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The offender and the theory of legal personality: International and ukrainian contexts

Правосуб'єктність правопорушника та злочинця: міжнародний та український контексти

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Abstract

The ability of a person to represent and protect his interests, and bear legal responsibility for committing administrative offenses and crimes, constitutes such a category as the legal personality. The article's purpose was to compare the legal personality of an offender and criminally punishable acts by the legislation of Ukraine and international legal acts.

For this purpose, the following tasks have been set: 1) the concept and components of such a category as "legal entity" were defined; 2) the peculiarities of the concept of administrative legal personality are clarified, the limits of the administrative legal personality of a person who has committed an administrative offense are determined; 3) the limits legal personality person who has committed a criminal offense are characterized.

The value of individual sources of the United Nations and the European Court of Human

Анотація

Здатність особи представляти і захищати свої інтереси, нести юридичну відповідальність за вчинення адміністративних і кримінальних правопорушень становить таку категорію, як правосуб'єктність особи. Метою статті було порівняти правосуб'єктність правопорушника, який вчинив адміністративно каране правопорушення, та особи, яка вчинила кримінально каране діяння законодавством України та міжнародно-правовими актами. Досягнення поставленої мети стало можливим завдяки виконанню таких завдань: 1) визначено поняття та складові такої категорії як «юридична особа»; 2) з'ясовано особливості поняття адміністративної правосуб'єктності, визначено межі адміністративної правосуб'єктності особи, яка вчинила адміністративне правопорушення; 3) охарактеризовано межі правосуб'єктності

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Rights for solving the specified tasks is clarified. Provisions are given that indicate that certain norms of Ukraine's national legislation do not correspond to the provisions of international law. This needs to be settled, because, for example, the right to a fair trial should be equal for everyone.
The legal personality within the limits of administrative and criminal proceedings carried out by the legislation of Ukraine does not differ. However, in the case of bringing a person to justice, it is necessary to evaluate different components of legal personality.

Keywords: legal personality, crime, forensic psychiatrist examination, court proceedings in absentia.

особи, яка вчинила кримінальне правопорушення.
Автори використовували методи аналізу, синтезу, логіко-догматичний методи тощо. Визначено, що у загальному аспекті обсяг правосуб'єктності в межах адміністративного та кримінального судочинства, що здійснюється законодавством України, не має суттєвих відмінностей, однак у разі притягнення особи до відповідальності необхідно враховувати вагому кількість факторів.

Ключові слова: правосуб'єктність, злочин, судово-психіатрична експертиза, заочне судове провадження.

Introduction

The terminological construction "Legal Personality" is derived from the category "Subject of Law". "Subject of Law" is a concept that originated in ancient Rome. The category "Legal Personality" is widely used in the theory of law and in-branch legal sciences.

Everyone has the right to recognition everywhere as a person before the law (United Nations, 1948). A similar definition is contained the Art. 16 of the International Covenant on Civil and Political Rights (United Nations, 1966). These norms establish the concept of the legal personality of a person.

The Basic Law of Ukraine stipulates that exclusively the laws of Ukraine determine the legal personality of citizens (Law of Ukraine No. 254k/96-VR, 1996). The legal personality of the offender is determined by the norms of the Code of Ukraine on Administrative Offenses (Law of Ukraine No. 8073-X, 1984), and the legal personality of the criminal is by the Criminal Procedural Code of Ukraine (Law of Ukraine No. 4651-VI, 2012).

Such a category as legal personality means that a person, enterprise, state, international organization, and other forms of population organization can be participants in legal relations. In the modern world, there are many different debatable questions about the definition of the legal personality of a person, the disabled, persons who have changed sex, as well as about the definition of the legal personality of animals and rivers, artificial intelligence.

The problem of the legal personality of the offender and the criminal has drawn our attention. This is important because Ukraine has been in a state of military conflict for more than two years. When choosing the measure of punishment for persons who committed war crimes, it will be important to be guided by the provisions of international law especially since the International Criminal Court and the European Court of Human Rights will consider individual cases. In most of the criminal cases considered by the courts of Ukraine, criminal proceedings are conducted "in absentia" of the criminal. Their rights must be respected.

