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Begründet von  
Prof. Dr. Reinhart Maurach

Herausgegeben von  
Prof. Dr. Martin Fincke,  
Passau,  
Prof. Dr. Martin Löhnig,  
Regensburg und  
Prof. Dr. Dr. h. c. Herbert  
Küpper, Regensburg

Institut für Ostrecht  
München

**IOR**

## Aufsätze

Ukrainian criminal law at a crossroad

The German model for Central European  
constitutional courts

Verwaltungsgerichtsbarkeit in Ungarn

Das rumänische Verfassungsgericht als  
Super-Kontrollinstanz

Menschenrechte und Verwaltungsrecht  
in Zentralasien

## Schwerpunkte der Rechtsentwicklung 2024

## Dokumentation

Ungarn: Fall Maja T.

Moldau: Gesetz über den Verfassungs-  
gerichtshof

## Gutachten

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Dieser neue Band des Jahrbuchs für Ostrecht bündelt Ausschnitte der Bewegungen eines Rechtsraums, der seit Jahren im Umbruch ist. Zwischen Krieg und EU-Annäherung, zwischen Konsolidierung und Rückschritt zeigt er, wie Recht in Mittel-, Ost- und Südosteuropa sowie den zentralasiatischen Staaten seine Steuerungsaufgabe neu austariert. Yevgen Streltsov verortet das ukrainische Strafrecht „an der Weggabelung“ und zwingt damit zur Grundsatzfrage, wie weit Dogmatik unter Transformationsdruck nachgiebig sein darf oder auch sollte. Csaba Cservák rekonstruiert den Export des „deutschen Modells“ der Verfassungsgerichtsbarkeit nach Mitteleuropa und beleuchtet am Beispiel der ungarischen Verfassungsbeschwerde die Chancen und Bruchstellen dieser Rezeption. József Benke liefert eine vertiefte Darstellung zur „Force Majeure“ im ungarischen Vertragsrecht; Herbert Küpper zeichnet den mühsamen Aufbau der Verwaltungsgerichtsbarkeit nach dem Ende des Sozialismus in Ungarn nach. Mit kritischem Blick auf Wahlaufsicht und Rechtsstaatlichkeit fragt Pavel Usvatov nach der Rolle des rumänischen Verfassungsgerichts als „Super-Kontrollinstanz“. Beiträge zu Kasachstan (Roman Melnyk) und zur Gleichstellung in Tadschikistan (Matrob Matrobov) weiten den Blick über die EU-Ränder hinaus – ein notwendiger Horizont für einen Raum, dessen Rechtsentwicklung selten an Grenzen Halt macht.

Wieder aufgenommen haben wir dieses Jahr die „Schwerpunkte der Rechtsentwicklung“, auf Wunsch vieler Leserinnen und Leser und nach ausführlicher Diskussion – wir denken, dass diese jährliche Zusammenstellung für Wissenschaft und Praxis einen Mehrwert bietet.

In diesem Band erscheinen akademische Titel im Einklang mit aktuellen Gepflogenheiten vieler wissenschaftlicher Zeitschriften nicht mehr vor dem Namen, sondern in der Autorenfußnote. Das erhöht die Lesbarkeit und wird den unterschiedlichen Gepflogenheiten in den zahlreichen Herkunftsländern unserer Autorinnen und Autoren besser gerecht.

Und schließlich ein nicht ganz unwichtiger Punkt: Der Deutsche Bundestag hat mit seinem Beschluss über den Bundeshaushalt 2025 den Abbau der Förderung des Instituts für Ostrecht nicht nur gestoppt, sondern rückgängig gemacht und seinem Wunsch nach dem Fortbestand unserer wissenschaftlichen Einrichtung deutlich gemacht, so dass es auch mit dem Jahrbuch für Ostrecht weiter gehen kann. Wir danken allen, die Anteil an dieser erfreulichen Entscheidung hatten, und hoffen auf eine Verstetigung für die Zukunft.

*Axel Bormann, Schriftleitung des JOR*



# Ukrainian Criminal Law at a Crossroads: In Pursuit of a New Concept or on the Path to Its Erosion?

*This study explores, with a specific focus on developments in the Ukrainian legal system, the relationship between the traditional definition of the concept and characteristics of the subject of a criminal offense, and its current, potential future, and historical (specifically medieval) interpretations – particularly the notion of an “illusory” or “phantom” subject that may be viewed as its conceptual analogue. The central argument is that this issue is fundamental to understanding the essence and qualitative features of criminal law. The nature of this conceptual shift suggests that we are either on the verge of a redefinition of the subject of a crime or witnessing a gradual erosion of the foundational principles of criminal law.*

Key words: transitional state; criminal law of Ukraine; subject of a crime; culpability; personal liability; legal entity; artificial Intelligence; illusory phantom subject

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## I. INTRODUCTION

The world stands on the threshold of a profound transformation driven not only by digitalization and the advancement of artificial intelligence, but also – and in many respects more fundamentally – by an objective generational shift, changes in public

\* Prof. Prof. Hon., Dr. of Law, Dr. of Theology, Head of the Criminal Justice Innovations Lab at the National University “Odesa Law Academy”; Professor of the Department of Criminal Law at the National University “Odesa Law Academy”; Scientific Secretary of the Southern Center of the National Academy of Legal Sciences of Ukraine. <https://www.onua.edu.ua/en/streltsov>.

consciousness, the erosion of traditional social institutions, and other developments in human evolution. At its core, this transformation concerns not only changes in lifestyle and patterns of thought, but potentially a reconfiguration of the very forms of human existence. These changes directly affect all major social institutions that structure human life, including the creation and operation of law, particularly if law is understood in a pragmatic sense as a mechanism for organizing, regulating, and safeguarding public life.

This conceptualization of law corresponds to its performance of three essential functions. *The civilizational function* involves establishing and maintaining (or striving to maintain) a balance between stability and change, thereby enabling society to adapt - through legal mechanisms - to emerging challenges such as technological advancements, socio-biological risks, and new forms of communication. *The normative function* is carried out through the formulation of legal norms that enshrine the core values recognized (or perceived) by a given society (or group of societies), setting the boundaries of permissible behaviour and defining the limits of individual freedom. Finally, *the institutional function* of law consists in ensuring the use of officially sanctioned (legitimate) mechanisms for conflict resolution and for overseeing the exercise of public authority.

At the same time, each branch of law is marked by its own specific features, shaped by its subject matter, functional orientation, and principal objectives. This applies equally to criminal law, and such particularities must be considered when assessing its development. Without delving into all of the distinct features of criminal law, it is essential to highlight its predictive scientific function. This function is (or ought to be) reflected not only in the evaluation of the current state of the field, but also in the ability to forecast its future development through the analysis of emerging trends, risks, and societal changes. More specifically, this predictive capacity may be realized in the identification of new threats - ranging from the emergence of negative trends in cyberspace and digital technologies to their reaching critical levels of societal impact; in the formulation of forward-looking assessments that ensure criminal law remains responsive to reality rather than lagging behind it; and in the development of future-oriented criminal law models. These models must be shaped with consideration for technological advancements, the evolving nature of law - particularly in transitional societies - and potential shifts in the understanding of key categories such as responsibility, freedom, and the boundaries of permissible and prohibited behaviour.

It is critically important not only to analyse the effectiveness of reforms at both the substantive and organizational levels, but also to engage in a forward-looking evaluation of their potential outcomes. This principle applies fully to criminal law reforms. This approach enables not only a direct evaluation of the scientific model underlying the proposed reform(s), but also, in a manner of speaking, the ability to “anticipate” the potential consequences of changes to legal norms and institutions. It allows for the preparation of alternative legal responses and fosters readiness for both



successful outcomes and potential setbacks in the implementation of reforms. Figuratively speaking, the task of contemporary criminal law scholarship is not merely to explain what is happening and why, but to provide well-reasoned predictions about what ought to happen - and on what grounds.<sup>1</sup> This perspective is particularly emphasized in discussions concerning the European integration of Ukrainian legal scholarship.<sup>2</sup> Recognizing this served as an additional rationale for the preparation of this paper, with the objective of drawing more systemic political and legal attention to the ongoing transformations within criminal law. This, in turn, compels a return to the understanding (and assessment) of the changes occurring within criminal law, and necessitates readiness to address the following questions: Are such changes a permanent feature - an inherent process characteristic of criminal law itself? Or are they trends largely driven by shifts in social development, particularly in light of profound societal transformations? Or, alternatively, are they reactive processes of legal amendment, internally disconnected from social change and largely compelled by circumstantial pressures? It must always be borne in mind that each of these directions may be examined independently, yet they may also be viewed as forming a known triad - a stable structure in which each element sustains the integrity of the broader conception of legal reality. It is this very approach - the synthesis of the particular and the complex - that underpins the present study.

