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SYSTEMATISATION OF CRIMINAL LAW MEASURES IN THE DRAFT CRIMINAL CODE OF UKRAINE

The article analyses the criminal legal measures reflected in the Draft Criminal Code of Ukraine through the prism of a taxonomic approach. The author concludes that the criminal legal measures provided in the draft are coherent and clear, achieved by a peculiar legal technique. The authors of the draft took into account the proposals of scholars and practitioners to expand the areas of criminal law influence, which made it possible to build a logical and well-thought-out system of criminal law measures. The author of this paper considers the understanding of criminal liability in the draft as a supra-specific category that covers certain types of criminal law measures to be successful and also considers it an appropriate and necessary step to define such types of criminal law measures as restitution and Compensation in the draft. At the same time, the author points out certain shortcomings, in particular, the term used to refer to the central element of the system – remedy; the absence in the draft CC of Ukraine of the essential features of certain types of criminal legal measures and the purposes of the types of criminal legal measures identified by the members of the Working Group. The article concludes that, along with the predicate approach, consideration of the relational dimension, which requires the identification of taxonomic attributes which recognise the essential features of a particular type of legal measure, is a necessary step in further improving the systematisation of criminal legal measures in the draft CC of Ukraine. Therefore, eliminating the relevant shortcomings could become the basis for improving the systematisation of criminal legal measures.

Key words: draft Criminal Code of Ukraine, criminal legal measure, taxonomy, systematics, predicate dimension of taxonomy, categories (ranks) of taxonomy.

Statement of the problem. In the modern period, criminal legislation is being actively reformed. The draft Criminal Code of Ukraine, which is almost at the final stage of development, is widely discussed by scholars, and foreign and domestic experts have already provided certain conclusions. One topical issue

requiring detailed study and analysis is the system of criminal legal measures proposed by the developers, which would consider the achievements of science, the history of criminal legislation, and international experience.

In the draft Criminal Code of Ukraine, the Working Group on the Development of Criminal Law changed the approach to defining the range of criminal law measures. The Concept of Criminal Law Reform defined one of the fundamental provisions as follows: 'The new criminal law should provide the widest possible and, at the same time, differentiated list of not only punishment but also other criminal law measures' (clause 6 of the Principles of Reforming the Legislation on Liability for Offences in the Public Sphere)¹, which indicates that the drafters of the draft accepted the doctrinal concept of "multi-track" when defining criminal law measures in the new criminal law. Therefore, in the latest published draft of the Criminal Code of Ukraine² we see a great deal of work on this issue stated in the concept. This applies not only to defining the range of criminal legal measures, some of which are new to criminal law but also in an attempt to systematise them using a kind of legal technique to reflect in the text of the act itself an exhaustive, consistent and multi-level classification of criminal legal measures and rules for their application.

One of the approaches to the generalisation and systematisation of legal measures, in general, is the taxonomic approach to their classification proposed by Professor Oleksandr Kozachenko and presented in the research of scientists of the Department of Criminal Law and Other Criminal Law Disciplines of the Mykolaiv Educational and Research Institute of Law of the National University 'Odesa Law Academy'³.

¹ Kontseptsiia reformuvannia kryminalnoho zakonodavstva [The concept of reforming criminal legislation]. *Veb-sait. Reformuvannia kryminalnoho zakonodavstva*. [Website. Reform of criminal legislation]. URL: <https://newcriminalcode.org.ua/concept> (accessed 04.11.2024) [in Ukrainian].

² Kryminalnyi kodeks Ukrainy: kontrolnyi tekst proiektu (stanom na 01.08.2024). [Criminal Code of Ukraine: control text of the draft (as of 01.08.2024)]. URL: <https://newcriminalcode.org.ua/upload/media/2024/08/02/kontrolnyj-tekst-proyektu-kk-stanom-na-01-08-2024.pdf> (accessed 04.11.2024) [in Ukrainian].

³ Kozachenko, O.V., Vasyliaka, O.K., Chornozub, L.V., & Musychenko, O.M. (2020). Taxonomy of compulsory and incentive legal consequences (legal measures) of committing illegal acts. *Cuestiones Politicas*.

This paper **aims** to analyse the criminal law measures (means – in the draft) defined in the draft Criminal Code of Ukraine through the prism of the above taxonomic approach.

