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Lists in the disposition of the special section of criminal code of Ukraine

Abstract: It is discussed the use of inventories in the dispositions of articles of the Special Part of the Criminal Code of Ukraine. The advantages of exhaustive lists are outlined. It is highlighted features open (non-exhaustive) lists, and suggested a relevant concept. Based on different types of classification criteria are highlighted open (non-exhaustive) lists in the dispositions of articles of the Criminal Code of Ukraine.

Keywords: list exhaustive list; open (non-exhaustive) list; disposition articles; criminal law injunction; criminal legal structure.

In the dispositions of articles of the Special Part of the Criminal Code of Ukraine secured penal construction of a crime. In their construction should be used techniques, tools, and rules of legislative technique, developed theory of law for centuries. In the theory of criminal law, the question of the legal nature of legislative structures (to which they belong and criminal law) is debatable. Besides, there are different points of view on the concept and structure of such designs. Without going into the scientific debate, we indicate that we understand by the criminal law structure “means internal legislative technique, which is a structural model of a group of similar legal phenomena, a certain combination of legislation which fills legally significant information, thereby regulating the criminal law of the variety of data phenomena” [1, p. 4].

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Any penal design inconceivable without certain mini-models (mini - structures) used by the legislator for their construction, which are both part of the legislative text of the Criminal Code of Ukraine. These mini designs are appropriate lists, by which dispositions contained some articles of the Criminal Code of Ukraine. They are an important element of the corresponding text and are often used by the legislator.

In the theory of criminal law are not developed rules for the use of inventories in the Criminal Code of Ukraine, not formulated their signs and symptoms species. Therefore it is necessary to analyze these questions. After definition of the essence of inventories in the dispositions of articles of the Criminal Code of Ukraine is a prerequisite for a proper understanding of criminal law provisions.

First we define the word “list” in the language. In dictionaries, it is defined as “list, listing those items in any order” [2], “transfer whom-what - ever order and a list with the transfer” [3]. Synonymous with the word “list” is the word “list” [4]. Thus, any transfer lists are, a list of corresponding features.

Due to the presence of the Criminal Code lists anyway questions arise form and completeness of the relevant legislative provisions, as well as the feasibility of using open (or approximate) lists.

After analyzing the dispositions of articles of the Criminal Code of Ukraine, we note that in some cases the legislator uses an exhaustive list of those or other evidence of a crime (e.g., Articles 112, 344, 346 Criminal Code of Ukraine secured exhaustive lists of victims belonging to public figures). Such lists in the theory of criminal law and legal doctrine are also called casuistic (formal). Availability exhaustive list is more acceptable than non-exhaustive lists. After the corresponding mini-construction must be understood exactly as defined legislator. But, nevertheless, in the formulation of comprehensive inventories in the dispositions of articles of the Criminal Code of Ukraine has certain shortcomings. In the above example, concerning the transfer of persons belonging to government figures, there is a different approach to determining the appropriate legislator categories of victims. Articles 112, 344 and 346 of the Criminal Code specifies such general categories of public figures: President, Chairman of the Supreme Council of Ukraine, MP, Prime

Minister of Ukraine, member of the Cabinet of Ministers of Ukraine, the Supreme Council of the Commissioner for Human Rights, the Chairman of the Accounting Chamber Chairman of the National Bank of Ukraine. But in these articles there are also differences in the listing statesmen. So, in articles 112 and 346 of the Criminal Code to them legislator took the Chair or a judge of the Constitutional Ukraine court or the Supreme Court of Ukraine, or higher specialized courts of Ukraine, the Prosecutor General of Ukraine. In accordance with Art. 346 of the Criminal Code also belong to them not only the High Commissioner of Human Rights Council, but his representative, not only the Chairman of the Accounting Chamber, but its members, as well as the Chairman or a member of the Central Election Commission, a member of the National Council of Ukraine on Television and Radio Broadcasting, Chairman of the Antimonopoly Committee of Ukraine, Chairman of the State Property Fund of Ukraine, Chairman of the State Committee for Television and radio Broadcasting. Thus, an exhaustive list of public figures from article 344 of the Criminal Code included a greater number of people. This is unacceptable from the point of view of the rules of legislative technique. After all, one and the same term should be understood by the legislator in one sense (at least within a single legal act).

Views of scientists on the use of exhaustive lists practically coincide. According to them, the use of this kind of lists justifiably [5, p. 139-141]. From the viewpoint of D.A. Kerimov, “in cases where we cannot avoid transfers should ensure that it bore exhaustive” [6, p. 45]. We believe that the use of the criminal law of Ukraine exhaustive list of acceptable. After all, they give certainty and clarity of the criminal law norm. Besides form an exhaustive list of comfortable and clearer to read than descriptive text. Part of comprehensive inventories in the dispositions of articles of the Criminal Code of Ukraine is usually located, continuous text, without isolating paragraphs.

