Вип. 20, серія ПРАВО. – Ч. 1. – Т. 4. – С. 72-75.

5.КондратюкЛ.В.Криминологическое измерение / Л.В. Кондратюк, В.С. Овчинский. – М. : Норма, 2012. – 272 с.

6. Кримінологія: підруч. / В.В. Голіна, Б.М. Головкін, М.Ю. Валуйська та ін. ; за ред. В.В. Голіни, Б.М. Головкіна. –Х. : Право, 2014. – 440 с.

7. Антонян Ю.М. Криминология: учебник для бакалавров / Ю.М. Антонян. – М. : Юрайт, 2012. – 523 с.

8. Романова Л.И. Наркопреступность: цена, характеристика, политика борьбы: монография / Л.И. Романова. – М. : Юрлитинформ, 2010. – 304 с.

9. Шостко О.Ю. Теоретичні та прикладні проблеми протидії організованій злочинності в європейських країнах : автореф. дис. на здобуття наук. ступеня д-ра. юрид. наук: 12.00.08 / О.Ю. Шостко; Нац. юрид. акад. України ім. Ярослава Мудрого. – Х., 2010. – 38 с.

10. Голубов А. Мафия Inc. / А. Голубов // Еженедельник Корреспондент. – 2013. – № 31 (570). – С. 32-34.

11. Головкін Б.М. Корислива насильницька злочинність в Україні: феномен, детермінація, запобігання : монографія / Б.М. Головкін. – Х. : Право, 2011. – 432 с.

12. Медицький І.Б. Наслідки злочинності у механізмі криміналізації суспільно небезпечної поведінки / І.Б. Медицький // Наука кримінального права в системі міждисциплінарних зв'язків : матеріали міжнар. наук.-практ. конф., 9−10 жовт. 2014 р. / НЮУ ім. Я. Мудрого, НДІ вивчення проблем злочинності ім. академіка В.В. Сташиса НАПрН України, Всеукр. громад. організація «Асоціація кримін. права». – Харків : Право, 2014. – С. 194-197.

13. Голіна В.В. «Ціна» злочинності: що ми про неї знаємо? / В.В. Голіна, Н.В. Сметаніна // Голос України. – 2013. – № 127 (12 липня). – С. 10 : портр.

14. Лунеев В.В. Социальные последствия, жертвы и цена преступности / В.В. Лунеев // Государство и право. – 2009. – № 1. – С. 36-56.

15. Сметаніна Н.В. Теоретичне уявлення про злочинність в пострадянській кримінології : автореф. дис. на здобуття наук. ступеня канд. юрид. наук: 12.00.08 / Н.В. Сметаніна; Нац. юрид. ун-т ім. Ярослава Мудрого. – Х., 2014. – 20 с.

REALIZATION OF EXPEDIENCY PRINCIPLE OF CRIMINAL LAW IN LAW-ENFORCEMENT ACTIVITY

Oksana STEPANENKO,
Postgraduate student of criminal law department
National University «Odessa Law Academy»

Summary

The article deals with problematic aspects of realization of expediency principle of criminal law in area of criminal law-enforcement. On the basis of analysis of criminal legislation of Ukraine and scientific literature author emphasizes that in sphere of criminal law expediency principle realizes only in case when a criminal law rule is constructed in way that provides for law-enforcement discretion. Precisely for this reason within limits of law-enforcement discretion which is based on authorizing criminal law rules, relatively definite and alternative sanctions; assessment concepts, we can say on possibility and necessity of realization of expediency principle.

Key words: criminal law-enforcement, principles of a criminal law-enforcement, expediency principle of criminal law, expediency of criminal law.

Аннотация

В статье исследуются проблемные аспекты реализации принципа целесообразности уголовного права в сфере уголовного правоприменения. На основании анализа уголовного законодательства Украины и научной литературы отмечается, что в правоприменительной деятельности в сфере уголовного права принцип целесообразности реализуется только в случае, когда уголовно-правовая норма сконструирована таким образом, что предусматривает правоприменительное усмотрение. Именно поэтому в рамках правоприменительного усмотрения, основаниями которого являются управомочивающие уголовно-правовые нормы, уголовно-правовые относительно-определенные и альтернативные санкции, оценочные понятия оправдано говорить о возможности и необходимости реализации принципа целесообразности уголовного права.

