KYIV-MOHYLA
LAW & POLITICS JOURNAL
KYIV-MOHYLA SCHOLARLY PEER-REVIEWED JOURNALS

DOI: 10.18523/2414-9942.11.2025.202-214

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GENERAL AND SPECIAL NORMS CONCERNING CARELESS CRIMES IN THE ASPECT OF LEGAL CERTAINTY AS A COMPONENT OF THE RULE OF LAW

Abstract

The article examines collision between the requirements of legal certainty of the description of unlawful behavior and the desire of specialists for a rational construction of criminal legislation. The direction of criminal law policy is criticized, according to which the legislator tries to cover with special norms all possible forms of manifestation of careless behavior and thus achieve legal certainty. Specific practical examples prove that such a direction of criminal law policy leads to a decrease in the ability of law enforcement officers to abstract legal thinking and the loss of theoretical substantiation skills of the grounds for criminal liability. It is empirically proven that the above problems concern not only law enforcement agencies of Ukraine but also judges of the ECHR. The point of view that improving general norms on criminal liability for careless crimes is a more rational direction of criminal law policy is supported.

Keywords: *General Norm, Special Norm, Careless Crime, Carelessness, Negligence, Legal Certainty, Rule of Law*

Introduction

The current stage of development of domestic jurisprudence is characterized by the growing role of interdisciplinary connections, systemic and comparative research methods in the field of law.

Ukraine's movement towards the European legal space sets a difficult task for domestic lawyers in bringing the provisions of domestic legislation into line with European Union law. This process is often referred to as the harmonization of the domestic legal system with the European one.

On June 27 2017, the document of the European Commission "For Democracy through Law" (Venice Commission) "Rule of Law Checklist" was presented in Kyiv, translated into Ukrainian from English as "*Mirylo pravovladdya*".[1]

The document had a significant impact on domestic legal science; its importance was immediately appreciated. For example, the Center for Research on the Problems of the Rule of Law and Its Implementation in the National Practice of Ukraine was established at

[1] Мірило правовладдя. Коментар. Глосарій [Rule of Law Checklist. Commentary. Glossary]. Ухвалено Венеційською комісією на 106-му пленарному засіданні (Венеція, 11–12 березня 2016 р.) / перекл. з анг. Сергія Головатого. USAID, червень 2017. 163 с.; Мірило верховенства права (правовладдя) національного рівня: практика України [Rule of Law Checklist at National Level: Case of Ukraine] / за заг. ред. М. Козюбри; передмова: Головатий С.; упоряди. та авт. коментарів: В. Венгер, С. Головатий, А. Заєць, Є. Звєрєв, М. Козюбра, Ю. Матвєєва, О. Цельєв; Центр дослідження проблем верховенства права та його втілення в національну практику України Національного університету «Києво-Могилянська академія». Київ, 2021. 152 с.

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The Venice document "Rule of Law Checklist" defines the following as the core elements of the concept of "The Rule of Law": (1) Legality, including a transparent, accountable and democratic process for enacting law; (2) Legal certainty; (3) Prohibition of arbitrariness; (4) Access to justice in independent and impartial courts, including judicial review of administrative acts; (5) Respect for human rights; and (6) Nondiscrimination and equality before the law.

It can be assumed that the "Rule of Law Checklist" was conceived as an attempt to develop standards, the observance of which makes it possible to understand whether a particular element of the legal system corresponds to the idea of the rule of law. This idea has been developed by some domestic scientists in such a way that the "Rule of Law Checklist" can be considered as a kind of tool of scientific knowledge, as a legal method of research.[2]

Legal certainty is an indispensable component or an integral core element of the rule of law. The content of this concept, its significance for the domestic legal system, and other aspects of its application are actively studied by domestic legal theory specialists.[3]

At the same time, representatives of sectoral legal sciences began to pay attention to the study of legal certainty as a component of the rule of law in terms of the goals and objectives of the relevant field. For example, in the science of criminal law, noteworthy studies by Yu. V. Baulin,[4] Z. A. Zahyney-Zabolotenko,[5] A. A. Muzyka,[6] V. O. Navrotsky,[7] M. I. Khavronyuk[8] and some other researchers have appeared. We share the opinion of V. O. Navrotsky that "the problem of legal certainty in criminal law is so deep and diverse that it can be adequately highlighted only at the monographic level".[9]

There is one aspect in the issue of harmonizing criminal law norms with the requirements of legal certainty that has not been separately considered yet in Ukrainian criminal law science. In our opinion, this aspect is very problematic and can be briefly highlighted in the following way. In the most general sense, legal certainty is explained as "the requirement for clarity of the grounds, goals and content of regulatory provisions, especially those that are addressed directly to a person. A person must be able to foresee the legal consequences of their behavior".[10] Or in other words legal certainty is viewed as one of the core rule of law elements supporting the idea that the law has to provide logical and firm

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[2] Л. Музика. Верховенство права – принцип чи метод? [Rule of Law – Principle or Method?]. Тези доповідей і повідомлень учасників конференції *«Принципи права: універсальне та національне в контексті сучасних глобалізаційних і євроінтеграційних процесів»*, Київ, 21-22 червня 2024 р. Київ: НаУКМА, 2024. С. 174–177.

[3] Ю. Матвєєва. Принцип правової визначеності як складова верховенства права [Principle of Legal Certainty as a Component of the Rule of Law]: дис. … канд. юрид. наук. Київ, 2019. 220 с.; I. Zvieriev. Death penalty is applied to the state. The view through legal certainty as an element of the rule of law. *Kyiv-Mohyla Law & Politics Journal*. 2024. # 10. P. 135–149.

[4] Ю. Баулін. Принцип верховенства права у кримінально-правовому вимірі [Principle of the Rule of Law in the Criminal Law Dimension]. *Концептуальні засади нової редакції Кримінального кодексу України*: матеріали міжнар. наук. конф. (м. Харків, 17–19 жовтня 2019 р.). Харків: Право, 2019. С. 109–113.

[5] З. Загиней-Заболотенко, О. Чаплюк. Правова визначеність юридичного рішення суду у кримінальних провадженнях (на прикладі застосування пункту 6 частини 3 статті 76 Кримінального кодексу України) [Legal Certainty of a Court Decision in Criminal Proceedings (on the Example of the Application of Paragraph 6 of Part 3 of Article 76 of the Criminal Code of Ukraine)]. *Юридичний науковий електронний журнал*. 2023. № 7. С. 28–32.

