



# ON PROBLEMS OF CRIMINAL AND LEGAL QUALIFICATION OF OFFENSES OF TRAFFIC OF DANGEROUS CHEMICAL SUBSTANCES ON THE TERRITORY OF UKRAINE

M. Prodanchuk<sup>1</sup>, O. Bantyshev<sup>2</sup>, M. Velychko<sup>1,2</sup>, O. Kravchuk<sup>1</sup>, I. Salagor<sup>2</sup>, I. Maksymchuk<sup>3</sup>

<sup>1</sup>L.I.Medved's Research Center of Preventive Toxicology, Food and Chemical Safety, Ministry of Health, Ukraine (State Enterprise), Kyiv, Ukraine

<sup>2</sup>National Academy of Security Service of Ukraine, Kyiv, Ukraine

<sup>3</sup>National Academy of Internal Affairs of Ukraine, Kyiv, Ukraine

**ABSTRACT. Aim of the Research.** To make the systematic analysis of structure of the crimes of Ukraine providing responsibility for smuggling of poisonous substances (Article 201 of Criminal Code of Ukraine) and for illegal production, manufacture, acquisition, transportation, shipment, storage for the purpose of sale or sale of poisonous or potent substances, or poisonous or potent drugs (Article 321 of the Criminal Code of Ukraine). Provide proposals to bring the legislation of Ukraine concerning the list of toxic substances their production, storage, transportation, use, disposal, destruction and disposal in accordance with EU legislation.

**Materials and Methods.** The research is based on international and domestic legislation, scientific publications, materials of scientific and practical conferences, etc. The following methods are used in the work: dialectical, systematic analysis of the internal construction of the system of criminal law, formal-logical definition, modeling, analogy, logical and formal-legal.

**Results and Discussion.** The article examines the issue of criminal liability for socially dangerous acts related to toxic substances. A brief legal analysis was performed. Attention is focused on the need to bring the legislation of Ukraine in line with the requirements of the legislation of the European Union. It is noted that in the EU there is no term "toxic substances" in laws and regulations, and the term dangerous substance is used.

**Conclusions.** It is necessary to develop a draft regulatory document harmonized with EU requirements instead of the repealed Resolution of the Cabinet of Ministers of Ukraine No 440, which concerns the procedure for handling these substances.

**Keywords:** criminal code, poisonous substance, dangerous substance, normative document, smuggling.

**Relevance of the Topic.** Practice shows that "toxic substances" as they are still called in Ukraine and which should be referred to as "dangerous substances" in the EU are used not only as the subject of a crime in Articles 201 and 321 of the Criminal Code of Ukraine. They can be used as instruments of crime against the foundations of national security of Ukraine (Section I of the Special Part of the Criminal Code of Ukraine), as well as against peace, security and international law (Section II of the Special Part of the Criminal Code of Ukraine) and international law (Section XX of the Special Part of the Criminal Code of Ukraine), and in many other cases where a person's health and life may be an additional object of crime.

Intensification of European integration processes, deepening cooperation between the

EU countries set new tasks for Ukraine: bringing its legislation in line with the requirements of European Union legislation.

The content of this article is aimed at formulating the relevant legislative proposals.

**Analysis of Previous Research.** A number of domestic scientists in the field of toxicology have devoted their works to certain aspects of the theoretical and practical regulatory nature of solving the problem of chemical safety, and legal sciences, which deal with the problems of legal regulation in this area of activity in Ukraine. Among them: Vlizlo V. V. and co-author in the article "Problems of biological safety of pesticides in Ukraine" (2012) conducted an analysis of the current state of environmental and biological safety of pesticides in the agro-industrial sector of Ukraine. The authors raised the issues of their

legal regulation, the use of falsified, unusable and banned pesticides. Emphasis is placed on the problem of the use of neurotoxic pesticides, in particular drugs based on chlorpyrifos and carbofuran, and the need to ban them as soon as possible in Ukraine. [1]; Chmil V. D. in the work "On the problem of compliance of domestic standards governing the state testing of plant protection products, their registration and use in agriculture, the requirements of the European Union" (2014) considers the need to bring in line with international requirements of domestic standards in the field of state testing of plant protection products, their registration and further use in agriculture. The author proposed a set of actions to bring domestic research conducted during field trials of chemical plant protection products (PPPs) closer to EU requirements, and most importantly – that the results of these studies would be reliable and help improve the objectivity of PPP assessment registered in Ukraine, in terms of their safety for humans, animals and the environment. [2]; Prodanchuk M. G. with co-authors in the work "Statutory regulation of pesticide studies under conditions of world economy globalization: the international experience" (2018) explored aspects of the Association Agreement between Ukraine and the EU, where an important part is the provision of a free trade area, which provides Ukraine with its technical regulations and procedures in accordance with European ones. The authors paid special attention to the requirements of harmonization of domestic regulations concerning the placing on the market of chemical products, including pesticides, as well as the quality and identity of their research to assess the level of danger to human health and the environment. [3]; in the next work Prodanchuk M. G. with co-authors "Regulation of field toxicological and biological testing of pesticides on the example of the European Union. Challenges for Ukraine. (Review of normative-legal and scientific-methodical documents)" (2018) investigated the need for measures to achieve compliance of national standards with European and international requirements in the free trade area under the Association Agreement between Ukraine and the EU. The authors believe that one of the important issues is the harmonization of regulation of the circulation of chemical products, including pesticides. Particular requirements apply to the quality of non-clinical studies of plant protection products (PPPs) in

accordance with the principles of good laboratory practice (GLP) and good experimental practice (GEP) in the laboratory and field, the need for their implementation is especially relevant for mutual recognition of the results of PPP tests during their registration in Ukraine and in European countries [4].

