CRITICAL INFRASTRUCTURE FACILITIES

Abstract. Providing national security by the protection of critical infrastructure facilities is one of the priority tasks of every state, as criminal encroachments on the security of critical infrastructure facilities are precisely those crimes that not only cause a negative resonance in Ukrainian society, but also a resonance in the world society. It is noted in the provisions of the article that People's Deputies of Ukraine adopted the Law of Ukraine “On amendments to article 259 of the Criminal Code of Ukraine regarding strengthen liability for knowingly false reporting about the threat to the safety of citizens” with the necessary technical and legal edits on March 2, 2021. Analyzing the content of criminal legal relations, we do not always pay attention to another important circumstance. It is due to the fact that, criminalizing the relevant act, thereby creating an appropriate criminal legal relation, the state "legalizes" its ability to exercise powers of authority, in particular: for "uncoordinated" interference in private life of a person, even the application of a number of coercive measures, including precautionary measures, punishments, etc. to such a person, subject to other necessary conditions.

The purpose and objectives of the article. The purpose of the article is to research the norms of the criminal legislation of Ukraine and to reveal the scientific views of leading scientists in the field of security and law for the developing of their own author's definition of the concept and the disclosure of essence of the criminal legal protection of critical infrastructure facilities as elements of national security.

Methods of the article. Conducting our scientific research required the application of all tools that has been developed by the methodology of legal science. This made it possible to obtain a sufficient level of knowledge about the researched problem, to draw their own conclusions and to suggest the proposals for the definition of the concept and the disclosure of essence of the criminal legal protection of critical infrastructure facilities as elements of national security and thereby to solve the objectives and achieve the goal of the research. of the research should provide the selection of the optimal system of the tools for the research of the outlined problem.

Results of the research. National security is a complex system entity, among the components of which the security of critical infrastructure, which, of course, needs protection by all means that are available to the state and criminal legal protection is one such means, occupies a prominent place. The peculiarity of the domestic present and at the same time a new challenge for the law enforcement agencies of Ukraine is that the biggest threat to critical infrastructure is the actions of not just aggressive individuals or lone saboteurs, but members of extremist groupings, sabotage groups that are purposefully prepared or financed from abroad, participants of international terrorist organizations, etc.

Scientific novelty. The difficult situation in the field of security in Ukraine requires the classification of critical infrastructure protection to priority directions of countering the threats to national security. In addition, the threats can be particularly dangerous, during the implementation of which a crisis situation on one of the elements of critical infrastructure, due to various interconnections, can cause a crisis situation on similar other type facilities. That is why the
definition of the concept and essence of the criminal legal protection of critical infrastructure facilities will help the providing of strengthen of the mechanism of the national security of Ukraine.

**Practical significance.** A clear definition of the criminal legal norm provides a starting point for the development or improvement of forensic means on the combating of the criminal offense that is defined in the Criminal Code of Ukraine. The criminal legal assessment of encroachments on critical infrastructure facilities depends on their types and, in accordance, possible features of causing, determination of the amount of damage that is caused to certain individual or combined objects of criminal legal protection. There is a need under the solution of these issues to determine the type of special knowledge, professional training of the specialists, who are involved by the investigator, the equipment used, etc., during the pre-trial investigation.