It is also important to emphasize that, despite their significance, criminal law reforms - at least within a civilized state - should not be viewed in isolation from broader legal and institutional transformations occurring at the national level. This broader perspective is especially crucial for understanding the interrelated nature of such processes in transitional states.<sup>3</sup> Accordingly, this paper offers a sequential exploration of the concepts of a transitional state, a transitional legal system, and a transitional branch of law, with particular emphasis on transitional criminal law, both in general terms and with regard to specific legal institutions.

The distinctiveness of this study also lies in the fact that it presents the perspective of a Ukrainian scholar on a set of important issues essential for understanding the legal situation in Ukraine.

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<sup>1</sup> Тернавська В. М. Правотворча політика України: монографія. Одеса: Видавничий дім «Гельветика», 2022. С. 104

<sup>2</sup> Recognizing the importance of conducting necessary scientific research, European partners view this area as one of the most significant in assessing Ukraine's European integration processes. Accordingly, in March 2025, the Ukrainian government began substantive work related to the screening of Chapter 25, "Science and Research," within Cluster 3, "Competitiveness and Inclusive Growth," as part of preparations for negotiations with representatives of the European Commission. These representatives, in turn, form an integral part of the broader negotiation process concerning Ukraine's accession to the European Union. See: Україна завершила підготовку до скринінгу за двома переговорними розділами в рамках інтеграції в ЄС. <https://sud.ua/uk/news/ukraine/325339-ukraina-zavershila-podgotovku-k-skriningu-po-dvum-peregovornym-glavam-v-ramkakh-integratsii-v-es>

<sup>3</sup> Many of my scholarly works have been devoted to the analysis of these issues, including my most recent monograph: Streltsov, E.L. Rational Discourse on Criminal Law: Monograph. Kyiv: Yurinkom Press, 2024. 468 pages. This work was awarded first place in the All-Ukrainian Competition of Scientific and Educational Publications on Law, Security, and European Integration, "Yuridika," in the category "For High-Quality Analysis of Complex Problems in the Transformation of Modern Law." It is worth noting that, in addition to Ukrainian scholars, the monograph was reviewed by two German experts: Prof. Dr. h.c. Hans-Joerg Albrecht (Freiburg) and Prof. Dr. h.c. Bernd Heinrich (Tübingen). I extend my sincere gratitude to all of them for their valuable feedback and insights.

However, this analysis may also prove valuable for assessing the complex socio-legal dynamics in other transitional states - particularly within Europe - as well as for enabling developed countries to better understand such contexts. A deeper understanding of these processes can enable developed states to provide more effective support to transitional societies in formulating and implementing measures aimed at facilitating a more orderly and coherent transition.

In turn, I believe that such an understanding may offer foreign colleagues a meaningful glimpse into the legal culture of an “ordinary” Ukrainian law professor - his way of thinking, and his view of law as a form of public “reason” through which the state and society seek to strike a balance between freedom and order, individual interests and the common good, and the fundamental conditions of the rule of law. With this in mind, the primary focus of this paper will be on one of the elements constituting a criminal offense,<sup>4</sup> and most likely, on its central element - the subject of the criminal offense. Put it more simply, the focus will be on the perpetrator of the offense.

## II. THE CONCEPT, CHARACTERISTICS, AND FEATURES OF A TRANSITIONAL STATE (WITH REFERENCES TO THE UKRAINIAN EXPERIENCE)

A *transitional state* is generally understood as a state undergoing a comprehensive structural transformation. At present, many states that have experienced the collapse of authoritarian or totalitarian regimes are in such a condition. In these states several fundamental processes occur - either simultaneously or sequentially - including the democratization of the political system, the implementation of market-oriented economic reforms, changes in social policy, and the restructuring of legal institutions, among others. This period - figuratively speaking, a “puberty” stage between the old system and the new order - characterizes a transitional phase in the state’s development and, as such, justifies the classification of the state as *transitional*. Such states exhibit a number of features that underscore the complexity of transition processes. These include: 1. Political instability and hybridity - a mixture of elements from both the old and new political systems; 2. Institutional weakness - the absence of well-established democratic mechanisms, coupled with issues such as systemic corruption; 3. Social polarization - the emergence of new elites in opposition to the old bureaucratic order; 4. Identity conflicts - contestation over national, cultural, or ideological self-definition; 5. Incomplete legal reform - legal reforms that have been initiated but not yet completed;

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<sup>4</sup> It is particularly important to note that the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on the Simplification of Pre-Trial Investigation of Certain Categories of Criminal Offenses” (*Bulletin of the Verkhovna Rada of Ukraine*, 2019, No. 17, Art. 17) introduced the concept of a *criminal offense* into the Criminal Code, replacing the previously existing concept of a *crime*. Under this amendment, a criminal offense is defined as a socially dangerous act (action or omission) provided for by the Criminal Code, committed by the subject of a criminal offense (Part 1 of Article 11). These offenses are further classified into *crimes* and *criminal misdemeanors* (Part 1 of Article 12). This legislative change came into effect on July 1, 2020.



6. Possible legal nihilism - a lack of respect for law and legal norms; 7. External influence - transitional states often exist within the political orbit of more stable countries or international organizations (such as the United States, China, or the European Union); 8. Critical importance of “elite consensus” - without a basic internal agreement on the rules of reform among key actors (political leaders, government officials, oligarchs) successful transformation is unlikely.<sup>5</sup> This transitional condition is often marked by contradictions. For example, democratization may coexist with backsliding into authoritarian practices; bursts of civic activism may alternate with political apathy; and reform efforts may be shaped by external imposition and internal resistance. It is a volatile and dynamic period in a state’s development - one that may ultimately lead either to genuine democratic change or to a form of managed authoritarianism.

In Europe, following the events of 1989–1991, a phenomenon of unprecedented scale and depth unfolded: more than twenty countries in Eastern and Central Europe underwent sweeping political and economic transformations. Each began moving away from the socialist, centrally planned model toward various forms of market-oriented democracy, albeit with differing degrees of success. In this context, the post-socialist European states can be viewed as variants of the broader model of the transitional state.<sup>6</sup> Efforts to systematize these European transitional states make it possible to identify several distinct groups. One such group consists of the former Soviet republics located in Europe, including the Baltic states (Estonia, Latvia, and Lithuania), as well as Ukraine, Moldova, Belarus, and the European part of Russia. These states share a number of common features: a shift from a planned to a market economy; efforts to redefine national identity; varying models of reform (some more successful than others); and external influence from either the Russian Federation or the European Union. The particularities of this group are evident in several respects. Some of these countries face additional challenges, including active armed conflicts (e.g., Ukraine) or so-called “frozen” conflicts (e.g., Moldova and Transnistria). Many also continue to struggle with the establishment of a new legal system - a process complicated by remnants of past political inertia - as well as with issues such as judicial dependence and systemic corruption.<sup>7</sup> Another group comprises

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<sup>5</sup> Основні риси держави і права перехідного типу. <https://mego.info/основні-рис-держави-і-права-перехідного-типу>; Тодика О. Специфіка державності перехідного періоду і проблеми народовладдя. *Вісник Львів. Ун-ту. Серія юридична*. 2006. Вип. 42, с.143-151; Атаманова Н. Дискусійні погляди на поняття та види форм державного режиму. *Юридичний вісник*. 2021/1, с. 42 – 48.

<sup>6</sup> It should be noted at the outset that the concepts of a post-Soviet state and a transitional state are not synonymous; rather, the post-Soviet state constitutes a specific type of transitional state. See: Моїсеєнко Д.М. «Перехідна держава» та «постсоціалістична держава»: співвідношення понять. *Держава та регіони. Науковий журнал*. Серія: Право. 2014. № 1 (43), с. 14 – 17.