[6] А. Музика, С. Багіров. Верховенство права і правовий прагматизм як наукові методи дослідження [Rule of Law and Legal Pragmatism as Scientific Methods of Research]. *Вісник Національної академії правових наук України*. 2023. Т. 30. № 3. С. 98–125.

[7] В. Навроцький. Правова визначеність і забезпечення її реалізації у кримінальному праві України [Legal Certainty and its Providing in Criminal Law of Ukraine]. *Право України*. 2017. № 2. С. 59–67.

[8] М. Хавронюк. Щодо [не] відповідності Кримінального кодексу України принципу юридичної визначеності [Regarding Compliance or Inconsistency of the Criminal Code of Ukraine with the Principle of Legal Certainty]. *Наукові записки НаУКМА. Юридичні науки*. 2021. Том 8. С. 69–84.

[9] В. Навроцький. Правова визначеність і забезпечення її реалізації у кримінальному праві України [Legal Certainty and its Providing in Criminal Law of Ukraine]. *Право України*. 2017. № 2. С. 59–60.

[10] Мірило верховенства права (правовладдя) національного рівня: практика України [Rule of Law Checklist at National Level: Case of Ukraine] / за заг. ред. М. Козюбри; передмова: Головатий С.; упоряди. та авт. коментарів: В. Венгер, С. Головатий, А. Заєць, Є. Звєрєв, М. Козюбра, Ю. Матвєєва, О. Цельєв; Центр дослідження проблем верховенства права та його втілення в національну практику України Національного університету «Києво-Могилянська академія». Київ, 2021. С. 53.

idea about possible outcome of one's actions or inaction.[11]

The ability of legislation to be clear and predictable for the citizens to whom it is addressed is considered as one of the features of legal certainty. In addition, the guiding principle of criminal law is the principle of legislative determination of a crime (*nullum crimen sine lege*). Therefore, the general legal standard of legal certainty and the criminal law principle *nullum crimen sine lege* set the legislator the task of describing in law as fully as possible the wrongdoings that entail criminal liability.

The development of society is necessarily accompanied by the emergence of new sources of increased danger, careless handling of which can lead to severe harm. Such careless behavior becomes the subject of prohibition by criminal law. As a result, criminal legislation in terms of providing norms on careless crimes can move in two directions.

The first one is associated with a constant response to the emergence of another socially unacceptable careless behavior and the creation of new special criminal law norms that provide for liability for such behavior. It seems that this course of criminal law policy aims to achieve the necessary predictability of criminal legislation and awareness of citizens with special norms that establish liability for certain forms of careless behavior and the consequences caused.

The second direction is devising ultimate general norms concerning liability for carelessness. The legislative technique used in creating these norms is designed to cover all possible types of careless criminal culpable behavior, both those that already exist and those that may occur in the future.

As a result, a kind of collision arises between the requirements of legal certainty in describing illegal behavior and the desire of specialists to construct criminal law rationally. Therefore, which way is optimal given the rule of law? Below are some considerations on how to resolve the issue.

The Volynkin case. Violation of the rules for handling weapons

Let us start with empirical argumentation. Practical situations similar to the Volynkin case once highlighted the problem of criminal-legal assessment of the actions of a subject who did not directly cause harm but created the conditions for it to be caused by another person. Criminal law theorists describe them in the following way: the initial careless behavior of the subject is interrupted by the actions of a person who does not possess the characteristics of a subject of a criminal offense.

Volynkin's case is often analyzed by researchers who study the problem of careless co-causing.[12] For example, considerable attention is paid to this case in the monograph of O. V. Kursayev (2015). This researcher of careless co-causing supports the position that careless acts of a person who created conditions conducive to socially dangerous acts of minors or the insane cannot be considered under the rules of indirect causation and also cites the Volynkin case in the monograph as an example. In connection with the above example, O. V. Kursayev notes that negligent storage of firearms constitutes careless aiding in the commission of the main crime, which necessitates the decriminalization of this act and the exclusion of Article 224 from the Criminal Code of the Russian Federation, because this article constitutes liability for "the fault of another".[13]

On that ground, citizen Volynkin was brought to criminal liability for careless manslaughter under Art. 139 of the Criminal Code of the RSFSR of 1926 (Art. 109 of the

[11] J. Braithwaite. Rules and Principles: A Theory of Legal Certainty. *Australasian Journal of Legal Philosophy.* Vol. 27. 2002 P. 47–82.

[12] The term "careless co-causing" in the theory of Ukrainian criminal law refers to a situation where, through careless behavior, several persons cause a criminal consequence. For the science and practice of Ukrainian criminal law, careless co-causing is a problem, since it is not covered by the norms of complicity in a crime, and the current criminal legislation does not provide for a separate normative construction regarding it.

[13] А. Курсаев. Неосторожное сопричинение в российском уголовном праве [Careless Co-causing in the Russian Criminal Law]. Москва: Юрлитинформ, 2015. С. 75–76.

Criminal Code of the Russian Federation of 1996. He was accused of the fact that having a hunting rifle and cartridges for it, he was negligent in their storage, as a result of which his six-year-old son shot a neighbor's four-year-old boy. Let us consider in more detail the circumstances of the case, which occurred in the 50s, before the Criminal Code of the RSFSR of 1960 came into force.

Volynkin lived with his wife and children in a private house and often went hunting. He hung his hunting rifle and cartridges on the wall at a height of 1.73 cm from the floor. He guessed this sufficient to ensure that children could not get to the weapon, considering that there were no pieces of furniture nearby that could facilitate children's access to the weapon. One day, he was away from home, and his wife's friend came to visit with her children. Due to heavy rain, the roof of the house started leaking in one place, and water began dripping onto the bed. Then Volynkin's wife moved the bed to the wall where the gun and cartridges were hanging. The women left the children unattended in the room for a while, and Volynkin's six-year-old son climbed onto the bed, gained access to the gun, and while playing with the gun, shot the neighbor's four-year-old son. The Supreme Court of the RSFSR having reviewed this case noted that even if Volynkin's guilt in negligent storage of weapons had been established, then in this case, he could not have been held criminally liable for the accident that occurred with the boy, since Volynkin himself did not commit any socially dangerous acts provided by criminal law; for the damage caused by his minor son, he could only be subject to material liability under the rules of the Civil Code of the RSFSR.[14]

What was the problem with the court bringing Volynkin to criminal liability? The criminal legislation of that time did not contain a special norm with the *corpus delicti* of "negligent storage of a firearm, which caused serious consequences." This norm was provided for in the Criminal Code of the RSFSR only after the 1960 reform (Article 219 of the Criminal Code of the RSFSR). The same applies to the Criminal Code of the Ukrainian SSR of 1960 (Article 224 of the Criminal Code of the Ukrainian SSR). The question arises: why then the court did not agree with the position of the prosecution regarding the assessment of Volynkin's omission as manslaughter by carelessness?