Legal aspects of this problem were considered by the following scientists: Velychko M. V. with co-authors in the article "Consequences of deregulation in the field of state control for import, distribution, use and disposal of hazardous chemical substances at the territory of Ukraine" (2017) investigated the state of the chemical safety system of the state in terms of repeal of the Resolution of the Cabinet of Ministers of June 20, 1995 No 440 "Approving the authorization of the production, storage, transportation, use, disposal, destruction and disposal of toxic substances including products of biotechnology and other biological agents" in order to develop proposals for improving regulatory and legal counteraction to threats to the national security of Ukraine of a chemical nature. Ways to optimize the chemical safety system for the import, storage, use and disposal of pesticides and other toxic substances are argued [5].; Dvurechenska O. S. in the article "Regulatory and legal support of chemical safety in Ukraine" (2018) examines the impact of international activities on the formation of the national legal framework in Ukraine in the field of chemical safety. Researches leading international documents in the field of chemical safety and Ukraine's participation in them. Analyzes the impact of Ukraine's accession to international export control regimes on the construction of an appropriate system at the national level. Considers the leading Ukrainian documents in the regulation of research, production, use and transportation of toxic substances that can be used as chemical weapons, or otherwise harm humans and the environment [6]; Maksymchuk I. M. in the article "Toxic substances as an element of forensic characteristics of certain criminal offenses" (2019) explores the problem of imperfect control and mechanism of circulation of toxic substances in Ukraine due to the abolition of certain regulations by implementing Ukrainian legislation to the European, and focuses on the term "toxic substance" as one that is essential in the methodology of investigation of criminal offenses and tactics of certain investigative (search)

actions related to toxic substances. Analyzes legislation, which determined in the past and determines now the mechanism of circulation of poisonous, dangerous chemical or harmful substances. Focuses on current unsuccessful attempts to determine the list of toxic substances and determine the mechanism of their circulation. Separately outlines the tasks and provides proposals for the creation of a completely new, really implemented to modern world standards list of toxic substances in Ukraine, emphasizes the need to define a clear regulatory mechanism for the circulation of such substances in conjunction with law enforcement agencies, security agencies [7]; Tytula D. with co-author in the article "Smuggling – a corruption crime" consider corruption structure of the crimes provided by Criminal Code of Ukraine. An analysis of the composition of crimes, provided by Art. 201 (smuggling), Art. 305 (smuggling of narcotic drugs, psychotropic substances, their analogues or precursors, or counterfeit drugs) of the Criminal Code of Ukraine. The authors concluded that both types of smuggling should be classified as corruption crimes [8].

Despite the fact that the problems of regulatory and legal support for the circulation of hazardous chemicals are devoted to the works of many well-known scientists, the issue of systematic analysis of the crimes of Ukraine has not been studied. In particular, this applies to the following problems: liability for smuggling of toxic substances (Article 201 of the Criminal Code of Ukraine) and for illegal production, manufacture, acquisition, transportation, resettlement, storage for sale or sale of poisonous or potent substances, or poisonous or potent drugs (Article 321 of the Criminal Code of Ukraine) and providing proposals for further improvement of the texts of articles providing for liability for these crimes. The focus should be on the possibilities and ways to bring the legislation of Ukraine on the list of toxic substances, their production, storage, transportation, use, disposal, destruction and disposal in accordance with EU legislation. And this requires further painstaking study and detailed development of scientists.

**Aim of the Research.** Systematic analysis of the composition of crimes involving responsibility for the smuggling of toxic substances (Article 201 of the Criminal Code of Ukraine) and for illegal production, manufacture, acquisition, transportation, resettlement, storage for sale or sale of toxic or potent substances, or poisonous or

potent drugs (Article 321 of the Criminal Code of Ukraine) and providing suggestions for further improvement of the texts of the dispositions of the articles providing for responsibility for these crimes. In addition, the issue of possibilities and ways to bring the legislation of Ukraine on the list of toxic substances, their production, storage, transportation, use, disposal, destruction and disposal in accordance with EU legislation is studied.

**Materials and Methods.** Research of basic documents. These are international and domestic legislation, scientific publications, materials of scientific and practical conferences, etc. The dialectical method was used to consider the problems of criminal liability for certain crimes against chemical safety of the state, the method of systematic analysis of the internal structure of criminal law, which provides for liability for crimes against chemical safety, the relationship and interdependence of elements both within and other criminal law, environmental law categories, the scope and content of relevant concepts, the place of criminal liability for relevant crimes in the system of norms and institutions of the Special Part of criminal law. Methods of analysis and synthesis used in the classification of sources of chemical threats by origin, as well as the method of formal-logical determination was used to define basic concepts – "chemical safety of Ukraine", "toxic substance", etc. and others (method of modeling, analogy, logical and formal-legal).