**Keywords:** crime, criminal law, infrastructure, providing, facilities, critical infrastructure.

**Problem statement and its connection with important scientific or practical tasks.** The relevance of the article has been determined by the fact that criminal law policy is considered as a part of state policy and is defined as the direction of activity of specially authorized state bodies. Considering the special danger of such actions, which affect not only the baseless distraction of law enforcement officers from the implementation of direct tasks to maintain law and order in certain territories and create tension in society, but also affect the activity of critical infrastructure facilities, the Ukrainian legislator made a decision to increase criminal liability for knowingly false reporting. For this reason, People's Deputies of Ukraine adopted the Law of Ukraine "On amendments to article 259 of the Criminal Code of Ukraine regarding strengthen liability for knowingly false reporting about the threat to the safety of citizens" on March 2, 2021. According to the text of the bill that was prepared for the second reading, the first paragraph of the second part of the article 259 of the Criminal Code of Ukraine has been stated in new edition. Enhanced criminal liability for the acts that are provided for in part one of this article is established, if critical infrastructure facilities or buildings or structures, that provide the activity of public authorities, or the health care facilities, or the educational institutions, have become the objects of knowingly false reporting or if it has caused serious consequences or has been committed again. The liability in the form of imprisonment for a term of four to eight years has been established, as well as additional punishment in the form of confiscation of property. The article 259 of the Criminal Code is also supplemented by a note, by which the term "critical important infrastructure facilities" is defined in the part two, that is used in the meaning, which is defined by the Law "On basic principles of Cyber security of Ukraine", – the enterprises, institutions and organizations regardless of ownership, whose activity is directly related to technological processes and/or the providing of services, which have great importance for the economy and industry, the functioning of society and the security of the population, the incapacitation or disruption of the functioning of which may have a negative impact on the state of national security and defense of Ukraine, on the environment, may cause property damage and/or pose a threat to human life and health [1]. Namely, the strengthening of criminal liability for encroachment on infrastructure facilities, in our opinion, will strengthen the social and legal factors of the providing of national security of Ukraine.

**The main content. Analysis of the researched issue.** By criminalizing a certain action, the state thus creates and consolidates specific criminal legal relations with the help of legal measures. This has a number of consequences, which draws the attention of Ye.L. Streltsov. First, such legal relations become generally binding, designed for an indefinite number of persons; their obligation "is provided" by the state. Each such legal relationship has its facility, content and subjects. In turn, each of the subjects has the appropriate rights and responsibilities. Legal relations begin to "act" from the moment of availability of the legal fact, in our case – from the moment of a crime committing. However, when analyzing the content of criminal legal relations, we do not always pay attention to another important circumstance. It is due to the fact that, criminalizing the relevant action, thereby creating an appropriate criminal legal relation, the state "legalizes" its opportunity to show the power of authority, in particular: for "uncoordinated" interference in a private life of
human, even application to such a human, on condition of compliance with the other necessary terms, of a number of the coercive measures, including the precautionary measures, punishments, etc. Another important circumstance, which is essential also for the understanding the criminal legal relations, is that a specific legal relation (the group of legal relations) has a general and specific meaning. At the general level, at the level of the so-called legal "proclamation", the legal relation has the potential opportunities; it does not "act", but is ready for it in the availability of the corresponding legal fact. At the same time, from the moment of a crime committing, the legal relations "come to life" and begin their realization in all possible directions, with all possible consequences [2, p.91].

Ukrainian criminal legal policy is most closely linked to the criminal law, which occupies a dominant position in the state policy in the field of the fight against the crime. The rest of its parts are to some extent derived from the criminal legal policy. It is important only to keep in mind that it is not politics in the process of its development that follows the law, but, on the contrary, its law enforcement fields are formed in accordance with the guidelines of the criminal policy [3, p.30]. V.I. Borysov and P.L. Fris, the well-known domestic researchers of the problems of crime emphasize that during the years of independence in Ukraine no national doctrine and concept of the combating crime has been developed, as well as a criminal legal doctrine with the corresponding its conception. At the same time, they point out that law enforcement activity is very important.

It is this aspect of the criminal legal policy that most vividly reflects the political will of the state in the fight against crime, first of all, with such its manifestations, which acquire a particularly negative resonance for society at the present stage of the development of Ukraine, and criminal law is a tool of this policy [4, p. 15-31]. The criminal encroachments on the safety of the critical infrastructure are precisely those crimes that not only cause a negative resonance in Ukrainian society, but also a resonance in the world society. These crimes not only disturb the public peace, but also cause the considerable material damage, encroach on the life and health of the people in the large areas and are not limited to the borders of one state. In addition, the negative consequences of such crimes can take a place for a long time.

