

РОЗДІЛ 2. КОНСТИТУЦІЙНЕ ПРАВО; МУНІЦИПАЛЬНЕ ПРАВО

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LEGAL REGULATION OF DEPRIVATION OF RIGHTS AS A TYPE OF PUNISHMENT OR TYPE OF CRIMINAL LAW MEASURES: THE EXPERIENCE OF POLAND, BULGARIA AND UKRAINE.

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Basalayeva A.V. Legal regulation of deprivation of rights as a type of punishment or type of criminal law measures: the experience of Poland, Bulgaria and Ukraine.

The article carries out the epistemology of the legal regulation of deprivation of rights in Poland and Bulgaria as a type of punishment. The following features of it in Bulgaria are highlighted: 1) there is a system of punishments related to deprivation of rights, which includes the following three types of punishments: deprivation of the right to hold a certain state or public position; deprivation of the right to engage in a certain profession or activity; deprivation of the right to reside in a certain area; 2) can be the main and additional type of punishment; 3) is imposed by a court verdict; 4) can be imposed as an independent type of punishment, or can be imposed together with another type of punishment; 5) if this punishment is imposed together with a punishment involving deprivation of liberty, the term of punishment can be up to three years; 6) if deprivation of rights is imposed together with a type of punishment such as imprisonment, the term of deprivation of rights may exceed the term of imprisonment imposed by no more than three years.

The following features of the legal regulation of deprivation of rights in Poland are highlighted: 1) it is not part of the system of penalties; 2) it is a type of criminal law measure; 3) as a criminal law measure it can be a type of additional punishment; 4) the system of criminal law measures related to deprivation of rights includes the following three types: deprivation of public rights; prohibition to hold a certain position, perform a certain profession or engage in a certain economic activity; prohibition to drive a means of transport; 5) deprivation of rights is carried out by a court; 6) a person may be permanently deprived of rights by a court decision if the offender recidivists in a crime and has already been sentenced to imprisonment for an intentional crime against life or health or causing harm to a minor; 7) a ban on holding a certain position or engaging in a certain profession may be imposed for a period of one to ten years.

It has been established that in Poland, the deprivation of a person's public rights also includes the deprivation of awards and honorary titles, and in the case of a military serviceman - the deprivation of military rank and demotion to private. Also, one of the features of the legal regulation of the deprivation of a person's rights in Poland is that the Criminal Code of Poland focuses on the motives for committing crimes and on the fact that they require not just punishment, but special conviction.

According to the norms of the Criminal Code of Ukraine, there may be three situations when a person may be sentenced to punishment in the form of deprivation of the right to hold certain positions or engage in certain activities: 1) it (the punishment) is mandatory because it is provided for in the sanction of the article of the Special Part of the Criminal Code of Ukraine; 2) it is not a mandatory additional punishment, although it is provided for in the sanction of the article of the Special Part of the Criminal Code of Ukraine; 3) it is not provided for in the sanction of the article of the Special Part of the Criminal Code of Ukraine, however, the possibility of its imposition is motivated with reference to the provisions of the General Part of the Criminal Code of Ukraine - Part 2 of Article 55 of the Criminal Code of Ukraine.

Key words: human rights, the right to participate in the management of state affairs, public rights, deprivation of rights, deprivation of public rights, criminal law measures, punishment.

Басалаєва А.В. Правове регулювання позбавлення особи прав як виду покарання чи виду кримінально-правових заходів: досвід Польщі, Болгарії та України.

В статті здійснено гносеологію правового регулювання позбавлення особи прав в Болгарії та Польщі як виду покарання чи виду кримінально-правових заходів. Виділено такі його особливості в Болгарії: 1) є система покарань, пов'язаних із позбавленням прав, яка включає такі три види покарань: позбавлення права обіймати певну державну або громадську посаду; позбавлення права займатися певною професією чи діяльністю; позбавлення права на проживання у певній місцевості; 2) може бути основним і додатковим видом покарання; 3) призначається за вироком суду; 4) може призначатися як самостійний вид покарання, а може призначатися разом з іншим видом покаранням; 5) вразі, якщо це покарання призначається разом з покаранням, що передбачає позбавлення волі, то строк покарання може становити до трьох років; 6) вразі, якщо позбавлення прав призначається поруч із таким видом покарання, як позбавленням волі, то строк позбавлення прав може перевищувати призначений строк позбавлення волі не більше ніж на три роки.

