

Підсумовуючи вищезазначене, пропонуємо наступне визначення: «кіберзлочинність – протиправні, кримінально карані діяння, що здійснюються за допомогою чи проти комп'ютерних даних, комп'ютерів, їх систем та мереж». В рамках та у відповідності до універсальної концепції кіберзлочинності повинно бути розроблено і концепцію стратегії реалізації державної політики щодо боротьби із кіберзлочинністю в Україні.

Література

1. Конвенція Ради Європи про кіберзлочинність від 21.11.2001 р. / [Електронний ресурс]–Режим доступу: http://zakon4.rada.gov.ua/laws/show/994_575

2. Arab Convention on Combating Information Technology Offences 21.12.2010 / [Електронний ресурс] – Режим доступу: <http://cms.unov.org/DocumentRepositoryIndexer/GetDocInOriginalFormat.drsx?DocID=3dbe778b-7b3a-4af0-95ce-a8bbd1ecd6dd>.

3. Соглашение о сотрудничестве государств-участников Содружества Независимых Государств в борьбе с преступлениями в сфере компьютерной информации от 01.06.2001 г. / [Електронний ресурс] – Режим доступу: http://zakon4.rada.gov.ua/laws/show/997_353

4. Соглашение между правительствами государств-членов Шанхайской организации сотрудничества о сотрудничестве в области обеспечения международной информационной безопасности от 16.06.2009 г. / [Електронний ресурс] – Режим доступу: http://base.spinform.ru/show_doc.fwx?rgn=28340

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THE REQUIREMENT OF DOUBLE CRIMINALITY FROM THE VIEW OF THE PRINCIPLE OF CITIZENSHIP

1. Introduction. The requirement of double criminality is the law institution, which regulates the issues of validity of the criminal code outside the borders of a country. In accordance with abovementioned rule it is impossible to prosecute for acts committed abroad in a case, when those acts are not prohibited according to the law being in force in the place of acting. This directive is in practice far-reaching restricted, in particular because of the provisions contained in international agreements.

2. The requirement of double criminality in Polish and Ukrainian criminal law. In Polish law the requirement of double criminality is precised in the article 111 of the Criminal Code [1. p. 1132]. It is an essential condition of prosecution of crimes committed abroad – by citizens and foreigners. The exception is prosecution based

on the so-called "the principle of absolute protection" (when the act committed abroad is opposed to the special interests of the Republic of Poland) and the principle of universal jurisdiction (conventional jurisdiction). The requirement does not refer to a situation, when the act prohibited according to the Polish law is perpetrated by a Polish public official, in connection with his duties or when the place of committing is out of the scope any state power (i.e. in the outer space). In the other cases, act committed abroad has to be considered as a crime both by the Polish law and the law of the country of committing. The Polish legislator decided therefore that offenses committed abroad shall be condemned only conditionally.

The Ukrainian legislature defined the scope of validity of requirement of dual criminality in other way. Citizens and people without Ukrainian citizenship, but residing permanently on the territory of Ukraine can be prosecuted and punished for acts committed abroad irrespective of the law being in force in the territory of committing [2. p. 190] Thus it is possible, that the perpetrator commits a crime (i.e. during vacation) which is permitted by the law applicable in place of committing, but is banned in Ukraine - he could be punished for above behavior after his return to the country.

It reveals a basic difference occurring between Polish and Ukrainian law. It can be described by a foregoing exemple: the perpetrator during a trip to Europe had drugs in Czech Republic and the Netherlands and in both countries his conduct was lawful. If he was a citizen of Poland, he will avoid liability - if a citizen of Ukraine, he will be punished. Above problem can take much more drastic forms especially in an era of increased population migration and mixing of cultures.

3. The basics of the requirements of double criminality. In the aim of better explanation and understanding the differences between the Polish and Ukrainian law it is necessary to ask a question about axiological and normative basics of validity of the requirement of double criminality.

The scope of the above requirement should be analyzed from the point of view of the principle of the citizenship. In this perspective double criminality states special limitation of liability for acts committed abroad - or (inverting of reasoning) - limited responsible of state for reprehensible action of its citizens. The principle of citizenship constitutes an expression of solidarity of a specific population (a nation), who accept a system of values and creates legal instruments designed for its protection. Thus the state is (in principle) obligated to prosecute and punish acts committed by citizens if above acts strike the system of values underlying the penal regulations. The requirement of dual criminality considerably limits the obligation. This results in a situation in which the state authority is responsible not for its citizens, but the subordinate territory.

On the other hand - the complete exclusion of the principle of double criminality in cases of offenses committed abroad by citizens means that a citizen of one

state must obey norms applicable by virtue of his citizenship even if (from the point of view of the social and economic place to stay) above norms are inadequate. In this situation, the protected value is only obedience to the law, and not any substantiated legal interests (as life, health etc.).

In this context, we should ask, whether there exists any compromise, which minimizes, but does not exclude prosecution for crimes committed abroad. It seems that the solution would be to depend the validity of requirement of double criminality requirement on recognizing the committed act as "mala per se" or "mala prohibita".

4. The division of prohibited acts on "mala per se" and "mala prohibita" as a criterion of the validity of the requirement of double criminality. The division of prohibited acts on "mala per se" and "mala prohibita" is well known in legal sciences, especially in criminology [3. p. 270]. As mala per se (evil in itself) are determined these behaviors, which are in immanent way associated with the negative assessment, resulting from the act itself (not from the social, economic or historical situation). Such acts include behavior striking directly in the basic legal interests - life, health, property, dignity. In turn, the "mala prohibita" are all these acts that can be described as violating public order - including possession of drugs or driving while intoxicated.

While the first group of behaviors (mala per se) connects with the moral condemnation of the offender, and consequently - with the desire to satisfy the public's sense of justice, in the case of offenses relating to violation of the public order (mala prohibita) there does not exist any need of revenge from the community. In addition, it seems that the state of citizenship has no interest in the prosecution of this type of behavior. Given that the community, in which the act was committed, did not consider that the abovementioned act infringed on the public order in the degree deserving condemnation (not socially harmful), it does not appear that there were sufficient grounds to punish the offender by the authorities of the state of citizenship.

On the other hand - it seems that there are behaviors that should be subject to punishment without regard to the principle of double criminality - such as honor killing, lawful in Islamic countries. In this respect, the solution adopted by the Polish legislature seems to be inadequate, does not allow to an institutional condemnation of acts belonging to the group mala per se.

5. Conclusions. In the light of the arguments presented above, it appears that neither the Polish Penal Code nor the Ukrainian penal regulations do not adequately define the scope of the requirement of dual criminality. On the one hand, there is a group of acts which deserve condemnation, and are not prosecuted (Polish Penal Code), but on the other hand, there is a group of harmless behavior in a social context, which are prosecuted and punished (Ukrainian Penal Code).

Literature

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2. F. Ciepły, Obowiązywanie ukraińskiej ustawy karnej pod względem miejsca i osób [w:] Prawne aspekty migracji na przykładzie uregulowań wybranych uczestników systemu międzynarodowego, red. K. Maćkowska, Lublin 2010, s. 183-204.
3. Mark S. Davis, Crimes Mala in Se: An Equity-Based Definition, Criminal Justice Policy Review Volume 17 Number 3 September 2006.