In our opinion, it is the decision of the Criminal Division of the Supreme Court of the RSFSR and the legal position it took that raises questions. Let us pay attention to the board's motivation: "even if Volynkin's guilt in negligent storage of weapons had been established." This may mean that the investigation did not establish the defendant's guilt in the negligent storage of weapons. In such a case, the board could not decide other than to acquit the accused. One should agree with the above aspect of the legal position of the Supreme Court of the RSFSR in this case. At the same time, there is a thesis in the motivation of the board's decision that arouses criticism. In particular, it was stated that "Volynkin himself did not commit any socially dangerous acts provided by criminal law." Apparently, with this provision, the board wanted to point out the absence of an *actus reus* of careless manslaughter – a socially dangerous act. Meanwhile, in the theory of criminal law, at the time of the consideration of the Volynkin case, it was established that an act of any careless crime always constitutes a violation of safety rules in a particular area. Let us consider this in a little more detail.

Violation of safety rules – an essential element of a careless crime

In one of the first scientific monographs of the USSR devoted to criminal liability for carelessness (V. G. Makashvili, 1957) as well as in other publications of the late 50s of the

[14] See: Определение судебной коллегии по уголовным делам Верховного Суда РСФСР от 30 июня 1959 г. [Ruling of the Judicial Collegium for Criminal Cases of the Supreme Court of the RSFSR dated June 30, 1959]. *Советская юстиция*. 1959. № 10. С. 86.

XX century on the same subject, the position was defended that a necessary condition for liability for carelessness is a violation of the norms of generally obligatory foresight. It is noteworthy that V. G. Makashvili gave an appropriate title to paragraph 2 of chapter three of his work: "violation of generally obligatory foresight as a necessary condition for liability for carelessness".[15] This position was supported by another representative of the Georgian scientific school, M. G. Ugrekhelidze: "Violation of a special or vital norm of foresight is one of the necessary conditions for liability for carelessness".[16] A. N. Ilkhamov argues in the same way: "An analysis of judicial practice proves that cases of erroneous criminal liability based on the occurrence of serious consequences without establishing the fact of an act, which, due to negligence or recklessness, constitutes a violation of certain safety rules, are not uncommon".[17] The correctness of the position of these researchers can be proven from the opposite: the lawfulness of an act is based on its compliance with the norms provided by criminal or other branches of law.[18]

Manslaughter by carelessness (Article 119 of the Criminal Code of Ukraine) and careless grievous or medium gravity bodily injury (Article 128 of the Criminal Code of Ukraine) are not exceptions to the rule "an act in any careless crime constitutes a violation of certain safety rules". Acquaintance with the practice of manslaughter by carelessness, given in the monograph by O. V. Gorokhovska, allows us to verify the correctness of the above thesis – almost every example is somehow connected with a violation of certain safety rules.[19]

In addition, the rules for handling objects that pose an increased danger to the surroundings can be both written and unwritten. In the latter case, they can be called general or everyday safety rules. Thus, O. V. Gorokhovska agrees with the approach of M. D. Shargorodsky and believes that one of the circumstances of criminally punishable carelessness is the commission of an action that violates normal safety rules in society.[20] Adherence to common or everyday safety rules is considered the standard behavior of an ordinary reasonable person (as stated in the doctrine of Anglo-American criminal law – the standard of the ordinary reasonable person, or doctrine of the "normal man", "reasonable man", "reasonably prudent man", "man of ordinary sense"[21]).

When comparing the content of the cross-cutting criminal law concepts of "illegal actions" and "violation of rules", V. O. Navrotskyi reveals the content of the latter in the following way: "violation of rules has a broader meaning and is about non-compliance with any regulatory legal acts, including those adopted to develop the provisions of legislative acts, and in some cases, rules based on moral principles, customs, precedents, etc".[22]

Based on the above reasoning, we share the opinion that a person who owns a firearm with cartridges for it, who has a six-year-old son living in the premises where the weapon is stored, was obliged to exercise due care and take measures to limit the minor's access to the weapon. We understand that at that time there may not have been a requirement to store such weapons in a special safe, as is provided for in modern regulations. At the same time, the accused could well have stored the weapon

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[15] В. Макашвили. Уголовная ответственность за неосторожность [Criminal Liability for Carelessness]. Москва: Государственное издательство юридической литературы, 1957. С. 119–141.

[16] М. Угрехелидзе. Причинная связь при нарушении норм предосторожности [Causal Relationship by Violation of Precautionary Norms]. *Проблема причинности в криминологии и уголовном праве*. Межвузовский сборник. Владивосток: Изд-во ДВГУ, 1983. С. 110.

[17] И. Ильхамов. Преступная неосторожность: проблемы ответственности и предупреждения неосторожных преступлений [Culpable Carelessness: Problems of Liability and Prevention of Careless Crimes]: автореф. дис. ... канд. юрид. наук. Москва, 1983. С. 26.

[18] Ю. Баулин. Обстоятельства, исключающие преступность деяния [Circumstances that Excluding the Criminality of an Act]. Харьков: Основа, 1991. С. 32.

[19] О. Гороховська. Вбивство через необережність: проблеми кримінальної відповідальності [Manslaughter by Carelessness: Problems of Criminal Liability]: монографія / Наук. ред. А.А. Музика. Київ: Вид. Паливода А.В., 2007. С. 55, 66, 67 etc.

[20] О. Гороховська. Вбивство через необережність: проблеми кримінальної відповідальності [Manslaughter by Carelessness: Problems of Criminal Liability]: монографія / Наук. ред. А.А. Музика. Київ: Вид. Паливода А.В., 2007. С. 54;

[21] L. Bohnenkamp. The Doctrine of the "Normal Man". *St. Louis Law Review*. Vol. 9. 1924 P. 308.

[22] В. Навроцький. Наскрізні кримінально-правові поняття [Cross-cutting Concepts of Criminal Law]: навч. посіб. Київ: Юрінком Інтер, 2023. С.158.

disassembled, separately from the cartridges for it, or in any other way reasonably taken care to make access to the weapon impossible by the minor.