Summary of the primary material. The concept of ‘measure’ in criminal law and other branches of law is not new and has been enshrined in legislation for a long time. In our opinion, the attempt to terminologically replace this term with another one – ‘means’, which can be traced not only in the doctrine of criminal law but also in the draft Criminal Code of Ukraine⁴, looks somewhat artificial and not sufficiently balanced, as already pointed out by representatives of the Odesa School of Law⁵.

Taking into account the predicate dimension of the taxonomy of legal measures, criminal legal measures in the taxonomic system of legal measures take their place by specific categories (ranks): type – subtype – class – genus – subgenus – supergenus – species – subspecies. The basic taxon is the category of type, which determines the uniqueness of criminal law impact by the essential systematising features of each criminal law measure's objective and subjective nature.

Vol. 38. №. 67. Especial (2da parte), 151–168. URL: <https://produccioncientificaluz.org/index.php/cuestiones/article/view/34688> (accessed 04.11.2024); Kozachenko, O.V., Musychenko, O.M., Vasylyaka, O.K., Chornozub, L.V. (2022). Taksonomiia pravovykh zakhodiv. [Taxonomy of legal measures]. *Prykarpatskyi yurydychnyi visnyk*. Zbirnyk naukovykh prats. Natsionalnyi universytet «Odeska yurydychna akademiia». [*Prykarpattya legal bulletin*. Collection of scientific papers. National University Odesa Law Academy]. Helvetica Publishing House, Issue №. 5 (46), 13–20. URL: http://pjuv.nuoua.od.ua/v5_2022/2.pdf (accessed 04.11.2024) [in Ukrainian].

⁴ Kryminalnyi kodeks Ukrainy: kontrolnyi tekst proiektu (stanom na 01.08.2024). [Criminal Code of Ukraine: control text of the draft (as of 01.08.2024)]. URL: <https://newcriminalcode.org.ua/upload/media/2024/08/02/kontrolnyj-tekst-proyektu-kk-stanom-na-01-08-2024.pdf> (accessed 04.11.2024) [in Ukrainian].

⁵ Kozachenko, O. (2020). Adekvatna terminolohiia – adekvatnist kryminalnoho zakonu [Adequate terminology is the adequacy of the criminal law]. *Novitni kryminalno-pravovi doslidzhennia – 2020: Almanakh naukovykh doslidzen* [*The latest criminal law research – 2020: Almanac of scientific research*] / ed. by professor O. Kozachenko, O. Musychenko. Mykolaiv, 20–28 [in Ukrainian]; Kozachenko, O.V. (2019). Shchodo vyznachennia pravovykh naslidkiv vchynennia zlochynu v proekti kryminalnoho zakonu Ukrainy [On determining the legal consequences of committing a crime in the draft criminal law of Ukraine]. *Kontseptualni zasady novoi redaktsii Kryminalnoho kodeksu Ukrainy: materialy mizhnarodnoi naukovo-praktychnoi konferentsii, 17–19 zhovtnia 2019 roku* [*Conceptual foundations of the new edition of the Criminal Code of Ukraine: materials of the international scientific and practical conference, 17-19 October 2019*] / ed by V.Y. Tatsiy, Y.V. Baulin and others. Kharkiv: Pravo, 282–286 [in Ukrainian].

The analysis of Book Three, 'On Criminal Legal Means and Their Application' of the draft CC of Ukraine convinces that for each type of criminal legal measure, the grounds for application, the main features provided in the norms-definitions are determined (for example, part 1 of Article 3.6.3 'Restraining Means', part 2 and part 3 of Article 3.7.1 'Restitution and Compensation', part 1 Art. 3.8.1 'Confiscation of Property', Art. 3.8.3 (1) 'Seizure of Things', Art. 3.9.1 (1) 'The Concept of a Criminal Record'). However, there are no definitions of such measures as probation or security measures; definitions are used only for certain types (subtypes) of these criminal legal measures. This approach is not entirely consistent and is selective.

Some chapters of Book Three of the draft define types of criminal legal measures united by standard features, while these defining features of each type need to be enshrined in law. It is not entirely clear why the authors of the draft abandoned the definitions of probation and security measures in the latest published version of the draft since the first versions of the draft contained both definitions of the types of these criminal legal measures and the specific purpose of their application. At the same time, we emphasise that the latest version of the draft already contains a definition of punishment, and the authors of the draft have taken into account our comments in a recent publication⁶.