Виділено такі особливості правового регулювання позбавлення особи прав в Польщі: 1) не входить до системи покарань; 2) є видом кримінально-правових заходів; 3) як кримінально-правовий захід може бути видом додаткового покарання; 4) система кримінально-правових заходів, пов'язаних з позбавленням прав включає такі три види: позбавлення публічних прав; заборона обіймати певну посаду, виконувати певну професію або займатися певною господарською діяльністю; заборона керувати засобами пересування; 5) позбавлення особи прав здійснюється судом; 6) особа може бути постійно позбавлена прав за рішенням суду якщо правопорушник рецидивує до злочину та вже був засуджений до позбавлення волі за умисний злочин проти життя чи здоров'я або завдання шкоди неповнолітньому; 7) заборона обіймати певну посаду або займатися певною професією може призначатися на строк від одного до десяти років.

Встановлено, що в Польщі позбавлення особи публічних прав передбачає також позбавлення нагород та почесних звань, щодо військовослужбовця – позбавлення військового звання і розжалування у рядові. Також одна з особливостей правового регулювання позбавлення особи прав в Польщі полягає в тому, що в Кримінальному кодексі Польщі акцентовано увагу на мотивах вчинення злочинів і на тому, що вони потребують не просто покарання, а особливого засудження.

З норм Кримінального кодексу України випливає, що може бути такі три ситуації, коли особі може бути призначене покарання у вигляді позбавлення права обіймати певні посади або займатися певною діяльністю: 1) воно (покарання) є обов'язковим оскільки передбачене у санкції статті Особливої частини Кримінального кодексу України; 2) воно не є обов'язковим додатковим покаранням, хоча і передбачене у санкції статті Особливої частини Кримінального кодексу України; 3) воно не передбачено у санкції статті Особливої частини Кримінального кодексу України, однак можливість його призначення мотивована з посиланням на положення Загальної частини Кримінального кодексу України – ч. 2 ст. 55 Кримінального кодексу України.

Ключові слова: права людини, право на участь в управлінні державними справами, публічні права, позбавлення прав, позбавлення публічних прав, кримінально-правові заходи, покарання.

Problem statement. Ukraine is integrating with the EU [1-2]. The future restoration of Ukraine provides for effective constitutional and legal regulation of the right to participate in the management of state affairs. The regulatory and legal mechanism of such regulation also includes regulatory and legal regulation of deprivation of public rights. To improve it, it is advisable to study foreign experience and identify the features of such regulation in Bulgaria and Poland for consideration in the future by Ukraine.

The purpose of the article is to identify the features of the legal regulation of deprivation of rights in Bulgaria and Poland as a type of punishment or a type of criminal law measures, to highlight situations when in Ukraine a person may be sentenced to punishment in the form of deprivation of the right to hold certain positions or engage in certain activities.

The state of the development of the problem.

The issues of restriction of human rights are systematically studied in the works of domestic scientists, which are the foundation for further scientific developments. In particular, in 2024-2025, fundamental

scientific articles by scientists L. Deshko, O. Lotyuk, O. Vasylchenko [3-6] were published, which investigated constitutional and legal sanctions, including restrictions on participation in the management of state affairs. The issue of restrictions on human rights during Covid-19 was also investigated [7]. In recent years, dissertations have been defended on the restriction of constitutional human and citizen rights, sanctions as a measure of constitutional and legal responsibility [8-9], which are important in the epistemology of the constitutional and legal regulation of the right of a citizen to participate in the management of state affairs. At the same time, the issue of deprivation of public rights as a type of criminal liability has not received a comprehensive study. Practice shows that the legislation of Ukraine needs to be improved regarding the deprivation of public rights to ensure the proper rule of the rule of law in Ukraine and counteraction to threats to national security.

For example, the purge of power in Ukraine began in 2014, when Ukrainian laws were adopted both on the purge of power in general and on restoring trust in the judicial branch. At the same time, the practice of the European Court of Human Rights has shown that lustration cannot be collective in nature, individual responsibility for committed criminal offenses is required (“Denisov v. Ukraine”, “Polyakh and Others v. Ukraine”, “Samsin v. Ukraine” [12-14]).

Presentation of the main material.

According to paragraphs 6-8 of Article 37 of the Criminal Code of the Republic of Bulgaria, punishments associated with deprivation of rights include three types: 1) deprivation of the right to hold a certain state or public office; 2) deprivation of the right to engage in a certain profession or activity; 3) deprivation of the right to reside in a certain area. That is, there is a system of punishments associated with deprivation of rights, which consists of three types of punishments.

According to the legislation of Bulgaria, the above-mentioned punishments can only be imposed by a court. In addition, they can be imposed both as the main punishment and as an additional punishment in parallel with the main one.

