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THE WAYS OF VIOLATING THE RULES CONCERNING THE SAFE USE OF INDUSTRIAL PRODUCTS AS AN ELEMENT OF THE FORENSIC CHARACTERISTICS OF THE CRIME PROVIDED FOR IN ART. 275 OF THE CRIMINAL CODE OF UKRAINE

The analysis of the branch legislation on the requirements for the safety of industrial products has been carried out, a number of special concepts are revealed in the context of the topic under study, the ways for violating the rules has been defined concerning the safe use of industrial products and the place of this element in the forensic characteristics of crimes under Art. 275 of the Criminal Code of Ukraine.

Keywords: investigation, crimes against the safety of production, way of committing a crime, forensic characteristic, industrial products, safety.

In part 3 of Art. 42 of the Constitution of Ukraine it is stated that the state protects the rights of consumers, exercises control over the quality and safety of products and all types of services.

Thus, the quality and safety of industrial products are defined as its main features, and consumers' rights with regard to the safety of industrial products are enshrined in the form of constitutional guarantees.

One of the subjects of the crime provided for in Art. 275 of the Criminal Code of Ukraine is industrial products. If the title of this article indicates a violation of the rules concerning the safe use of industrial products, then in the disposition of the legal norm the legislator specifies the stages of the life cycle of industrial products: from development to use.

The study of law enforcement practice has shown that the application of Art. 275 of the Criminal Code of Ukraine is widespread. Legal statistics show that, as of August 2017, 888 crimes against the safety of production were registered, 35 of them are under Art. 275 of the Criminal Code of Ukraine (3,94 % of the total). In one proceeding the suspicion was reported, in 34 – the decision is not made [1]. If you refer to the USRCD, then in 2012–2014 there was three sentences passed for violation of Art. 275 of the Criminal Code of Ukraine [2]. Analysis of statistics shows that in most cases such production is closed or there is a change in the criminal legal qualification.

The problems of investigating crimes against the safety of production were investigated by domestic scientists O. Taran, M. Panchishin, N. Timofeeva, K. Spasenko, and others, but individual studies on the investigation of crimes under Art. 275 of the Criminal Code of Ukraine were not conducted.

We devoted this article to one of the important questions of the investigation of the mentioned crimes, namely, we attempted to characterize the ways of violating the rules concerning the safe use of industrial products.

As G. Zuikov notes, the study of the way of carrying out crimes, should not be reduced to an analysis of investigative practice in cases completed by production. It is necessary to study directly the psychological characteristics of the personality of criminals, the objective situation in which crimes occur or can occur [3, p. 30]. From this perspective we, in addition to studying the investigative and judicial practice in criminal proceedings, studied administrative practices, documents of regulatory bodies, conducted a survey of specialized specialists. This allowed us to more broadly define the problems of violation of the rules concerning the safe use of industrial products.

Blanket disposition Art. 275 of the Criminal Code of Ukraine provides for mandatory application of law enforcement subjects to other norms of law, in this case those that regulate the development, design, manufacture, storage of industrial products. However, only concerning its safe usage. Mandatory also is the establishment and guidance of references to specific norms of the law, rules and other normative acts and regulations.

Considering the significant array of branch legislation, bylaws, standards, norms, rules, instructions, etc., special terminology, it is

difficult for the investigator to navigate in these matters. Therefore, it is advisable to consider a number of concepts related to the investigated problem.

In a broad sense industrial production is aimed at meeting the basic needs of the state and the population, and its volume and quality is a sign of general welfare.

As for the concept of industrial products, it is defined as a direct, useful result of industrial production in the form of products or in the form of production services.

Industrial products in the sense of Art. 275 of the Criminal Code of Ukraine are not any results of production activities, but only those that have certain characteristics, namely: created in the process of their own production, are the result of the main industrial and production activities, are the direct result of such activities and can be used for their intended purpose.

Another important issue is product safety. The Law of Ukraine «On the general safety of non-food products» [4] stipulates that safe non-food products are any products that, under normal or reasonably expected conditions of use (including the service life and, if necessary, putting into service, installation and maintenance requirements) does not pose any risk or represents only the minimum risks arising from the use of such products, which are deemed acceptable and do not pose a threat to the public interest, taking into account:

- characteristics of products, including its composition, packaging, requirements for installation and maintenance;
- impact of products on other products, if it is used with it;
- warnings contained on the product label, instructions for its use and destruction, as well as other product information;
- reservations regarding the consumption or use of products by certain categories of the population (children, pregnant women, old people, etc.).

