

## PROBLEMS OF ESTABLISHING NORMS, REVEALING BLANKET CONTENTS OF DISPOSITIONS OF ART. 271-275 OF THE CRIMINAL CODE OF UKRAINE

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### Abstract.

**Purpose:** the task of scientific research is to determine the specifics of the use of art. 271-275 of the Criminal Code of Ukraine, containing blanket disposition. The system of branch legislation is considered and the limits of its use are defined. **Methods:** optimization of enforcement of the norms of the Criminal Code of Ukraine, which provide for responsibility for crimes against safety of production. **Results:** levels of legal regulation and safety of production are defined, which is important for establishing the elements of crimes, provided in art. 271-275 of the Criminal Code of Ukraine. **Discussion:** international regulatory enactments, national legislation relating to the safety of production and labor protection.

**Keywords:** crimes against safety of production; blanket disposition; elements of crime; labor protection; legislation; regulatory enactments.

### 1. Introduction

The art. 3 of the Law of Ukraine "On labor protection" states that the Ukrainian legislation on labor protection consists of this law, the Code of Labor Laws of Ukraine (article 157 states that state inter-branch and branch regulatory enactments on labor protection are rules, standards, norms, regulations, instructions and other documents, which have been given the validity of legal norms, mandatory for implementation), The Law of Ukraine "On Compulsory State Social Insurance in Respect Accident at Work and Occupational Disease that Caused Disability" and the regulatory enactments adopted in accordance with them.

If the international agreement, which consent to be bound is set by the Verkhovna Rada of Ukraine, establishes other norms than those stated by the legislation of Ukraine on labor protection, the norms of the international agreement are applied.

Consequently, the legislative formula generally defines a system of regulatory material covering supranational sources, internal legislation, bylaws. The latter include a separate array of normative, informational, reference material, the content of which is specified depending on the types of pro-

duction activities, specific requirements for the implementation of certain works, the order of preparation and organization of production processes, etc.

Even such a simplified and generalized approach gives an idea of the diversity and significant amount of safety of production regulation and hence the use of blank disposition of art. 271-275 of the Criminal Code of Ukraine is considered expedient and justified, since it allows to unify and simplify the form of a criminal law and prevents the necessity of constant review of criminal legislation in connection with changes in branch legislation that is of a systematic nature.

### 2. Problem and its connection with scientific and practical tasks

Historically, the spread of the blanket method of forming the norms of law is associated with the development and complication of legal relations, the improvement of the legislative regulation of social relations, and the requirements of law enforcement. In 1922, the German scientist K. Binding invoked the concept of "blanket law" for scientific use, which he defined as a criminal law, which does not formulate an independent prohibition, but is limited to a reference to the rules contained in other legal

decisions, and provides only a sanction for their violation [1]. Also synonymous are the notions of "open criminal law", "conditional sanction", "blind law", "incomplete police order" [2; 3].

Introduction with the content of similar norms in the criminal legislation of some foreign countries (Germany, Belgium, Switzerland, Denmark) revealed a similar approach to the design of blanket dispositions, in particular regarding the general reference to acts of other branch affiliation. At the same time, the legislation of some countries also applies the approach of criminalizing certain actions (inaction) not only in the criminal law itself, but also in special laws and acts of the executive branch [4;5].

### 3. Analysis of result research

Scientists have different points of view on the blanketization of criminal law. Without denying the overall expediency of this approach for certain elements of crimes, while at the same time, there are opinions suggesting the need to concretize legislative enactments of other branch affiliation and the scope of their application. These provisions can be extended to the dispositions of art. 271-275 of the Criminal Code of Ukraine.

L.D. Gaukhman believes that in the case of the application of norms with blanket dispositions, it is compulsory to take into account other branches of legislation in which the elements of crimes are determined, this distorts the idea of the circle of sources of criminal law. The existence of blanket dispositions means nothing else by the delegation of the right to establish, abolish or change the criminality and punishability of acts to ministries and departments - the executive authorities, who are permitted to directly influence the expansion or limitation of the scope of criminal liability [6]. In literature, there are also arguments against the admissibility of references to other regulatory enactments in the dispositions of criminal law, which lies in the fact that this can lead to the abuse of law enforcement in the sense of arbitrarily defining the boundaries of criminal responsibility.