Criminal law, namely Articles 201 and 321 of the Criminal Code of Ukraine (hereinafter – the Criminal Code of Ukraine) provides for liability for criminal acts in terms of illegal handling of toxic substances [9].

Article 201 of the Criminal Code of Ukraine "smuggling" provides for liability for movement across the customs border of Ukraine outside customs control or with concealment from customs control of cultural property, poisonous, potent, radioactive or explosive substances, weapons and ammunition (except smoothbore hunting weapons and ammunition for it), parts of firearms, as well as special technical means of secretly obtaining information. When committing this crime, the procedure established in Ukraine for the movement of these items, substances and materials across the customs border of Ukraine, which coincides with its state border, is violated. Such movement may be affected in any

way, outside the location of the customs authority or outside the time of customs clearance or with the use of documents on illegal exemption from customs control.

The crime is committed by active action. This is a crime with a formal composition – the movement of these items across the customs border of Ukraine, regardless of the consequences, gives us the composition of the completed crime. A physically sane or partially sane person who has reached 16 years of age may be held liable for this crime. The subject of the crime is the objects, substances or materials listed in the disposition of Article 201 of the Criminal Code of Ukraine [9].

Article 321 of the Criminal Code of Ukraine “Illegal production, manufacture, acquisition, transportation, shipment, storage for sale, sale of toxic or potent substances that are not narcotic or psychotropic or their analogues, or poisonous or potent drugs” provides for liability for committing these acts with the listed substances or drugs that are not narcotic or psychotropic or their analogues, as well as the implementation of such actions in relation to equipment intended for the production or manufacture of toxic or potent drugs, committed without special permission. When committing this crime, the procedure established in Ukraine for handling these substances or means, which are the subject of the crime and at the same time its instrument, is violated. A crime with a formal composition – the self-commission of these acts, regardless of the consequences gives the composition of the completed crime. The crime can be committed both by active actions (production, manufacture, acquisition, transportation, shipment) and by inaction (storage for sale). A physically sane or partially sane person who has reached 16 years of age may be liable for these acts. The crime is committed with intent. In the case of storage of these substances, tools or equipment, the purpose of their sale is mandatory [10].

In comments to the Criminal Code of Ukraine in defining the term “poisonous substance”, scientists refer to the Resolution of the Cabinet of Ministers of Ukraine of June 20, 1995 No 440 [11] (hereinafter – Resolution No 440, which in accordance with the Resolution of the Cabinet of Ministers of Ukraine of September 3, 2014 No 405 expired) [12], which approved the Procedure for obtaining a permit for the production, storage, transportation, use, disposal,

destruction and disposal of toxic substances, including products of biotechnology and other biological agents (hereinafter – the Procedure), which approved the Procedure for obtaining a production permit, to which was added a list of toxic substances, including products of biotechnology and other biological agents, production, storage, transportation, use of disposal, destruction and disposal of which are carried out with a permit (hereinafter – the List) included 485 names of chemicals and their compounds, 10 names of producer strains and 6 types of biotechnology products.

Simultaneously with the gaining momentum of Ukraine's active European integration, in accordance with paragraph 3 of Regulation 38 of Chapter 10 (Industrial and Entrepreneurship Policy) of Section V (Economic and Sectoral Cooperation) of the Action Plan for the Implementation of the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their Member States, of the other part, for 2014-2017, approved by the Order of the Cabinet of Ministers of Ukraine of September 17, 2014 No 847-r [13] (hereinafter – the Plan) (repealed by the Resolution of the Cabinet of Ministers of Ukraine No 1106 of October 25, 2017) [14], Law of Ukraine of September 16, 2014 No 1678-VII “On Ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand” [15] to deepen cooperation with International organizations for the development of small and medium enterprises and industry have committed Ukraine to bring Ukrainian legislation in line with the requirements of European Union legislation, in particular on energy efficiency and clean production.

The definition of the term “toxic substance” is contained in the Instruction on consideration of applications and permits for production, storage, transportation, use, disposal, destruction and disposal of toxic substances, including biotechnology products and other biological agents, approved by the Ministry of Ecology and Natural Resources of Ukraine of July 30, 2002 No 294, [16] repealed by order of the Ministry of Ecology and Natural Resources of Ukraine of July 30, 2013 No 323 “On repealing the order of the Ministry of Ecology and Natural Resources of Ukraine of July 30, 2002 No 294” [17]. This cir-

cumstance called into question the legally correct definition of the term “poisonous substance”.

Given the implementation of the Plan [13], it should be noted that the motivating reason for the cancellation of this resolution was the inconsistency of its terms with the requirements of EU law.

The Law of Ukraine of January 18, 2001 No 2245-III “On high-risk objects” stipulates that “dangerous substance – chemical, toxic, explosive, oxidizing, combustible substance, biological agents and substances of biological origin (biochemical, microbiological, biotechnological drugs, pathogenic to humans and animals microorganisms, etc.), which pose a danger to human life and health and the environment, a set of properties of substances and / or features of their condition, as a result of which under certain circumstances may endanger human life and health, the environment, material and cultural values” [18].