Ensuring product safety – is a set of measures taken by producers, distributors, state market surveillance authorities to ensure the conformity of products that are put into circulation in the Ukrainian market to a general requirement for the safety of non-food products.

This law also defines the term «user» as an individual, who acquires, orders, uses or intends to acquire or order products for needs related to the performance of business activities, or to ensure

the performance of duties by an employee, or a legal entity that acquires, orders, uses or intends to acquires or order products.

Products are any substance, preparation or other product manufactured during the production process.

From the content of the law it is seen that the safety of industrial products is determined by its compliance with legislative requirements, including national standards (their list is formed by the central executive body implementing the state policy in the field of standardization). You can get acquainted with its content on the official website of the CEB or from its media representative.

In addition, the legislator provides for the possibility of assessing the safety of industrial products, taking into account other documents and indicators. In particular, it is:

- national standards of other countries to ensure product safety, harmonized with relevant European and international standards;
- regional standards for ensuring product safety in accordance with international agreements of Ukraine;
- standards of Ukraine for ensuring product safety (except for the national standards mentioned above);
- codes of established practice to ensure product safety in the relevant industries;
- achievements of science and technology in the field of product safety;
- the consumers (users) expectations regarding the safety of products of conventional or reasonably expected conditions for its use (including the service life and, if necessary, putting into service, installation and maintenance requirements).

The study of the content of these documents showed that the main parameters of safety of industrial products are: injury safety, electrical safety, fire, chemical, biological and explosion safety, electromagnetic radiation, acoustic noise, vibration.

As noted the disposition of Art. 275 of the Criminal Code of Ukraine stipulates that a violation of the rules concerning the safe use of industrial products may be allowed at any, or at several stages of the creation of such products. Among these stages there are: working out, designing, manufacturing, storage. For each of these stages of activity there are certain requirements that are necessarily documented.

To determine how the rules relating to the safe use of industrial products are violated, it is important to accurately determine such rules and clarify whether they specifically concern the safety of its use.

Thus, for the investigator it is important first of all to have an idea of the general procedure for creating industrial products, and second of all to correctly determine which requirements relate to safety, which makes it possible to correctly determine the way in which they are violated. So, if the violation concerns not safety, but another indicator of industrial products, or, for example, such a violation took place not at the stage of development, design, manufacture, storage, but at the stage of industrial products disposal, then criminal responsibility under Art. 275 of the Criminal Code of Ukraine does not come.

At each stage of the development of industrial products, certain technical documentation is created or used (technical assignment, construction, software, operational, repair, etc.). Official documents confirming the compliance of industrial products with safety requirements are subject to careful study, so it is important to understand the purpose of each such document.

Forensic significance in the context of the problem under the study has indicators of product safety, these are the kind of characteristics of industrial products that ensure the safety of humans and other objects when using such products.

In criminology the way of committing a crime is traditionally defined among the elements of the forensic characteristics of any crimes or groups of crimes. The way of committing a crime is connected with the person of the criminal, the situation and other elements of the forensic characteristics.

To investigate crimes provided for in Art. 275 of the Criminal Code of Ukraine, the establishment and investigation of a ways of violating the rules relating to the safe use of industrial products it is necessary to clarify the trace pattern, establish the identity of the offender, clarify the components of the crime scene, correctly present the subject of criminal assault, which in turn is important for proper crime qualification, choice of investigative (search) actions, their tactics, optimal consistency, expediency of attracting specialists.

With due regard for the particular significance of the way of committing a crime, its concept is widely represented in the criminalistic doctrine.

As V. Bakhin states for criminalistics the main thing in the way is not the achieved result, but the process of achieving the goal, the

mechanism for achieving it. The way of committing crimes is considered in criminalistics as a source of information on the laws of the emergence of evidence, which is necessary for the development of means and methods of disclosure and investigation of crimes [5, p. 197].