To further strengthen our position, we can give an example of a crime similar to careless manslaughter (Article 119 of the Criminal Code of Ukraine) in terms of the mechanism of commission of the crime, namely the careless causing of grievous or medium gravity bodily injury (Article 128 of the Criminal Code of Ukraine). Similar to manslaughter through carelessness, this is a general *corpus delicti*, i.e. one that contains the general criminal law norm of the Special Part of the Criminal Code. Act as a sign of the *actus reus* (in the domestic theory of criminal law that is called *objective side*) of this element of the crime is also formed by the violation of safety rules. For example, in criminal proceedings related to violation of the rules for the safekeeping of dangerous dog breeds, the injuries caused to the victims, which are grievous or medium gravity bodily injuries, were qualified by the pre-trial investigation under Article 128 of the Criminal Code of Ukraine. The courts subsequently agreed with such a qualification.

Thus, F. kept a fighting dog of the "pit bull terrier" breed on the territory of a summer cottage in the city of Sevastopol. On June 8, 2008, the dog ran out of this area through an opening under the gate and attacked Mr. B., who was passing by bit him, thereby causing serious bodily harm. In particular, the victim lost 65% of his working capacity as a result of the forced amputation of his left forearm. In the indictment, the investigator stated that F., violating the rules for keeping pets, let the dog off the chain in order to protect the territory of the summer cottage, did not foresee the possibility that the dog could run out into the street through an opening in the fence and cause bodily harm to someone, although he should and could have foreseen this.[23]

In this proceeding, the actions of the dog owner were recognized as socially dangerous, which formed one of the signs of the *actus reus* of the careless causing of serious bodily harm. Here, it is easy to draw an analogy with the negligent storage of a firearm in the Volynkin case and causing the death of the victim. If the courts perceive careless handling of dangerous animals as a sign of the *actus reus* of the crime provided for in Art. 128 of the Criminal Code of Ukraine (or Art. 119 of the Criminal Code of Ukraine in a case when the victim died), then in the Volynkin case, it was quite possible to recognize the negligent storage of a firearm (it should be noted – the criminal legislation of that time did not provide for such a separate element) as a sign of the *actus reus* of manslaughter through carelessness. This is due to the fact that there was a violation of safety rules in handling weapons, and as we have determined above – a violation of safety rules is an element of the *actus reus* of any careless crime.

The issue under research is not as simple as it might seem at first glance. If in the case of Volynkin the court referred to the fact that his act was not provided for by criminal law, then in cases where some persons violated the rules for keeping dangerous animals, the reference to Art. 128 or 119 of the Criminal Code of Ukraine may also be recognized as ungrounded, since the Special Part of the Criminal Code of Ukraine does not directly provide for criminal liability for the consequences caused by violating the rules for keeping dangerous animals. The authors of the scientific article O. Dudorov, E. Pysmensky and A. Danylevsky emphasized: "It is indicative that the investigator hesitated for a rather long time about what the correct criminal-legal assessment of F.'s behavior as the owner of the dog should be and only with the verbal advisory consent of the employees of the appellate court (primarily taking into account the severity of the consequences that occurred) did he initiate a criminal case under Art. 128 of the Criminal Code of Ukraine, which provides for liability for careless grievous or medium gravity bodily harm".[24]

[23] Матеріали Нахімовського РВ УМВС України в м. Севастополі. Кримінальна справа № 780334 за 2008 р. [Case Files of Nakhimovsky RDMIA of Ukraine in Sevastopol. Criminal Case № 780334 for 2008] / Can be found in: О. Дудоров, Є. Письменський, А. Данілевський. Порушення правил утримання тварин: кримінально-правовий аспект проблеми [Violation of Animal Keeping Rules: Criminal Legal Aspect of the Problem]. *Юридичний вісник України*. 15–21 травня 2010. № 20 (776). С. 6.

[24] О. Дудоров, Є. Письменський, А. Данілевський. Порушення правил утримання тварин: кримінально-правовий аспект проблеми [Violation of Animal Keeping Rules: Criminal Legal Aspect of the Problem]

Therefore, there is a contradiction in the legal positions of the courts in the above cases. In the Volynkin case, the court did not apply the general criminal law norm of manslaughter by carelessness, and in the F. case of the attack by a pit bull terrier, the court agreed with the qualification of F.'s behavior under the general criminal law norm.

The aforementioned divergent positions of judges are caused by the fact that in the theory of criminal law itself, there is no unity on the issue of the relationship between general and special criminal law norms that provide for liability for careless crimes. For example, regarding violation of the rules for keeping dangerous animals, as a result of which they caused harm to the victims, some experts believe that the current criminal legislation of Ukraine does not provide for liability for such an act; other experts see no problems in applying general formulations for manslaughter through carelessness (Article 119 of the Criminal Code of Ukraine) or careless causing of grievous or medium gravity bodily injury (Article 128 of the Criminal Code of Ukraine).[25]

As for the opinion of O. V. Kursayev that the negligent storage of a firearm constitutes careless aiding in the commission of the main crime[26], it is difficult to recognize it as grounded. The weapon can be used by a minor or an insane person, which in itself, despite the possible grave consequences, cannot be recognized as a crime due to the absence of signs of the subject of the crime (underage or insane). Therefore, the thesis of O. V. Kursayev that such a construction constitutes liability for "someone else's fault" is vulnerable to criticism.

Regarding the position of O. V. Kursayev, the following should be noted. It should be borne in mind that the concept of "which created conditions for its use by another person" in this article means the presence of at least two types of the following behavior. First, non-criminal, but socially dangerous behavior of a person who is not the subject of a crime. For example, a weapon can be used by an insane person. Second, the criminal use of a firearm by the subject of a crime.

In this matter, we believe that in the Volynkin case the court had every reason to recognize his behavior as a violation of safety rules and apply the general criminal law norm of manslaughter by carelessness. His act (omission) which constituted a violation of safety rules was not only a necessary but also a natural condition for the consequence in the form of the victim's death, and therefore is causally connected with it.

It would seem that the position of practitioners in the Volynkin case, which belongs to a long-overdue stage of judicial practice in criminal cases, is hardly possible in modern conditions. After all, the theory of criminal law has since then significantly advanced both in terms of the study of culpable carelessness and in the development of the doctrine of the theory of criminal law qualification. However, law enforcement practice is again making the same mistake. The incorrect actions of law enforcement agencies led to the decision of the ECHR against Ukraine in the case of Ms. Isayeva.