This Resolution was the basis for a clear and correct classification of crimes in this category under the Criminal Code of Ukraine, as well as in determining the jurisdiction of certain actions related to the violation of the rules of handling foreign substances. According to Art. 216 of the CPC of Ukraine, pre-trial investigation in the framework of criminal offenses under Art. 321 of the Criminal Code of Ukraine, relies on the investigative bodies of the National Police [7], and provided for in Art. 201 of the Criminal Code of Ukraine – on investigators of the Security Service of Ukraine [19]. The term “toxic substances” is used in the Laws of Ukraine of February 24, 1994 No 4004-XII “On ensuring the sanitary and epidemiological well-being of the population” [20] and of September 6, 2005 No 2806-IV “On the permit system in the field of economic activity” [21]. However, none of these Laws of Ukraine defines a clear and exclusive list of toxic substances, which is important for the correct qualification of committed criminal offenses, as well as during the appointment and conduct of forensic examinations. The vast majority of current regulations, namely the Laws of Ukraine of June 25, 1991 No 1264-XII “On Environmental Protection” [22]; of October 14, 1992 No 2694-XII “On labor protection” [23]; of February 9, 1995 No 45/95-VR “On ecological expertise” [24]; of May 23, 2017 “On environmental impact assessment” [25]; of February 15, 1995 No 60/95-VR “On Narcotic Drugs, Psychotropic Substances and

Precursors” [26]; of March 2, 1995 No 86/95-VR “On pesticides and agrochemicals” [27]; of January 18, 2001 No 2245-III “On high-risk objects” [28], of February 20, 2003 No 549-IV “On state control over international transfers of military and dual-use goods” [29], Resolution of the Cabinet of Ministers of Ukraine of August 17, 1998 No 1287 “On approval of the list of particularly dangerous chemicals subject to production licensing” [30], and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of September 10, 1998, ratified by the Law of Ukraine of September 26, 2002 No 169-IV [31], and the Stockholm Convention on Persistent Organic Pollutants of May 22, 2001, ratified by the Law of Ukraine of April 18, 2007 No 949-V [32], define in their terminology chemical, dangerous chemical or harmful substances, and not toxic, as it is specified in the Criminal Code of Ukraine.

Given these circumstances, there is a need to adopt a new regulatory act, which will form and determine a specific list of hazardous substances, as defined by European legislation. Taking into account the repeated proposals and practical insistence of law enforcement agencies (letters of the Ministry of Internal Affairs to the Ministry of Ecology and Natural Resources of Ukraine dated March 2, 2015 No 9796/PC, Security Service of Ukraine dated June 19, 2015 No 2/4-25377 and dated September 5, 2017 No 2/4/1-23544, Ministry of Internal Affairs to the Cabinet of Ministers of Ukraine dated October 13, 2015 No 37556/PC), as well as the repeated proclamation of this issue during international meetings, meetings and round tables, in order to implement paragraph 6 of the extraordinary meeting protocol of the State Commission on Technogenic and Ecological Safety and Emergencies on July 20, 2018 No 7 on submission of draft decisions of the Cabinet of Ministers of Ukraine aimed at regulating the import of chlorine and chlorine-containing reagents used for decontamination of drinking water into the customs territory of Ukraine, the Ministry of Ecology and Natural Resources of Ukraine prepared a draft Government Resolution “On approval of the List of toxic substances, including biotechnology products and other biological agents”, which was sent to the Cabinet of Ministers of Ukraine on July 25, 2018 No 27421/10/1-18 in which the term “toxic substances” should be replaced by “dan-

gerous substances". Based on the results of consideration of this order and the draft Resolution by the Cabinet of Ministers of Ukraine in accordance with paragraph 6 § 12 of the Regulations of the Cabinet of Ministers of Ukraine [30] entrusted to the Ministry of Ecology and Natural Resources of Ukraine, Ministry of Economic Development and Trade of Ukraine, Ministry of Finance of Ukraine, Ministry of Regional Development, Construction and Housing Economy of Ukraine, the Ministry of Agrarian Policy and Food of Ukraine, the Ministry of Health of Ukraine, the State Food and Consumer Service and the State Regulatory Service of Ukraine to ensure consideration and resolve the issue of approval. After analyzing the Draft List, we see that it includes 485 names of chemicals and their compounds. It should be noted that both the repealed Resolution and the draft List contain 486 items of "chemicals" and their compounds, however, in part of ordinal positions 415 and 485 from the list we revealed a repetition of the same poisonous substance "sodium nitrite" [30]. Given these circumstances, as well as a cursory study of the issues by the central executive authorities, we believe that the adoption in this form of the List of toxic substances, including biotechnology products and other biological agents, is at least illogical, unreasonable and unacceptable for the following reasons:

1. The proposed list is outdated and does not meet modern challenges.

2. Scientists and scholars in the field of chemical safety were not involved in the creation of a new list of toxic (dangerous chemical) substances, as well as representatives of law enforcement agencies and paramilitary formations of the Ministry of Internal Affairs of Ukraine (National Police, SES, National Guard, State Border Guard Service) and the Security Service of Ukraine, which are directly related to the process of preventive, law enforcement regulation and control the circulation of toxic (dangerous chemical) substances, as well as take coercive measures and conduct pre-trial investigation in cases of criminal offenses related to their illegal production, manufacture, acquisition, transportation, shipment, storage for the purpose of sale or sale of toxic substances.

