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GENERAL CHARACTERISTICS OF CRIMINAL OFFENCES AGAINST FREEDOM, HONOUR AND DIGNITY

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The article is devoted to the analysis of criminal offences against the will, honour and dignity of a person in the context of modern Ukrainian legislation. The author highlights how the legal regulation of these categories has historically transformed, which has a significant impact on the interpretation and application of criminal law in modern conditions.

The author examines the twofold interpretation of the object of criminal offences – both social relations protecting personal freedom, honour and dignity, and the values themselves as such. In particular, the article focuses on the lack of effective protection of honour and dignity through criminal law, which is confirmed by the decriminalisation of libel and insult. The article also discusses the correspondence between the title and content of Section III of the Special Part of the Criminal Code of Ukraine, where criminal offences do not always reflect honour and dignity as direct objects of criminal liability. This discussion provides the basis for recommendations for improving the legislation based on the needs of modern society and international human rights standards. The terms “will” and “freedom”, their meaning and application in criminal law are separately considered, including proposals to replace the concept of “will” with “freedom” to ensure a more accurate reflection of legislative intentions.

The objective aspect of such offences, including illegal deprivation of liberty, abduction, enforced disappearance, child substitution and exploitation, is examined. The authors examine how these acts are qualified depending on the method, consequences and specifics of the restriction of freedom, honour or dignity. Particular attention is paid to the subjective side, which includes the direct intent of the perpetrator and the motives that affect the nature of the offence.

In conclusion, the author notes that criminal law protection of freedom, honour and dignity of a person requires not only improvement of legislation, but also ensuring its compliance with international standards. The author suggests ways to improve the effectiveness of law enforcement by clarifying the qualifying features and improving legal mechanisms.

Keywords: will, honour, dignity, freedom, person, criminal offence, corpus delicti, responsibility

Formulation of the problem. The relevance of the chosen research topic is due to several important factors:

1. Protection of fundamental human rights: Criminal offences against the will, honour and dignity of a person constitute a direct violation of fundamental rights and freedoms enshrined in international and national legal instruments. As these rights are fundamental to ensuring a decent human life, their protection requires special attention and continuous analysis.

2. Social importance: Violations against honour, dignity and freedom, such as coercion, bullying, torture, discrimination, defamation of honour and business reputation, affect social stability and harmony. Research on this topic can contribute to the development of more effective mechanisms for preventing and responding to such crimes, which in turn improves the overall social climate.

3. Political relevance: Given the ongoing development of democratic standards and the legal system, the study of such offences is of great importance to legislators and law enforcement agencies. Analysis of existing norms and practices will help to identify the need for legislative changes or new approaches to justice.

4. International dimension: Due to globalisation and international migration, it is important to study how different cultural and national factors influence offences against freedom, honour and dignity. This allows for the development of international norms and co-operation that are culturally and regionally sensitive.

5. Prevention and protection: Increased awareness and understanding of these offences can contribute to the development of better strategies to protect victims and prevent further offences. It is important to establish how educational programmes, public campaigns and other preventive measures can be used to reduce the number of such offences.

Analysis of the study of the problem. The problems of liability for criminal offences against the will, honour and dignity of a person were studied by such authors as M. O. Akimov, A. V. Andrushko, O. O. Volodina, V. G. Goncharenko, V. K. Hryshchuk, O. M. Dzhuzha, V. V. Dzhun, D. O. Kalmykov, M. Y. Korzhanskyi, D. A. Kryvokon, M. I. Melnyk, A. M. Orleans, V. M. Pidhorodynskyi, A. S. Politova, A. V. Savchenko, S. S. Yatsenko and others.

The purpose of the article is a comprehensive analysis of the regulatory framework and practical application of Ukrainian legislation on criminal liability for offences against the freedom, honour and dignity of a person, identification of problems and weaknesses in legal regulation and victim protection mechanisms.

Presenting main material. It is well known that the concept of the essence of honour and dignity of a person has been changing over time throughout history. Similarly, the legislative mechanisms for the criminal law protection of these values have also been transformed. Therefore, in order to understand the current status of protection of honour and dignity of a person within the framework of criminal law, it is necessary to analyse the key elements of qualification of a criminal offence against freedom, honour and dignity.

Thus, the concept of the object of a criminal offence against the will, honour and dignity of a person is a subject of lively debate in the scientific community. Usually, in the Ukrainian criminal law science, this object is interpreted, on the one hand, as social relations that protect personal freedom, honour and dignity of a person, and on the other hand, as the values themselves – freedom, honour and dignity of a person.

In connection with the decriminalisation of defamation and insult, some scholars have expressed doubts about the effectiveness of the protection of honour and dignity of a person through criminal law. For example, A. S. Politova questions whether the title of Section III of the Special Part of the Criminal Code of

Ukraine corresponds to its content. Analysing various provisions of the legal literature, she concludes that the title of this section does not fully reflect its content, since the criminal offences included in it do not have honour and dignity as direct objects of criminal liability [1, p. 7]. O. O. Volodina points out that it is more appropriate to name the section as "Criminal offences against personal freedom" [2, p. 48]. Also, O. Khramtsov expresses the opinion that although Section III of the Special Part of the Criminal Code of Ukraine is entitled "Criminal offences against the freedom, honour and dignity of a person", none of the offences considered therein considers honour and dignity as the main direct object [3, p. 233].