Usually, the criminal legal policy is considered as a part of the policy of the state and is defined as the direction of the activity of the specially authorized state bodies, concerning the protection of the human and civil rights and freedoms, society and the state from the socially dangerous encroachments through the application of punishment or other measures of a criminal legal nature to persons, who committed such encroachments, as well as by the way of the preventing the specified encroachments through the legal education and the measures of the prevention of individual and special criminological nature [5, p. 56]

It should be noted that the national safety is a complex systemic entity, among the components of which the safety of the critical infrastructure occupies a prominent place, which, certainly needs the protection by all means that are available to the state and the criminal legal protection is one such means. We believe that a characteristic peculiarity of the domestic present and at the same time a new challenge for the law enforcement agencies of Ukraine is that the greatest threat to the critical infrastructure is posed the actions not only by aggressive individuals or lone saboteurs, but also by members of the extremist groupings, the sabotage groups that are purposefully getting ready or are financed from abroad, the participants of international terrorist organizations, and so on. In addition, we see examples of this today in the daily practice of domestic law enforcement agencies and special services. Thus, for example, in January 2021, the SSU counterintelligence exposed the activity of the intelligence spy network of the Federal Security Service of the Russian Federation, which operated in the territory of Ukraine in Kyiv, Odesa, Mykolaiv, Zhytomyr and Chernihiv regions and which included the former service members. The citizens of Ukraine were recruited and performed tasks that had been set by the counterintelligence personnel of the Federal Security Service of the Russian Federation – V. Dautov and D. Sobko. They were instructed to create the conditions for the sabotage at the critical infrastructure facilities, including at the military airfield that is called "Kulbakino" [6].
Note that O.P. Yermenchuk, the domestic researcher of the problems of the critical infrastructure protection, recognizes that, today, the state stands against the most serious challenge in the field of providing the state safety since its independence. The military conflict in eastern Ukraine, the state of undeclared hybrid war, the trade wars, the economic expansion, the sharp strengthening of the manifestations of terrorism, the unprecedented increase of crime, all this and other risks require the state to take new approaches to identifying threats, criminalizing certain actions and preventing and stopping them. The specified puts on the agenda the task of the protection of critical for the existence of the state of the set of parts (sectors) of fields of the national economy, of the subjects of law of various organizational and legal forms, of the tangible or intangible resources, of the natural resources, that provide the vital functions of the human and the citizen, the society and the state, its sovereignty and territorial integrity, of the so-called "critical infrastructure" [7, p. 151].

With regard to the issue of the general coordination of the activity in this area, it is considered to be appropriate the consideration of the possibility of establishing a National Center for Critical Infrastructure Protection or a Center for National Infrastructure Protection, that have been expressed by domestic scientists. In their opinion, the specified center should include representatives of the involved ministries and departments as members. The Center may be established as a separate body, or as a structural part within the existing authority, which will be identified as responsible for the coordinating of activity of the critical infrastructure protection. This can be either a body subordinate to the Prime Minister or the National Security and Defense Council or a body within the Security Services of Ukraine (on the basis of units of the counterintelligence protection of the interests of the state in the field of economic security, etc.) [7, p. 152].

From our side, we support the idea of creating such a body, and in the case of implementation of the expressed idea, we draw attention to the need for experts to develop such a center of criminal legal norms, that make it more stringent the liability for encroachments on the critical infrastructure facilities, and the relevant to these legal norms forensic recommendations regarding providing pre-trial investigation and interaction of the prosecutor, investigator with such a body during the implementation of the criminal proceedings. Many of the issues from the organization of the investigation in general to the preparation and conduction of individual investigative actions will be able to be resolved with the use of help of the staff or structural subdivisions of the Center for Critical Infrastructure Protection. In this way, the issues of the forensic providing for the combating certain types of crimes lead us directly to the need for a clear definition of the state criminal legislative policy on the combating crimes that encroach on the critical infrastructure facilities.