3. The list does not include completely new names and compounds of toxic substances, which were created after the adoption of the preliminary list, which requires additional involve-

ment and consultation with scientists in this field.

To effectively address existing problems and reduce potential chemical threats, it is necessary to develop and implement comprehensive measures to improve the existing chemical safety system, in particular:

1. Identify current threats by compiling an exhaustive list of chemicals that can lead to a public health emergency, followed by the formation of a national profile (list) of chemical risks.

2. To establish with the help of international organizations and partners of Ukraine mutual exchange of experience on problems with unregulated or imperfect circulation of toxic (dangerous chemical) substances and to develop preventive measures for our state. Given that Ukraine participates in projects of the Global Partnership against the Proliferation of Weapons of Mass Destruction, this provides an opportunity to use technical support for the development and implementation of a similar to the world state system of chemical (antidote) security. In our opinion, interdepartmental scientific institutions of Ukraine, including law enforcement agencies and specialized commercial structures, should be involved in this work. It is under such conditions that it is possible to develop a draft normative document harmonized with the requirements of European and world legislation, capable of specifying the tasks and challenges facing society in the field of handling hazardous chemicals. Therefore, in view of these circumstances, we believe that law enforcement and other central executive bodies face quite logical tasks aimed at regulating the civilized circulation of hazardous substances, namely:

1. Creation of a completely new, substantiated, concretized and systematized list of toxic (dangerous chemical) substances with classification by levels of impact on the human body and degrees of danger to the environment, taking into account the possible consequences of their uncontrolled circulation.

To this end, it is necessary to provide for the establishment of an interdepartmental government commission, which must include representatives of the above bodies.

2. Resolving the issue of unambiguous legal definition of the term "dangerous substance" in order to correctly and accurately apply it during the pre-trial investigation and administration of justice in terms of qualification of acts (inaction) related to violation of the rules of their circulation.

3. In accordance with the implemented Plan [13], in particular in terms of definitions of the term “toxic substance” or “dangerous substance”, focus on reflecting such changes in the future in the application of other regulations and bylaws to avoid risks, legal conflicts and misunderstandings in their application.

Regarding the content of Articles 201 and 321 of the Criminal Code of Ukraine, we note that these criminal legal norms the term “toxic substance” should be replaced by the term “dangerous substance”.

As Article 201 is in Section VII of the Special Part of the Criminal Code of Ukraine “Crimes in the Sphere of Economic Activity” in the disposition of this article as objects of crime should be left only cultural values and add goods to them, as in the original version of this article of the Criminal Code of 2001. With such a solution to this issue, there is no need for the Criminal Code of Ukraine, which provides for liability for smuggling of timber and amber. Namely, the concept of “smuggling of goods” will cover the smuggling of any objects, substances and means of consumer value (wood, amber, alcoholic beverages, tobacco, etc.), as well as smoothbore hunting weapons.

Responsibility for smuggling explosives, radioactive materials, weapons and ammunition, parts of firearms, as well as special technical means of secretly obtaining information should be provided for in Section IX of the Special Part of the Criminal Code of Ukraine “Crimes against Public Safety”.

Responsibility for smuggling dangerous and potent substances should be provided for in Article 321 of the Criminal Code of Ukraine, having accordingly formulated its name and dispositions of its first and second parts. As for Section XIII of the Main Part of the Criminal Code of Ukraine “Crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors and other crimes against public health” it should be divided in two – “Crimes in the field of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors” (Articles 305 – 320 of the Criminal Code of Ukraine) and “Crimes against public health” (Articles 321 – 327 of the Criminal Code of Ukraine).

In practice, when deciding on liability for crimes under Articles 201 and 321 of the Criminal Code of

Ukraine in terms of liability for illegal acts with toxic (dangerous) substances, it should be remembered that they can only be a preparation for more dangerous crimes, and pay special attention to motives and purposes of the criminal act.

**Conclusions.** To effectively address existing problems and reduce potential chemical threats, it is necessary to develop and implement comprehensive measures to improve the existing chemical safety system, in particular:

1. Introduce a cross-sectoral approach involving the above bodies in phytosanitary and epidemiological surveillance, monitoring the circulation of hazardous chemicals, including pesticides, taking into account the signal signs and events associated with human poisoning and the detection of critical amounts and / or concentrations of hazardous chemicals, including in soil, water, seeds, plants, etc.

2. Identify current threats by compiling an exhaustive list of chemicals that may lead to a public health emergency, followed by the formation of a national list of hazardous chemicals.

3. With the help of international organizations and partners of Ukraine to establish an exchange of experience on chemical safety issues and develop measures to prevent chemical threats to our country.

Considering that Ukraine's participation in the Global Partnership against the Proliferation of Weapons and Materials of Mass Destruction projects is quite relevant and provides the opportunity to use technical support for the development and implementation of their state chemical safety system, it is considered appropriate to involve interdepartmental scientific institutions of Ukraine and law enforcement and business structures, – to develop a harmonized to EU requirements draft regulatory document instead of the repealed Resolution of the Cabinet of Ministers of Ukraine of June 20, 1995 No 440 “On approval of the Procedure for obtaining a permit for production, storage, transportation, use, disposal, destruction and disposal of toxic substances, including products biotechnology and other biological agents” and a project of effective procedure for controlling the movement across the state border of goods that may pose a real threat to Ukraine's national security of a chemical nature.