Part 2 of Art. 3.1.1 defines the general purpose of criminal law means as 'protection of a person, society and the state from criminal offences and other unlawful acts provided for by this Code'⁷.

In our opinion, this goal follows from the author's understanding of the very concept of a criminal law remedy, by which they mean "restrictions on a person's rights or imposition of obligations on him/her provided for by this Code, which the

⁶ Musychenko, O.M. (2024). Informatsiina taksonomichna systema kryminalno-pravovykh zakhodiv [Information taxonomic system of criminal law measures]. *Taksonomiia pravovykh zakhodiv [Taxonomy of Legal Measures]* / ed. by prof. O. Kozachenko. Mykolaiv: Ilyon. P 444. [in Ukrainian].

⁷ Kryminalnyi kodeks Ukrainy: kontrolnyi tekst proiektu (stanom na 01.08.2024) [Criminal Code of Ukraine: control text of the draft (as of 01.08.2024)]. URL: <https://newcriminalcode.org.ua/upload/media/2024/08/02/kontrolnyj-tekst-proyektu-kk-standom-na-01-08-2024.pdf> (accessed 04.11.2024) [in Ukrainian].

court applies in case of a criminal offence or other unlawful act provided for by this Code" (part 1 of Article 3.1.1). Such a narrowed understanding of criminal law means does not quite correspond to the term 'means' itself since, according to the concept substantiated by Y. A. Ponomarenko, criminal law means (or criminal law means) should be used 'to denote those phenomena of legal reality which are used by substantive criminal law as a branch of law to achieve its tasks'⁸. Today, the main tasks of criminal law stem from the provisions enshrined in Article 1 of the current CC of Ukraine – protection of the most important values (human and civil rights and freedoms, property, public order, public safety, environment, constitutional order, peace and security of humanity), as well as prevention of criminal offences. The draft CC of Ukraine does not reflect the objectives of criminal law (although, again, this was the case in previous versions). However, it cannot be argued that modern criminal law will not fulfil the preventive task, and this is primarily served by the rules defining criminal offences and the legal consequences in case of their commission by a person. That is, under such a broad approach, the means include provisions establishing objective signs of criminal offences, the role of which is vital in prevention since they outline the boundaries of prohibited behaviour. This once again suggests that the concept of 'criminal law means' is not appropriate to denote the essentially legal consequences (reaction, influence of the state) of the fact of committing a criminal offence or an unlawful act provided for by criminal law.

Returning to the definition of 'criminal legal means' in the draft and their purpose, we note that such an understanding of this general generic category as a restriction of a person's rights or imposition of obligations is not entirely successful since not all measures provided for in the draft meet this definition. For example, the understanding of such a measure as the seizure of a thing, which 'consists in the compulsory free-of-charge alienation of a thing that does not belong to the

⁸ Ponomarenko, Y. A. (2020). *Zahalna teoriia vyznachennia karanosti kryminalnykh pravoporushen* [General theory of determining the punishability of criminal offences]. Kharkiv: Pravo. P. 66 [in Ukrainian].

convicted person on the right of ownership, including a thing withdrawn from civil circulation, to the State Fund for Compensation to Victims' (part 1 of Article 3.8.3 of the draft), does not allow us to say that this measure meets the general features since in this case the person is not endowed with the right of ownership, and, accordingly, it is not a 'restriction of a person's right'.

Comparing the previous versions of the draft, it seems that the Working Group wanted to move the emphasis of generalisation to a higher level in the taxonomic hierarchy of measures, neglecting the defining features, including the specific objectives of each type of measure, which would convey the essence and uniqueness of criminal legal influence. The drafters tried to combine the features of all measures in the general definition and purpose. However, at the same time, considering the wide range of possible criminal legal influences, they identified a relatively large number of varieties of each type. They considered many nuances but only by listing the varieties of individual types, grounds and rules for their application. Given the variety of criminal legal measures defined in the draft, without a focus on species and particular purpose, it is challenging to clarify the essence of each measure, so it is necessary to take into account the relational approach in the systematisation of criminal legal measures in the further improvement of the draft CC of Ukraine.