The norms of criminal legal protection of critical infrastructure.

The issue of the protection of critical infrastructure is one of the elements of criminal legal protection and law enforcement agencies, using their existing legal institutions, have the task of warning and preventing the committing of crimes at the critical infrastructure facilities. Therefore, O.V. Taran and O.G. Sandul rightly pay attention to the fact that currently only the formation and establishment of the mentioned institution is taking place, the legislative work continues, in particular on the development of a special law, which will determine the directions of further development of the legislation in the relevant field, the creation of a list of the critical infrastructure facilities that need the appropriate criminal legal protection [8, p. 58].

A clear definition of the criminal legal norm provides a starting point for the start of development or improvement of the forensic means to combating against the criminal offense that is defined in the Criminal Code of Ukraine. V.O. Navrotskyi, the famous domestic scientist, disclosing the criminal legal aspects of the concept of the critical infrastructure, rightly draws attention to the fact that the relevance of the definition of this concept is due to the following factors:
the state, society and the individual exist due to the functioning of a huge number of factors. All of them need the protection, including the criminal legal. Due to the limitation of resources, "all and everything" cannot be effectively protected. Therefore, the priorities need to be identified – those facilities that constitute the critical infrastructure;

– the relevance of the problem of the critical infrastructure protection is exacerbated by the conditions of the sabotage war and terrorist threats;

– certain bodies in Ukraine are tasked with the creation of a system of protection of the critical infrastructure facilities, which again predicts the exact establishment of the subject of the relevant activity;

– intuitively everyone understands the essence of the critical infrastructure.

However, both at the normative level and in theory there is no precise definition of this concept, which would allow to comprehensively establish the range of the relevant facilities, to separate them from adjacent ones [9, p. 73].

The Criminal Law of Ukraine acts as the main tool for identifying and objectifying threats in the field of the critical infrastructure, their assessment and protection of the state from the criminal encroachment. The current Criminal Code of Ukraine does not contain special (separate) norms that provide for liability for the socially dangerous actions, which encroach on the critical infrastructure facilities, their definitions and other related concepts also are not mentioned in the Criminal Code of Ukraine. At the same time, his systematic analysis has shown that there is a normative regulation of the grounds for the criminal liability for such encroachments. The norms, by which the liability for criminal encroachments on the critical infrastructure facilities is predicted, are set out in various sections of the Special Part of the Criminal Code, which indicates the fact that the legislator defines the generic object of these crimes differently. For example, O.V. Taran and O.G. Sandul, analyzing the current criminal legislation of Ukraine, allocate the following groups of crimes that encroach on the critical infrastructure facilities: against the foundations of national safety (sabotage); against property (intentional damage to electricity facilities); against public safety (terrorist act); against traffic safety and transport operation (damage to communication routes and vehicles; blocking of transport communications, and also capture of the transport enterprise; damage to facilities of main or industrial oil, gas, condensate and oil pipelines); against the authority of the public authorities, local governments, associations of citizens and crimes against journalists; intentional damage to communication lines; crimes in the field of use of computing machinery (computers), systems and computer networks and telecommunication networks [8, p. 59].

In our opinion, the separation of such groups of crimes has a certain, including the forensic significance, however, such a grouping of the crimes cannot be recognized perfect on the basis of possible encroachment on the critical infrastructure facilities. A facility or group of facilities critical infrastructure may be affected by several criminal manifestations, and a certain crime that will take place at a critical infrastructure facility may not be directed at the facility itself as an object of the criminal encroachment and on the contrary, the consequences of a single crime can additionally and without the direct intent of the offender damage the critical infrastructure facility. Thus, there are no crimes against the life and health of a person in the classification of crimes that has been suggested by O.V. Taran and O.G. Sandul, but the murder for personal motives of the operator or several persons, who manage the operation of a nuclear reactor in the performance of their duties, may cause, as a result, the encroachment on the safety of a critical infrastructure facility. The individual crimes in the field of the protection of state secrets, for example, its disclosure to an agent of foreign intelligence service, etc., can cause the significant damage to safety of the critical infrastructure. However, to talk about the definition of those crimes, the committing of which creates or potentially can create the danger to the critical infrastructure facilities, is worth both from a purely criminal legal and from a forensic standpoint. Here the balanced the criminal legal policy of the state must have its say.