I. Hora based on an analysis of different points of view suggests that the way of committing a crime is a complex structure that reflects legal, criminally-remedial and criminalistics aspects. However, the forensic understanding of the way is not adequate either to the criminal law or to the criminal procedural significance. Criminalistics considers the way of committing a crime as a complex phenomenon of reality on the basis of learning the laws of its formation, the causes and forms of its repeatability for the development of techniques and methods for detecting, collecting and investigating evidence in a criminal case. The criminalistic significance of the way of committing a crime is determined by the specifics of the emergence of evidence in the process of reflecting the event of a crime in the external environment. Analyzing a certain way of committing a crime, it is possible to put forward versions where and what traces can be left, and after discovering the traces of a crime it is possible to guess in what way it is committed. Analysis and evaluation of information characterizing the crime from forensic positions, one way or another related to the use of criminalistic classification of ways of the criminal actions. Such a scientifically based classification is an important heuristic tool in theory and practice [6, p. 38].

It should be noted that the use of the concept of «way of crime» is widespread, including preparation, actual commitment of the crime and its concealment. To violate the rules concerning the safe use of industrial products, preparation is not extrinsic, as part of the way, since this crime is characterized by an imprudent form of guilt. Therefore speaking of a way of violating the rules concerning the safe use of industrial products, we have in mind such elements as the direct commitment and concealment of a crime.

In order to correctly determine the way of violation of the rules concerning the safe use of industrial products, it is important to establish at what stage of the life cycle of industrial products such a violation was committed.

As it was noted, for the criminal legal qualification under Art. 275 of the Criminal Code of Ukraine, the violation of the rules concerning the safe use of industrial products, which was committed by a person

obliged to comply with the following rules, in the development, design, manufacture, storage of industrial products is of significance.

The development and construction of industrial products takes place in the following order: development of a technical assignment; development of construction, technological and operational documentation; production of a prototype (preproduction run) of products and conducting preliminary tests; correction of construction documentation based on the results of preliminary tests and acceptance testing; correction of construction documentation based on the results of acceptance tests and accepting of the results of development work.

Thus, having an idea of the sequence and content of the actions of various subjects, as well as the circle of such subjects involved in the development and construction of industrial products, one can put forward a version of the way of violating certain rules and determine which ones were the rules and who violated them.

Thus, it can be:

a) violations committed by the responsible entity during the performance of a certain type of work personally (non-compliance with standards, miscalculations in calculations, not carrying out (carrying out with violations) tests of models, mock-ups, experimental samples (if a test is provided for them), violation and miscalculations when creating working documentation; improper conduct (failure to conduct) preliminary tests of prototypes; not implementing (improper implementation) of the designer supervision during the serial production of products;

b) lack of control, inadequate control (if he is obliged to implement it) for the actions of other persons who are executing certain works, which are the components of the development and construction of industrial products.

Manufacturing of industrial products includes all types of technological operations, during which new products are created from raw materials, semi-manufactured products, or components, or the quality of previously created products is restored in the course of their industrial reconstruction, repair [7, p. 94]. The ways of committing a crime at this stage of the life cycle of industrial products can be: violations associated with the technological preparation of production for the manufacture of industrial products; use of prohibited or not provided for by requirements materials, raw materials, purchased component parts, etc.; violations of manufacturing technology (for example, to reduce production costs); deviations from the design documentation.

Storage of products is the creation and compliance with conditions under which the efficiency and usability of industrial products for use after storage and transportation is ensured. The ways of violation the rules for the storage of industrial products can be: non-compliance of the conditions imposed on the storage of a certain type of product (for example, temperature regime, air humidity, etc.) violation of the terms and order of reconsevation of industrial products (if terms and procedure are provided).

Of course, the indicated provisions do not contain a list of all possible ways of violating the rules concerning the safe use of industrial products. It is not possible to display a complete list of them because of their variety. We tried to identify the most typical methods of the corresponding violations that are allowed during the development, construction, manufacture and storage of industrial products.

The proposed results can be used in law enforcement practice for the correct definition of the way of committing a crime, taking into account the specific circumstances of production, as well as establishing other elements of the forensic characteristics of the crimes provided for in Art. 275 of the Criminal Code of Ukraine.

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Здійснено аналіз галузевого законодавства щодо вимог до безпечності промислової продукції. Визначено низку спеціальних понять у контексті досліджуваної тематики. Описано способи порушення правил, що стосуються безпечного використання промислової продукції, та окреслено місце цього елемента в криміналістичній характеристиці злочинів, передбачених ст. 275 Кримінального кодексу України.

Ключові слова: розслідування, злочини проти безпеки виробництва, спосіб учинення злочину, криміналістична характеристика, промислова продукція, безпека.