Understanding the concepts of "will" and "freedom" has a significant impact on the legal status and protection of these fundamental rights in criminal law. According to the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, personal liberty is defined as a fundamental right and an essential element of the dignity of every human being. The Constitution of Ukraine also reflects this position, enshrining the right of everyone to personal liberty and security (Article 29) [4].

The terms "will" and "freedom", although often used synonymously, have different meanings. "Will" is associated with the mental and conscious activity of a person, while "freedom" has a broader social and political context, encompassing the absence of external restrictions and oppression [5]. There is some debate among researchers about the use of these terms in criminal law, with some experts suggesting replacing the term "will" with "freedom" to more accurately reflect legislative intentions.

Based on the comparative analysis, it can be concluded that the concept of "freedom" more adequately reflects the values protected by criminal law, as it describes a wider range of rights and is more accepted in international law. It is also proposed to review the use of the term "will" in the Criminal Code of Ukraine, replacing it with "freedom" to ensure greater consistency with generally accepted international standards and to avoid legal uncertainty.

It should be noted that the Constitutional Court of Ukraine in its decision of 1 June 2016 No. 2-рп/2016 stressed that freedom is one of the fundamental values of an effective constitutional democracy, important for the development and socialisation of a person. It is believed that the right to freedom is an inalienable and inalienable constitutional right of every person, which allows an individual to act independently in accordance with his or her own decisions and determine his or her priorities, do everything not prohibited by law, and move freely within the territory of the state [6].

O. M. Lytvynov notes that in Ukrainian legislation the concept of "will" is used not only in the context of Chapter III of the Special Part of the Criminal Code, but also in the definition of such forms of punishment as imprisonment and restriction of liberty, where will is understood as physical freedom of a person [7, p. 398]. This indicates that liberty can be seen as synonymous with physical freedom. However, this interpretation does not exhaust the content of offences against liberty, as they have a broader impact on personal freedoms, such as freedom of movement, determination of one's behaviour, and communication with others without coercion. These aspects relate to a more comprehensive understanding of freedom that goes beyond mere physical integrity, as it encompasses the ability of an individual to determine his or her own behaviour and choices.

Before analysing the essence of honour and dignity of a person, we should pay attention to certain shortcomings in the criminal law protection of these values recorded in scientific sources. In particular, M. Y. Korzhansky criticises the insufficient protection of honour and dignity by law, describing them as "social rudiments" [8, p. 73]. O. M. Khramtsov confirms that, unlike the protection of life, health and inviolability of the person, the protection of honour and dignity remains insufficient [3, p. 233]. These conclusions are often voiced against the background of the absence of criminal liability for defamation and insult in the current legislation. I. A. Vartyletska draws attention to the fact that Section III of the Special Part of the Criminal Code of Ukraine does not consider honour and dignity as the main object of offences, focusing instead on the physical freedom of a person [9, p. 83]. There is also a growing number of proposals to criminalise defamation and insult, among whose supporters are V. A. Bortnyk, V. K. Hryshchuk, M. I. Kolos, M. Y. Korzhansky, V. V. Mulchenko, O. S. Subbotenko and O. M. Khramtsov, who support the introduction of appropriate amendments to the Criminal Code.

In our opinion, limiting criminal attacks on the honour and dignity of a person to forms of defamation and insult is inappropriate, as it unduly narrows the understanding of these fundamental values. Human dignity can be violated not only through obvious humiliation, but also in a broader context. As P. M. Rabinovich points out, every offence that infringes on personal interests inevitably affects the dignity of a person, as the victim experiences humiliation, resentment and other negative emotions that lead to mental depression. These feelings, although the result of an indirect influence, indicate a deep connection between encroachments on the rights and dignity of a person [10, p. 175]. However, our main interest in this study is in cases where actions directly and explicitly infringe on the dignity of an individual.

In accordance with Section III of the Special Part of the Criminal Code of Ukraine, the legislator groups offences against the freedom, honour and dignity of a person based on their mutual similarity and overlap. Literary sources often emphasise the connection between a person's freedom and his/her honour and dignity. In particular, M. I. Khavroniuk emphasises that respect of each person for his or her own moral principles and value for society makes it necessary to recognise that violation of freedom necessarily entails violation of honour and dignity [11, p. 433]. S. V. Shevchuk emphasises the need for each person to be able to freely express their uniqueness and creative function, which is provided by nature or God, without unjustified restrictions [12, p.33]. The Scientific and Practical Commentary to the Criminal Code of Ukraine prepared by M. O. Potebenko and V. G. Goncharenko expresses the opinion that any criminal encroachment on the freedom of a person reduces his or her honour and dignity [13, p. 108]. These arguments are quite convincing. Also, international legal instruments often place freedom and dignity side by side, for example, in the preamble to the Universal Declaration of Human Rights and the Charter of Fundamental Rights of the European Union, emphasising them as fundamental values.

Although international legal acts attach great importance to the concept of "human dignity", they do not provide a clear definition of it, which leads to various interpretations of this category. P. M. Rabinovych points out the risk of too narrow an interpretation of this term due to its uncertainty [10, p. 171]. Scholars, such as O. V. Hryshchuk, define human dignity through the prism of legal categories, considering it a legal idea, value, principle of law and other aspects [14, p. 16]. Most researchers distinguish between objective and subjective aspects of human dignity, considering it both as a phenomenon common to all people and as a personal right or interest.