## REFERENCES

1. Vlizlo VV, Salyha YuT Problemy biolohichnoi bezpeky zastosuvannya pestytsydiv v Ukraini Visn. ahrar. nauky. 2012;(1):24-27.
2. Chmil' VD K probleme sootvetstviya otechestvennykh normativov, reguliruyuschikh provedenie gosudarstvennykh ispytaniy sredstv zaschity rastenii, ikh registratsiyu i ispol'zovanie v sel'skom khozyaistve, trebovaniyam Evropeiskogo Soyuza. Suchasni problemy toksykologhii, kharchovoi ta khimichnoi bezpeky. 2014;(1/2):10-26.
3. Prodanchuk MH, Leposhkin IV, Kravchuk OP, Hryenko AP, Velychko MV, Babiak MV ta in. Normatyvno-pravove rehuliuвання doslidzhen pestytsydiv v umovakh hlobalizacii svitovoi ekonomiky: mizhnarodnyi dosvid. Suchasni problemy toksykologhii, kharchovoi ta khimichnoi bezpeky. 2018;(2-3):85-91.
4. Prodanchuk MH, Leposhkin IV, Kravchuk OP, Hryenko AP, Velychko MV, Babiak MV ta in. Rehlementaciia polovykh toksykolo-ho-biolohichnykh vyprobuvan pestytsydiv na prykladi krain Yevropeiskoho Soiuзу. Vykyly dlia Ukrainy. (Ohliad normatyvno-pravovykh ta naukovy-metodychnykh dokumentiv) Suchasni problemy toksykologhii, kharchovoi ta khimichnoi bezpeky. 2018;(2-3):5-12.
5. Velychko MV, Sytnyk YeIU, Kovaliuk OS, Holovin DI. Naslidky derehuliacii u sferi derzhavnogo kontroliu za vvezenniam, obihom, vykorystanniam ta utylizaciiu na terytorii Ukrainy nebezpechnykh khimichnykh rechovyn. Suchasni problemy toksykologhii, kharchovoi ta khimichnoi bezpeky. 2017;(1-2):143-149.
6. Dvurechenska O.S. Normatyvno-pravove zabezpechennia khimichnoi bezpeky v Ukraini. Epistemolohichni doslidzhenia v filosofii, socialnykh i politychnykh naukakh. 2018;1(1-2):73-80.
7. Maksymchuk I.M. Otruini rechovyny yak element kryminalistychnoi kharakterystyky okremykh kryminalnykh pravoporushen. Naukovyi visnyk publicnogo ta pryvatnoho prava. 2019;4(1):316-324.
8. Tytula Dmitrii i Bantyshev Aleksandr. Kontrabanda – koruptsionnoe prestuplenie. Legea si viata. Republica Moldova. 2017 (5):123-127.
9. Andrushchenko PT, Honcharenko VH, Fesenko Ye. V Naukovo-praktychnyi komentar do Kryminalnogo kodeksu Ukrainy. K.:Alerta: KNT: Centr uchbovoi literatury; 2009. 964s.
10. Dzhuzhi OM, Savchenko AV, Cherniei V.V. Naukovo-praktychnyi komentar do Kryminalnogo kodeksu 2-he vyd., pererob. i dopov. K:Yurinkom Inter; 2018. 1104 s.
11. Pro zatverdzhennia Poriadku oderzhannia dozvolu na vyrobnyctvo, zberihannia, transportuvannia, vykorystannia, zakhoronennia, znyshchennia ta utylizaciiu otruiynykh rechovyn, u tomu chysli produktiv biotekhnolohii ta inshykh biolohichnykh ahentiv: Postanova Kabinetu Ministriv Ukrainy vid 20.06.1995 № 440. URL: <https://zakon.rada.gov.ua/laws/show/440-95-%D0%BF>.
12. Pro vyznannia takymy, shcho vtratyly chynnist, deiakykh postanov Kabinetu Ministriv Ukrainy: Postanova Kabinetu Ministriv Ukrainy vid 03.09.2014 № 405. URL: <https://zakon.rada.gov.ua/laws/show/405-2014-%D0%BF>.
13. Pro implementaciiu Uhody pro asociaciiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuзom, Yevropeiskym Spivtovarystvom z atomnoi enerhii i ikhnimy derzhavamy-chlenamy, z inshoi storony: Rozporiadzhennia Kabinetu Ministriv Ukrainy vid 17.09.2014 № 847-r. URL: <https://zakon5.rada.gov.ua/laws/show/847-2014-%D1%80>.
14. Pro vykonannia Uhody pro asociaciiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuзom, Yevropeiskym spivtovarystvom z atomnoi enerhii i ikhnimy derzhavamy-chlenamy, z inshoi storony: Rozporiadzhennia Kabinetu Ministriv Ukrainy vid 25.10.2017 № 1106. URL: <https://zakon.rada.gov.ua/laws/show/1106-2017-%D0%BF>.
15. Pro ratyfikaciiu Uhody pro asociaciiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuзom, Yevropeiskym spivtovarystvom z atomnoi enerhii i ikhnimy derzhavamy-chlenamy, z inshoi storony: Zakon Ukrainy vid 16.09.2014 № 1678-VII. URL: <https://zakon.rada.gov.ua/laws/show/1678-18>.
16. Pro zatverdzhennia Instrukcii pro rozghliad zaiavok ta nadannia dozvoliv na vyrobnyctvo, zberihannia, transportuvannia, vykorystannia, zakhoronennia, znyshchennia ta utylizaciiu otruiynykh rechovyn, u tomu chysli produktiv biotekhnolohii ta inshykh biolohichnykh ahentiv: Nakaz Ministerstva ekolohii ta pryrodnykh resursiv Ukrainy vid 30.07.2002 № 294. URL: <https://zakon.rada.gov.ua/laws/show/z0781-02>.