In our opinion, in defining the generic concept of criminal legal measures, we should abandon the clear signs of 'restriction of a person's rights' and 'imposition of obligations' since they do not exhaust the essence of criminal legal measures. However, criminal legal measures are a system of various techniques and methods of influence (not only coercive but also incentive) on criminal practices and lawful post-criminal behaviour provided for by criminal law⁹. It would be possible to abandon the definition of an overly broad generic concept altogether, but the specific concepts of measures are subject to mandatory statutory

⁹ Kozachenko, O. V. (2011). Kryminalno-pravovi zakhody: kulturo-antropolohichniy vymir [Criminal and legal measures: cultural and anthropological dimension]. Mykolaiv: Ilion. P.12 [in Ukrainian].

regulation. In the same context, it should be noted that certain sections of Book Three describe the types of criminal law remedies, including Section 3.4, 'Exemption from punishment. Modification of the sentence'. Without indicating the essence of this institution, the authors of the draft CC of Ukraine list the types of Exemption from punishment and the grounds and conditions for their application but refuse to indicate them among the types of criminal law measures in Article 3.1.2. At the same time, the draft law's provisions regulating the Exemption from punishment and its commutation convince us that they are of great importance in criminal law measures, as they have a special impact on the person who committed the criminal offence. Therefore, Ukrainian experts' remarks noted that 'non-punishment of a person who has committed a criminal offence is an alternative way of responding to his/her behaviour, which is carried out within the framework of criminal liability, are understandable. Why is it not a criminal law remedy under Art. 3.1.2?'¹⁰ Perhaps, defending their position of 'non-recognition' of the status of 'means' for other criminal law phenomena with an incentive nature, the draft's authors defined this criminal law definition in Part 1 of Art. 3.1.1.

As for criminal legal means defined in the draft – 'protection of a person, society and the state from criminal offences and other unlawful acts provided for by this Code' – it also, in our opinion, cannot cover all the defined criminal legal means, if we interpret the word 'protection' as an action from 'to protect' – to protect, to guard against something, to prevent some danger¹¹. This purpose is understandable for such measures as punishment, security, criminal records, etc. However, restitution or Compensation is not entirely correct because the specific purpose of these measures is to eliminate the consequences, to restore the state that existed before the commission of a criminal offence or other unlawful act provided for by criminal law, which does not fit into the general purpose of 'protection'.

¹⁰ Vysnovok na proiekt Kryminalnoho kodeksu Ukrainy (kontrolnyi tekst stanom na 30.01.2023) [Opinion on the Draft Criminal Code of Ukraine (control text as of 30.01.2023)] / Vozniuk A., Dudorov A., Zadoya K., Movchan R et al. P. 155. URL: <https://newcriminalcode.org.ua/upload/media/2023/03/16/vysnovok-natsionalnyh-ekspertiv.pdf> (accessed 04.11.2024) [in Ukrainian]

¹¹ Slovnyk ukrainskoi movy v 11 tomakh (1979). [Dictionary of the Ukrainian language in 11 volumes] / ed. by I. K. Bilodid. Vol. 10: T–F. Kyiv: Naukova Dumka. P. 351 [in Ukrainian].

Therefore, we believe it is advisable to change the general purpose of criminal law remedies to 'restoration of social justice'. Such a goal of a more general nature would unite the local goals of specific types of criminal law remedies.

The formulation in the draft of objective types of criminal legal measures, including the definition of their specific purposes of application, based on the overall goal of achieving social justice, will contribute to a more balanced and orienting further taxonomy of criminal legal measures at lower hierarchical levels. This can also serve as a support in defence against possible criticisms from experts that there is no difference between such types of punishment as 'free labour', 'restriction of freedom of movement' and types of supervisory probation measures such as 'community service', 'home probation arrest', since, despite the common essence of execution, they have different features – the purpose of application, grounds, subjects of application and procedural component, so they have a clear place in the taxonomic system of criminal law measures.

The specific objectives of certain types of criminal legal measures are not reflected in the latest version of the draft. In some articles that define the general rules for applying certain types of criminal legal measures, the authors refer to a single goal formulated in part 2 of Article 3.1.1. For example, in part 3.5.3, "Probation means shall be the minimum necessary and sufficient to achieve the purpose of criminal legal measures and shall be compatible with each other".