The case of Isayeva v. Ukraine. Ukrainian law enforcement agencies and the European Court of Human Rights underestimated the importance of the general norm regarding careless crime

The circumstances of the case of Ms. Natalia Isayeva (hereinafter referred to as the applicant) best illustrate the problems that we discuss in this study. In this case, the decisions taken by the law enforcement agencies of Ukraine revealed an inadequate understanding of the relationship between the general and special norms of the Special Part of the Criminal Code of Ukraine. Moreover, we believe that the European Court of Human

Legal Aspect of the Problem]. *Юридичний вісник України*. 15–21 травня 2010. № 20 (776). С. 6.

[25] О. Дудоров, Є. Письменський, А. Данілевський. Порушення правил утримання тварин: кримінально-правовий аспект проблеми [Violation of Animal Keeping Rules: Criminal Legal Aspect of the Problem*]. Юридичний вісник України*. 15–21 травня 2010. № 20 (776). С. 6.

[26] А. Курсаев. Неосторожное сопричинение в российском уголовном праве [Careless Co-causing in the Russian Criminal Law]. Москва: Юрлитинформ, 2015. С. 76.

Rights itself failed to properly deal with the criminal-legal aspects of this case.

The case concerned the applicant's complaint that she had been seriously harmed by another patient in a State-run psychiatric institution in 1998. As stated in paragraph 3 of this judgment, "the case concerns the infliction of grievous bodily harm on the applicant by another patient while in a State-run mental institution. The applicant alleged, in particular, that the State had failed to make those responsible for the incident accountable and had not provided proper redress for the harm inflicted on her within a reasonable time".[27]

The case established the following. On 8 May 1998 the Slavyanoserbskiy district prosecutor's office of the Luhansk Region ("the prosecutor's office") refused to institute criminal proceedings against two psychoneurological asylum employees (orderlies), N. and L. When questioned about the incident, the orderlies testified that on the morning of 2 April 1998 they were cleaning the rooms when they heard someone crying. They found the applicant on her bed with her face smashed. Other patients had told N. and L. that B. had beaten the applicant with a mop because she had hit B. The prosecutor noted that (i) B. was "incapacitated because of a mental disorder" and thus could not be held criminally responsible for assaulting the applicant, and (ii) even though it appeared that orderlies N. and L. had been negligent in their duties (according to the asylum orderlies' list of duties submitted by the Government they were not allowed to leave patients unsupervised), which could possibly constitute a crime under Article 167 of the 1960 Criminal Code, they were not considered to be "officials" who could be prosecuted under that provision[28].

Following the entry into force of a new Criminal Procedure Code, on 26 December 2012 the applicant lodged a complaint with the police, alleging negligence by the orderlies. The complaint was registered, and two separate investigations were launched into negligent performance of duties by members of the medical or pharmaceutical profession and negligence of duties by officials. On 19 February 2013 both investigations were merged. Several witnesses were questioned, including the applicant, her mother, and orderly L. The latter testified that she had not seen the accident take place but had later learned that, for an unknown reason, B. had hit the applicant with a mop left by L. in their room. On 30 June 2013 the proceedings were terminated by a police investigator of the Slyavyanoserbskyy District Police Department. That decision was identical to the one of 8 May 1998 (see paragraph 8 above) and referred to the investigator's findings (i) that B. had been "without legal capacity because of a mental disorder" and thus could not be held responsible for assaulting the applicant, and (ii) that even though it appeared that the orderlies N. and L. had been negligent in their duties, which could constitute a crime under Article 167 (negligence of duties by officials) or Article 140 of the new 2001 Criminal Code (negligent performance of duties by members of the medical profession), they were not considered to be "officials" or "members of the medical profession" who could be prosecuted under those provisions of the law (p. 10 of the Judgment)[29].

Analyzing in paragraphs 52–56 of the Judgment the content of criminal law remedies, the European Court of Human Rights summarized in paragraph 55: "The decisions not to institute or pursue criminal proceedings were taken because the orderlies could not be considered to be "officials" within the meaning of the relevant provisions of the Criminal Code in force at the material time. Therefore, the absence of legislation establishing the orderlies' liability in negligence and the objective fact of B.'s death led to all attempts of the applicant to institute

[27] Case of Isayeva v. Ukraine (Application no. 35523/06). Judgment Strasbourg. 4 December 2018: URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187919%22]} (Last accessed: 05.03.2025).

[28] Case of Isayeva v. Ukraine (Application no. 35523/06). Judgment Strasbourg. 4 December 2018: URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187919%22]} (Last accessed: 05.03.2025).

[29] Case of Isayeva v. Ukraine (Application no. 35523/06). Judgment Strasbourg. 4 December 2018: URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187919%22]} (Last accessed: 05.03.2025).

criminal proceedings fall flat in this particular case"[30].

In the following paragraph of this judgment, the ECHR, referring to its relevant case-law, reminds that an effective judicial system does not necessarily require the provision of a criminal-law remedy if, as in the case of the orderlies, the infringement of the right to personal integrity is not caused intentionally (see the case-law quoted in paragraph 49 above), the Court must also examine whether the respondent State made available other legal remedies that satisfied the requirements of Article 3 of the Convention.[31]

Thus, having not found the necessary legislative norms in terms of criminal-law legal remedies, the ECHR predictably turns to other legal remedies that should ensure the applicant's rights.

In our opinion, both the law enforcement agencies of Ukraine and the European Court of Human Rights lacked the proper theoretical training to conclude that the legislative norms that provided for the criminal liability of the orderlies were still contained in the legislation that was in force at the time. Let us prove this thesis.

In this case, we encounter a situation that, in criminal law theory, is called a careless crime committed by omission.

Causal relationship in criminal omission is a rather controversial issue in the theory of criminal law[32]. Historically, several positions have been developed on this issue. Briefly, there are two leading approaches. Representatives of one approach advocate the so-called "*acausality of omission*." They believe that omission does not have the quality of causing a result, and criminal liability arises not for causing harm but for failing to fulfill a legal obligation established by a norm. Proponents of another approach believe that a causal relationship in omission exists, but has a certain peculiarity. The subject does not interfere in the development of events, although he has a legal obligation to do so and prevent the occurrence of a criminal outcome. In the coordinate system of social relations, non-interference can have the same results as intervention in the sphere of physical phenomena. In addition, in "material" (i.e., productive or result-oriented) *corpus delicti*, the existence of a causal connection between omission and the result is obligatory in the view of the provisions of the theory of criminal law. Otherwise, we would have to assume that establishing a causal connection between omission and the result has no legal significance. But this is not the case, since the absence of such a connection between omission and a socially dangerous consequence may indicate that the consequence occurred regardless of the subject's omission. Therefore, under such circumstances, omission is not the one that caused the result, and the subject will not be subject to criminal liability. All this speaks in favor of the position of recognizing the quality of criminal omission to cause consequences. That is why the representatives of the second theoretical approach believe that a causal relationship exists in criminal omission, since in this case we consider the situation in terms of social causality, and not causality in the sphere of physical phenomena[33]. This second

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[30] Case of Isayeva v. Ukraine (Application no. 35523/06). Judgment Strasbourg. 4 December 2018: URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187919%22]} (Last accessed: 05.03.2025).