<sup>7</sup> Стогова О.В. Перехід «авторитаризм – демократія» у Східній Європі: проблеми використання досвіду транзитології. *Вісник Харківського національного університету імені В.Н. Каразіна. Серія: Питання політології*. 2008. № 796, с. 34 – 39; Рудич Ф. Політичні лідери і стратегії реформ у країнах Центральної та Східної Європи. *Політичний менеджмент*. 2007. №2, с.25 - 45; *Демократія у країнах Східної Європи: конституційно-правовий вимір (Тодиківські читання): Збірка тез наукових доповідей і повідомлень Четвертої міжнародної наукової конференції молодих вчених, аспірантів і студентів (27–28 травня 2011 року)* / За заг. ред. проф. А.П. Гетьмана.

the former Warsaw Pact states, notably Poland, the Czech Republic, Slovakia, Hungary, Romania, and Bulgaria. These countries have undergone relatively rapid institutional transformations. Most acceded to the European Union and NATO between 2004 and 2007 and have established relatively stable political systems — although with certain risks of democratic backsliding, as evidenced by recent electoral developments in Poland and Romania. Legal reforms in these states have largely been guided by the *acquis communautaire*, serving as a foundational framework for aligning national legal systems with European standards.<sup>8</sup> A distinct group is formed by the republics of the former Yugoslavia, including Serbia, Croatia, Bosnia and Herzegovina, Slovenia, North Macedonia, Montenegro, and Kosovo. These states are characterized by a number of specific features, most notably their experience with the armed conflicts of the 1990s, the consequences of which continue to be felt today. They face persistent and complex interethnic and territorial issues - for example, the status of Kosovo and the internal structure of Bosnia and Herzegovina, particularly the position of the Republika Srpska. The pace of reform has varied significantly across the region: while Slovenia and Croatia have successfully acceded to the European Union, others - such as Serbia - remain in candidate status.<sup>9</sup>

In any case, taking the above into consideration, it can be argued that Ukraine, in general terms, meets the classical criteria of a transitional state, while simultaneously exhibiting a distinct “individuality” - a set of unique attributes that, in combination, complicate and often slow the country’s progression through the transitional phase, which merit dedicated scholarly inquiry.<sup>10</sup> Among the factors - which to some extent appear contradictory - are the coexistence of democratic practices alongside oligarchic influence; ongoing judicial reform amid persistent functional deficiencies in the justice system; transparent electoral processes coexisting with political populism; and sustained efforts toward European integration countered by artificial internal and external obstacles. This constellation of conditions may be further expanded to include political system instability; social polarization including regional, linguistic, cultural, and historical divisions; institutional weakness, particularly within an unreformed judiciary; and deep dependence on external actors such as the United States, the European Union, and the International Monetary Fund. Most

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Національний університет «Юридична академія України імені Ярослава Мудрого». Харків: Права людини, 2011. 336 с.

<sup>8</sup> Троцький Я.О. Європейська політика безпеки на сучасному етапі. *Освіта регіону. Український науковий журнал*. 2009. №2, с. 16 – 22.

<sup>9</sup> Миронова М. Підходи ЄС щодо врегулювання конфліктів: наслідки для країн Східного партнерства. *Європейські історичні студії. Науковий журнал*. 2021. № 20, с. 16-33.

<sup>10</sup> Стрельцов Є.Л. До концептуальних засад нової редакції КК України: принципове положення. *Концептуальні засади нової редакції Кримінального кодексу України* : матеріали міжнар. наук. конф., м. Харків, 17–19 жовт. 2019 р. / редкол.: В. Я. Тацій (голов. ред.), А. П. Гетьман, Ю. В. Баулін та ін. Харків : Право, 2019, с.38 – 44.

notably, since February 2022, Ukraine has been engaged in direct armed conflict with the Russian Federation - a factor of radical significance for the formation and evolution of its statehood.<sup>11</sup>

A more detailed analysis reveals that Ukraine's transitional trajectory is "pulsating" in nature: periods of reform are frequently followed by attempts to revert to past practices. The cost of reform has been high, encompassing political crises, economic setbacks, and even military conflict. Unlike many other transitional states, Ukraine increasingly embodies a form of hybrid statehood, combining elements of democratic development with the conditions of hybrid warfare. This duality renders Ukraine's path not only uniquely complex but also emblematic of a broader and deeper transformation. Under the cumulative pressure of these factors, Ukraine appears to be undergoing what might be termed an *existential modernization* a qualitatively new phase of state transformation in which survival, identity, and reform converge.<sup>12</sup>

It is essential to recognize that transitional states in Europe are not merely post-Soviet or post-socialist in character. Rather, they are political systems in search of equilibrium - where the contest between new norms and entrenched practices remains unresolved. In this regard, Ukraine may be viewed as a critical litmus test for the viability of transitioning to a new model of the state in the 21st century.

### III. TRANSITIONAL LEGAL SYSTEMS AND THE SPHERE OF CRIMINAL JUSTICE (WITH REFERENCES TO THE UKRAINIAN EXPERIENCE)

The legal system plays a crucial role in the functioning of the state. It comprises a set of legal norms, principles, institutions, sources of law, legal traditions, and mechanisms for implementation that have historically developed within a specific state and/or society. These components reflect the unique social, political, economic, and cultural evolution of that society.<sup>13</sup> This understanding underscores that the legal system is not confined merely to legal norms or legislation; rather, it encompasses the broader legal culture - including legal procedures, interpretative methods, and the practical application of law. In transitional states, the legal system is tasked with additional

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<sup>11</sup> Сучасний розвиток державотворення та правотворення в Україні: проблеми теорії та практики: зб. матеріалів XII міжнар. наук.-практ. конф., м. Київ, 31 трав. 2023 р. / за заг. ред. М.В. Трофименка. Київ: МДУ, 2024, 226 с

<sup>12</sup> Соціально-економічні наслідки війни російської федерації проти України та шляхи їх подолання: матеріали наук.-практ. семінару (Київ, 30 листоп. 2023 р.) / за ред. Г. П. Ситника. Київ: Навч.-наук. ін-т публ. упр. та держ. служби Київ. нац. ун-ту імені Тараса Шевченка, 2023, 88 с.; Політика суспільних реформ: стратегія, механізми, ресурси. Збірник наукових праць / за ред. О. О. Рафальського, О. М. Майбороди. Київ: ІПіЕНД НАН України, 2018. - 472 с.

<sup>13</sup> Дячишин Я. Правова система суспільства перехідного типу: ознаки, тенденції, завдання. *Науковий вісник Ужгородського національного університету*. Серія ПРАВО. 2012. Випуск 20. Частина II. Том 1. С. 30 – 32; Загальне вчення про правову систему. Правові системи сучасності. Національна академія внутрішніх справ. Кафедра теорії держави та права. [https://arm.navs.edu.ua/books/posibnyk\\_pps/nm/lec1.html](https://arm.navs.edu.ua/books/posibnyk_pps/nm/lec1.html)



responsibilities, primarily related to the need to ensure a coherent, normatively regulated transition between different stages of state or governmental development. Such transitions often occur during political regime changes, constitutional reforms, crises, or states of emergency. Accordingly, the key functions of a transitional legal system include: ensuring continuity of governance to prevent a legal vacuum or institutional breakdown; safeguarding stability and public order through temporary regulatory mechanisms as new rules are developed; laying the groundwork for a new legal order by creating conditions for the effective functioning of emerging institutions and legal norms; and fostering public trust in new political and legal structures. In general terms, a transitional legal system should be viewed as a mechanism for adapting from an outdated to a new legal order - aimed at avoiding social chaos, preserving the legitimacy of public authority, and facilitating the effective implementation of reforms at a time when former political and legal institutions have ceased to function, and new ones have yet to be fully established.<sup>14</sup>

The main challenges inherent in transitional legal systems include several interrelated structural and functional difficulties: inconsistency in lawmaking - the parallel coexistence of “legacy” and newly adopted legislation often leads to significant contradictions and normative conflicts; political instrumentalization of law - legal norms are frequently shaped by the interests of prevailing political forces, rather than being grounded in stable legal doctrine or long-term normative principles; fragmentation of legal sources - transitional systems often involve the simultaneous application of domestic legislation, international norms, and temporary (transit) regulations, complicating legal coherence; implementation deficits - even when legal norms are well-formulated, their application is hindered by weak institutional capacity, lack of resources, or insufficient political will; instability of constitutional regulation - constitutions may be subject to frequent revisions, partial amendments, or politically motivated reinterpretations, undermining their authority and continuity; tension between legality and legitimacy - legal norms may formally comply with constitutional or statutory requirements but lack societal support or perceived legitimacy, or, conversely, norms may enjoy broad public acceptance without a firm legal foundation.