Ключевые слова: уголовное правоприменение, принципы уголовного правоприменения, принцип целесообразности уголовного права, целесообразность уголовного права.

Introduction. Although special place of expediency principle in law-enforcement activity, it hasn't been given consideration in criminal law publications. Some issues of realization of expediency principle in criminal law-enforcement has been addressed by such scholars as: O. Averin, B. Bovtun, L. Bagriy-Shakhmatov, E. Blagov, D. Bocharov, P. Dahel, G. Zlobin, S. Kelin, M. Kovalev, A. Korobyeyev, V. Kudryavtsev, A. Kovalenko, S. Maksimov, V. Maltsev, A. Martsev, A. Myznikova, A. Musica, N. Lopashenko, V. Navrotskyi, P. Nedbaylo, I. Noah, S. Poznyshev, B. Razhildiyev, O. Raroh, M. Tagantsev, S. Timokhin, V. Tula, Y. Oborotov, P. Rabinovich, P. Friso LA, L. Yavych, V. Yakushin and others. Some issues that are concerned with issue were investigated in papers on issues of imposition of sentence and application of other measures of criminal law by: L. Bagriy-Shakhmatov, A. Goroch, T. Denisova, D. Dedkov, I. Karpets, S. Kelyna, P. Korobeev, V. Merkulov, A. Musica, E. Polyanskyy, T. Ponyatovskaya, N. Storchak, V. Tulakov, V. Tyutyuhyn and others. At the same time some issues are still should be investigated. Some of them are – delineation of cases in which we can say on possibility of application of the expediency principle by subject of law enforcement.

Formulation of problem. The object of article is to research limits of expediency principle realization in sphere of criminal law enforcement.

An exposition of basic matter. There is no common attitude among legal theory scholars nor forensic scholars on definition of «law enforcement» but at same time they are all agree that law-enforcement activity are being made according to principles and to expediency principle in particular.

Y. Oborotov holds that in order to enforce a law the specific principles are should be taken into account and expediency is one of them [1, p. 93]. D. Bocharov also holds that expediency is important part of law-enforcement activity

[2, p. 3]. According to B. Malisheva, law-enforcement can be called «correct» if it meets requirements of process and result of law-enforcement. One of these requirements is expediency [3, p. 20].

Regarding the implementation of expediency principle in law-enforcement activity P. Nedbaylo, believes that expediency in application and enforcement of legal provisions is such implementation, in which not only goal of law is achieved, which leads to certain material or socio-cultural results, but which is more fully achieved in particular, historically determined conditions of place and time [4, p. 199]. A similar position is held by P. Rabinovich, who believes that application of rule that allows specific conditions to achieve its goals in best way possible. The above is based on understanding of expediency of dialectic relations between goals and means to achieve it, for any purpose usually can be implemented in concrete terms through various means (actions). All such actions will be feasible in broad sense of expediency, but given degree of unequal level of expediency, some of them will ensure achieving goal faster, easier, and less «cost» than others [5, p. 45].

M. Marchenko believes that principle of effectiveness in law-enforcement activity means taking into account specific conditions of application of a regulatory act, taking into account specifics of situation at moment of decision, the choice of optimal embodiment of legal requirements in certain specific circumstances [6]. At the same time, S. Alexeyev pointed out that inclusion of expediency is very important in application of legal norms, especially in implementation of (use of) rights by justice system. The more so because law often provide an opportunity to solve some of legal issues in order of a sub-regulation (for example, when sentencing for a crime) [7, p. 271].

According to A. Vengerov expediency − is a principle of law-enforcement, which provides for a specific evaluation of law-enforcement on following criteria: is it necessary to apply law, whether it is socially useful, taking into account individual characteristics and circumstances. The scholar adds that in terms of implementation of principle of effectiveness in law-enforcement can appear two extremes. On the one hand, expediency sometimes substitutes legality and offender remains unpunished. And we know that effective application of law shouldn't be cruel but imminent. On the other hand, because of misunderstanding of an expediency the measure of application of law is violated in every possible way, offender is subject to too cruel punishment [8].

