APPLICATION OF ARTICLE 369-2 OF THE CRIMINAL CODE OF UKRAINE VIOLATES THE PRINCIPLE OF LEGALITY: PROBLEMS OF LEGISLATIVE TECHNIQUE, JUDICIAL PRACTICE

The issue on criminal liability for improper influence has been considered. Based on the analysis of the current legislation it has been concluded that at present the application of Art. 369-2 of the Criminal Code of Ukraine (hereinafter the «CC of Ukraine») violates the principle of legality. The current version of the notes of Art. 369-2 of the CC of Ukraine leads to such reasoning.

In particular, the CC of Ukraine in two norms (disposition of Art. 172 and note of Art. 369-2) refers to the provisions of the Law of Ukraine «On Principles of Prevention and Combating Corruption», which are now void. In accordance with Cl.1, P.4 of the Final Provisions of the Law of Ukraine «On Prevention of Corruption», the previous law has been declared void (except for provisions for financial control that will become void with the start of the system of presentation and disclosure of declarations of persons authorized to perform state functions or local self-government). Without making amendments to the CC of Ukraine the application of Art. 368-2 of this Code is problematic. This is primarily because of the fact that the criminal act, its punishment and other criminal and legal consequences are determined exclusively by the Criminal Code of Ukraine (P.3, Art. 3 of the CC of Ukraine). Proving the essential elements of offences described in Articles 172 and 369-2 of the CC of Ukraine is impossible because of the reference in them to the law that became void. In particular, bringing people to criminal liability for...
improper influence (Art. 369-2 of the CC of Ukraine) is now impossible because of the following reasons. The scope of persons authorized to perform state functions that are indicated in the disposition of this Article, are defined in Article 3 of the Law of Ukraine «On Prevention of Corruption», while the CC of Ukraine obliges the law enforcement officer to define this scope applying Art. 4 of the Law of Ukraine «On Principles of Prevention and Combating Corruption» that became void.

The specified obvious mistake of the legislator should be immediately eliminated, since it leads to the application of the law on criminal liability similar to that expressly prohibited by P.4, Art. 3 of the CC of Ukraine.