With regard to the dignity of a particular person, it is interpreted as an internal self-assessment that should correspond to the external assessment of society [15, p. 99]. M. I. Khavroniuk emphasises dignity as a person's awareness of his or her social value [11, p. 433], and V. M. Pidhorodynskyi focuses on positive self-esteem [16, p. 108]. Taking into account the research, the Constitutional Court of Ukraine emphasises the dual nature of dignity as a right and a constitutional value.

We believe that the concept of human dignity should be based on the principles of human dignity, focusing on its objective rather than subjective characteristics. We are convinced that dignity is inherent in every human being by virtue of being a member of the human race, regardless of personal traits, social status or profession.

In the modern legal and philosophical literature, honour is usually described as the undamaged reputation and authority of a person, reflecting his or her moral qualities and honesty. V. V. Jun emphasises the difference between honour and dignity, noting that honour is based on the social assessment of a person, while dignity has a universal moral basis [17, p. 113]. S. P. Golovaty points out the tendency to identify honour with dignity, especially in the context of professional honour, which is evidence of the common philosophical foundation of both concepts. However, legally, these concepts are different: dignity is a key element of the system of human rights, while honour does not directly belong to the basic categories of human rights [18, p. 672]. In the Great Explanatory Dictionary of the Modern Ukrainian Language, honour is interpreted as a set of higher moral principles that govern human behaviour in society and personal life [5, p. 1600]. This definition is confirmed by the opinion of some authors who propose to use it to define the object of a criminal offence against honour provided for in Section III of the Special Part of the Criminal

Code of Ukraine. However, the content of such a broad interpretation of honour may be problematic for legal application, as it is difficult to determine the exact moral principles and the mechanism of their violation.

Thus, the concepts of freedom, honour and dignity are closely related, and their unification in one section of the CC of Ukraine is justified. At the same time, for each specific act provided for in this section, it is necessary to clearly define how it affects the honour, freedom and dignity of a person.

From the objective point of view, almost all corpus delicti of criminal offences contained in Section III of the Special Part of the Criminal Code of Ukraine are formulated as formal, i.e. they are considered to be completed from the moment the perpetrator commits the act itself and do not require the occurrence of unnecessary harmful consequences.

For example, the objective side of a criminal offence related to illegal deprivation of liberty or kidnapping includes two alternative acts:

1) illegal deprivation of liberty;

2) kidnapping, where the commission of any of these actions is sufficient to establish the objective side of such an offence.

The essence of illegal deprivation of liberty is the unlawful restriction of a person, which is realised through the creation of artificial barriers (tying, chaining, closing doors, etc.) that prevent the victim from moving freely and choosing a place of stay. Most scholars believe that kidnapping is always committed through active actions, while illegal deprivation of liberty can occur both through active actions and inaction [2, p. 77, 86]. On the other hand, some researchers argue that both illegal deprivation of liberty and abduction are possible only through active actions [19, p. 87].

The first point of view seems more convincing. Illegal deprivation of liberty is usually carried out by creating obstacles to the victim's free movement (e.g., restriction of the premises). However, in certain cases, such an act may also be committed through inaction, such as when a disabled person who is unable to move independently is not provided with the necessary means or refused to open the room in which he or she is staying at will.

The objective aspect of enforced disappearance encompasses various forms, including arrest, detention, abduction, as well as any other form of deprivation of liberty, followed by a refusal to recognise such actions or concealment of information about the fate or whereabouts of the person. These actions may be complemented by orders or decrees that do not recognise the deprivation of liberty or conceal information about the fate of the person. It is important to note that the need to take appropriate measures on the part of the management who witnessed the deprivation of liberty of persons and the failure to notify the relevant authorities of the offence may also play a role in enforced disappearance [11, p. 438].

Article 146-1 of the CCU includes a list of typical forms of deprivation of liberty, such as arrest, detention and abduction, but also leaves open the possibility of other similar forms of deprivation of liberty, such as detention or custody, emphasising that the list is not exhaustive [20, pp. 216–217]. It is important to realise that enforced disappearance can occur as a result of not only illegal actions, but also actions that may have been legal at first, but became illegal due to the refusal to recognise the deprivation of liberty or concealment of information about the fate of the disappeared person [21, p. 167].

The objective side of hostage-taking is determined by two possible forms of action:

1) abduction of a person as a hostage;

2) holding a person in hostage status.

According to Art. 147 (1) of the Criminal Code of Ukraine, a hostage is a person abducted or held with the intention of forcing third parties to take certain actions as a condition for release. The concept of "kidnapping" is interpreted differently in the legal literature. In particular, Y. G. Lyzogub defines kidnapping as an act of violent control over the victim, which restricts his/her ability to act freely [22, p. 112]. M. I. Khavroniuk believes that kidnapping is associated with an attack and a significant restriction on the free movement of a person [11, p. 440]. Other authors, such as I. Davydovych and V. Onopenko, believe that seizure may include the removal of a person from his or her usual environment and transfer to a confined space, which can be considered as abduction [23, p. 128].