Summarizing the theoretical position it may be noted that in accordance with principle of expediency, option of application of law is recognized expedient which allows best way to achieve, in specific circumstances purpose of law.

In contrast to general theoretical studies devoted to implementation of principle of effectiveness in field of law enforcement, in science of criminal law, in most cases, only certain aspects of implementation of principle of expediency in field of criminal law enforcement are investigated, such as sentencing, exempt from criminal liability and punishment. That is why establishing boundaries within which is justified to talk about possibility and necessity of applying principle of expediency by subjects of criminal law enforcement is logical aspect of study that concerns implementation of expediency principle in field of criminal law enforcement.

We have already mentioned that law cannot provide all features and changes that may arise in real life. That is why law, often determines only general guidelines. The aim of person who applies law is precisely fit general requirements to characteristics of particular case [9, p. 113]. On this occasion A. Koni said: «... the judge deciding matter, never has neither right nor moral grounds to say: Sie volo, sie jubco – «I want». He must speak as Luther: «I cannot help it». I cannot, because logic of things, and inner feeling and vital truth and meaning of law firmly and inevitably tells me my decision and against any other my conscience as a judge and human will object» [10, p. 3]. In addition, we should agree with A. Kostenko, which indicates that legislation − is a tool (good or bad) in hands of people who use it (or have used). The scholar has concluded that law is only effective when it is used by people, and law acts only in a way it is used by people. How will people apply law − it is dependent on state of their will and consciousness, which is determined by social culture of people [11, p. 88].

Application of law is based solely on its letter, in some cases impossible due to, first of all, imperfections of law, and lack of a real possibility of legislator to provide for diversity of living conditions that will accompany its implementation [12]. Y. Tikhomirov said that legislator deliberately uses vague wording in order to extend application of law in terms of unknown situations that may arise, which, in his opinion, determines a considerable scope of discretion of a law enforcer. It is not possible to treat law solely as an expression of any political will, and to application of rule of law − both formal-logical process of application of specific law rules [13, p. 44].

In other words, application of law − it is not just spread of legal rules to certain factual circumstances; it is, in some cases, creative process. One important point that, along with this, law enforcement − a subordinate activity that involves creativity (discretion – O.S.) only to extent and direction of certain applicable substantive provisions, and in forms established by appropriate procedural and procedural rules, they are solely on basis of submission to requirements of rule of law [2, p. 11].

Summarizing solid research of scholars on issue of law-enforcement discretion in criminal law, you can define it as, law-enforcement activity of authorized subjects to choose one of several criminal law options for solutions, in accordance with the will of legislator and principles of criminal law [14; 15; 16; 17; 18; 19].

In Addition, V. Tulakov and A. Makarenko noted that «genetic» feature in history of development of domestic legislation is its formation on principles of wide application of judicial discretion. Scientists true added that lack of certainty of criminal law, multiple meanings of some terms and concepts, variability of punishment, lack of detailed and clear rules and criteria of sentencing significantly impede enforcement process leads to instability of criminal legal regulation, discord in court practice and sometimes leads to judicial errors [20, p. 209]. On this basis, it is so important, when it comes to use of discretion, to adhere to principles of criminal law (including expediency principle), which should guide decision.

Along with this, it should be noted that when there is a clear legislative

guidance, work of law enforcer, which applies this criminal law is subject exclusively to principle of legality. In this context, position of convincing P. Nedbaylo, who pointed out that when rule of law provides for only one and not several possible solutions − there is no question of expediency of its application [4, p. 197]. Thus, in accordance with Art. 46 of Criminal Code of Ukraine court is obliged to exempt from criminal liability in connection with reconciliation of perpetrator with victim; person who has committed a minor offense or intentional misdemeanor, except crimes of corruption; if a person reconciled with victim and compensate for damage or eliminate harm. That is, if there are grounds specified in article in question court has no other solution but to release person from criminal responsibility. Emphasizing that in example it comes to implementation, only principle of legality, because in this case, all other principles of criminal law (including expediency principle) considered by legislator (or should have been taken into account) when enshrined it in criminal law rules.