V.F. Prymachenko, the specialist in the field of criminal law draws attention to the fact that the criminal liability Responsibility for encroaching on the critical infrastructure facilities will come
for general corpus delicti, for example, such as: the article 113 "Sabotage", the article 194 "Intentional destruction or damage to property", the article 196 "Careless destruction or damage to property", the article 258 "Terrorist act", the article 361 "Unauthorized interference with in the work of computing machinery (computers), systems and computer networks and telecommunication networks" etc. That is, the differentiation of criminal liability for crimes against the critical infrastructure facilities, in his opinion, is insufficient. Sure, there are separate corpus delicti, which are special corpus delicti and provide for the criminal liability for socially dangerous actions that are aimed primarily at the protection of critical infrastructure facilities, such as in the article 194-1 "Deliberate destruction of electricity facilities". There are usually quite a lot of means of differentiating of the criminal liability in the General Part of the Criminal Code of Ukraine and they can be applied in certain circumstances in the differentiation of the criminal liability for crimes that have been committed against the critical infrastructure of Ukraine. However, in this case it would be expedient to use more widely the means of differentiation of the criminal liability that are provided for in the Special Part of the Criminal Code of Ukraine. Today we can only talk about the availability of special corpus delicti, such as provided for in the article 194-1 of the Criminal Code of Ukraine. Therefore, V.F. Prymachenko suggests the establishing of appropriate qualifiers in the specified corpus delicti, namely, it is necessary to introduce such a qualifying feature as the commission or non-commission of certain actions that have caused damage or threatened to cause such damage regarding the critical infrastructure facilities of Ukraine in a number of corpus delicti that could hypothetically encroach on the critical infrastructure of Ukraine. Such an innovation, appears to have, will not only deepen the differentiation of the criminal liability for these crimes, but also strengthen the criminal legal protection of the critical infrastructure of Ukraine [10, p.p. 199-200]. We consider such ideas of the expert in the field of criminal law to be reasonable and also from the point of view of the forensic aspects of pre-trial investigation of the specified crimes. It is necessary to develop special tactic techniques for conducting certain investigative actions, use tactical operations, involve relevant specialists, scientific and technical means, find the specific material and other evidence and conduct separate expert research, etc., for the establishment of the true direction of the criminal actions of the perpetrator of the crime, the proving that such his actions encroached namely on the critical infrastructure and its safety. Criminal legal assessment of the encroachments on the critical infrastructure facilities depends on their types and, accordingly, the possible features of causing, determining the amount of damage that has been caused to certain individual or matched facilities of the criminal law protection. Behind the solution of these issues there is a need to determine during the pre-trial investigation the type of special knowledge, professional training of the specialists that are involved by the investigator, the used equipment, etc. Thus, criminal legal norms and their legal interpretation have a direct impact on the means of the forensic support of pre-trial investigation of crimes at the critical infrastructure facilities.

Conclusions and suggestions.

We believe that the development of criminal legal and procedural standards at the international level with the further implementation into national legislation is necessary for the comprehensive counteraction to threats to information security of the critical infrastructure. This will make it possible effectively to investigate crimes on a global scale, to obtain, store, research and provide the electronic evidence, taking into account the cross-border nature of crimes. The success of cooperation of the law enforcement in the pre-trial investigation of the cybercrime is due to the speed of the preservation of digital evidence and the resolution of jurisdictional issues in the information space. The practical implementation of such suggestions will necessitate the development of appropriate forensic recommendations, methodologies for providing the pre-trial investigation of new types of crimes.