The objective side of the criminal offence of child substitution includes the replacement of one child with another, regardless of whether it is one's own child or someone else's. According to the Great Explanatory Dictionary of the Modern Ukrainian Language, substitution is defined as the act of replacing one object or person with another [5, p. 958]. I. A. Vartyletska notes that such a criminal act may be committed, for example, when replacing one's own child, who may be sick or different in race, with another's child; it is also possible to replace one child with another child [24, p. 340]. There is also the possibility of replacing someone else's child with one's own.

Traditionally, child substitution is committed through active acts, which are generally accepted in criminal law doctrine. However, some lawyers believe that the offence can also be committed through omission. They describe a situation where substitution occurs through inaction, for example, when parents or other responsible persons, knowing about the substitution, do not prevent it by ignoring the actions of medical personnel who make mistakes. Although this possibility cannot be ruled out, the likelihood of a situation where the desire to switch coincides with the negligent actions of a third party remains extremely low.

According to Article 149 (1) of the Criminal Code of Ukraine, human trafficking may include various forms of actions, such as: sale, recruitment, transfer, concealment, transfer or receipt of a person. The commission of any of these acts is considered to be an offence of human trafficking. This article was included in the criminal legislation of Ukraine due to the implementation of international norms. It is important to note that international legal acts, such as the Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings, define "trafficking in human beings" as actions aimed at exploitation, including the recruitment, transportation, transfer, harbouring or receipt of persons. In this context, the Ukrainian legislator has combined international provisions with the domestic legal understanding of human trafficking [25].

Analysing the objective aspect of child exploitation under Article 150 of the CC of Ukraine, it should be noted that the title of this article is used too broadly, as it refers only to labour exploitation of children, as emphasised in the scientific literature [26, p. 283]. Part 1 of Art. 150 of the CC of Ukraine interprets child exploitation as the use of labour of a child under the age of employment.

D. O. Kalmykov points out four main features of the objective side of child exploitation: an act constituting exploitation; a method of committing it through the use of child labour; socially dangerous consequences in the form of significant harm to the child's will; and the existence of a causal link [27, p. 65]. However, this position is objectionable, according to A. M. Orleans, since the use of child labour should be considered as a characteristic of an act rather than a method of its commission. In addition, part 1 of Art. 150 of the CC of Ukraine does not mention socially dangerous consequences or significant harm, which makes it impossible to consider them as mandatory signs of a crime [26, p. 284, 285].

It should be noted that in the context of criminal offences against the freedom, honour and dignity of a person, we have focused on key aspects and norms, but the limited scope allowed us to consider only some aspects of this broad issue. Therefore, many articles that are also important for a holistic understanding of this topic remain unexamined. This opens up prospects for further research in this area, with the possibility to study in more detail not only specific corpus delicti, but also approaches to their classification and analysis in law enforcement practice.

The subject of criminal offences against the will, honour and dignity of a person is usually an individual who has reached the age of 16, but for some criminal offences the permissible age may be reduced to 14. There are also special categories of perpetrators, such as a psychiatrist or members of a medical commission of psychiatrists, including the chief psychiatrist.

According to Article 146 of the Criminal Code of Ukraine, any person may be a subject of a criminal offence. However, M. I. Khavroniuk reasonably expressed the opinion that not all persons may be subjects of this offence, especially those who are authorised by law to keep other persons in places that they cannot leave of their own free will. Such persons include, for example, parents or guardians who act with care for the physical and mental health of persons under their care [11, p. 435]. At the same time, prolonged restriction

of a child's freedom by his/her parents may be considered as unlawful deprivation of liberty if it is used as an educational measure requiring criminal qualification. Determining the boundary between parental care and criminal behaviour is complex and requires individual consideration of each case.

The subject of enforced disappearance is special, in particular, it can be a representative of the state, including foreign states (part 1), as well as their leaders (part 2), as stated in Article 146-1 of the CCU. According to the note to Art. 146-1 of the CCU, a representative of the state should be understood as an official or a person, as well as a group of persons acting with the permission, support or consent of the state [4]. This provision is in line with Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, which defines state agents as persons or groups of persons acting with the authorisation, support or consent of the state.

However, the qualification of a group of persons as one representative of the state raises certain doubts, since the representation of the state is usually associated with the actions of specific individuals, not a group of persons as an integral whole. Therefore, we believe that this provision should be revised in the footnote to the article to remove any uncertainty regarding the recognition of a group of persons as one representative of a state.

Ukrainian legislation sets the age of criminal liability for hostage-taking at 14 years. This decision of the legislator emphasises the seriousness of the offence compared to other encroachments on a person's freedom, such as unlawful deprivation of liberty or kidnapping. However, the analysis of practice shows that such a public danger is not always greater, and the difference often lies only in the motives for committing the crime. M. O. Akimov supports the decision to lower the age of responsibility, arguing that at this age, persons are already able to realise the consequences of their actions [28, p. 9]. However, it can be argued whether younger persons are really more aware of the consequences of hostage-taking than in cases of other offences for which liability arises from the age of 16. It is especially important to take this into account, as the study did not reveal any cases of such acts committed by persons under the age of 18. Therefore, it can be argued that the establishment of a lower age of criminal liability may be inappropriate.