The above leads to conclusion that enforcement activities, in field of criminal law, principle of expediency is realized only when criminal law is designed in such a way that provides for law-enforcement discretion. That is why in framework of law-enforcement discretion we can say about feasibility of implementing principle of criminal law. Given above it is difficult to agree with thesis of P. Nedbaylo that absolutely all rules provide for a greater or lesser degree of their application, and therefore most expedient law-enforcement problem arises in all cases [4, pp. 197, 200].

Summarizing it may be noted that need to incorporate principle of expediency in implementation of enforcement of criminal law occurs when criminal law is designed in such a way that provides law-enforcement discretion.

In scientific literature devoted to study of law enforcement discretion various grounds of its application are allocated [21; 22].

B. Dyogot believes that because of lack of exhaustive list of rights and duties in relatively definite norms, they provide law-enforcement subjects to decide the matter, taking into account specific circumstances. The scholar has concluded that relatively definite norms provide an enforcement subject right to choose one or another possible solution of case [23, p. 32, 52]. Along with this, V. Goncharov and V. Kozhevnikov note that basis of law-enforcement discretion is dispositive rules, including those that contain assessment concepts [24, p. 54]. O. Berezin expands list of grounds for law-enforcement discretion who believes that grounds for any actions enforcer are: dispositive rule of law; with respect to certain or alternative sanctions mandatory law; evaluation concepts; closed or open legal lists; gaps in law and conflicts of law [21, p. 8-9]. Y. Grachev and A. Rarog include authorizing regulations, assessment concepts and all kinds of sanctions used in Criminal Code to grounds of judicial discretion in criminal law [25]. According to A. Barak, to grounds of discretion, in addition to relative definition of content of legal norms and gaps in law, should include legal conflicts [18, p. 24-25].

In addition basis of law-enforcement discretion should be linked to legislation one way or another or fact of its absence, so it is legal in nature. The existence of «non-legal» grounds discretion is excluded. We agree with position of M. Risny that discretion, is not based on legal grounds, in fact, be nothing more than arbitrary [26, pp. 82, 84].

Based on analysis of Criminal Code of Ukraine and expressed in scientific literature position we believe that grounds of law-enforcement discretion in criminal law are: authorizing criminal law rules; criminal law, relatively definite and alternative sanctions; assessment concepts.

We should also address issue on possibility of discretion when carrying out criminal law qualification. M. Korzhansky understands qualification as a criminal and legal assessment of act, choice and application to it of criminal law that most closely describes its symptoms. Analyzing position of M. Korzhansky, V. Nawrocki emphasizes importance of fact that in order to correctly carry out qualification it is necessary to choose and apply only a single, specific criminal law of several adjacent norms that best describes characteristics of offense. In addition, the V. Nawrocki emphasis correctness of position of M. Korzhanskiy that it's needed to select a specific rule during qualification that best suited to present case [27, p. 42]. In addition, V. Nawrocki said that qualification begins at stage of selection of legal norms for action. Scholars emphasize that we should talk about «choice» of a rule or a number of existing ones. After all, in law, there is only one single rate, devoted to settlement of case or more if there are multiple offenses [27, p. 18].

That is, at first glance, we cannot say about any law-enforcement discretion during criminal law qualification. However, as we have already noted basis of law-enforcement discretion is estimated concepts that are quite common in Criminal Code and that subject of law-enforcement is faced during criminal law qualification. That is why if disposition of article contains assessment signs, we can say that law-enforcement discretion may take place during qualification, only to extent where it carries on an interpretation of assessment signs of a crime.

We have already mentioned that we support position of authoritative scholars (including N. Kuznetsova, V. Nawrocki, V. Havronyuk) and believe that maximum unification of terminology of criminal law is an important step to achieve its objectives and implement expediency principle of criminal law [28, p. 61]. However, till assessment concepts are enshrined in Criminal Code, authorized persons who apply criminal law will have to interpret them. That is why, position of group of authors of textbook «Actual problems of criminal law» seems to be quite convincing, that in cases where there is uncertainty of legal regulations, its elimination is possible only through application of law, based on its established objectives and targets. Thus, process of interpretation of assessment terminology in criminal law in many respects may be associated with occurrence of expediency. For example, determining damage, level of income, whether consequences are heavy, losses are significant – law-enforcement authority, judge, legislator (if amplifications or clarifications are made in Criminal Code) makes decisions based primarily on expediency [29].