That is why the theory of the criminal's legal personality, the specifics of its observance in the investigative and judicial practice of Ukraine, its compliance with the theory of international legal personality, and the possibility of bringing a person to legal responsibility for such criminal cases this is all a subject for separate thorough scientific studies.

Literature review

In the science of international law, the international legal personality of a person studied has been researched by M. Baimuratov (2004), N. Kucheruk (2013), and others. Comprehensive studies were conducted by J. Sánchez (2022), O. Tarasov (2023), K. Boczek (2023), O. Pasechnyk (2023), D. DeGrazia, (2023). F. Renz (2023), P. Księżak and S. Wojtczak (2023). The works of these scientists became the theoretical basis for our scientific research. Scientists tried to determine which subjects should be prosecuted for violating the provisions of international law. They also investigated the peculiarities of the status of individuals, minority groups, non-governmental organizations,

international organizations, and animals in the international legal order. At one time, these works witnessed the emergence of an international legal order, which is increasingly perceived in terms of regularities and probabilities. Scientists are still analyzing the provisions of international legal acts. However, some aspects of this problem remain insufficiently studied.

O. Kaplina (2022), A. Shulika (2023), H. Hlobenko (2023), Ye. Pelikhos (2021) studied the problems of absentee criminal proceedings in Ukraine. They pointed to debatable issues. The authors actualized the need to solve them but did not suggest how it could be done.

Methodology

The article aimed to compare the legal personality of an offender who committed an administratively punishable delict and a person who committed a crime.

Achieving this goal is possible by solving the following tasks:

1) To define the concept and components of such a category as "legal personality".
2) To clarify the concept of administrative legal personality, determine the limits of the administrative legal personality of a person who committed an administrative offense.
3) To determine how the provisions of criminal procedure legislation can characterize the limits of the legal personality of a criminal.

This study is comparative-legal. The provisions of the Constitution of Ukraine, the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights are used for comparison. By the provisions of these normative legal acts, the components of the category "legal personality of the offender" were analyzed. Also, when conducting a comparative study, the positions of scientific works of foreign and Ukrainian scientists were analyzed.

The authors used methods of analyzing, and synthesis, which made it possible to determine the normative and legal provisions governing the legal personality of the offender. The dogmatic, comparative legal, logical, and generalization methods, as well as the legal analysis method, were also used to formulate the research conclusions.

Empirical research is presented by the results of the study of 150 judgments of the national courts of Ukraine. It was issued in 2022 and 2023. The category of cases is criminal, accused of collaborationism and treason. Methods of analysis and generalization were used to collect data.

Results and discussion

I. The Offender and the Theory of Legal Personality: Ukrainian Context

There are two types of legal personality in the theory of Ukraine's legal science.

– The first is general legal personality. General legal personality is the presence of the subject of typical rights, obligations, and the possibility of their use and execution, regardless of external factors. The scope of general legal personality is the same for both natural persons and legal entities.
– Special legal personality is the subject of specific rights, duties, and opportunities. It is used and fulfilled depending on external factors. The scope of special legal personality is not the same or constant, it depends on the will of the subject, its type, characteristics, etc.

Some scientists also distinguish three types of legal personality: 1) general; 2) sectoral; 3) special. General legal personality is considered a prerequisite for the legal relations emergences between persons in general, and sectoral - as the possibility emergences of these legal relations, but already in a specific field of law. Branch legal personality is a part of general legal personality, it includes civil, administrative, labor, procedural, and others.

II. The offender`s administrative legal personality

The offender`s administrative legal personality consists of two elements: 1) administrative legal capacity, and 2) administrative capacity (Law of Ukraine No. 8073-X, 1984). Administrative responsibility is borne by an offender in a state of conviction and has reached the age of sixteen at the time of its commission.

The Code of Ukraine on Administrative Offenses does not specify the procedure for appointing a psychiatric examination for a person who has committed an offense. But the expert is

appointed by the body (official) in whose proceedings there is a case if need for special knowledge (Law of Ukraine No. 8073-X, 1984). To establish the administrative capacity of a person, a forensic psychiatric examination may be ordered.