As defined in Article 149(1) of the Criminal Code, any individual over the age of 16 may be a perpetrator of a criminal offence. However, certain categories of persons, such as medical staff of maternity hospitals or employees of children's institutions, are mentioned as potential subjects of child substitution due to their direct access to children. According to research, such acts are more often associated with medical professionals. It has been suggested that the actions of healthcare workers should be assessed particularly strictly, as they are responsible for the safety and security of the child. The proposal makes a recommendation to the legislation on special liability for officials who substitute a child in the course of their duties.

The offence of human trafficking can be committed by any sane individual who has reached the age of 16. The Criminal Code contains certain age restrictions, in particular, regarding the prosecution of hostage-taking from different social groups (Articles 349 and 349-1 of the Criminal Code). There is a debate in criminal law about the possibility of lowering the age threshold for criminal liability for human trafficking to 14 years, based on the high social danger of this offence and the assumption that even fourteen-year-olds can understand its seriousness [29, p. 669, 670]. However, this position seems contradictory, as empirical evidence shows that it is rare for young people under the age of 18 to commit this offence.

According to Article 150-1 (1) of the Criminal Code of Ukraine, the use of a minor child for begging is a criminal offence committed by parents or persons acting in their stead. Paragraph 2 of the same article defines the perpetrators of the offence as any other persons other than parents or persons acting in their stead. Meanwhile, part 3 stipulates that the subject of a criminal offence may be parents, persons in loco parentis and other persons [30, p. 170].

The perpetrator of forced marriage can be any person, usually a person who has authority or control over the victim, such as parents. This opinion is supported by M. I. Khavroniuk, who emphasises that such actions are often committed by close relatives who have family influence on the victim [11, p. 457].

Thus, the subjects of criminal offences against the will, honour and dignity of a person are often individuals who have reached the appropriate age – usually 16 years, and in some cases 14 years. In addition

to general perpetrators, there are special categories of perpetrators, such as medical professionals or officials, who, due to their professional duties, may use their official position to commit crimes against the will, honour and dignity of a person.

The subjective side of the criminal offence of unlawful deprivation of liberty or abduction is characterised by direct intent. This means that the perpetrator is aware of the unlawfulness of his or her actions to restrict the freedom of another person and wishes to do so. As for the grave consequences of such actions, they may be the result of negligence rather than intent. The motives of the perpetrator may vary, and, as O. O. Volodina notes, kidnapping may be aimed not at deprivation of freedom as such, but at achieving other goals, for example, raising a kidnapped child in the case when the kidnapper cannot have children of his own [2, p. 137]. It is also worth noting that although kidnapping may have specific features, it is still considered a form of unlawful deprivation of personal liberty, and the ultimate goal of the offence is often different from deprivation of liberty.

From a subjective perspective, enforced disappearance is always intentional. M. I. Khavroniuk expresses the opinion that intent in such cases can be both direct and indirect [11, p. 440]. This statement is the subject of debate, because enforced disappearance, as an offence with a formal composition, in our opinion, is committed only with direct intent.

As for the subjective side of hostage-taking, it is characterised by direct intent, while the person's attitude to the possible grave consequences of such an act may be negligent, as stated in Article 147(2) of the Criminal Code of Ukraine. An important feature of hostage-taking is the presence of a special purpose – to induce certain individuals or organisations to commit or refrain from committing certain actions, which is a condition for the release of the hostage. Taking or holding a person hostage is not considered an end, but a means of achieving this end. The absence of such a special purpose makes it impossible to qualify the act under Art. 147 of the Criminal Code of Ukraine. However, in judicial practice, there are sometimes cases when the special purpose is ignored when qualifying such acts [31, p. 272–273].

The subjective side of the criminal offence of child substitution is determined by intentional actions with mercenary or other personal motives, as stated in Article 148 of the Criminal Code of Ukraine. This excludes the possibility of committing this offence negligently. The offence of child substitution is a formal one, so the intent is always direct, including a conscious desire to substitute one child for another. Selfish motives mean that the perpetrator wants to gain material benefits or avoid costs by substituting a child. Other personal motivations can range from negative, such as revenge or jealousy, to positive, such as the desire to replace a terminally ill child with a healthy one for the sake of its mother. M. I. Khavroniuk emphasises that in the latter case, the action may not be considered socially dangerous due to its moral justification [11, p. 369].

However, legal doctrine often criticises the need to specify specific motives in the disposition of an offence, as the criminality of an act should not depend on the motives. In particular, many scholars believe that criminalisation should be based on the acts themselves, not on their motives. Accordingly, there are proposals to remove the reference to mercenary or other personal motives from the article. Also, Y. V. Datsenko advocates for increased liability for child substitution if it is committed for mercenary reasons, as this indicates a special moral and psychological deformation of the offender's personality [32, p. 11, 15, 16].

The subjective side of human trafficking is determined by direct intent, where a person is aware of the illegality of his or her actions aimed at human trafficking and wishes to commit them. In particular, when recruiting, moving, hiding, transferring or receiving a person, the purpose of exploitation is a mandatory feature of the subjective side. However, there are proposals in the scientific literature to remove the reference to exploitation from the legislation, as this may complicate the proof of the purpose of the offence. The authors of such opinions point to the difficulties of proving the purpose of exploitation, as well as the fact that this purpose is not always obvious to all participants in human trafficking, noting that often these persons are interested in material benefits that are not necessarily related to exploitation.