Along with assessment concepts basis of law-enforcement discretion is authorizing rules that should be understood as organized according to structure and expressed in form of criminal law, rules providing entities-recipients option

that provides variants of regulations of legislator in accordance with established law in various areas of application of these norms of Criminal Code [30, p. 6-7]. M. Poroikov indicates that without authorizing rules the whole process of exercising justice would be reduced in criminal aspects only to mechanical use of appropriate standards, which describes in its disposition of any corpus delicti and contains a form of punishment sanctions of same size, so it would be absolutely certain [30, p. 3]. However, A. Makarenko correctly emphasizes that such legal construction as authorizing rules which are used by legislator consciously or planned, as we cannot provide all variety of life's realities in every case and thus to formalize assessment of case and identity of perpetrator [14].

The occurrence of authorizing rules are enshrined in current Criminal Code of Ukraine as legal wording as «may» (Art. 9, 19, 47, 48, 52, 54, 55, 74, 81, 82, 84, 85, 87, 95, 96, 97, 99, 105 107 of Criminal Code), « court may» (Art. 53, 57, 66, 67, 69, 75, 76, 79, 83, 91, 94, 96-7, 104, 105 of Criminal Code), «may be» (vv. 10, 19, 70, 77, 86, 87 of Criminal Code of Ukraine), «decided by court» (Art. 49, 80 of th Criminal Code of Ukraine). It's obvious that actual number of authorizing rules in Criminal Code is much more so we pointed out only those which, in our view, often used by enforcer.

In accordance with this, it should be noted that authorizing rules are provided in following sections of Criminal Code of Ukraine − Chapter IX exemption from criminal liability Art. 47, 48, 49 of Criminal Code of Ukraine; − Section X punishment and its types Art. 52, 53, 54, 55, 57 of Criminal Code of Ukraine; − Section XI sentencing Art. 66, 67, 69, 70 of Criminal Code of Ukraine; − Section XII exemption from punishment and serving Art. 74, 75, 76, 77, 79, 80, 81, 82, 83, 84, 85, 86, 87 of Criminal Code of Ukraine; − Section XIV other measures of criminal law Art. 96, 91, 94, 95 of Criminal Code of Ukraine; − Chapter XIV-1 measures of criminal law on legal persons Art. 96-7 of Criminal Code of Ukraine; − Section XV specificity of criminal responsibility and punishment of minors Art. 97, 99, 104, 105, 107 of Criminal Code of Ukraine.

In Summary we believe it is justified to talk about possibility and necessity of applying th expediency principle by criminal law-enforcement subjects but only within law-enforcement discretion (authorizing criminal law rules, relatively definite and alternative sanctions; assessment concepts). Given that law enforcer «meets» authorizing criminal law rules, criminal law, relatively definite and alternative sanctions in sentencing and application of other measures of criminal law, further direction of research is study of principle of expediency of criminal law: − during sentencing; − during application of other measures of criminal law.

References:

1. Оборотов Ю.М. Теорія держави і права (прагматичний курс) : [екзаменаційний довідник] / Ю.М. Оборотов. – О. : Юридична література, 2006. – 184 с.

2. Бочаров Д.О. Правозастосовча діяльність: поняття, функції та форми : проблемні лекції / Д.О. Бочаров – Дніпропетровськ : АМСУ, 2006. – 73 с.

3. Малишев Б.В. Застосування норм права (теорія і практика) : навчальний посібник / Б.В. Малишев, О.В. Москалюк; за заг. ред. Б.В. Малишева. – К. : Реферат, 2010. – 260 с.

4. Недбайло П.Е. Применение советских правовых норм / П.Е. Недбайло. – М.: Государственное изд. юрид. лит., 1960. – 511 с.

5. Рабинович П.М. Законность и целесообразность в применении юридических норм / П.М. Рабинович // Применение советского права: Сб. уч. труд. – Вып. 30. – Свердловск, 1974. – С. 44-47.