N.A. Gutorova, believes that the articles of the Criminal Code of Ukraine on blanket dispositions should contain a reference not to any normative acts, but only to laws, since otherwise it contra-

dicts p. 22, art. 92 of the Constitution of Ukraine and entails instability of criminal law [7].

O.O. Dudorov notes that a panacea should not be seen in achieving such a state of legal regulation, in which blanket dispositions of Criminal Code norms will only refer to laws. ... The solution of the problem of blanketness in criminal law lies both in the plane of improvement of the Criminal Code (the increase in the specific weight of the descriptive element in the descriptive-blanket dispositions of the Criminal Code norms, in fixing a sufficient number of criminogenic factors in them), and in a plane unrelated to the improvement of the criminal law [8].

G.Z. Yaremko in the study of the permissible level of dispositions blanketness of the articles of the Special part of the Criminal Code of Ukraine, which contains instructions for its limitation, notes that blanket dispositions containing references to the law provide for the possibility of applying to other branch norms that are formalized in sources of law that are valid, that is not only to the laws, but also to international agreements, which consent to be bound is provided by the relevant authorized body, as well as the decisions of the Constitutional Court but Ukraine. The author notes that with the blanket reference to the legislation it is possible to appeal to the laws of Ukraine; existing international agreements of Ukraine, which consent to be bound is set by the Verkhovna Rada of Ukraine; resolutions of the Verkhovna Rada of Ukraine; decrees of the President of Ukraine; decrees and resolutions of the Cabinet of Ministers of Ukraine; normative acts of central executive bodies [9].

As it is seen, scientists express different views of the blanketness of criminal law and identify some problems that require a scientific solution. Some of them are relevant in the context of the topic under study.

### 4. Setting objectives

Peculiarity of the application of blanket dispositions of art. 271-275 of the Criminal Code of Ukraine is that the legislator uses terminology, the meaning and significance of which are presented in the norms of other branch affiliation, and provides for the mandatory application of such norms. Therefore, an accurate and correct understanding of

the legislation system, content and connection of legal norms is determinative for a proper criminal qualification.

### 5. Presenting main materials

Art. 271 of the Criminal Code of Ukraine provides that the law enforcer should apply to legislative and other regulatory enactments on labor protection; art. 272-275 of the Criminal Code of Ukraine refers to special rules contained in the regulatory block of regulation of a certain type of activity. So, in dispositions there is no question of specific norms that are important for establishing the elements of a crime [10].

A more detailed specification of the normative acts is presented in the Decision of the Plenum of the Supreme Court of Ukraine "On the Practice of Application by the Courts of Ukraine of Legislation on Crimes Against Safety of Production". In particular, it is pointed out that, based on the fact that for establishing in the act the element of crime the dispositions of articles 271-275 of the Criminal Code of Ukraine refer to legislative and other normative acts on labor protection, special rules that regulate the safety of labor; courts, while formulating a proven accusation in cases of this category, must refer to the relevant articles of the Law "On Labor Protection", articles, paragraphs (clauses) of legislative and other normative acts that are violated, and disclose the essence of the committed violations [11].

For art. 271 of the Criminal Code of Ukraine there is a list of normative acts that apply to all branches and types of production, concern all employees and ensure the safety of persons associated with production. Such rules are stipulated by the laws of Ukraine: "On Labor Protection", "On Ensuring the Sanitary and Epidemic Wellbeing of the Population", "On Fire Safety", "On Pesticides and Agrochemicals", "On Prevention of Acquired Immunodeficiency Syndrome (AIDS) and Social Protection of the Population" ; The Code of Labor Laws of Ukraine, the decisions of the Cabinet of Ministers of Ukraine, departmental regulatory enactments (instructions, regulations, rules), as well as regulatory acts of enterprises, institutions, organizations (orders, orders of managers on labor protection issues) etc.