While there are certain shortcomings in defining the essential features of criminal legal measures, the draft CC of Ukraine clearly structures the division of criminal legal measures into separate types and subtypes. In addition, a positive aspect is allocating a separate supra-specific category – criminal liability – in the text of the draft (Article 3.1.3). This is a significant step towards further improvement of the taxonomy of criminal legal measures.

The division of the types of criminal legal remedies outlined in Article 3.1.2 of the draft CC of Ukraine into subtypes, given their large number, especially those

that do not relate to punishment, seems quite detailed and logical. The technique used for numbering articles is consistent with the taxonomic approach, considering the hierarchy of categories (ranks). The first digit, 3, indicates the general generic category 'criminal legal means', which is the starting point for all articles in Book 3, 'On Criminal Legal Means and Their Application'; the second digit indicates the serial number of the sections: 3.1, 3.2, 3.3, etc. and mainly corresponds to the category 'type of criminal law means'. There are seven of them: 3.2 – punishment; 3.5 – probation; 3.6 – security measures; 3.7 – restitution and Compensation; 3.8 – confiscation of property and seizure of things; 3.9 – criminal record; 3.11 – criminal law measures against a legal entity. The third digit of the article may indicate a subtype of remedy. For example, 3.2.3 – community service, 3.2.4 – fine; 3.2.5 – restriction of liberty, etc. Those subtypes that are divided into lower-order categories are indicated in the parts of the articles themselves, and further paragraphs may outline unique methods of implementing specific subtypes. For example, security means, which include restrictive means (Art. 3.6.3), are divided into prohibitions (part 2 of this article, paragraphs 1–5 define what kind of prohibitions), restrictions of rights (part 3, paragraphs 1–7 of which specify possible restrictions of rights) and imposition of duties (part 4, where paragraphs 1–2 specify specific duties).

According to this hierarchy, seven types of criminal law measures are divided into subtypes.

Punishment is divided into the following subtypes: basic punishment – community service, fine, restriction of liberty, fixed-term imprisonment, life imprisonment; additional punishment – fine, which is imposed only in addition to restriction of liberty and fixed-term imprisonment¹². We consider it a positive step that the authors of the draft abandoned the previous version of 3.2.1, according to which subtypes of punishment were determined depending on the category of

¹² Kryminalnyi kodeks Ukrainy: kontrolnyi tekst proiektu (stanom na 01.08.2024). [Criminal Code of Ukraine: control text of the draft (as of 01.08.2024)]. URL: <https://newcriminalcode.org.ua/upload/media/2024/08/02/kontrolnyj-tekst-proyektu-kk-standom-na-01-08-2024.pdf> (accessed 04.11.2024) [in Ukrainian].

criminal offence committed by the person: for a felony – a fine, imprisonment for a fixed term and life imprisonment; for a misdemeanour: free work, a fine, restriction of freedom of movement, arrest. This has led to an overlap in the essence of such types of punishment as a monetary penalty and a fine, as pointed out in our monographic study¹³.

The types of criminal law probation measures are listed in Art. 3.5.1 of the project, and they are divided into two groups: the first group – supervisory means of probation, which includes the following obligations: to periodically report for registration to the probation authority; to notify the probation authority of a change of place of residence, work or study; not to travel outside Ukraine, as well as to the temporarily occupied territory of Ukraine without the consent of the probation authority; the second group – social and educational means of probation, which includes the following obligations to carry out the measures envisaged by the probation programme; to find a job on their own or upon referral from the state employment service; to undergo education or vocational training; to undergo treatment for a mental or behavioural disorder due to the use of psychoactive substances or other socially dangerous disease, subject to the consent of the convicted person; to undergo a course of consultations with a psychologist; to provide childcare and upbringing.

The Working Group has taken into account our proposals¹⁴ to change section 3.5 ‘Probation’ to ‘Means of probation’, which is in line with the Working Group's concept of understanding probation measures as a separate type of probation. After all, the essence and purpose of probation is currently broader than a set of measures against a convicted person – it is also the provision of information to the

¹³ Musychenko, O. M. (2024). Informatsiina taksonomichna systema kryminalno-pravovykh zakhodiv [Information taxonomic system of criminal law measures]. *Taksonomiia pravovykh zakhodiv [Taxonomy of Legal Measures]* / ed. by prof. O. Kozachenko. Mykolaiv: Ilyon. P. 450 [in Ukrainian].