6. Марченко М.Н. Правоведение : учебник для студ. юрид. вузов / М.Н. Марченко. – М. : 2004. – 416 с.

7. Алексеев С.С. Теория права / С.С. Алексеев. – М. : Издательство БЕК, 1995. – 320 с.

8. Венгеров А.Б. Теория государства и права. – [Электронный ресурс] : учебник для студ. юрид. вузов / А.Б. Венегров. – М. : Юриспруденция, 2000. – Режим доступа : http://bibliotekar.ru/teoria-gosudarstva-i-prava-2/in.

9. Ильин И.А. Теория государства и права / И.А. Ильин; под ред. и с предисл. В.А. Томсинова. – М. : Зерцало, 2003.

10. Кони А.Ф. Избранное // А.Ф. Кони; сост., вступ.ст. и примеч. Г.М. Миронова, Л.Г. Миронова. – М.: Сов. Россия, 1989. – 496 с.

11. Костенко О.М. Конституція і ідеологія: проблема співвідношення / О.М. Костенко // Конституційні засади державотворення і правотворення в Україні: проблеми теорії і практики: 36 наук. статей. – К. : Ін-т держави і права їм. В.М. Корецького НАН України, 2006. – С. 87-93.

12. Балобанова Д.О. Теорія криміналізації : дис. ... канд. юрид. наук: 12.00.08 / Д.О. Балобанова; Одеська національна юридична академія. – О., 2007. – 208 с.

13. Правоприменение: теория и практика / отв. ред. Ю.А. Тихомиров. – М. : Формула права, 2008. – 432 с.

14. Макаренко А.С. Суддівський розсуд при призначенні покарання в Україні : монографія / А.С. Макаренко ; Нац. ун-т «Одес. юрид. акад.». – Одеса : Юрид. літ., 2013. – 269 с.

15. Грачева Ю.В. Судейское усмотрение в уголовном праве: автореф. дис. … канд. юрид. наук : спец. 12.00.08 / Ю.В. Грачева. – Москва, 2002. – 199 с.

16. Рарог А.И. Судейское усмотрение при применении уголовно-правовых норм / А.И. Рарог // Вестник Нижегородского университета им. Н.И. Лобачевского. Серия: Право. – 2003. – № 2. – С. 376-381.

17. Бобрешов Є.Г. Судове правозастосування в Україні: проблеми теорії і практики : автореф. дис. ... канд. юрид. наук: 12.00.01 / Є.Г. Бобрешов. – Київ : Б. в., 2011. – 18 с.

18. Барак А. Судейское усмотрение / А. Барак / Пер. с англ. А.Ю. Лисин. – М.: Изд-во НОРМА, 1999. – 246 с.

19. Комиссаров К.И. Судебное усмотрение в гражданском процессе / К.И. Комиссаров // Советское государство и право. – 1969. – № 4. – С. 49-56.

20. Туляков В.О. Призначення покарання / В.О. Туляков, А.С. Макаренко // Вісник Асоціації кримінального права України. – 2013. – № 1 (1). – С. 208-227.

21. Березин А.А. Пределы правоприменительного усмотрения : автореф. дис. … канд. юрид. наук : спец. 12.00.01 / А.А. Березин. – Нижний Новгород, 2007. – 25 с.

22. Ермакова К.П. Пределы судебного усмотрения : дис. … канд. юрид. наук : 12.00.01. / К.П. Ермакова. – М., 2010. – 212 с.

23. Деготь Б.А. Классификация норм советского социалистического

права по их структуре / Б.А. Деготь – Саратов, 1977. – 60 с.

24. Гончаров В.Б., Кожевников В.В. Проблема усмотрения правоприменяющего субъекта в правоохранительной сфере / В.Б. Гончаров, В.В. Кожевников // Государство и право. – 2001. – № 3. – С. 51-60.

25. Рарог А.И., Грачева Ю.В. Понятие, основание, признаки и значение судейского усмотрения в уголовном праве / А.И. Рарог, Ю.В. Грачева // Государство и право. – 2001. – № 11. – С. 90-98.

26. Рісний М.Б. Правозастосувальний розсуд (загальнотеоретичні аспекти) : дис. … канд. юрид. наук : 12.00.01 / М.Б. Рісний. – Л., 2006. – 191 с.