The footnote to Article 149 of the Criminal Code of Ukraine defines human exploitation as covering a wide range of actions: from sexual exploitation to use in the pornography business, forced labour, slavery, involvement in debt bondage, organ harvesting, and even forced actions such as pregnancy or abortion, as well as involvement in criminal activities. These forms of exploitation are in line with international norms, as outlined in the Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings, which, for example, define that exploitation may include prostitution or other forms of sexual exploitation, slavery, enslavement or the removal of organs [33]. This list of forms of exploitation defined in the CC of Ukraine and relevant international acts is not exhaustive, and there may be other forms of exploitation, as noted by M. I. Khavroniuk, who believes that trafficking in human beings for the purpose of tissue transplantation or blood extraction should also be qualified under Article 149 of the CC of Ukraine [11, p. 447].

A particular difficulty arises in the analysis of sexual exploitation, as the legislator does not specify specific forms of sexual exploitation, except for the use of persons in the pornography business, which gives rise to ambiguities regarding the legal definition and requires additional clarification and possible detail in the legislation.

The subjective side of unlawful deprivation of liberty or abduction is characterised by direct intent, when a person is aware that he or she has no right to restrict the freedom of another person, but consciously wishes to do so. As for the consequences of such actions, they may be negligent, when a person does not want them to occur, but commits actions that may lead to serious injury or even death of the victim. As an example, O. O. Volodina points out that the motives for abduction can vary and do not always include the exploitation of the victim, as in the case of abduction of children for upbringing without the possibility of having children of their own, when the child is provided with good conditions for development and upbringing [2, p. 137].

There is also the concept of unlawful placement of a person in a psychiatric institution with the direct intention of placing a person who is known to be mentally healthy, which indicates a conscious decision to hospitalise a person who does not actually need such treatment. In some cases, when unlawful placement in a psychiatric institution leads to serious consequences, the subjective side may include not only direct intent for the placement itself, but also negligence regarding the consequences, which may require qualification as a set of offences if bodily harm is intentionally inflicted [24, p. 92].

The subjective side of coercion to marriage or cohabitation is determined by direct intent. The perpetrator deliberately seeks to force another person to enter into or continue a marriage or to enter into or continue cohabitation without formalising the marriage. This may also include deliberately inducing a person to move abroad in order to realise these intentions.

The key element in determining criminal liability for criminal offences affecting the freedom, honour and dignity of a person is the presence of qualifying and especially qualifying features. These features lead to the application of more severe penalties than those established for the main body of the criminal offence in the relevant part of the article.

It is noted that unlawful deprivation of liberty or abduction of a person committed against a minor is considered a qualifying feature of a criminal offence. However, there is a reasonable proposal in the criminal law literature to expand this category to include kidnapping of minors due to the similar degree of gravity [2, p. 11, 150]. At the same time, it is concluded that it does not make sense to distinguish liability based on the age of a minor or juvenile, as this does not affect the degree of social danger of these acts [2, p. 151].

With regard to human trafficking, some authors propose to criminalise such acts committed against minors, but practical analysis shows that this is usually not the case for persons under 18. Therefore, this qualifying feature may seem excessive. However, the law already takes into account that parents or guardians may traffick their minor children, highlighting this as a separate qualifying feature [2, p. 11, 150].

The use of the masculine gender exclusively in the legislative provisions relating to victims of the above-mentioned offences is also noteworthy. This can lead to misunderstandings, as it gives the impression

that the legislator meant only male victims. Therefore, it would be more appropriate to use non-restrictive wording that would include both sexes, thereby eliminating potential ambiguity and ensuring gender equality in the legal field [2, p. 11, 150].

Criminal liability for unlawful deprivation of liberty or abduction of a person may be aggravated in the case of actions committed for mercenary reasons. Analysing court practice, it can be seen that actions aimed at forcing a person to fulfil civil law obligations are often interpreted as being committed for mercenary reasons. A typical example is when a person, seeking to recover his or her debt or property that legally belongs to him or her, resorts to illegal detention of the debtor. For example, the Bolhrad District Court of Odesa Region qualified a case where the accused, in order to repay a debt, physically forced the victim to get into the trunk of a car, transported him to his household and kept him in a utility pit from which he could not get out on his own [35]. However, it is obvious that a person's desire to recover his or her own money or property that belongs to him or her by law cannot be considered a manifestation of mercenary intentions.

There are certain difficulties in the practice of qualifying illegal deprivation of liberty or abduction of a person by means that threaten life or health. This applies to both investigative and judicial practice. Also, there is no unambiguity in the professional literature regarding the interpretation of this qualifying feature. For example, some researchers believe that this method should be understood as actions that create a real threat of physical injury that can lead to serious consequences, as stated in Part 1 of Article 121 of the CC of Ukraine [36, p. 108]. Other researchers point to the threat of any bodily harm [37, p. 457]. Still others focus on the possibility of causing severe, moderate or light bodily harm that causes short-term or minor health problems [38, p. 278]. In some places, scholars argue that any serious consequences that have actually occurred should be considered as serious and qualified under Part 3 of Article 146 of the CC of Ukraine [39, p. 380]. Thus, although there are differences between researchers as to the degree of health risk it poses, the above approaches agree that it is a matter of potential, not actual, harm to health.