[31] Case of Isayeva v. Ukraine (Application no. 35523/06). Judgment Strasbourg. 4 December 2018: URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187919%22]} (Last accessed: 05.03.2025).

[32] A. Ashworth. The Scope of Criminal Liability for Omissions. *Law Quarterly Review*. Vol. 105. 1989 P. 424–459; M. Dsouza. Against the Act/Omission Distinction. *Northern Ireland Legal Quarterly*. Vol. 73. 2022 P. 103 129; S. MacGrath. Causation by Omission: a Dilemma. *Philosophical Studies*. Vol. 123. 2005. P. 125–148; M. Moore. Causation and Responsibility: An Essay in Law, Morals, and Metaphysics. Oxford University Press, 2009. P. 444; P. Robinson. Criminal Liability for Omissions - A Brief Summary and Critique of the Law in the United States. *New York Law School Law Review* Vol. 29 Issue: 1. 1984 P. 101–124; A. Leavens. A Causation Approach to Criminal Omissions. *California Law Review*. Vol. 76. № 3. 1988 P. 547–591; A. McGee. Omissions, Causation and Responsibility. *Journal of Bioethical Inquiry*. Vol. 8(4). 2011 P. 351–361; D. Husak. Omissions, Causation and Liability. *The Philosophical Quarterly (1950-)*. Vol. 30. No. 121 Oct., 1980 P. 318–326; D. Fisher. Causation in Fact in Omission Cases. *Utah Law Review*. Fall 1992 P. 1335–1384;

[33] This is well emphasized by Mark Dsouza: "Another claim is that we cause things by our acts, whereas our omissions merely let things happen. Perhaps that is true in physics. But in law (and ordinary speech) the attribution of causal responsibility is a normative as well as mechanical issue. So, we commonly use the language of causation to pick out the most salient ingredients in the occurrence of an event – even if they are omissive – as their causes. That's why my omission to latch the window causes it to slam in a storm." See: M. Dsouza. Commentary for the article: Against the Act/Omission Distinction. *Northern Ireland Legal Quarterly*. Vol. 73. 2022 P. 103–129: Doi: https://nilq.qub.ac.uk/index.php/nilq/issue73AD1-article3 (Last accessed March 16, 2025).

position has more supporters in the theory of Ukrainian criminal law.

Thus, in certain social situations, a specific person may be legally obligated to act in such a way as to prevent dangerous forces from getting out of control and from giving them the opportunity to manifest their inherent ability to harm other subjects. An agent who directly harms others may not possess the characteristics sufficient to be a subject of criminal law relations. This may be, in particular: 1) a minor child (Volynkin case); 2) a potentially dangerous animal – a pit bull terrier (F. case); 3) a person of unsound mind (Isayeva case).

In our opinion, in the Isaeva case, the negligent omission of orderlies N. and L., who were obliged to, but did not, control a dangerous patient, led to grievous bodily injury to the victim. In a legal sense, an attack made by an insane person is not much different for the victim from an attack by an animal or the actions of a minor. There are grounds to assert that there is a causal connection between the orderlies' omission and the harm caused to the victim – according to the asylum orderlies' list of duties at the institution, they were not allowed to leave patients unattended. A rule specifically designed to prevent such consequences was violated. In addition, an object that could potentially cause harm was left behind – a mop. Therefore, through the orderlies' negligent omission resulted in a violation of safety rules – which is an essential element of a careless crime. The orderlies' careless behavior in this case was beyond doubt. They, under appropriate circumstances, demonstrated insufficient concern for others, which in the theory of criminal law is considered as one of the signs of negligence.[34]

Now we have established: 1) there was a violation of the instructions – a violation of special safety rules; 2) the omission of the subjects led to the fact that the victim was caused a grievous bodily harm; 3) the failure to comply with the requirements of the instructions by the orderlies allowed dangerous forces to act – there is a causal connection between the omission and the injury caused; 4) there is careless fault in the form of negligence – N. and L. did not foresee the possibility of such an outcome, although they should and could have foreseen it. Therefore, from a theoretical point of view, all the necessary elements of the crime are present.

Let us now consider the criminal legislation that was in force at the time of the events. Law enforcement agencies focused on finding special norms and turned to Article 167 of the Criminal Code of 1960 (earlier in Ukrainian legislation this called "*Khalatnist*"). Indeed, the orderlies could not be the subjects of this crime, since they are not "officials" within the meaning of Article 167 of the Criminal Code of 1960. But at that time there was another, general norm – careless grievous or medium gravity bodily harm (Article 105 of the Criminal Code of 1960). This article assumed the presence of a general subject, the characteristics of which the orderlies undoubtedly corresponded to. Therefore, instead of trying to find some special norm of the Special Part of the Criminal Code of Ukraine, law enforcement agencies had to turn to the general one, since there are all the signs of careless causing of grievous bodily harm, which was provided for in Article 105 of the then-current Criminal Code of 1960. We assume that in the minds of many lawyers, careless grievous or medium gravity bodily harm is associated only with the active behavior of the subject of the crime, who causes the corresponding consequence with his own physical actions. However, the theory of criminal law considers it permissible to commit such a careless crime by way of non-intervention – when the violation of the duty to intervene gives the opportunity to act to other factors that directly cause the harm. In terms of causality, the theoretical basis for this possibility is described by H.L.A. Hart and A. Honoré, M. Moore and other researchers: "Our central paradigm case of causing is doing these simple actions with our bodies. We then analogize from simple doings to more complex manipulations; by doing one thing we can cause something more remote to occur".[35]

[34] F. Stark. Culpable Carelessness. Recklessness and Negligence in the Criminal Law. Cambridge University Press, 2016. P. 272.

[35] See: H.L.A. Hart, & A. Honoré. Causation in the Law. 2d ed. Oxford: Oxford University Press, 1985. pp. 28–29; See also: M.