The peculiarity of pre-trial investigation of criminal offenses that have been committed at the critical infrastructure facilities is not only the correct criminal legal qualification of committed crimes, but also the development of the basics of forensic providing for their detection and investigation. The need for research and scientific development of recommendations for the
forensic providing investigation of crimes at critical infrastructure facilities is due to the priority to solve these and related problems by law enforcement agencies. It is necessary to take a comprehensive approach to the issues, which are related to technical, tactical, methodological and forensic providing of this activity of pre-trial investigation bodies, for a comprehensive, complete, rapid and objective investigation of the facts of committing crimes at the critical infrastructure facilities.

References

1. Rada posylila vidpovidalnist za zavidomo nepravdyve povodomlennya pro zahrozu bezpetsi hromadyan. Retrieved from: https://jurliga.ligazakon.net/ua/news/201972_rada-posilila-vdpovidalnst-za-zavdomo-nepravdyve-povodomlennya-pro-zagrozu-bezpets-gromadyan (data zvernennya 3.03.2021 р.).
2. Strelets, Ye.L. (2017). Problemy kryminalno-pravovoi rehamentatsii derzhavnoi polityky v sferi borotby zi zlochynnistiu. Materialy Mizhnarodnoi naukovo-praktychnoi konferentsii: "Polityka v sferi borotby zi zlochynnistiu" z nahody vidznachennia 25-richchia navchalno-naukovoho yurydychnoho instytutu. Ivano-Frankivsk, S. 90-93.
3. Danshyn, I.M., Zelinskyi, A.F. (1992). Kryminalna polityka: za i proty. Pravo Ukrainy. №8. S. 29-35.
4. Borysov, V.I., Fris, P.L. (2013). Poniattia kryminalno-pravovoi polityky. Visnyk Asotsiatsii kryminalnoho prava Ukrainy, №1(1). S. 15-31.
5. Dudorov, O.O., Khavroniuk, M.I. (2014). Kryminalne pravo: navch. Posibnyk. Za red. M.I. Khavroniuka. Kyiv: Vaite, 944 s.
6. SBU "nakryla" set FSB iz byvshykh voennykh razvedchikov. Retrieved from: https://realist.online/news/sbu-nakryla-set-fsb-iz-byvshikh-ukrainskich-voennykh-razvedchikov-foto- (data zvernennia 5.02.2021)
7. Yermenchuk, O.P. (2017). Pershocherhovi zakhody z orhanizatsii zakhystu krytychnoi infrastruktury v Ukraini. Materialy Mizhnarodnoi naukovo-praktychnoi konferentsii: "Polityka v sferi borotby zi zlochynnistiu" z nahody vidznachennia 25-richchia navchalno-naukovoho yurydychnoho instytutu. Ivano-Frankivsk, S.150-152.
8. Taran, O.V., Sandul, O.H. (2019). Problemy kryminalnoi vidpoidalnosti za posiahannya na obiekty krytychnoi infrastruktury. Yaderna ta radiatsiina bezpeka. №3(83), S.58-67.
9. Navrotskyi, V.O. (2017). Kryminalno-pravovi aspekty poniattia krytychnoi infrastruktury. Materialy Mizhnarodnoi naukovo-praktychnoi konferentsii: "Polityka v sferi borotby zi zlochynnistiu" z nahody vidznachennia 25-richchia navchalno-naukovoho yurydychnoho instytutu. Ivano-Frankivsk, S.70-75.
10. Prymachenko, V.F. (2017). Okreml aspekty dyferentsiatsii kryminalnoi vidpoidalnosti za zlochyny proty krytychnoi infrastruktury Ukrainy. Materialy Mizhnarodnoi naukovo-praktychnoi konferentsii: "Polityka v sferi borotby zi zlochynnistiu" z nahody vidznachennia 25-richchia navchalno-naukovoho yurydychnoho instytutu. Ivano-Frankivsk, S.198-200.

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