In criminal law, the issue of aggravating circumstances for unlawful deprivation of liberty or kidnapping is important, especially when the act is committed with the use of weapons. The legal literature has a clear understanding of this qualifying feature. However, there are doubts as to the need to define the use of weapons as a separate qualifying feature, especially in view of the provision of part 2 of Article 146 of the Criminal Code of Ukraine, which refers to the commission of an offence in a manner dangerous to the life or health of the victim. In addition, the commission of an offence with the use of weapons, which led to grave consequences, requires further qualification in accordance with the relevant articles of the Special Part of the Criminal Code of Ukraine. According to Y. G. Lyzogub, the use of weapons, even if it causes psychological pressure, does not differ from the impact of other objects, such as a kitchen knife or an air gun, which are not officially classified as weapons [40, p. 93–94].

The practice of assessing unlawful deprivation of liberty or abduction, especially if it occurs over a long period of time, varies considerably between courts. In particular, the Oleksandriia City District Court of Kirovohrad Region considered the illegal deprivation of liberty of a man as "carried out for a long time", although he was held for only an hour in a car [41]. At the same time, the Sinelnykivsky City District Court of the Dnipropetrovs'k region did not qualify a similar incident, where a person was detained for several days, as prolonged [42]. This confirms the general trend of a lack of uniformity in assessing the duration of unlawful deprivation of liberty, which is often observed in different regions and situations. Courts usually do not base their decision on consideration of not only the duration of detention, but also other circumstances, such as the method and place of detention, the person's health condition, age, etc.

Recognition of grave consequences as a qualifying feature for offences such as unlawful deprivation of liberty or kidnapping is provided for in criminal law (Article 146(3), Article 147(2), Article 149(3), Article 151(2)). There is a variety of interpretations of grave consequences in the legal literature, including death,

grievous bodily harm, disappearance, etc. However, this diversity of views does not contribute to the unity of judicial practice.

In particular, the category of "grave consequences" should not be completely abandoned, as it allows criminal law to be applied to a wide range of life situations, giving the law flexibility. However, more clarity in the definition of this category is needed to avoid arbitrariness in law enforcement. On the other hand, there is criticism that the legislator uses the concept of grave consequences without a proper definition, which may lead to an unjustified expansion of criminal liability [43, p. 21].

Taking or holding a person hostage with the threat of killing people is defined as a qualifying offence under Article 147 of the Criminal Code of Ukraine. Scholars generally believe that such actions include death threats to at least one person. However, this interpretation should be reconsidered, because according to the wording of the law, the threat of destruction involves the impact on many people, not just one [44, p. 234]. Thus, the qualification of an action on this basis may require more careful consideration. Moreover, any seizure or holding of a person as a hostage involves elements of violence, including mental pressure, such as a threat of murder. This indicates the potential redundancy of this qualifying feature in the current legislation, and its exclusion from Part 2 of Article 147 of the CC of Ukraine may be justified, as already noted by M.O. Akimov [28, p. 4, 9]. At the same time, it should be noted that offences against the will, honour and dignity of a person in most cases reasonably contain qualifying features, which contributes to adequate law enforcement. However, the possible addition of new qualifying features to these articles remains a subject of discussion among lawyers.

Currently, the only qualifying factor for unlawful placement of a person in a mental health facility under Part 2 of Article 151 of the Criminal Code of Ukraine is the occurrence of grave consequences due to such actions. However, it is worth considering the addition of other qualifying features, such as acts motivated by mercenary motives, which is also specified in the legislation of several other countries, including Armenia, Kazakhstan and Tajikistan. At the same time, given the frequent commission of such actions for mercenary motives in the current environment, this qualification may be excessive and may reduce the application of the main body of the criminal offence.

In our opinion, it would be more appropriate to supplement part 2 of Article 151 of the CC of Ukraine with a qualifying feature that takes into account the commission of an offence against two or more persons, since the multiplicity of victims increases the public danger of the act and should provide for enhanced liability. This is similar to the provisions existing in part 2 of Article 146 of the CC of Ukraine, which takes into account the illegal deprivation of liberty or abduction of several people.

Conclusions. Thus, the topic of criminal offences against the will, honour and dignity of a person is important, as these categories play a key role in the protection of fundamental human rights. In the criminal legislation of Ukraine, the object of these offences is interpreted in two ways: on the one hand, as protection of social relations that guarantee personal freedom, honour and dignity of a person, and on the other hand, as direct protection of the values themselves – freedom, honour and dignity.

The objective side of criminal offences against the freedom, honour and dignity of a person, according to Section III of the Special Part of the Criminal Code of Ukraine, covers various forms of restrictions that are recognised as committed from the moment they are implemented without the need for additional harmful consequences. To illustrate, offences such as unlawful deprivation of liberty or kidnapping have two alternative forms – active deprivation of liberty or kidnapping, where the mere commission of one of these acts already constitutes the objective side of the offence. At the same time, the methods of implementation of such offences may vary from active actions to inaction, which is also confirmed in the legal literature.

Much of the debate in legal circles focuses on the interpretation and classification of these acts, particularly in the context of enforced disappearance, which can include arrests, detentions and other forms

of deprivation of liberty. Hostage-taking is another category where a hostage may be held or abducted to exert pressure on third parties. In particular, the essence of unlawful deprivation of liberty is often the creation of obstacles to free movement, such as tying up or isolation in a room, which limits the person's ability to choose where to stay. In contrast, kidnapping usually involves the transfer of a victim for the purpose of detention.