17. Pro vyznannia takym, shcho vtratyv chynnist, nakazu Ministerstva ekolohii ta pryrodnykh resursiv Ukrainy vid 30 lypnia 2002 roku № 294: Nakaz Ministerstva ekolohii ta pryrodnykh resursiv Ukrainy vid 30.07.2013 № 323. URL: <https://zakon.rada.gov.ua/laws/show/z1359-13>.
18. Pro ob'iekty pidvyshchenoi nebezpeky: Zakon Ukrainy vid 18 sichnia 2001 roku № 2245-III. URL: <https://zakon.rada.gov.ua/laws/show/2245-14>.
19. Kryminalnyi procesualnyi kodeks Ukrainy. URL: <https://zakon.rada.gov.ua/laws/show/4651-17>.
20. Pro zabezpechennia sanitarnoho ta epidemichnoho blahopoluchchia naselennia: Zakon Ukrainy vid 24 liutoho 1994 roku № 4004-KhII. URL: <https://zakon.rada.gov.ua/laws/show/4004-12>.
21. Pro dozvilnu systemu u sferi hospodarskoi diialnosti: Zakon Ukrainy vid 06 veresnia 2005 roku № 2806-IV. URL: <https://zakon.rada.gov.ua/laws/show/2806-15>.
22. Pro okhoronu navkolyshnoho pryrodnoho seredovyscha: Zakon Ukrainy vid 25 chervnia 1991 roku № 1264-KhII. URL: <https://zakon.rada.gov.ua/laws/show/1264-12>.
23. Pro okhoronu praci: Zakon Ukrainy vid 14 zhovtnia 1992 roku № 2694-KhII. URL: <https://zakon.rada.gov.ua/laws/show/2694-12>.
24. Pro ekolohichnu ekspertyzu: Zakon Ukrainy vid 09 liutoho 1995 roku № 45/95-VR. URL: <https://zakon.rada.gov.ua/laws/show/45/95>.
25. Pro ocinku vplyvu na dovkillia: Zakon Ukrainy vid 23 travnia 2017 roku № 2059-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2059-19>.
26. Pro narkotychni zasoby, psykhotropni rehovyny i prekursory: Zakon Ukrainy vid 15 liutoho 1995 roku № 60/95-VR. URL: <https://zakon.rada.gov.ua/laws/show/60/95-%D0%B2%D1%80>.
27. Pro pestycydy i ahrokhimikaty: Zakon Ukrainy vid 02 bereznia 1995 roku № 86/95-VR. URL: <https://zakon.rada.gov.ua/laws/show/86/95-%D0%B2%D1%80>.
28. Pro ob'iekty pidvyshchenoi nebezpeky: Zakon Ukrainy vid 18 sichnia 2001 roku № 2245-III. URL: <https://zakon.rada.gov.ua/laws/show/2245-14>.
29. Pro derzhavnyi kontrol za mizhnarodnymy peredachamy tovariv viiskovoho pryznachennia ta podvinoho vykorystannia: Zakon Ukrainy vid 20 liutoho 2003 roku № 549-IV. URL: <https://zakon.rada.gov.ua/laws/show/549-15>.
30. Pro zatverdzhennia pereliku osoblyvo nebezpechnykh khimichnykh rehovyn, vyrobnyctvo yakykh pidliahaie licenzuvanniu: postanova Kabinetu Ministriv Ukrainy vid 17 serpnia 1998 roku № 1287. URL: <https://zakon.rada.gov.ua/laws/show/1287-98-%D0%BF>.
31. Pro pryiednannia Ukrainy do Rotterdamskoi konvencii pro proceduru poperednoi obgruntovanoi zghody vidnosno okremykh nebezpechnykh khimichnykh rehovyn ta pestycydiv u mizhnarodnii torhivli: Zakon Ukrainy vid 26 veresnia 2002 roku № 169-IV. URL: <https://zakon.rada.gov.ua/laws/show/169-iv>.
32. Pro ratyfikaciiu Stokholmskoi konvencii pro stiiki orhanichni zabrudniuuvachi: Zakon Ukrainy vid 18 kvitnia 2007 roku № 949-V. URL: <https://zakon.rada.gov.ua/laws/show/949-16>.