It is essential to recognize that a critical - and often central - component in the reform of a legal system is constitutional legal transformation. Such transformation entails not only amendments to the text of the Constitution, but also a rethinking of the constitutional idea itself. This includes fundamental questions such as: Is the Constitution merely a legal document? Does it reflect a genuine social consensus? Is it an instrument of institutional stability or a tool for political manipulation? Addressing these questions reveals several common features of constitutional change in transitional

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<sup>14</sup>Пильгун Н. Особливості розвитку та функціонування правової системи України. *Теорія та історія держави і права, міжнародне право. Науковий журнал*. 2019. № 1 (50). С. 47-53

states. These include: frequent amendments to the constitutional text, as successive political forces seek to “adapt” the Basic Law to their own interests; a pronounced gap between legal norms and practical realities, whereby rights and guarantees are enshrined formally but lack effective implementation mechanisms; the constitutionalisation of international standards, where the state formally commits to integrating international legal norms, often in the absence of a coherent or systemic implementation strategy. This focus on constitutional transformation is particularly important, as constitutional provisions are - or at least ought to be - foundational as they form the legal and ideological basis for the structure of state power, the protection of human rights, and the overall direction of legal development in transitional societies.<sup>15</sup>

The legal system of transitional Ukraine also exhibits distinct characteristics. In recent years, it has undergone significant changes, particularly following the events of the Maidan protests between November 30, 2013, and February 2014 - known as the “Revolution of Dignity” - as well as the armed conflict that began in February 2022 etc. These events have directly influenced the content and interpretation of the Constitution of Ukraine, which serves as the fundamental framework for the functioning of the legal system. The Constitution itself has been subject to substantial revisions in 2004, 2010, and 2014, highlighting the dynamic and, at times, unstable nature of constitutional development in the country. These circumstances indicate a pressing need for the development of new - or at least additional - directions within the legal system, particularly concerning the stabilization of the constitutional and legal mechanisms governing amendments. Such mechanisms must be designed to limit situational or politically motivated alterations to the Basic Law.<sup>16</sup>

It is equally important to recognize that the reform of Ukraine’s legal system is significantly shaped by the adoption of international legal standards. However - and this point must be emphasized - such standards should be implemented through national procedures, not through mechanical or wholesale transplantation.<sup>17</sup> Effective reform requires contextual adaptation rather than formalistic imitation. In any case, constitutional legal reforms should be viewed as a key instrument in the development and refinement of the legal system, especially in transitional states. They serve to establish new legal principles, uphold the rule of law, and facilitate the adaptation of legal institutions to democratic norms and standards.

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<sup>15</sup> Лісота А. Основні фактори політичної нестабільності перехідних систем із позиції компаративного регіоналізму. *Вісник Львівського університету. Серія філос.-політичні студії*. 2018. Випуск 19, с.45-152; Бисага Ю. Конституційне право України: навч. посібник / Ю. М. Бисага, Ю. Ю. Бисага, Д. М. Белов, І. В. Решетар, М. М. Палінчак, О. Я. Рогач. Ужгород : Ліра, 2007. 370 с.

<sup>16</sup> Степико М. Українська ідентичність: феномен і засади формування : монографія. К. : НІСД, 2011.336 с.

<sup>17</sup> Дячишин Я. Основні риси сучасної правової системи України: теоретичний погляд. *Інформація і право. Науковий журнал*. 2013. № 1(7), с. 163 – 169; *Правова система України в умовах воєнного стану : збірник наукових праць / за загальною редакцією О. О. Кота, А. Б. Гриняка, Н. В. Міловської, М. М. Хоменка*. Одеса: Видавничий дім «Гельветика», 2022. 540 с.

The sphere of criminal justice warrants particular attention, as it constitutes an essential component of the legal system. By implementing the provisions of criminal law, it is tasked with ensuring the comprehensive protection of citizens, the maintenance of public order, and the enforcement of legal norms through the work of the judiciary, prosecution, investigative bodies, the bar, and other relevant institutions. In recent years, several key features have emerged in the functioning of this sphere under evolving socio-political conditions. These include: shifts in value priorities (universal, political, economic, and others) requiring legal protection; challenges in adapting criminal law to new realities of public life; ongoing development of criminal procedural legislation; efforts to enhance the independence of courts, prosecutors, and investigators. These developments must support the criminal justice system in fulfilling a range of vital objectives, including: ensuring the effective investigation, legal qualification, and sanctioning of criminal offenses while safeguarding human rights; restoring public trust in the judiciary and law enforcement agencies; aligning national criminal law with the standards set by the European Convention on Human Rights, among others.<sup>18</sup> It is worth noting that Ukraine has already undertaken certain reforms within its criminal justice system. These include: the establishment of an anti-corruption infrastructure, comprising the National Anti-Corruption Bureau, the Specialized Anti-Corruption Prosecutor's Office, and the High Anti-Corruption Court - a structural innovation that highlights functional renewal in the justice sector; reform of the Prosecutor's Office, which has achieved partial success at the institutional level, although practical challenges remain; ongoing efforts to secure greater independence across the judiciary, particularly in the adjudication of war crimes, corruption, economic offenses etc.<sup>19</sup>

#### IV. TRANSITIONAL EUROPEAN CRIMINAL LAW: CONCEPT, CHARACTERISTICS AND SPECIFIC FEATURES

When analysing the functioning of both stable and transitional states, particular attention must be paid to criminal law - an integral component of the broader legal system and the foundational legal framework for the administration of criminal justice.<sup>20</sup> It is essential to recognize that the legal system, the criminal justice sector, and criminal law are closely interconnected and mutually

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<sup>18</sup> Місце кримінальної юстиції у плані відновлення України: воєнний аспект. [Лугано. Швейцарія, 2022.](https://justtalk.com.ua/post/mistse-kriminalnoi-yustitsii-u-plani-vidnovlenni-ukraini-voennij-aspekt) <https://justtalk.com.ua/post/mistse-kriminalnoi-yustitsii-u-plani-vidnovlenni-ukraini-voennij-aspekt>; Проект Концепції державної політики у сфері кримінальної юстиції та забезпечення правопорядку в Україні. <https://www.helsinki.org.ua/articles/proekt-kontseptsiji-derzhavnoji-polityky-u-sferi-kryminalnoji-yustitsiji-ta-zabezpechennya-pravoporyadku-v-ukrajini/>

<sup>19</sup> Реформування органів кримінальної юстиції України відповідно до європейських стандартів: концептуальний аналіз: монографія / Овчаренко О.М., Сердюк О.В., Мошак Г.Г., Дунаєва Т.Є., Кохан В.П., Шуміло О.О. ; НДІ ВПЗ ім. акад. В.В. Сташиса. Харків , 2015. 242 с.; Український досвід реформування кримінального правосуддя та правоохоронних органів: аналітична доповідь / О. Маркєєва, О. Котелянець, О. Їжак К.: НІСД, 2011. 44 с.

<sup>20</sup> Стрельцов Є. Кримінальне право України (датовані роздуми). *LexInform*. 2021. С. 12-24. <https://lexinform.com.ua/dumka-eksperta/kryminalne-pravo-ukrayiny-datovani-rozdumy/>



reinforcing. However, in states at different stages or types of development, the nature of these interrelations can vary significantly.

In a stable democratic state, the legal system is characterized by continuity and institutional maturity; the criminal justice system operates in a standardized manner, grounded in a well-established legal framework - primarily informed by the norms of criminal law. In such contexts, the three components (legal system, criminal law, and criminal justice) interact in a coherent and stable manner. That is: the legal system as a whole maintains general legal stability and continuity; criminal law establishes the binding legal norms; criminal justice serves as the operative mechanism ensuring compliance and enforcement of these norms.

Simultaneously, in a transitional state, the legal system remains in the process of formation; it is often unstable or, so to speak, internally contradictory, as noted earlier. Criminal law in such a context also exhibits certain deficiencies at the national level and/or varying degrees of inconsistency with international legal standards. These issues influence, at multiple levels, but most notably at a systemic level, the effectiveness of the criminal justice system. As a result, the relationships among these key components - the legal system, criminal law, and criminal justice - may become weakened or even distorted. This typically leads to the partial or ineffective implementation of legal norms, intermittent or inconsistent functioning of criminal justice institutions, and an overall legal system that remains incomplete or transitional in nature. Such conditions inevitably impact the functioning and stability of the transitional state itself. Accordingly, it becomes essential to undertake at least a preliminary analysis of criminal law as a core element of state operation, in order to generate insights necessary for the development and improvement of this legal domain.<sup>21</sup>

Given the subject of this study, the focus will be on European criminal law as it exists within transitional states - referred to here as European transitional criminal law. Broadly speaking, transitional European criminal law refers to a system of criminal law norms and enforcement mechanisms that emerge or undergo transformation within European states characterized by their transitional status and shifting trajectories of political, economic, and social development. At this stage, the state - by altering its political orientation, adopting new economic models, and redefining social development priorities - undertakes comprehensive reforms of its legal system, including the criminal justice sector and criminal law. These reforms are aimed at aligning national criminal law with democratic standards and human rights obligations, ensuring that criminal law provisions appropriately reflect newly emerging or transformed forms of socially dangerous conduct typical of the transitional period.