The objective aspect of child exploitation, as indicated by the legislation, focuses on the use of child labour, often above the age of employment, which is also subject to discussion in terms of appropriateness and social harm.

In general, the analysis of the objective aspect of criminal offences against the freedom, honour and dignity of a person demonstrates the complexity and multifaceted approaches to their regulation and application, requiring law enforcement officers to have a deep understanding of both legislative provisions and practical aspects of their implementation.

The perpetrators of criminal offences against the will, honour and dignity of a person are usually individuals who have reached a certain age – mostly 16 years, although for some offences this age may be lowered to 14 years. The legislation also identifies special categories of actors, such as psychiatrists or members of a medical commission, which underlines the special role of these individuals in certain contexts. This may include acts that involve unlawful interference with a person's will, such as unlawful deprivation of liberty or abduction. Sometimes, as in the case of the use of a minor child for begging, the actors may be parents or persons in loco parentis, as well as other persons. There are also cases where the perpetrators may be representatives of the state acting on its behalf or with its consent, as specified in the relevant articles of the Criminal Code of Ukraine.

The subjective side of criminal offences against the will, honour and dignity of a person includes the understanding and conscious desire of a person to commit an act that restricts the rights of another person. In these offences, direct intent is the main component that determines the perpetrator's awareness of the illegality of their actions and the desire to commit them. Hostage-taking or unlawful deprivation of liberty, for example, have a specific subjective aspect, where the purpose of the act is often aimed at achieving certain requirements or conditions imposed on third parties. The subjective aspect may also include a variety of motives, ranging from personal to mercenary, which may affect the nature and seriousness of the criminal offence. The grave consequences of such acts, although they may be the result of negligence, are also an important part of the subjective aspect, as they may further qualify the offence.

Qualifying and specially qualifying features of criminal offences against the will, honour and dignity of a person are key to determining the scope of criminal liability and the application of more severe punishment. These features differentiate offences depending on their circumstances and the degree of social danger. For example, unlawful deprivation of liberty or kidnapping committed against a minor or a juvenile is considered a qualifying feature that increases liability. Practice shows that it is not always necessary to distinguish between the age of the victims, as this does not affect the degree of social danger of the crime. In addition, in the context of human trafficking, the rarity of such offences committed by persons under 18 years of age calls into question the need for special qualifying characteristics for this age group. It is noted that the normative use of the masculine gender in legislative wording can cause ambiguity and violation of gender equality, which requires amendments to include wording that covers both sexes.

In addition, some qualifying features, such as the use of a weapon, may be considered redundant or excessive in light of the existence of other features that already cover acts dangerous to the life or health of the victims. Therefore, the study and analysis of qualifying elements is important for the adequate and fair application of the criminal law, with the subsequent potential adjustment of the rules to ensure their relevance and effectiveness in justice.

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ЗАГАЛЬНА ХАРАКТЕРИСТИКА КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ ПРОТИ ВОЛІ, ЧЕСТІ ТА ГІДНОСТІ

Стаття присвячена аналізу кримінальних правопорушень проти волі, честі та гідності особи в контексті сучасного українського законодавства. Автор висвітлює, як історично трансформувалося правове регулювання вказаних категорій, що має значний вплив на тлумачення та застосування норм кримінального права в сучасних умовах.

Автор досліджує двояке трактування об’єкта кримінальних правопорушень – як суспільні відносини, що захищають особисту волю, честь та гідність, так і самі цінності як такі. Зокрема, у статті акцентується увага на проблематиці браку ефективного захисту честі та гідності через кримінальне законодавство, що підтверджується декриміналізацією наклепу та образ. В статті також обговорюються відповідність між назвою та змістом розділу ІІІ Особливої частини КК України, де кримінальні правопорушення не завжди відображають честь і гідність як безпосередні об’єкти кримінальної відповідальності. Таке обговорення дає підстави для рекомендацій щодо вдосконалення законодавства, виходячи з потреб сучасного суспільства та міжнародних стандартів прав людини. Окремо розглядаються терміни “воля” та “свобода”, їхнє значення і застосування у кримінальному праві, в тому числі пропозиція щодо заміни поняття “воля” на “свобода” для забезпечення точнішого відображення законодавчих інтенцій.

Досліджується об’єктивна сторона таких правопорушень, зокрема незаконне позбавлення волі, викрадення, насильницьке зникнення, підміна дітей та експлуатація. Автори досліджують, як ці діяння кваліфікуються залежно від способу, наслідків та особливостей обмеження свободи, честі чи гідності. Особливу увагу присвячено суб’єктивній стороні, яка містить прямий умисел винної особи та мотиви, що впливають на характер правопорушення.

В підсумку автор відзначає, що кримінально-правовий захист волі, честі та гідності особи потребує не лише вдосконалення законодавства, але й забезпечення його відповідності міжнародним стандартам. Пропонуються способи підвищення ефективності правозастосування через уточнення кваліфікуючих ознак та вдосконалення правових механізмів.

Ключові слова: воля, честь, гідність, свобода, людина, кримінальне правопорушення, склад правопорушення, відповідальність.