**ПРОБЛЕМИ КРИМІНАЛЬНО-ПРАВОВОЇ КВАЛІФІКАЦІЇ ПРАВОПОРУШЕНЬ  
ОБІГУ НЕБЕЗПЕЧНИХ ХІМІЧНИХ РЕЧОВИН НА ТЕРИТОРІЇ УКРАЇНИ**

М.Г. Проданчук<sup>1</sup>, О.Ф. Бантишев<sup>2</sup>, М.В. Величко<sup>1,2</sup>, О.П. Кравчук<sup>1</sup>,  
І.М. Салагор<sup>2</sup>, І.М. Максимчук<sup>3</sup>

<sup>1</sup>ДП «Науковий центр превентивної токсикології, харчової та хімічної безпеки  
імені академіка Л.І. Медведя МОЗ України», м. Київ, Україна

<sup>2</sup>Національна академія Служби безпеки України, м. Київ, Україна

<sup>3</sup>Національна академія внутрішніх справ України, м. Київ, Україна

**РЕЗЮМЕ. Мета.** Зробити системний аналіз складу злочинів України, що передбачають відповідальність за контрабанду отруйних речовин (ст. 201 КК України) та за незаконне виробництво, виготовлення, придбання, перевезення, пересилання, зберігання з метою збуту або збут отруйних чи сильнодіючих речовин, або отруйних чи сильнодіючих лікарських засобів (ст. 321 КК України). Надати пропозиції щодо приведення законодавства України відносно переліку отруйних речовин, їхнього виробництва, зберігання, транспортування, використання, захоронення, знищення та утилізації у відповідності до законодавства ЄС.

**Матеріали і методи.** Підґрунтям дослідження є міжнародне та вітчизняне законодавство, наукові публікації, матеріали науково-практичних конференцій тощо. У роботі використано наступні методи: діа-

лектичний, системного аналізу внутрішньої побудови системи кримінально-правових норм, формально-логічного визначення, моделювання, аналогії, логічний та формально-юридичний.

**Результати та обговорення.** У статті досліджено питання про кримінальну відповідальність за суспільно небезпечні дії, пов'язані з отруйними речовинами. Здійснено їх стислий юридичний аналіз. Зосереджено увагу на необхідності приведення законодавства України у відповідність до вимог законодавства Європейського Союзу. Зазначено, що в ЄС у законодавчих та підзаконних актах відсутній термін «отруйні речовини», а вживається термін небезпечна речовина.

**Висновки.** Необхідно розробити гармонізований до вимог ЄС проект нормативного документа замість відміненої Постанови КМУ №440, що стосується порядку поводження з вказаними речовинами.

**Ключові слова:** кримінальний кодекс, отруйна речовина, небезпечна речовина, нормативний документ, контрабанда.

### **ПРОБЛЕМЫ УГОЛОВНО-ПРАВОВОЙ КВАЛИФИКАЦИИ ПРАВОНАРУШЕНИЙ, СВЯЗАННЫХ С ОБРАЩЕНИЕМ ОПАСНЫХ ХИМИЧЕСКИХ ВЕЩЕСТВ НА ТЕРРИТОРИИ УКРАИНЫ**

Н.Г. Проданчук<sup>1</sup>, А.Ф. Бантышев<sup>2</sup>, Н.В. Величко<sup>1,2</sup>, А.П. Кравчук<sup>1</sup>,  
И.Н. Салагор<sup>2</sup>, И.М. Максимчук<sup>3</sup>

<sup>1</sup> ГП «Научный центр превентивной токсикологии, пищевой и химической безопасности имени академика Л.И. Медведя МЗ Украины», г. Киев, Украина

<sup>2</sup> Национальная академия Службы безопасности Украины, г. Киев, Украина

<sup>3</sup> Национальная академия внутренних дел Украины, г. Киев, Украина

**РЕЗЮМЕ. Цель.** Проведен системный анализ составов преступлений Украины, предусматривающих ответственность за контрабанду ядовитых веществ (ст. 201 УК Украины) и за незаконное производство, изготовление, приобретение, перевозку, переправку, хранение с целью сбыта или сбыт ядовитых или сильнодействующих веществ или сильнодействующих лекарственных средств (ст. 321 УК Украины). Предложены меры для приведения законодательства Украины относительно перечня ядовитых веществ, их производства, хранения, транспортировки, использования, захоронения, уничтожения и утилизации в соответствии с законодательством ЕС.

**Материалы и методы.** Базой исследования является международное и отечественное законодательство, научные публикации, материалы научно-практических конференций и тому подобное. При исследовании использованы следующие методы: диалектический; системного анализа внутреннего устройства системы уголовно-правовых норм, формально-логического определения; моделирование; аналогии; логический и формально-юридический.

**Результаты и обсуждение.** В статье исследован вопрос об уголовной ответственности за общественно опасные действия, предметом которых являются ядовитые вещества. Проведен их краткий юридический анализ. Обращено внимание на необходимость приведения законодательства Украины в соответствие с требованиями законодательства Европейского Союза. Отмечено, что в Европейском Союзе в законодательных и подзаконных актах отсутствует термин «ядовитые вещества», а употребляется термин опасное вещество.

**Выводы.** Необходимо разработать гармонизированный с требованиями ЕС проект нормативного документа вместо отмененного Постановления КМУ № 440, касающегося порядка обращения с указанными веществами.

**Ключевые слова:** уголовный кодекс, ядовитое вещество, опасное вещество, нормативный документ, контрабанда.

Received June 12, 2020