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<sup>21</sup> Блашов А., Озимок І., Астапенко Т., Руссу В. Європейська інтеграція на початку нового тисячоліття: довідник/ склад. А. М. Круглашов, І. Озимок, Т. С. Астапенко, В. В. Руссу. Чернівці. 2010. 212 с.; Переформатування європейської інтеграції: можливості і ризики для асоціації Україна - ЄС / В. Сіденко (керівник проекту) та ін. Київ: Заповіт, 2018. 214 с.

In general, such criminal law is marked by a notable degree of dynamism, yet this dynamism is often accompanied by a certain degree of instability. This situation frequently arises due to the absence of a defined legal program (or scholarly doctrine) that substantiates the state's position regarding its "intentions", the direction of their implementation, and the anticipated (or possible) outcomes. Such a program should inform both the content and the application of criminal law. In other words, identifying and defining a prohibited criminal act within the disposition of a criminal law norm represents only one dimension of how criminal law is employed. Another essential dimension involves determining the specific criminal law measures that should be applied when such an act is committed - that is, the state's "practical" response to the violation of its prohibition. However, the nature and orientation of these measures depend, at the national level, on how the state conceptualizes the function of criminal law: Are its aims primarily punitive, resocializing, preventive, or restorative? Furthermore, how does the state perceive its own role as the primary agent of punishment: as severe, forgiving, prevention-oriented, or inclined toward conflict resolution?

Every transitional state must address these questions by developing a coherent doctrine grounded in both international and domestic experience. In Ukraine, for instance, this has recently entailed substantial changes to criminal law, such as the introduction of new categories of subjects, including legal entities (discussed in more detail below), and an increased focus on incorporating international - and particularly European - standards governing the criminal justice system. It also involves the implementation of legal practices targeting certain types of criminal offenses that hold particular relevance in each transitional state. This is a complex process, as in virtually every such state it is complicated by political pressure, entrenched historical traditions, the uneven application of "uniform" law across different regions of the country, challenges in the training of new legal personnel, and other related factors.

## V. TRANSITIONAL UKRAINIAN CRIMINAL LAW (GENERAL AND SPECIFIC ASPECTS)

Transitional criminal law in Ukraine shares many of the features characteristic of such legal systems in European states more broadly. At the same time, it demonstrates distinct features related to changes in the understanding and prioritization of values that criminal law is meant to protect. These changes manifest in several ways: the introduction of new legal institutions within both the General and Special Parts of criminal law; the expanded application of jurisprudence from the Constitutional Court of Ukraine and the European Court of Human Rights (ECHR) in interpreting criminal law provisions and enhancing the quality of legal practice; and the consolidation of the rule of law as a guiding principle in the field of criminal justice, as enshrined in Article 8 of the Constitution of Ukraine. However, this development process is accompanied by certain difficulties -

most notably, legal uncertainty, which is often reflected in the unsystematic nature of legislative amendments; the lack of a coherent doctrinal position on the general nature of criminal law and its specific forms of implementation; and the insufficient institutional independence of key actors such as the judiciary, the prosecutor's office, and investigative bodies. In this context, the key objectives of Ukrainian criminal law in the foreseeable future should include ensuring a balance between the functioning of criminal justice institutions and the protection of human rights; fostering a stable legal environment as prescribed by criminal law norms; and enhancing the quality and consistency of judicial practice and law enforcement.<sup>22</sup> Particular attention must also be given to the advancement of criminal law scholarship, which is essential for developing well-founded responses to contemporary challenges and for forecasting the future trajectory of this legal field.<sup>23</sup>

All of this makes it possible to assert that Ukraine, as a classic example of a transitional state, is undergoing a complex process of criminal law transformation. Despite certain positive developments, serious challenges remain - challenges that require a systematic approach, carefully considered legislative planning, and faithful implementation of the principle of *ultima ratio* - that is, criminal law must serve as a measure of last resort in state and societal intervention. At the same time, it must remain both effective and fair - an idea I consistently advocate.<sup>24</sup>

Such an approach draws attention to several key aspects that characterize the current state of development of Ukrainian criminal law. It is worth recalling that Ukraine declared its independence in 1991, adopted a new Constitution in 1996, and enacted a new Criminal Code in 2001, replacing the 1960 version, which had remained in force until then. As previously noted, the 2001 Criminal Code has undergone a continuous stream of amendments - over 1,500 in total - many of which have not been part of a coherent or systemic reform strategy.<sup>25</sup> The majority of these changes have concerned the Special Part of the Criminal Code. For instance, certain economic crimes have been

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<sup>22</sup>Баулін Ю.В. Тенденції розвитку сучасного кримінального права України <https://www.lib.dp.ua/text/urvisn15tend.doc>; Концепції реформування кримінального законодавства України. <https://newcriminalcode.org.ua/concept>; Дудоров О. Кримінально-правові проблеми сучасної України (вибрані праці). Київ: Ваіте, 2022. 632 с.; Сучасна кримінально-правова система України: реалії та перспективи / Ю. В. Баулін, М. В. Буроменський, В. В. Голіна, В. К. Гришук, О.В. Зайчук, В. О. Навроцький, О. В. Наден, Ю.В. Нікітін, Н.М. Оніщенко, Ю.А. Пономаренко, М.І. Хавронюк, О.В. Харитоновна, В.І. Шакур. Київ: ВАІТЕ, 2015. 688 с.

<sup>23</sup> Наука кримінального права в системі міждисциплінарних зв'язків : матеріали міжнар. наук.-практ. конф., 9 - 10 жовт. 2014 р. / редкол.: В. Я. Тацій (голов. ред.), В. І. Борисов (заст. голов. ред.) та ін. Х.: Право, 2014. 536 с.; Наука кримінального права. <https://dduvs.edu.ua/wp-content/uploads/files/Structure/library/student/nmm/1108/1.4.pdf>; Митрофанов І.І. Роздуми щодо науки кримінального права. *Вісник НТУУ КІП. Політологія. Соціологія. Право*. 2021. № 1, с. 16-22.

<sup>24</sup> Стрельцов Є. Що проголошують кримінальні кодекси: свої цілі, свої завдання або взагалі «нічого»? (Деякі авторські висновки). *Юридичний вісник України*. № 3 - 4, 22 січня - 4 лютого 2021, № 5, 5 - 11 лютого 2021, с. 16 - 28.

<sup>25</sup> As of May 22, 2025, a total of 1,469 amendments and additions had been made to the current Criminal Code of Ukraine (CCU), including 280 to its General Part and 1,189 to its Special Part.

decriminalized<sup>26</sup>; significant organizational and legal reforms have been introduced in the field of anti-corruption<sup>27</sup>; and criminal liability has been increased in connection with the outbreak of armed conflict<sup>28</sup>, among other developments. Amendments have also affected the General Part of the Code - such as the introduction of the concept of a criminal offense<sup>29</sup> - and include the implementation of criminal liability measures applicable to legal entities, which will be examined in detail below.

The scope of the amendments to the current Criminal Code of Ukraine, their scale, and the complexity of adapting contemporary social changes into the framework of criminal law have necessitated a targeted appeal to doctrinal principles of criminal law development, its transformation, and the search for optimal forms of its further improvement. In large part for this reason, the Working Group on Criminal Law Reform of the Commission on Legal Reform under the President of Ukraine was established in 2019.<sup>30</sup> The author of this paper is a member of this Group, which, as of today, has prepared a draft of a new Criminal Code that is currently the subject of broad public and expert discussion.<sup>31</sup>

More generally, it should be noted that Ukrainian criminal law, taking into account its specific national features, reflects the complex and often conflicting processes between past and emerging forms of social development. These processes are marked by political instability and difficulties in the implementation of new economic frameworks. As a result, such tensions are evident not only in the content of criminal law itself but also in its practical application within the legal system, the judiciary, and law enforcement institutions - factors that must be considered in any comprehensive analysis.<sup>32</sup>

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<sup>26</sup>Про внесення змін до деяких законодавчих актів України щодо гуманізації відповідальності за правопорушення у сфері господарської діяльності: Закон України від 15.11.2011 № 4025-VI. *Відомості Верховної Ради України (ВВР)*. 2012, N 25, ст.263.