In connection with the above, it is difficult for us to agree with the conclusion about the alleged absence of legislative norms that would provide for criminal liability of orderlies for negligence. There were criminal legal remedies, but the level of theoretical grounding, as well as, probably, inadequate motivation, did not allow for a reasoned decision in the case.

Conclusions

The practical situations which are highlighted in this article prove that legal certainty in the aspect of criminal law counteraction to careless crimes cannot be reduced to the creation of special norms for each separate sphere of manifestation of possible careless behavior. “No legislation, even the most perfect one (which is increasingly rare in modern life), due to its abstractness and impersonality, is unable to foresee all the specifics of a concrete situation”[36], – notes M. I. Kozyubra. Explaining the reasons for excluding from the Draft of the new Criminal Code of Ukraine the article on violation of road safety rules, V. O. Navrotsky emphasizes: “being consistent, the legislator should create special norms regarding offenses in violation of any safety rules, which caused harm through carelessness. But this would lead to the emergence of a countless number of special norms”.[37]

The aspiration to make legislation as detailed and understandable as possible for ordinary citizens should not turn into the prevalence of a casuistic approach when creating legal norms. The dominance of special norms can lead to deformation in the professional consciousness of law enforcement officers. The consequence of this is that practitioners focus exclusively on special norms and underestimate the legal significance of general norms regarding careless crimes. In other words, in some cases, judicial and law enforcement officials “are unable to see the wood for the trees". In this regard, we consider improving the construction and content of general norms that provide for liability for careless crimes as a more rational and theoretically based direction of criminal law policy.

Bibliography

1. A. Ashworth. The Scope of Criminal Liability for Omissions. *Law Quarterly Review*. Vol. 105. 1989 P. 424–459.

2. L. Bohnenkamp. The Doctrine of the “Normal Man”. *St. Louis Law Review*. Vol. 9. 1924 P. 308–313.

3. J. Braithwaite. Rules and Principles: A Theory of Legal Certainty. *Australasian Journal of Legal Philosophy*. Vol. 27. 2002 P. 47–82.

4. Case of Isayeva v. Ukraine (Application no. 35523/06). Judgment Strasbourg. 4 December 2018: URL: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-187919%22]} (Last accessed March 5, 2025).

5. M. Dsouza. Against the Act/Omission Distinction. *Northern Ireland Legal Quarterly*. Vol. 73. 2022 P. 103-129: Doi: https://nilq.qub.ac.uk/index.php/nilq/issue73AD1-article3 (Last accessed March 16, 2025).

6. D. Fisher. Causation in Fact in Omission Cases. *Utah Law Review*. Fall 1992 P. 1335–1384.

7. H. L. A. Hart, A. Honoré. Causation in the Law. 2d ed. Oxford: Oxford University Press, 1985. 596 p.

8. D. Husak. Omissions, Causation and Liability. *The Philosophical Quarterly (1950-)*. Vol. 30. No. 121. Oct., 1980 P. 318–326.

9. A. Leavens. A Causation Approach to Criminal Omissions. *California Law Review*. Vol. 76. № 3. 1988 P. 547–591.

10. S. MacGrath. Causation by Omission: a Dilemma. *Philosophical Studies*. Vol. 123. 2005 P. 125–148.

11. A. McGee. Omissions, Causation and Responsibility. *Journal of Bioethical Inquiry*. Vol. 8(4). 2011 P. 351–361.

12. M. Moore. Causation and Responsibility: An Essay in Law, Morals, and Metaphysics. Oxford University Press, 2009. 605 p.

13. M. Moore. The Metaphysics of Causal Intervention. *California Law Review*. Vol. 88. 2000 P. 827–877.

14. P. Robinson. Criminal Liability for Omissions – A Brief Summary and Critique of the Law in the United States. *New York Law School Law Review* Vol. 29 Issue: 1. 1984 P. 101–124.

Moore. The Metaphysics of Causal Intervention. *California Law Review*. Vol. 88. 2000 P. 855.

36 М. Козюбра. Практична філософія права [Practical Philosophy of Law]: монографія. Київ: «Дух і Літера», 2024. С. 463.

37 Проєкт нового Кримінального кодексу України: передумови розробки, концептуальні засади, основні положення [The Draft of the New Criminal Code of Ukraine: Prerequisites for Development, Conceptual Outlines, Main Provisions]: монографія. Андрушко П. П., Бакумов О. С., Баулін Ю. В., Бурдін В. М., Вишневська І. А., Горох О. П., Гуторова Н. О., Марчук Н. О., Навроцький В. О., Пономаренко Ю. А., Стрельцов Є. Л., Хавронюк М. І. // За заг. ред. Ю. В. Баулінa, М. І. Хавронюка. Київ: Компанія ВАІТЕ, 2024. С. 309. (494 с.)

15. F. Stark. Culpable Carelessness. Recklessness and Negligence in the Criminal Law. Cambridge University Press, 2016. 327 p.

16. I. Zvieriev. Death Penalty is applied to the State. The View through Legal Certainty as an Element of the Rule of Law. *Kyiv-Mohyla Law & Politics Journal*. 2024. # 10. P. 135–149.

17. Ю. Баулин. Обстоятельства, исключающие преступность деяния [Circumstances that Excluding the Criminality of an Act]. Харьков: Основа, 1991. 360 с.

18. Ю. Баулін. Принцип верховенства права у кримінально-правовому вимірі [Principle of the Rule of Law in the Criminal Law Dimension]. *Концептуальні засади нової редакції Кримінального кодексу України*: матеріали міжнар. наук. конф. (м. Харків, 17–19 жовтня 2019 р.). Харків: Право, 2019. С. 109–113.

19. О. Гороховська. Вбивство через необережність: проблеми кримінальної відповідальності [Manslaughter by Carelessness: Problems of Criminal Liability]: монографія / Наук. ред. А.А. Музика. Київ: Вид. Паливода А.В., 2007. 180 с.

20. О. Дудоров, Є. Письменський, А. Данілевський. Порушення правил утримання тварин: кримінально-правовий аспект проблеми [Violation of Animal Keeping Rules: Criminal Legal Aspect of the Problem]. *Юридичний вісник України*. 15–21 травня 2010. № 20 (776).

21. З. Загиней-Заболотенко, О. Чаплюк. Правова визначеність юридичного рішення суду у кримінальних провадженнях (на прикладі застосування пункту 6 частини 3 статті 76 Кримінального кодексу України) [Legal Certainty of a Court Decision in Criminal Proceedings (on the Example of the Application of Paragraph 6 of Part 3 of Article 76 of the Criminal Code of Ukraine)]. *Юридичний науковий електронний журнал*. 2023. № 7. С. 28–32.