In addition to an exhaustive list of dispositions of articles of the Criminal Code of Ukraine uses open (approximate) lists that belong to abstract Anecdotal (or evaluative-formal) acceptance legislative describe signs of crime. In such lists

legislator leads first casuistic transfer of appropriate signs, and then - not “close” it, and applies certain estimates (abstract) formulations (such as “other”). That is, unlike the extremely abstract (Stock) receiving formulations that characterized most of generalization or other phenomena, object attribute, abstract casuistic method consists in the transfer of certain items of the legislator of a phenomenon or object serving as a reference point (benchmark) for determination of generalized formulations final open (approximate) lists.

Thus, we can distinguish the first sign of open (approximate) lists. They are taking abstract casuistic (estimated - formal) modeling legislative dispositions of articles of the Criminal Code of Ukraine.

For open (approximate) lists, in contrast to the abstract (Stock) modeling dispositions of articles of the Criminal Code of Ukraine characteristic is that in his early legislator formalized (casuistic) form suggests (transfer) the specific elements of a crime, and concludes that these lists of condensed formulation requiring additional interpretation in the process of law enforcement. Consequently, the second sign of open (approximate) lists the dispositions of articles of the Criminal Code of Ukraine - a combination of specific traits to their crimes generalizing formulations. And there is no doubt that such lists are listed and summarized it evidence of a crime that affect all four elements (object, the objective side, the subject and the subjective side). For example, open (rough) list of “housing or other property of a person” describes the object as a sign of the object offense, “death or other serious consequences” - socially dangerous consequences of the objective side of the crime, “the medical, pharmaceutical or other employee” - a sign of the special subject the corresponding elements of a crime”, “mercenary or other personal motives” - motif as a sign of the subjective side of the offense). That is, the third feature of open (approximate) lists is to use them to describe the corpus delicti.

Open (approximate) lists in dispositions of articles of the Criminal Code of Ukraine may be purely approximate or conditionally approximate. In the first case refers to the fact that the legislature at the end of such a list only uses a generalized (estimated) formulation, without specifying any elements (for example, “material or

other dependence on the perpetrator”, “State or another institution, company or organization”, “violence, deceit, threat, bribery or otherwise”).

In most cases, open lists in the dispositions of articles of the Criminal Code of Ukraine have conditionally approximate when the legislator, completing them, indicates a certain specification of the corresponding synthesis (Stock) formulation (e.g., “beatings, torture or other acts of violence”, “immunodeficiency virus human or other incurable infectious disease dangerous to human life”, “wages, stipends, pensions or other statutory payments”). But there are also cases where lists are approximate. That is, the fourth sign of open lists - their approximate or shareware approximate.

Thus, taking into account the above mentioned open lists of extracted features can offer a definition of the corresponding concept: open (approximate) lists in the dispositions of articles of the Criminal Code of Ukraine-it is one of the techniques of abstract signs casuistic formulation of offenses for which the specific features combine with their generalize the formulation and which have an approximate or shareware approximate.

Let us point out that in some cases identical wording open (exhaustive) lists may not coincide. This can serve as a means for some understanding of the relevant criminal law provisions.

Thus, the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine regarding liability for corruption offenses” of the Criminal Code of Ukraine “enriched” some new subject compositions crime - the person providing public services (Articles 358, 365-2 , 368-4 of the Criminal Code) [7]. In these articles the relevant dispositions special subject legislator formulated using conditional approximate list. Person providing public services is recognized auditor, notary, appraiser, a person who is not a public servant, official of local self-government, but exercising professional activities related to the provision of public services, including expert services, arbitration manager, independent mediator member of the labor arbitration, the arbitrators (Part 1 of Art. 365-2, Part 1, Art . 368-4 of the Criminal Code of Ukraine). First, there is extremely unfortunate such a list. After regulatory

legislation of Ukraine does not contain the concept of “professional activity” or the concept of «public service». So establish a list of persons acting subjects these types of crimes is virtually impossible today. But, as mentioned above, the person providing public services is recognized subject of an offense under Part 2 of Art. 358 of the Criminal Code of Ukraine. In the disposition of this part as the corresponding attribute of the offense is formulated with the public (approximate) list. Draws attention to the different lists of those whom legislation classifies for this special subject: Auditor, an expert appraiser, attorney or other person exercising professional activities related to the provision of public services. That is, the list of such persons, on the one hand, much narrower than the list of dispositions in Part 1 of Art. 365-2, Part 1, Art. 368-4 of the Criminal Code of Ukraine. But, on the other hand, includes not provided for in these category of persons providing public services - a lawyer.