¹⁴ Ibid. P. 451.

court characterising the accused in order for the court to decide on the extent of their liability in accordance with the Law of Ukraine ‘On Probation’¹⁵.

The next type – criminal law security measures – includes, firstly, restrictive measures, secondly, compulsory psychiatric care, and thirdly, disclosure of information about a person's conviction.

At the same time, restrictive measures include those related to prohibitions, restrictions on rights, and certain obligations, and parts 2–4 of Article 3.6.3 of the draft CC of Ukraine clearly define their lists.

The types of compulsory psychiatric care include outpatient psychiatric care and placement in a particular institution for inpatient psychiatric care (part 1 of Article 3.6.5).

Publication of information about a person's conviction (Article 3.6.7) is a separate subtype of security measures, which consists of publishing information about a convicted person in the media in cases of committing a crime with a high degree of public danger (5–9 degrees of gravity), as well as specific crimes against sexual freedom and sexual inviolability and corruption or corruption-related crimes. In addition, disclosure means placing information in the relevant Unified State Registers in the latter two cases.

As we can see, there are quite a few subtypes of security measures, but each occupies a specific place in the proposed taxonomic system of criminal legal measures.

Restitution and Compensation is a new type of criminal law remedy for modern national criminal law. However, the historical development of legislation in force in the Ukrainian lands shows similar criminal law measures aimed at restitution and Compensation. For example, composition – the payment of a material ransom as Compensation for the damage caused, which later transformed

¹⁵ Pro probatsiiu: Zakon Ukrainy vid 5 liutoho 2015 r. № 160-VIII (2015). [On probation: Law of Ukraine of 5 February 2015 №. 160-VIII.] URL: <https://zakon.rada.gov.ua/laws/show/160-19#Text> (accessed 04.11.2024) [in Ukrainian].

into *golovshchyna* – a fine in favour of the injured person¹⁶ in the Old Russian period and the Polish-Lithuanian periods of statehood development. The rudiments of measures aimed at restoring the rights of the injured person are found only in the institute of civil action within criminal proceedings. Of course, this is not enough to achieve the victim's interests. Therefore, the future normative consolidation of this type of measure in criminal law is quite promising.

The draft CC of Ukraine proposes to enshrine restitution in a reasonably broad way: these are the obligations: 1) restoration of the violated personal right of the victim, 2) return to the victim, with his or her consent, of property obtained through the commission of a criminal offence, 3) with the consent of the victim, provision of equivalent property instead of property obtained through the commission of a criminal offence or destroyed or damaged, restoration of property in kind or restoration of the properties of damaged property, or 4) with the consent of the territorial community or the state, restoration or improvement of the condition of a particular territory or public infrastructure (part 2 of Compensation is a monetary compensation for the damage caused. At the same time, restitution and Compensation are applied in cases of criminal offences and other acts provided by criminal law if they violate the victim's rights or cause damage to the victim, community, or state.

The next type of criminal law remedy envisaged by the draft is confiscating property or seizing a thing (section 3.8). In essence, this is a particular criminal law measure that consists in the seizure of items that were misused in the commission of a criminal offence (the objects of a criminal offence, tools, means of committing them, which were intended to finance or materially support a criminal offence or were used as a reward for committing it, are subject to confiscation). The difference between these measures is that confiscation is applied to items belonging to the convicted person on the right of ownership, and seizure is applied

¹⁶ Kozachenko, O. V. (2015). *Kryminalno-pravovi zakhody v Ukraini* [Criminal law measures in Ukraine]. Mykolaiv: Ilyon [in Ukrainian].

to those not on the right of ownership, including those withdrawn from civilian circulation. The draft also clearly defines the possibility, if there are appropriate grounds, to confiscate the equivalent of property, i.e. other converted property and income from it, or a corresponding amount of money.

A criminal record is another criminal law monotypic measure, on the essence of which the Working Group reached a compromise, and which is defined as a means of applying legal restrictions to a convicted person provided for by the criminal and other laws of Ukraine. Given this approach, the purpose of a criminal record coincides with the purpose of punishment. In our opinion, it seems pretty burdensome to apply this measure in the form of restrictions provided for by laws other than the Criminal Code of Ukraine until the conviction is lifted, the right to which a person sentenced to imprisonment for a certain period acquires after the conviction is cancelled and the period equal to the duration of the actual imprisonment has elapsed (Article 3.9.3, part 2, clause 1).