For art. 272 of the Criminal Code of Ukraine - The list of jobs with increased risk and legislative or regulatory acts (branch or inter-branch), which establish safety rules during the relevant work included in the said List.

For art. 273 of the Criminal Code of Ukraine - any regulatory enactments (laws, regulations, instructions, rules, etc.) containing relevant norms.

For art. 274 of the Criminal Code of Ukraine - any legislative and regulatory acts that regulate the safety requirements in the workplace with respect to work with radioactive materials, that is, materials capable of unauthorized division, which is accompanied by heat release, as well as alpha, beta and gamma radiation, the order of circulation of which is regulated by special legislative and regulatory acts (laws of Ukraine "On the use of nuclear energy and radiation safety", "On the management of radioactive waste", "On the protection of man from the influence of ionizing radiation", "On the extraction and processing of uranium ores", "On licensing activities in the sphere of nuclear energy use", the Cabinet of Ministers of Ukraine decree "On approving the Procedure for licensing certain activities in the sphere of the use of nuclear energy", Conditions and rules for the implementation of activities for the production of sources of ionizing radiation; General provisions for ensuring the safety of nuclear power plants; Requirements and security conditions (licensing conditions) for the implementation of activities on the use of sources of ionizing radiation, etc.).

For art. 275 of the Criminal Code of Ukraine - standards (state, sectorial, individual enterprises), construction norms and regulations, certain decisions of the competent authorities on the prohibition of the use of certain materials, raw materials, semi-finished products, acts in which the maximum permissible concentration of harmful substances in the finished product is established, instructions of inspectors of supervisory bodies, etc [11]. In the event that the national legal base does not contain specific rules governing the safety of certain categories of goods or if specific rules (branch) are insufficient, the Directive of the European Parliament and of the Council 2001/95 / EU "On General product safety" is applied, which defines the general requirements in the product safety field (in ac-

cordance with the provisions of the Directive, the product is considered safe if, in accordance with the safety provisions provided for in European legislation or, in the absence of such rules, subject to compliance with the national requirements of the EU member state, where it is sold, or if it is launched in the market turnover. Product is also deemed safe if it complies with the European standard) [12].

The indicated provisions can be defined as a general reference point for the law enforcer, because the wording of exhaustive lists in the criminal law provisions of art. 271-275 of the Criminal Code of Ukraine is impossible, as well as limiting them exclusively to the requirements of laws. Otherwise, the status of the Law of Ukraine would have to be granted to numerous technical acts, instructions, documents of controlling bodies, internal documents of enterprises that are being investigated to determine the elements of the crime. Obviously, this can not be translated into practice.

It must be emphasized that the institutions, concepts and terms used and disclosed in the norms of other branch affiliation should be used in law enforcement practice of the criminal law in strict compliance and in the values defined in the branch legislation, because, firstly, the Criminal Code of Ukraine does not propose its own definition, and secondly, it will facilitate the unification of the terminology used by different branches and ensure uniform application of the law.

Complexity, ramification and in some cases inconsistency of the legislation in the field of labor protection is a problem that is complex in nature and concerns many spheres of law enforcement.

A positive trend is the simplification and unification of legal norms in the field of safety of production and labor protection.

Thus, during 2017 a number of normative legal acts of the USSR were recognized as such, which are not applied in the territory of Ukraine, in order to ensure the actualization of regulatory and legal acts regulating activities in the field of safety of reproduction (122 items, of which a significant part refers to safety rules in the implementation works with increased danger).

To promote the correct application of art. 271-275 of the Criminal Code of Ukraine a ban have been imposed by the Cabinet of Ministers of Ukraine order on Ministries and other central exec-

utive bodies, to establish legal norms in letters and recommendations and forward them for the implementation of normative and legal acts that have not passed state registration, as well as cancellation of orders of ministries and other central bodies executive power, establishing regulatory barriers [13].

The coordination of regulatory enactments of Ukraine with international documents in the relevant field is also continuing.