Given the basis for the process of understanding, called the philosophy of “hermeneutic circle”, according to which the “whole” can be understood on the basis of an individual and the individual - based on the “whole” [8, p. 72], we can conclude that such a special subject of crime, as the person providing the public services should be understood on the basis of lists of dispositions in Part 2 of Art. 358, Part 1, Art. 365-2, Part 1, Art. 368-4 of the Criminal Code of Ukraine. That is, each of these articles understanding of the respective characteristic of the offense possible by comparing the lists given by the legislator. Consequently, the person providing a public service, it should be understood lawyer auditor fees, appraiser, a person who is not a public servant, official of local self-government, but exercising professional activities related to the provision of public services, including expert services, arbitration manager, independent mediator member of the labor arbitration, the arbitrators. On this example, we have shown the specificity of application in law “hermeneutic circle”. We believe that the study of the right of the text it is used for parts by understanding the legal text and distinct legal concepts enshrined in it, to create a holistic view of the fixed model legislator legal regulation of social relations.

Analyzing open (approximate) lists used in dispositions article of Criminal Code of Ukraine, it is possible to separate them using a variety of relevant classification criteria.

First, depending on what features of the crimes described in the dispositions of article of Criminal Code of Ukraine, the open (approximate) lists may be of such types : 1) lists describing the attributes of the objects (such as “sources of ionizing radiation or radioactive substances nuclear materials in any physical condition in the installation or product or in another form”), 2) lists describing the actus (e.g., “if they caused death or disease in humans , the mass death of animals and plant life or other grave consequences”), 3) lists describing the features of the subject (e.g., “the auditor, expert appraiser, attorney or other person exercising professional activities related to the provision of public services”) , and 4) lists describing the signs of the subjective side of the offense (for example, “the purpose of the disclosure or other use of this information”).

Second, depending on the nature of public (approximate) lists they can be 1) approximate and 2) conditional approximate. In the first case the legislator after casuistic identify those or other evidence of a crime uses only generalize (estimated) formulation without any specification, while the second - a particular way limits the generalization of relevant specific words.

Third, depending on the number of open (approximate) lists in one disposition articles of the Criminal Code of Ukraine can be identified: 1) one-time lists, 2) lists two-fold, and 3) multiple lists. In the first case, the dispositions of articles of the Criminal Code of Ukraine uses only one corresponding list in the second - two lists, and the third - three or more open (approximate) list. In most cases, the legislator uses the first form (for example, in the disposition of Part 1 of Art. 297 Criminal Code of Ukraine – “the grave , other burial place”) at least - two-time (e.g., in the disposition of Part 1 of Art. 267-1 Criminal Code of Ukraine used two open list – “industrial or other products, animals, fish, plants or any other objects”) and open multiple lists (for example, in the disposition of Part 1 of Art. 326 CC of Ukraine used three open list – “improper storage, use, recording transport of microbial or other biological agents or

toxins, other rules for handling them, if it posed a threat to loss of life or other grave consequences, offensive or harm the health of the victim”). Note that the use of multiple open lists complicates the understanding of the will of the legislator, troubled interpretation of criminal-law and poses a threat to the judges' willfulness during their application.

Fourth, depending on the number of instantiated evidence of a crime in the open (approximate) lists dispositions article of Criminal Code of Ukraine can be classified into: one lists concretized sign of a crime (e.g., “passport or other important personal document”), lists instantiated with two signs of a crime (such as “investigator, prosecutor or other authorized person by the law”), lists of three or more instantiated signs of a crime (e.g., “through infancy, old age, illness or as a result of another helpless condition”).

Consequently, the analysis above lists in use dispositions of articles of the Special Part Criminal Code of Ukraine, allowed pointing out the advantage of using an exhaustive list before the open (non-exhaustive). On the basis of the research are presented signs of open (non-exhaustive) lists the corresponding concept and proposed allocation of such lists of species subject to different classification criteria. At the same time, the availability of open (exhaustive) lists complicates the understanding of criminal law provisions. Thus in some cases it is necessary to use techniques hermeneutical understanding of the texts, which belongs to the “hermeneutic circle”. This initial study open (approximate) lists will reveal their essence, the appropriateness of the use of dispositions in the article of the Criminal Code of Ukraine, and will also serve the development of rules for the interpretation of criminal law provisions, depending on the corresponding public (approximate) front.

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