Criminal law measures against a legal entity are provided for in section 3.11 of the Draft Criminal Code of Ukraine. This remedy is a polytypical one – the authors of the draft have identified the following subtypes (part 1 of Art. 3.11. 3): a fine; restriction of support from public finances (consists in the cancellation of previously granted benefits, subsidies, loans, tax advantages, quotas and preferences to a legal entity, as well as a ban on receiving new ones for a period of one to five years); restriction of specific activities (an exhaustive list is established to prohibit certain types of activities of a legal entity: to carry out a specific type of economic activity with the cancellation of the relevant general or special permit (licence, concession) or a specific type of other activity; to carry out certain types of activities; to carry out certain types of activities; to carry out certain types of activities. A separate type is the publication of information on criminal legal remedies against a legal entity, which is used in case of restriction of certain activities, confiscation of property or seizure of things, or liquidation of a legal entity.

As we can see, criminal legal remedies against legal entities constitute a separate subsystem since they also include remedies that occupy a separate place in the taxonomy of criminal legal remedies (confiscation of property of a legal entity or seizure of a thing). However, they have the same grounds, the purpose of the application, and those that can be attributed to security measures, namely restrictive measures such as restriction of certain activities and specific measures such as a fine or liquidation of a legal entity. In our opinion, given that the authors of the draft law have separately identified such a type as confiscation of property or seizure of a thing in the general system of remedies, it is inappropriate to additionally indicate it in the list of remedies against a legal entity, since the only distinguishing feature between confiscation of property or seizure of a thing as a separate type and as a subspecies of remedies against a legal entity is subjective – being in the ownership or actual possession of a particular entity.

Conclusions. Thus, the taxonomic system of criminal law measures defined by the Working Group on the Development of Criminal Law in the draft CC of Ukraine looks entirely coherent and clear, taking into account the proposals made by scholars and practitioners earlier regarding the need to expand the areas of criminal law impact, and thus expand the system of criminal law measures.

In our opinion, the criminal law measures system reflected in the draft CC of Ukraine looks promising. However, even though the defined system looks quite well thought out, a clear hierarchical structure allows us to speak of legal certainty of criminal consequences in case of a criminal offence or an act provided for by criminal law, the lack of essential features, separate purposes of the types of criminal legal measures identified by the members of the Working Group (we define as the relational dimension of the taxonomy) in the draft CC of Ukraine is insufficient for a complete taxonomy, which would allow for further improvement of the system.

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Мусиченко О. Систематизація кримінально-правових заходів в проєкті Кримінального кодексу України

У статті крізь призму таксономічного підходу проаналізовано систему кримінально-правових заходів, яка знайшла відображення в проєкті Кримінального кодексу України. Авторка робить висновок про достатню стрункість і чіткість передбаченої в проєкті системи кримінально-правових заходів, що досягається своєрідною юридичною технікою. Розробниками проєкту враховані пропозиції науковців та практиків щодо розширення напрямів кримінально-правового впливу, що дозволило вибудувати логічну і продуману систему кримінально-правових заходів. Вдалим вважає авторка даної роботи розуміння кримінальної відповідальності в проєкті як надвидової категорії, яка охоплює окремі види кримінально-правові заходів, також вважає доцільним і необхідним кроком визначення в проєкті таких видів кримінально-правових заходів як реституція і компенсація. Водночас, авторка вказує на певні недоліки, зокрема, висловлюється стосовно використаного терміна на позначення основного елемента системи – засіб; відсутності в проєкті КК України сутнісних ознак окремих видів кримінально-правових заходів та цілей виділених членами Робочої групи видів кримінально-правових засобів. У статті зроблено висновок, що разом з предикатним підходом, врахування реляційного виміру, який вимагає визначення таксономічних атрибутів, якими визнаються суттєві ознаки окремого виду правового заходу, є необхідним кроком при подальшому удосконаленні систематизації кримінально-правових заходів в проєкті КК

України. Тому усунення відповідних недоліків могло б стати фундаментом для покращення систематики кримінально-правових заходів.

Ключові слова: проєкт Кримінального кодексу України, кримінально-правовий захід, таксономія, систематика, предикатний вимір таксономії, категорії (ранги) таксономії.