<sup>27</sup>Про внесення змін до Кримінального та Кримінального процесуального кодексів України щодо імплементації до національного законодавства положень статті 19 Конвенції ООН проти корупції: Закон України від 21.02.2014 №746-VII. *Відомості Верховної Ради (ВВР)*. 2014, № 12, ст.188; Дудоров О.О. Удосконалення кримінально-правових засобів протидії корупції (аналіз окремих законодавчих ініціатив) <http://baltijapublishing.lv/omp/index.php/bp/catalog/download/367/10023/20871-1?inline=1>

<sup>28</sup> Новели кримінального законодавства України, прийняті в умовах воєнного стану: наук.-практ. комент. / А. А. Вознюк, О. О. Дудоров, Р. О. Мовчан, С. С. Чернявський та ін. ; за ред. А. А. Вознюка, Р. О. Мовчана, В. В. Чернея. Київ : Норма права, 2022. 278 с.

<sup>29</sup> As stated above, the Law of Ukraine on *Amendments to Certain Legislative Acts of Ukraine on Simplifying Pre-Trial Investigation of Certain Categories of Criminal Offenses* introduced the concept of a *criminal offense* into the Criminal Code of Ukraine. According to Part 1 of Article 11 of the Code, a criminal offense is defined as a socially dangerous act (action or omission) prescribed by the Code and committed by a subject of a criminal offense. These offenses are further categorized, pursuant to Part 1 of Article 12, into crimes and criminal misdemeanors. This legal framework has been in effect since July 1, 2020.

<sup>30</sup>Питання Комісії з питань правової реформи: Указ Президента України, №584/2019, 7 серпня 2019 р. <https://www.president.gov.ua/documents/5842019-28949>

<sup>31</sup> Проект нового Кримінального кодексу України: передумови розробки, концептуальні засади, основні положення: монографія. Андрушко П.П., Бакумов О.С., Баулін Ю.В., Бурдін В.М., Вишневська І.А., Горох О.П., Гуторова Н.О., Марчук Н.О., Навроцький В.О., Пономаренко Ю.А., Стрельцов Є.Л., Хавронюк М.І. // За заг. ред. Ю.В. Бауліна, М.І. Хавронюка. К.: Компанія ВАІТЕ. 494 с.

<sup>32</sup> Стрельцов Є. Щодо форм кримінально-правової реакції держави: сучасні тенденції. *Юридичний вісник України*. № 35-36, 1-15 вересня 2024 р.; № 37-38, 16-30 вересня 2024 р.; № 39- 40, 1-15 жовтня 2024 р.



## VI. LEGAL ENTITIES AS OBJECTS OF CRIMINAL LEGAL “REPROACH”: GENERAL AND UKRAINIAN PERSPECTIVES

One of the most pernicious and widespread categories of contemporary crime involves the receipt, accumulation, and utilization of illicit capital in substantial amounts. The danger posed by such capital is not confined to the illegal enrichment of specific individuals or groups - undermining fairness and transparency in income distribution - but extends much further when illicit funds infiltrate the economy. Typically, this integration distorts legitimate economic processes, erodes confidence in financial and legal institutions, and skews competition. It also manipulates resource allocation, enabling the illicit enrichment of some at the expense of the state, society, and honest market participants. Frequently, such capital is further exploited to facilitate corruption, power grabs, and other deleterious purposes.<sup>33</sup> The threat extends to national security: economic sovereignty may be compromised and dependency on external financing artificially increased, with far-reaching and negative implications. Entire sectors of the economy can be systemically destabilized - for instance, through public procurement fraud or smuggling. Inflationary pressures and financial market instability often follow, resulting in vast budgetary losses that divert critical funding away from healthcare, education, and pensions. The persistent outflow of capital further suppresses domestic investment, while the expanding shadow economy fuels corruption and entrenches the criminalization of business. Governmental involvement in such schemes erodes trust in the legal system, undermining entrepreneurial development. These processes perpetuate social decay: poverty and chronic unemployment become normalized, triggering heightened social tension, protest activity, and broader civil unrest. Altogether, economic crimes represent a profound and multidimensional threat - one that demands rigorous scholarly analysis to be fully understood and effectively addressed.<sup>34</sup>

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<sup>33</sup>Малашевська А., Барановська Т. Загальна характеристика економічних кримінальних правопорушень та їх характерні ознаки. <https://dspace.onua.edu.ua/server/api/core/bitstreams/5a69e91e-175c-49d0-873b-9979de0526a8/content>; Дії працівників поліції у разі виявлення економічних злочинів: методичні рекомендації / Кубецька О. М., Лазарєв В. О., Неклеса О. В., Палешко Я. С., Санакоєв Д. Б. Дніпро: Дніпроп. держ. ун-т. внутр. справ, 2020. 76 с.

<sup>34</sup> Economic crimes, irrespective of the prevailing legal-economic model within a given state or group of states, and regardless of whether they manifest in “visible” or “invisible” forms, represent a multifaceted threat capable of destabilizing the state, undermining social foundations, exacerbating social conflicts, and adversely affecting the material security of the population. In the early years following the adoption of the market economic model in Ukraine, I conducted a systematic study of these crimes, which I presented in two monographs. Recognizing the significance of this issue and the necessity for comprehensive examination, prefaces to these works were contributed by esteemed international colleagues. The first monograph, *Economic Crime in Ukraine*. Odessa: Bakhva, 1997. 572 p. was prepared during my scholarship tenure at the Max Planck Institute in Freiburg and features a foreword by Prof. Dr. Martin Fincke, Chair of the Department of Criminal Law and Procedure at the University of Passau, Germany. The second monograph, *Economic Crimes: Domestic and International Aspects*. Odessa: Astroprint, 2000. 476 p., which was awarded a special prize at the All-Ukrainian competition for the best legal writing and developed during my Fulbright Scholarship at the University of Illinois at Chicago, includes a foreword by Prof. Dr. Jess Meghan, Scientific Director of the Office of International Criminal Justice at the UIC.

It is important to note that, in many cases, legal entities are employed to commit, conceal, and legitimize illicit activities, particularly for the purpose of disguising the origin and use of illegally obtained income. The term “legal entity” refers to any organization formally established in accordance with statutory requirements, endowed with independent legal rights and obligations, capable of entering into legal relations autonomously. Such entities may take various forms, including limited liability companies (LLCs), joint-stock companies (JSCs), governmental bodies, non-profit organizations, and others. From a legal-theoretical standpoint, legal entities are foundational actors within the contemporary economic system. They are instrumental in driving economic development, fostering innovation, enabling international legal and commercial cooperation, and contributing to broader social and institutional stability. When functioning effectively and at scale, their role transcends that of mere market participants, as they help shape the economic, normative and institutional architecture of the modern society. Nevertheless, as previously indicated, legal entities are also frequently exploited as instruments or vehicles for the commission of economic and financial crimes. They may serve as legal “fronts,” “covers,” or “masks,” thereby creating a veil of anonymity that obscures the identities of the natural persons involved, conceals the illicit nature of the underlying transactions, and facilitates the misuse of legitimate legal and economic frameworks for unlawful purposes.

The adverse impact that legal entities may exert on the economy, society, and the functioning of the state necessitates the establishment of effective oversight mechanisms and the imposition of legal consequences and liability where appropriate. It is imperative that robust measures be implemented to prevent and suppress the misuse of legal entities as instruments or façades for unlawful activities. Such activities must give rise to legal liability, which should primarily encompass compensation for damage, restitution for harm caused, and the imposition of appropriate sanctions on the individuals responsible, particularly the executives or managers of the legal entity who permitted or facilitated such conduct. At both the legislative and practical levels, the realization of these objectives is embodied in various legal frameworks governing the liability of legal entities. The application of such frameworks is intended to safeguard public interests, promote the lawful development of commercial activity, and uphold justice within society. Where an offense is committed by a legal entity - whether in its name, under its cover, or for the purpose of concealing illicit actions - the entity may be subject to multi-tiered liability. This may include so-called direct liability, such as civil liability, as well as more qualified forms, including criminal liability, and in certain circumstances, international legal liability. The specific nature and extent of such liability will depend on the character of the offense and the legal framework of the jurisdiction in question.

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In several jurisdictions, the most serious unlawful acts committed by legal entities - particularly criminal offenses - may give rise to the imposition of criminal liability (in various forms) or quasi-criminal liability. The conditions under which such liability may be applied are well established and relatively conventional. These include: the legal entity possessing formal legal status; the commission of a criminally unlawful act on its behalf, in its interests, or under its cover; and, in many cases, the identification of a natural person acting on behalf of or in the interests of the legal entity (though this is not always a mandatory requirement). Crucially, the existence of a substantive criminal law provision (or provisions) that explicitly permits the attribution of such liability to legal entities is required. It must be emphasized, however, that a clear distinction exists between the substantive grounds for imposing criminal liability on legal entities and the procedural mechanisms through which such entities are held accountable.