The Criminal Code of Bulgaria provides for the peculiarities of calculating the period for which such a punishment as deprivation of rights is imposed. Thus, if deprivation of rights as a type of punishment is imposed independently or together with another punishment, but with deprivation of liberty, they may be determined for a period of up to three years within the limits established in the norms of the Special Part of the Criminal Code of Bulgaria [10]. This period is calculated from the moment the sentence enters into force, however, the convicted person may not exercise the rights of which he was deprived until the end of the term of imprisonment [10]. Deprivation of the right to hold a certain state or public office and deprivation of the right to engage in a certain profession or activity are imposed in cases provided for by law, if the occupation of the relevant position or profession or activity is impossible due to the nature of the crime committed [10]. After the expiration of the established period, the convicted person may again exercise the rights of which he was deprived by a court verdict.

In Poland, the approach to deprivation of certain rights as a punishment differs from the approach that exists in Bulgaria. Firstly, among the types of punishment in the Polish Criminal Code there is no such thing as deprivation of certain rights. Therefore, in Poland deprivation of rights is not included in the system of punishments.

Instead, the Polish Criminal Code has Chapter 5 “Criminal measures”, which includes the following types of these criminal measures: deprivation of public rights; prohibition to hold a certain position, perform a certain profession or engage in a certain economic activity; prohibition to drive a means of transport (Art. 39) [11]. They are types of additional punishments. Thus, in Poland there is a system of additional punishments, which includes the following types of punishments related to deprivation of rights: deprivation of public rights; prohibition to hold a certain position, perform a certain profession or engage in a certain economic activity; prohibition to drive a means of transport.

According to §1 of Art. 40 of the Polish Criminal Code, deprivation of public rights consists in the loss of the right to elect and be elected to public office, to self-governing professional or economic bodies, in the loss of the right to participate in the administration of justice and to perform functions in state administration, local self-government or self-governing professional bodies; as well as in the loss of military rank and demotion to private; deprivation of public rights also includes the loss of medals, decorations and honorary titles, as well as the inability to receive such titles during the period of deprivation of rights [11].

In § 2 of Art. 40 of the Polish Criminal Code it is stated that the Court may order the deprivation of public rights in the event of: 1) imprisonment for a term of not less than 3 years for a crime committed

for reasons deserving special condemnation; 2) for the offences referred to in Article 228 § 1 and 3-6, Article 229 § 1 and 3-5, Article 230 § 1, Article 230a § 1, Article 250a § 1 and 2, Article 271 § 3, Article 296a § 1, 2 and 4 and Article 305 § 1 and 2 [11].

According to § 1 of Art. 41 of the Polish Criminal Code, if the offender abused his or her position or professional activity at the time of committing the offence, or it has been proven that certain material interests protected by law will be at risk if he or she continues to hold a position or engage in a professional activity, the court may decide to deprive the offender of holding a certain position or engaging in a certain professional activity [11].

According to § 1a of Art. 41 of the Polish Criminal Code, if an offender is sentenced to imprisonment for an intentional crime against life or health or to the detriment of a minor, the court may decide to permanently deprive the offender of holding any position or engaging in certain professional activities or engaging in any activity or certain activities related to the upbringing, education or treatment of minors, or caring for them [11]. If an offender is sentenced to imprisonment for a crime against sexual freedom or decency to the detriment of a minor, the court may decide to temporarily or permanently deprive the offender of holding any position or engaging in certain professional activities or engaging in any activity related to the upbringing, education or treatment of minors, or caring for them [11].

According to § 1aa of Art. 41 of the Polish Criminal Code, the Court shall order prohibitions.

In Ukraine, the punishment in the form of deprivation of the right to hold certain positions or engage in certain activities can be both the main and additional.

From the norms of the Criminal Code of Ukraine it follows that there can be three situations when a person can be sentenced to a punishment in the form of deprivation of the right to hold certain positions or engage in certain activities: 1) it (the punishment) is mandatory because it is provided for in the sanction of the article of the Special Part of the Criminal Code of Ukraine; 2) it is not a mandatory additional punishment, although it is provided for in the sanction of the article of the Special Part of the Criminal Code of Ukraine; 3) it is not provided for in the sanction of the article of the Special Part of the Criminal Code of Ukraine, however, the possibility of its imposition is motivated with reference to the provisions of the General Part of the Criminal Code of Ukraine – Part 2 of Article 55 of the Criminal Code of Ukraine.