The term for conducting an outpatient forensic psychiatric examination is up to 30 working days. This period may be extended with the notification of the body (person) who appointed the examination (engaged the expert) and at whose request) the expert was involved. An administrative penalty may be imposed within three months from the date of the commission of the offense in cases pending before the court, and within two months in cases pending before the court of other bodies. Therefore, carrying out such an examination will lead to missing the terms of prosecution. In addition, the Code of Administrative Offenses does not specify the procedure for appointing a psychiatric examination if the administrative case is not under the jurisdiction of the court and when the person (offender) refuses to undergo it.

Moreover, persons who haven`t reached the age of majority are endowed with a different scope of legal personality. At the age of 16 to 18, other measures are applied for offenders.

Some exceptions make it impossible to bring a person to criminality. For example, it is a person who has a chronic mental illness (Corner, Penhale, & Antony, 2023), a temporary disorder of mental activity (Husieva et al., 2021), dementia, or other medical conditions. Based on the above, it can be said that the scope of legal personality of all persons - citizens of Ukraine are not the same, because a person with mental disorders is not endowed with administrative delict capacity, and the scope of legal personality of some persons may change in general, depending on the type of offense that they committed.

III. The criminal`s legal personality

Each of the criminal proceedings participants is endowed with a legal personality. For example, procedural legal capacity is the ability to demand judicial protection, to have procedural rights and obligations, and to be a person participating in the proceedings.

The criminal procedural law of Ukraine pays considerable attention to the requirements that a person must meet to become the subject of criminal procedural relations. It is appropriate to talk about the existence of procedural rights and obligations, legal interests, guarantees of rights, legal interests, and legal responsibilities of criminals.

The conditions for legal personality of a suspect (accused) are the following circumstances:

1) The person reaches the age of criminal responsibility.
2) Sanity.
3) Notification to a person of suspicion or detention on suspicion of committing a crime.

IV. The Criminal`s legal personality in absentia criminal proceedings: practice of Ukraine

From 2022 to january 2024, 3,141 verdicts were passed in cases of crimes against the national security foundations. Of these, 716 were passed in absentia criminal proceedings (i.e. in the absence of the accused).

In such criminal proceedings, pretrial bodies investigations must use all available means to the suspect knows about the criminal proceedings initiated against him. That is, a person should know about:

– that criminal proceedings have been initiated;
– what she is suspected of and to be able to exercise her right to defense and have her position in court.

Compliance with these conditions will ensure the implementation of the adversarial proceedings.

A special pre-trial investigation can be conducted only in relation to a person who has acquired the status of a suspect. Such notice must be personally delivered to the person. If her whereabouts are unknown, a message about this should be published in the mass media and on the official website of the Prosecutor General Office. The Supreme Court recognizes that informing by publishing relevant information in mass media, the Internet, or by e-mail may be considered sufficient. We believe that these measures cannot always be considered informative. Being in the occupied territory, a person may not have access to the Internet and may not even know that criminal proceedings have been initiated against him. This is not the only violation of the adversarial proceedings principle.

For the proper implementation of the defense suspect's right, the attorney must receive copies of the documents to be handed over to the suspect. However, it is unclear how he should hand them over if the location of the suspect is unknown. In such cases, the lawyer cannot agree with the suspect on the appropriate legal position, and secondly, if necessary, he cannot timely inform about the specifics of the case in court.

The outlined aspects have an extremely negative impact on the provision of effective legal assistance to the suspect. This indicates the limitation of its legal personality.

V. The Offender and the Theory of Legal Personality: International Context

According to the law, people are composed of statically structured bodies and identities (Naffine, 2012). A change in status or gender should also change the legal personality of a person. That it is, it leads to a new static way of existence. Thus the legal personality of a person can theoretically change several times during his life (Grabham, 2010).

In the modern world, legal personality is defined differently according to civil law (Dong, & Zhang, 2023), corporate law, and criminal law (Osmanollaj, 2023).

International legal personality is considered through the prism of a three-dimensional approach - normative, personal, and communicative.

The normative approach is the social actor's ability to be the bearer of legal status, to have rights, and to bear obligations (legal normative capacity). The personal approach is the social actor's ability to be a subject of law, a bearer of the personal legal physical form, or a sovereign person (legal personality). The communicative approach is the social actor's ability to participate in legal communication, as a party to a legal relationship (legal communication ability) (Boczek, 2023).

The concept of international legal capacity is equated with international legal personality. However, each category of subject of international law has a different legal capacity and is determined by a set of potential rights and obligations. In this sense, it is important to distinguish between legal capacity and legal personality.