For example, in the explanatory note to the draft order of the Ministry of Social Policy of Ukraine "On approving safety and health Requirements for the use of production equipment by employees" it is stated that the legislative act regulating safety and health protection requirements when using production equipment by employees is the Law of Ukraine "On Labor Protection, which defines the responsibilities of the employer and the employee for the use of production equipment.

In Ukraine, a number of technical regulations have been adopted that establish requirements for the design and manufacture of production equipment and a number of regulations that establish requirements for safety and health protection when using production equipment.

The national legislation in the field of labor protection on the use of production equipment, the requirements for its design, manufacture and safety in general complies with European standards. However, Directive 2009/104 / EU of the European Parliament and of the Council of 16 September 2009 in regard to minimum safety and health requirements when using production equipment by employees contains more specific employer responsibilities for the usage of production equipment. In addition, Ukraine lacks a comprehensive regulatory enactment regulating the safe usage of production equipment.

The draft of the Requirements stipulates that they apply to all business entities regardless of the form of ownership, organizational and legal forms and activities, and establish minimum health and safety requirements when using production equipment by employees in their working process. [14].

These and other initiatives to improve and simplify the system and content of legislation and regulatory material will contribute to the correct application of criminal law.

## 6. Conclusions

The carried out research allows to draw a conclusion that using the blanket method of constructing dispositions art. 271-275 of the Criminal Code of Ukraine is expedient because: 1) allows to determine the criminality of the acts in the criminal legal norms, taking into account the changing state of the other branch legislation (there is no need to amend the Criminal Code of Ukraine in connection with changes in other regulatory enactments); 2) the dispositions of art. 271-275 of the Criminal Code of Ukraine cover a significant number of various violations that can not be reproduced in the criminal law; 3) the blanket dispositions of art. 271-275 of the Criminal Code of Ukraine are revealed not only in the norms of laws, but also in other documents developed on their basis. At the level of law, it is impossible to resolve all issues that determine the content of blanket dispositions.

Accurate and correct understanding of the legislation in the field of safety of production and labor protection, correctness of the use of special terminology and concepts are important for criminal legal qualification.

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**ПРОБЛЕМИ ВСТАНОВЛЕННЯ НОРМ, ЩО РОЗКРИВАЮТЬ БЛАНКЕТНИЙ ЗМІСТ  
ДИСПОЗИЦІЙ СТ. 271-275 КК УКРАЇНИ**

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**Мета:** завданням наукового дослідження є визначення особливостей застосування ст. 271-275 КК України, що містять бланкетні диспозиції. Розглянуто систему галузевого законодавства та визначено межі його використання. **Методи дослідження:** оптимізація правозастосування норм КК України, що передбачають відповідальність за злочини проти безпеки виробництва. **Результати:** визначено рівні нормативно-правового регулювання охорони праці і безпеки виробництва, що має значення для встановлення ознак складу злочинів, передбачених ст. 271-275 КК України. **Обговорення:** міжнародні нормативні акти, національне законодавство, що стосується безпеки виробництва і охорони праці.

**Ключові слова:** злочини проти безпеки виробництва; бланкетна диспозиція; склад злочину; охорона праці; законодавство; нормативно-правові акти.

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**ПРОБЛЕМЫ УСТАНОВЛЕНИЯ НОРМ, РАСКРЫВАЮЩИХ БЛАНКЕТНОЕ СОДЕРЖАНИЕ  
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**Цель:** задачей научного исследования является определение особенностей применения ст. 271-275 УК Украины, содержащих бланкетные диспозиции. Рассмотрена система отраслевого законодательства и определены границы его использования. **Методы исследования:** оптимизация правоприменения норм УК Украины, предусматривающих ответственность за преступления против безопасности производства. **Результаты:** определены уровни нормативно-правового регулирования охраны труда и безопасности производства, что имеет значение для установления признаков состава преступлений, предусмотренных ст. 271-275 УК Украины. **Обсуждение:** международные нормативные акты, национальное законодательство, касающееся безопасности производства и охраны труда.

**Ключевые слова:** преступления против безопасности производства; бланкетная диспозиция; состав преступления; охрана труда; законодательство; нормативно-правовые акты.