Ukrainian legal scholars distinguish three principal models of criminal-legal “reproach” for unlawful acts committed by legal entities: a) the first one, under which a legal entity is recognized, alongside a natural person, as an independent subject of criminal liability. In this framework, the legal entity may be held criminally responsible for the commission of a criminal offense in its own right. This model is characteristic of the legal systems of the United Kingdom, the United States, Austria, and France; b) the second one is based primarily on the principle of individual culpability. According to this approach, the criminal liability of a legal entity arises when a natural person commits a criminal offense in the interests of the entity. The entity may then be held liable alongside the individual. This model is exemplified by the legal framework of Switzerland; c) the third one (may be defined as administrative or quasi-criminal in nature), in which a legal entity is not subject to criminal liability *per se*, but may incur specific administrative sanctions due to its involvement in, or benefit from, a crime committed by a natural person. This model is reflected in the legal systems of Germany, Italy, and Sweden.<sup>35</sup>

In Ukraine, the initial legal basis for the application of criminal law measures to legal entities was established in 2014.<sup>36</sup> At that time, a separate special Section XIV-1, titled “Criminal Law Measures Applied to Legal Entities”, was introduced into the General Part of the Criminal Code. This section has since undergone several amendments and clarifications as the legal framework developed. In 2024, this section was significantly expanded<sup>37</sup> in response to the stated need to align national

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<sup>35</sup>Харитонов С.О. Заходи кримінально-правового характеру щодо юридичних осіб в системі кримінального законодавства України. [https://dspace.nlu.edu.ua/bitstream/123456789/6307/1/Haritonov\\_145\\_147.pdf](https://dspace.nlu.edu.ua/bitstream/123456789/6307/1/Haritonov_145_147.pdf)

<sup>36</sup>Про внесення змін до деяких законодавчих актів України щодо виконання Плану дії щодо лібералізації Європейським Союзом візового режиму для України стосовно відповідальності юридичних осіб: Закон України від 23.05.2013 № 314 – VII. *Відомості Верховної Ради (ВВР)*. 2014. № 12, ст.183.

<sup>37</sup>Про внесення змін до Кримінального кодексу України, Кримінального процесуального кодексу України та інших законодавчих актів України щодо вдосконалення механізмів притягнення юридичних осіб до відповідальності за підкуп посадових осіб іноземних держав: Закон України від 04.12.2024 № 4111 – IX. *Відомості Верховної Ради (ВВР)*. 2025, № 19, ст.60.

legislation with the recommendations of the Organization for Economic Co-operation and Development (OECD), particularly about strengthening liability for the bribery of foreign public officials in international business transactions. As a result, Section XIV-1 now includes the following provisions: Article 96-3. Grounds for applying criminal law measures to legal entities; Article 96-4: Legal entities that are subject to criminal law measures; Article 96-5: Grounds for exemption of a legal entity from the application of criminal law measures; Article 96-6: Types of criminal law measures applicable to legal entities; Article 96-7: Fine; Article 96-8: Forfeiture of property; Article 96-9: Liquidation; Article 96-10: General procedure for the application of criminal law measures to legal; Article 96-10-1: Additional (non-financial) criminal law measures; Article 96-11: Application of criminal law measures to legal entities in respect of cumulative criminal offences.<sup>38</sup>

The same legislative act also amended the Criminal Procedure Code of Ukraine by introducing a new special Chapter 37-1, which establishes the procedural framework for the application of criminal law measures to legal entities. It is important to note that, at present, the liability of legal entities under Ukrainian law is not limited solely to the commission of economic offenses. Criminal-law measures may also be imposed in relation to the commission of *non-economic* offenses, provided that such acts were committed for the purpose of obtaining an unlawful benefit for the legal entity, or if they created the conditions necessary for the acquisition of such a benefit. This position is expressly codified in paragraph 2 of the Note to Article 96-3 of the Criminal Code of Ukraine “Grounds for Applying Criminal Law Measures to a Legal Entity”. More broadly, this legislative approach reflects a set of underlying rationales, many of which – critically - stem from Ukraine’s obligations under international law. This is evident not only in the content but also in the titles of the legislative instruments that introduced criminal law measures against legal entities in both 2014 and 2024.

The presence of such a fairly “representative” section in the Ukrainian Criminal Code should be regarded, without detailing the content of these changes, as various forms of criminal law “reproach”: (a) as a specific form of criminal law transformation during a transitional development period, likely compelled; (b) as a necessary (and possibly forced) adoption of foreign and international experience; and (c) as an attempt to endow criminal law with greater capacity for dynamic impact. In any case, certain arguments are likely advanced in support of this decision. For instance, these may include the emergence of new, particularly dangerous forms of criminal activity<sup>39</sup>; the growing influence of

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<sup>38</sup>See, for more details: Науково-практичний коментар Кримінального кодексу України у двох томах. Том 1. Видавництво: ЦУЛ, 2025. 1460 с.

<sup>39</sup> For example, in 2025, the Bureau of Economic Security of Ukraine uncovered a money laundering scheme involving over UAH 56 million, conducted through 40 unlicensed exchange offices operating for several years in Transcarpathia under the brands Orange Finance and Kurs uz ua. According to the investigation, three former bank managers orchestrated this illicit financial network, leveraging their banking expertise to establish an extensive shadow system of currency exchange operations. See, for more details: Ковальова А. Колишні банкіри відмивали мільйони через нелегальні обмінники: БЕБ назвало імена. <https://www.stopcor.org/ukr/section-suspilstvo/news-kolishni-bankiri-vidmivali-miljoni-cherez-nelegalni-obminniki-beb-nazvalo-imena-03-06-2025.html> Also in 2025, the Bureau of Economic



international institutions - such as the World Bank Group—as well as regional bodies like the Financial Action Task Force (FATF) and the Group of States against Corruption (GRECO); and the increasing pressure, particularly from European and transnational actors, to enhance the effectiveness of domestic legal systems in combating complex, transnational forms of crime. This has, in some respects, led to the rapid - and arguably at times mechanical - adoption of foreign and international models of corporate criminal liability.

It would be appropriate at this point to provide examples of some of the most notable international cases involving the criminal liability of legal entities:

1. The BP (British Petroleum) Case – Deepwater Horizon Disaster (USA, 2010). Following the catastrophic explosion on the Deepwater Horizon drilling platform in the Gulf of Mexico, BP was subjected to criminal liability in the United States, resulting in unprecedented financial penalties. Despite the fact that the investigation did not identify any specific individuals who intentionally caused the environmental disaster, the corporation entered into a plea agreement with the U.S. Department of Justice, agreeing to pay over \$4 billion in fines and penalties. From a criminal law perspective, this case raised serious concerns, as responsibility was effectively attributed to a “phantom” or “illusory” legal subject - BP as a corporate entity - without establishing the individual culpability of any of its agents. This approach provoked criticism from both human rights advocates and legal scholars, who argued that such proceedings undermined core principles of individual guilt and due process.

2. The Volkswagen “Dieselgate” Scandal (USA and EU, 2015–2020). In this high-profile case, the Volkswagen Group was accused of engaging in widespread fraud through the deliberate manipulation of emissions testing data. In the United States, criminal proceedings were initiated against the corporation itself, resulting in fines totaling approximately \$2.8 billion. However, despite the systemic nature of the wrongdoing, only a small number of individual executives and engineers faced prosecution. The corporation was treated as a collective offender or “generalized culprit,” and comprehensive proof of personal guilt among key decision-makers remained elusive. This case, like others, highlighted the tension between corporate criminal liability and the principle of individual accountability.

3. The Purdue Pharma Case – Opioid Crisis (USA, 2020). Purdue Pharma, the manufacturer of the opioid OxyContin, was criminally prosecuted for its role in

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Security uncovered an illegal fuel production operation in the Kryvorizhzhia region. According to the investigation, the accused established an unauthorized oil refinery at one of the industrial sites, with a production capacity exceeding 100 tons of gasoline and diesel fuel per day. The fuel, lacking any documentation including quality certificates, was distributed through local gas stations. Левандовська О. Контрафакт на мільйони: БЕБ припинило роботу нелегального нафтозаводу у промзоні.<https://www.stopcor.org/section-uanews/news-kontrafakt-na-miljoni-beb-pripinilo-robotu-nelegalnogo-naftozavodu-u-promzoni-27-05-2025.html>

facilitating widespread opioid addiction in the United States - a crisis that has resulted in tens of thousands of deaths. In 2020, the company entered into a settlement with the U.S. Department of Justice, admitting criminal wrongdoing and agreeing to substantial financial penalties. Notably, none of the members of the Sackler family - the company's owners - were subjected to criminal prosecution, despite compelling evidence that they were aware of the public health consequences of their corporate strategy. The state, in effect, imposed liability on the legal entity while shielding those individuals who were arguably most responsible.