22. И. Ильхамов. Преступная неосторожность: проблемы ответственности и предупреждения неосторожных преступлений [Culpable Carelessness: Problems of Liability and Prevention of Careless Crimes]: автореф. дис. ... канд. юрид. наук. Москва, 1983. 29 с.

23. М. Козюбра. Практична філософія права [Practical Philosophy of Law]: монографія. Київ: «Дух і Літера», 2024. С. 463.

24. А. Курсаев. Неосторожное сопричинение в российском уголовном праве [Careless Co-causing in the Russian Criminal Law]. Москва: Юрлитинформ, 2015. 280 с.

25. В. Макашвили. Уголовная ответственность за неосторожность [Criminal Liability for Carelessness]. Москва: Государственное издательство юридической литературы, 1957. 211 с.

26. Ю. Матвєєва. Принцип правової визначеності як складова верховенства права [Principle of Legal Certainty as a Component of the Rule of Law]: дис. … канд. юрид. наук. Київ, 2019. 220 с.

27. Матеріали Нахімовського РВ УМВС України в м. Севастополі. Кримінальна справа № 780334 за 2008 р. [Case Files of Nakhimovsky RDMIA of Ukraine in Sevastopol. Criminal Case № 780334 for 2008] / Can be found in: Дудоров О., Письменський Є., Данілевський А. Порушення правил утримання тварин: кримінально-правовий аспект проблеми [Violation of Animal Keeping Rules: Criminal Legal Aspect of the Problem]. *Юридичний вісник України*. 15–21 травня 2010. № 20 (776). С. 6.

28. Мірило верховенства права (правовладдя) національного рівня: практика України [Rule of Law Checklist at National Level: Case of Ukraine] / за заг. ред. М. Козюбри; передмова: Головатий С.; упоряди. та авт. коментарів: В. Венгер, С. Головатий, А. Заєць, Є. Звєрєв, М. Козюбра, Ю. Матвєєва, О. Цельєв ; Центр дослідження проблем верховенства права та його втілення в національну практику України Національного університету «Києво-Могилянська академія». Київ, 2021. 152 с.

29. Мірило правовладдя. Коментар. Глосарій. [Rule of Law Checklist. Commentary. Glossary]. Ухвалено Венеційською комісією на 106-му пленарному засіданні (Венеція, 11–12 березня 2016 р.) / перекл. з анг. Сергія Головатого. USAID, червень 2017. 163 с.

30. А. Музика, С. Багіров. Верховенство права і правовий прагматизм як наукові методи дослідження [Rule of Law and Legal Pragmatism as Scientific Methods of Research]. *Вісник Національної академії правових наук України*. 2023. Т. 30. № 3. С. 98–125.

31. Л. Музика. Верховенство права – принцип чи метод? [Rule of Law – Principle or Method?]. Тези доповідей і повідомлень учасників конференції «*Принципи права: універсальне та національне в контексті сучасних глобалізаційних і євроінтеграційних процесів*», Київ, 21-22 червня 2024 р. Київ: НаУКМА, 2024. С. 174–177.

32. В. Навроцький. Правова визначеність і забезпечення її реалізації у кримінальному праві України [Legal Certainty and its Providing in Criminal Law of Ukraine]. *Право України*. 2017. № 2. С. 59–67.

33. В. Навроцький. Наскрізні кримінально-правові поняття [Cross-cutting Concepts of Criminal Law]: навч. посіб. Київ: Юрінком Інтер, 2023. 376 с.

34. Определение судебной коллегии по уголовным делам Верховного Суда РСФСР от 30 июня 1959 г. [Ruling of the Judicial Collegium for Criminal Cases of the Supreme Court of the RSFSR dated June 30, 1959]. *Советская юстиция*. 1959. № 10. С. 86.

35. Проєкт нового Кримінального кодексу України: передумови розробки, концептуальні засади, основні положення [The Draft of the New Criminal Code of Ukraine: Prerequisites for Development, Conceptual Outlines, Main Provisions]: монографія. Андрушко П. П., Бакумов О. С., Баулін Ю. В., Бурдін В. М., Вишневська І. А., Горох О. П., Гуторова Н. О., Марчук Н. О., Навроцький В. О., Пономаренко Ю. А., Стрельцов Є. Л., Хавронюк М. І. // За заг. ред. Ю. В. Бауліна, М. І. Хавронюка. Київ: Компанія ВАІТЕ, 2024. 494 с.

36. М. Угрехелидзе. Причинная связь при нарушении норм предосторожности [Causal Relationship by Violation of Precautionary Norms]. *Проблема причинности в криминологии и уголовном праве*. Межвузовский сборник. Владивосток: Изд-во ДВГУ, 1983. С. 110–118.

37. М. Хавронюк. Щодо [не] відповідності Кримінального кодексу України принципу юридичної визначеності [Regarding Compliance or Inconsistency of the Criminal Code of Ukraine with the Principle of Legal Certainty]. *Наукові записки НаУКМА. Юридичні науки*. 2021. Том 8. С. 69–84.

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ЗАГАЛЬНІ І СПЕЦІАЛЬНІ НОРМИ ЩОДО НЕОБЕРЕЖНИХ ЗЛОЧИНІВ В АСПЕКТІ ЮРИДИЧНОЇ ВИЗНАЧЕНОСТІ ЯК СКЛАДНИКА ВЕРХОВЕНСТВА ПРАВА

Анотація

У статті розглядається колізія між вимогами юридичної визначеності опису протиправної поведінки і прагненням спеціалістів до раціональної побудови кримінального закону. Критикується напрям кримінально-правової політики, відповідно до якого законодавець намагається охопити спеціальними нормами всі можливі форми прояву необережної поведінки і в такий спосіб досягти юридичної визначеності. На конкретних практичних прикладах доводиться, що такий напрям кримінально-правової політики призводить до зниження здатності працівників правозастосовних органів до абстрактного юридичного мислення і до втрати навичок теоретичного обґрунтування підстав кримінальної відповідальності. Емпірично доведено, що зазначені проблеми стосуються не лише правоохоронних органів України, а й суддів ЄСПЛ. Підтримується погляд, згідно з яким удосконалення загальних норм про кримінальну відповідальність за необережні злочини є більш раціональним напрямом кримінально-правової політики.

Ключові слова: *загальна норма, спеціальна норма, необережний злочин, необережність, недбалість, юридична визначеність, верховенство права*