Antonyuk N. correctly notes that it is obvious that in the first two cases, when the analyzed punishment is provided for in the sanction of the accused person under the article of the Special Part, it is necessary to take into account whether it is an additional mandatory or vice versa, but if the additional punishment is not mandatory, then it is obviously a matter of the discretion of the court considering the criminal proceedings on the merits, which must, taking into account the social danger and nature of the criminal offense, the circumstances of the case, the identity of the perpetrator, as well as the circumstances that mitigate or aggravate the punishment, determine the type and amount of punishment [15]. In the event that the corresponding additional punishment is mandatory, the court may not impose it in the event of application of the provisions of Part 2 of Article 69 of the Criminal Code of Ukraine [15].

In practice, situations arise not infrequently when such a punishment as deprivation of the right to hold certain positions or engage in certain activities is not provided for in the sanction of the article of the Special Part of the Criminal Code of Ukraine, however, referring to Part 2 of Art. 55 of the Criminal Code of Ukraine, the possibility of its appointment is justified. A similar issue was considered by the Cassation Criminal Court in case No. 149/3010/23. In particular, the person was charged with committing a crime provided for in Part 1 of Art. 127 of the Criminal Code of Ukraine. The sanction provides for a relatively definite non-alternative punishment in the form of imprisonment for a term of 3 to 6 years. The prosecutor believed that torture of a child by a convicted person within the meaning of the requirements of Part 2 of Art. 55 of the Criminal Code of Ukraine are those other circumstances of the case, in the presence of which the court has the right to impose an additional punishment in the form of deprivation of the right to hold certain positions or engage in certain activities, regardless of whether it is provided for in the sanction of the article of the Special Part of the Criminal Code of Ukraine, as well as whether the person held a certain position or engaged in a certain activity at the time of committing the criminal offense charged [16].

The Cassation Criminal Court noted that the sanction of the convicted person under the article does not provide for an additional punishment in the form of deprivation of the right to hold certain positions or engage in certain activities, and the convicted person herself did not hold positions related to teaching, raising children or working with children at the time of committing the criminally punishable act –

therefore, there are no grounds for applying an additional punishment to her with reference to Part 2 of Art. 55 of the Criminal Code of Ukraine [16]. N. Antonyuk correctly emphasizes that “The convict did not hold relevant positions, and therefore there are no grounds to speak about the impossibility of her retaining such positions, as indicated in the above-mentioned article of the criminal law” and “it is necessary to clearly distinguish two different situations: ... when the punishment in the form of deprivation of the right to hold certain positions is provided for in the sanction of the article of the Special Part; ... when such a punishment is not provided for in the sanction of the article of the Special Part and we are talking about the possibility of its application with reference to Part 2 of Article 55 of the General Part of the Criminal Law” [15]. In the first case, as N. Antonyuk correctly notes, the court must impose such a punishment regardless of the fact that the person occupied a certain position or engaged in a certain activity at the time of committing a criminally punishable act, but in the case of imposing this additional punishment when it is not provided for by the sanction of the article under which the person is held criminally liable, the court may recognize as impossible the preservation of the person’s right to occupy certain positions or engage in certain activities only if the person already occupies them or is already engaged in such activities [15].

Conclusions.

1. The following features of the legal regulation of deprivation of rights in Bulgaria are highlighted: 1) there is a system of penalties related to deprivation of rights, which includes the following three types of penalties: deprivation of the right to hold a certain state or public office; deprivation of the right to engage in a certain profession or activity; deprivation of the right to reside in a certain area; 2) can be the main and additional type of punishment; 3) is imposed by a court verdict; 4) can be imposed as an independent type of punishment, or can be imposed together with another type of punishment; 5) if this punishment is imposed together with a punishment involving deprivation of liberty, the term of punishment can be up to three years; 6) if deprivation of rights is imposed along with such a type of punishment as deprivation of liberty, the term of deprivation of rights can exceed the prescribed term of deprivation of liberty by no more than three years.

The following features of the legal regulation of deprivation of rights in Poland are highlighted: 1) it is not part of the system of penalties; 2) it is a type of criminal law measure; 3) as a criminal law measure it can be a type of additional punishment; 4) the system of criminal law measures related to deprivation of rights includes the following three types: deprivation of public rights; prohibition to hold a certain position, perform a certain profession or engage in a certain economic activity; prohibition to drive a means of transport; 5) deprivation of rights is carried out by a court; 6) a person may be permanently deprived of rights by court decision if the offender recidivists in the crime and has already been sentenced to imprisonment for an intentional crime against life or health or causing harm to a minor; 7) a ban on holding a certain position or engaging in a certain profession may be imposed for a period of one to ten years.

2. It has been established that in Poland, the deprivation of a person’s public rights also includes the deprivation of awards and honorary titles, and in the case of a military serviceman, the deprivation of military rank and demotion to private.

The Polish Criminal Code focuses on the motives for committing crimes and the fact that they require not just punishment, but special conviction.

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