27. Навроцький В.О. Основи кримінально-правової кваліфікації : навчальний посібник / В.О. Навроцький. – К. : Юрінком Інтер, 2003. – 704 с.

28. Степаненко О.В. Використання оціночних понять у КК України з позиції принципу доцільності кримінального права / О.В. Степаненко // Науковий вісник Ужгородського національного університету, 2015. – С. 59-61.

29. Попович В.М. Актуальні проблеми кримінального права / В.М. Попович, П.А. Трачук, А.В. Андрушко, С.В. Логін. – К.: Юрінком Інтер, 2009. – 256 с.

30. Поройко М.С. Обязывающие и управомочивающие нормы в уголовном праве: автореф. дис. … канд. юрид. наук : спец. 12.00.08 / М.С. Поройко. – Казань, 2006. – 22 с.

СОЦИАЛЬНАЯ СПРАВЕДЛИВОСТЬ КАК ОСНОВА СОЦИАЛЬНОЙ ПОЛИТИКИ ЦИВИЛИЗОВАННОГО ГОСУДАРСТВА

Елена ТИЩЕНКО,
доктор юридических наук, доцент кафедры трудового права
и права социального обеспечения юридического факультета
Киевского национального университета имени Тараса Шевченко

Summary

The article analyzes essence of social-ethical concept of social justice as one of main principles of criteria for operation of democratic state. It is stated that issue of social rights and distribution function of state is directly related to problem of realization of social justice in this particular state. It is stated critical attitude to theory of «egalitarianism», justified that egalitarianism is inherently unfair. Reveals the problems of social policy of Ukraine in context of effectiveness of social security of vulnerable populations such as strategic direction of fight against poverty. It is proved that effectiveness of principle of social justice in today's society depends primarily on welfare state, raising living standards of citizens.

Key words: social justice, equality, egalitarianism, vulnerable, poverty.

Аннотация

В статье анализируется сущность социально-этического понятия социальная справедливость, как одного из главных принципов функционирования демократического государства. Указывается, что проблемы социальной распределительной функции права и государства непосредственно связаны с проблемой реализации социальной справедливости в данном конкретном государстве. Констатируется критическое отношение к теории «эгалитаризма», обосновывается, что уравниловка по своему существу несправедлива. Раскрываются проблемы социальной политики Украины в контексте действенности социального обеспечения уязвимых категорий населения, как стратегического направления борьбы с бедностью. Доказывается, что эффективность реализации принципа социальной справедливости в современном обществе, прежде всего, зависит от благосостояния населения государства, повышения жизненного уровня граждан.

Ключевые слова: социальная справедливость, равенство, эгалитаризм, уязвимые слои населения, бедность.

Постановка проблемы. Возникновение теории социальной справедливости связано с необходимостью осознания положения личности в обществе и государстве. Реализация принципа социальной справедливости в обществе, прежде всего, воплощается в развитии социальной политики в сфере социального обеспечения незащищенных слоев населения, численность которых увеличивается в условиях переходной нестабильной экономики. Именно поэтому проблематика значения социальной справедливости для развития социального обеспечения является актуальной для научного исследования и анализа.

Дискуссионных аспектов сущности категории социальной справедливости в своих трудах касались отечественные ученые-юристы В.М. Андриив, Н.Б. Болотина, Т.А. Занфирова, С.М. Прилипко, А.И. Процевский, С.М. Синчук, Б.И. Сташкив, Л.П. Шумная, Н.Н. Шумило и др. Однако, на этапе развития социально-ориентированной экономики вновь возникает потребность анализа социально-правового положения лица в государстве, изучения согласования принципа социальной справедливости с реализацией социальной политики в Украине в сфере социального обеспечения уязвимых слоев населения.

Цель статьи − проанализировать проблемы реализации принципа социальной справедливости в современных условиях развития государства и общества, исследовать эволюцию содержания принципа социальной справедливости в зависимости от социально-экономической политики государства.

Изложение основного материала исследования. Платон писал, что справедливость составляет основу совершенного государства. Он отмечал, что «люди еще в самом начале, когда соз-