Each category of subjects of international law has a different legal personality and reflects their specific features. In this sense, if international legal capacity indicates the legal framework of a person's possible behavior, then legal personality as a qualitative characteristic reflects not the size of these frameworks, but their presence. International legal capacity means the ability, or the possibility, to enter into legal relations within the limits of those rights and obligations that a person is endowed with.

A vivid illustration of this difference is the provision of clause 1 of Art. 4 of the Rome Statute of the International Criminal Court. According to it "the court has international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the achievement of its objectives" (Asamblea General UN, 1998). In the given provision, a clear distinction is made between the concept of legal personality as a qualitative characteristic that has no volume and legal capacity as a quantitative characteristic that is different in its content.

For a subject of international law, not only the ability to possess rights and obligations is important, but also to realize his international legal status, which, in addition to rights and obligations, includes the subject's freedoms, his legal interests, etc.

International legal personality characterizes the legal status of its bearer. At the same time, it is the basis of such status and a prerequisite for the subjects of international law participation in international legal relations. It is in the legal status of the subject of international law that the character and scope of international legal personality are reflected.

The equal subjects of international law can have (and often do) different legal status. This has been established as a precedent in modern international law. In the advisory opinion of the International Court of the United Nations, it was recorded that "subjects of the law of one or another legal system are not necessarily identical, since it is about their nature or the scope of their rights" (Asamblea general UN, 1998).

International legal personality acts as a prerequisite for participation in international legal relations. Based on the general theory of law, the subjects of specific international legal relations exercise certain international rights and perform the corresponding duties that constitute the legal content of such legal relations.

Thus, Article 34 of the Charter of the International Court of Justice of the United Nations stipulates: "Only states can be parties to cases pending in court" (United Nations, 1945).

Also, for example, part 4 of Article 55 of the Constitution of Ukraine states that "Everyone has the right, after using all national legal remedies, to apply for the protection of his rights and freedoms to the relevant international judicial institutions or international organizations, which he is a member or is Ukraine" (Law of Ukraine No. 254k/96-VR, 1996). That is, the state must be a party to a certain agreement and must recognize the competence of the committee established by the relevant agreement. This proves that the boundaries of the legal personality of a person and the state are different, and therefore not every citizen can apply independently for the protection of his rights.

VI. The International principles of administration justice «in absentia»

International standards of fair justice are defined by the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other normative legal acts. All of them declare the need for the accused to be present at the trial. However, some international documents do not define it as mandatory.

Such exceptions are provided for in Article 21 of the European Convention on the International Validity of Criminal Procedures (Council of Europe, 1970), Recommendation No. 6 R (87) 18 of the Committee of Ministers of the Council of Europe to member states "Regarding the simplification of criminal justice" (The Committee of Ministers of the Council of Europe, 1987).

The precedent practice of the European Court of Human Rights provides that the absence of the accused in the court session is possible if:

a) He has been duly notified of the judicial proceedings to be held against him;
b) He is guaranteed the realization of his right to protection;
c) The accused deliberately refused to participate in the trial;
d) The accused has the right to a retrial of this case.

Conclusions

Criminals in cases against the national security foundations usually have Ukrainian citizenship. If they appeal the decisions made in absentia, this may increase the number of complaints to the European Court of Human Rights against the national courts of Ukraine. We believe that the person should be declared an internationally wanted person and only then his case should be brought to trial. This approach is justified. For example, in Ukraine, judgments of courts of foreign countries passed in absentia, are not subject to execution. Exceptions are only those cases when the sentenced person was given a copy of the verdict and was allowed to appeal it. Citizens of Ukraine should have the same rights under the national legislation of Ukraine.

The current study has shown that the legal personality of the offender is a complex and multifaceted concept that is subject to various limitations. The study's findings have important implications for legal practice and legal theory. In legal practice, the study's findings could be used to develop more effective defense strategies for defendants. In legal theory, the study's findings could be used to refine the understanding of the offender's legal personality.

Current trends suggest that the theoretical and legal doctrine of legal personality must continue to develop to adapt to the changing reality of international law.

We recommended that future research explore in greater depth the theoretical and legal doctrine of legal personality development.

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