These cases illustrate a broader pattern whereby the state, as the “injured party”, is able to formally record the occurrence of a corporate crime and obtain financial compensation. Yet, the issue of personal criminal responsibility for those who were directly involved in or responsible for the wrongful conduct remains unresolved. Consequently, this trend risks eroding the foundational principles of criminal law, particularly the requirement of personal guilt as a basis for criminal liability.

Therefore, when considered as a whole, the recent developments concerning the imposition of criminal-law “reproach” on legal entities appear, in my view, to be of a compromise nature at best. These provisions are accompanied not only by conceptual ambiguities in their drafting but also by practical challenges in their direct application. These challenges relate, in particular, to: a) the inherent difficulty in proving the commission of criminally unlawful conduct by a legal entity; b) the risk of selective enforcement, whereby in “convenient” cases, criminal law provisions may be substituted with commercial or administrative legal mechanisms; and c) a range of additional procedural and evidentiary limitations that restrict the practical implementation of such norms. In this context, legal professionals and scholars have voiced concern that the potential for the “faceless” application of criminal sanctions against legal entities increases the risk of arbitrary or selective pressure on businesses by law enforcement authorities.<sup>40</sup> Accordingly, it is reasonable to argue that what is at stake here is not the classic model of criminal liability, but rather a distinct, exceptional form of criminal-law intervention—what is commonly referred to in foreign legal discourse as *quasi-criminal liability*.

Given the ongoing discourse surrounding the imposition of criminal law measures on legal entities, divergent views have emerged regarding the appropriateness and conceptual framing of such measures. Ukrainian legal scholars, for example, argue that these measures should be regarded as a distinct legal institution - comprehensive in scope - though not without significant challenges.<sup>41</sup> At a

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<sup>40</sup>Телешевський О. Закон № 11443: Підвищення відповідальності юридичних осіб чи посилення корупційного тиску на бізнес? [https://biz.ligazakon.net/analitics/232674\\_zakon--11443-pdvishchennya-vdpovdalnost-yuridichnikh-osb-chi-posilennya-koruptsynogo-tisku-na-bznes](https://biz.ligazakon.net/analitics/232674_zakon--11443-pdvishchennya-vdpovdalnost-yuridichnikh-osb-chi-posilennya-koruptsynogo-tisku-na-bznes)).

<sup>41</sup>Загиней-Заболотенко З. Застосування заходів кримінально-правового характеру щодо юридичних осіб як нормативно-правовий інститут. *Науковий вісник Ужгородського Національного Університету*. 2024. Вип. 83, с. 49 – 54.

more general level, these challenges are closely tied to the fundamental requirement that the state's authority to apply the most severe legal sanctions - namely, those of a criminal nature - must be grounded in a carefully considered and sovereign legal decision.<sup>42</sup>

Summarizing these perspectives, it must be noted that the introduction of criminal law measures applicable to legal entities has provoked extensive academic and professional debate, which began even prior to the official adoption of the relevant legislative provisions and continues unabated following their enactment.<sup>43</sup> What emerges as essential in this debate is the recognition that the threat posed by a wide range of economic crimes - and the established role of legal entities in facilitating or concealing such offenses - does not justify, at least within the scope of this analysis, the abolition of liability for legal entities or a shift toward more lenient or symbolic forms of accountability. On the contrary, legal liability for legal entities must be retained at a level that ensures the seriousness of the offense is adequately reflected in the legal response. In cases involving particularly grave violations committed by or through a legal entity, proportionate legal consequences may include significant monetary fines, the suspension or revocation of licenses for specific types of activity, or even the dissolution of the legal entity itself. Importantly, these measures need not fall exclusively within the domain of criminal law; they may also be implemented through civil or administrative legal mechanisms, which - without diminishing their legitimacy - may offer more flexible and effective tools for identifying and addressing corporate misconduct. Accordingly, the discussion should not be framed around the introduction of a "new" and unfamiliar concept of corporate criminal liability within Ukrainian criminal law. Rather, it would be more constructive to speak of the evolution and refinement of legal mechanisms across various branches of law - civil, administrative - that are capable of responding to corporate wrongdoing. These mechanisms, in turn, must be developed to a level commensurate with the complexity and severity of contemporary legal and economic challenges.

In any case, a proper understanding of this issue necessitates a dual-approach analysis. On the one hand, it is essential to focus on the detailed aspects of the problem; on the other hand, a broader, systemic perspective must also be adopted. A detailed examination, in accordance with established methodological principles, allows for the identification of hidden mechanisms and specific patterns.

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<sup>42</sup> Стрельцов Є. Кримінальна відповідальність юридичних осіб: необхідність «суверенного» виваженого рішення. *LexInform*. 2020, с.10-20. <https://lexinform.com.ua/dumka-eksperta/kryminalna-vidpovidalnist-yurydychnyh-osib-neobhidnist-suverennogo-vyvazhenogo-rishennya/>

<sup>43</sup> Тацій В.Я., Борисов В.І., Тютюгін В.І. Стабільність як умова законодавства України про кримінальну відповідальність. *Голос України*. 2013. № 60 (5566), с. 4- 5; Проект нового Кримінального кодексу України: монографія /Андрушко П.П., Бакумов О.С., Баулін Ю.В., Бурдін В.М., Вишневська І.А., Горох О.П., Гуторова Н.О., Марчук Н.О., Навроцький В.О., Пономаренко Ю.А., Стрельцов Є.Л., Хавронюк М.І. // За заг. ред. Ю.В. Бауліна, М.І. Хавронюка. К.: Компанія ВАІТЕ, с. 180.

Conversely, a general analysis reveals systemic interconnections, overarching trends, and, potentially, strategic directions for future development.

## VII. THE INTERRELATION AND TENSION BETWEEN PARTICULARS AND THE GENERAL

The resolution - or even the meaningful examination - of this issue depends upon how changes in criminal law concerning legal entities are compared, contrasted, and reconciled with the foundational axioms and postulates of Ukrainian criminal law. Thus, while the significance of this “new” legal framework for Ukrainian criminal law theory and enforcement practice cannot be underestimated, it is equally important to acknowledge the doctrinal context within which it arises. Approximately two centuries ago, Ukraine adopted the classical theory of German criminal law, the core elements of which remain influential to this day. These include the conceptualization of a criminal offense as a unity of act and actor - namely, a legally sane natural person who has reached the age of criminal responsibility - as well as the construction of guilt, understood as the individual’s awareness of the unlawfulness of their conduct, along with the identification of objective and subjective elements of the crime.<sup>44</sup> Accordingly, any attempt to analyse or implement criminal liability for legal entities must grapple with the inherent tension between these longstanding doctrinal foundations and the newer, functionally oriented models of corporate liability. In what follows, we seek to explore the relationship between these contrasting legal approaches and evaluate the extent to which they can be harmonized or remain fundamentally at odds.

This, in turn, creates the opportunity - and indeed necessitates - the formulation of a question that, in my view, holds fundamental significance for the future development of Ukrainian criminal law. It also carries profound implications for the evolution of criminal policy, the functioning of the criminal justice system, and, more broadly, the establishment and preservation of legal and social order - an objective for which criminal law, as previously noted, serves as a central regulatory mechanism. Restated in different terms, the issue may be framed as follows: Does the introduction of criminal law “reproach” for legal entities represent a temporary, pragmatic compromise aimed at achieving short-

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<sup>44</sup>The principal figures in the development of the classical school of German criminal law include Karl Binding, regarded as one of the founders of the “positive school” and the originator of the concept of the legal structure of crime; Franz von Liszt, a leading proponent of the sociological approach who introduced the idea of the preventive function of criminal law; Paul Johann Anshütz and Hans Welzel, who advanced the conceptualization of “guilt” as a category encompassing both culpability and responsibility; as well as Edmund Mezger and Klaus Roxin, notable for their contributions to the modern systematic understanding of *corpus delicti*, among others. Класична школа кримінального права [Архівовано 18 Листопада 2016 у Wayback Machine.] *Юридична енциклопедія*: [у 6 т.] / ред. кол.: Ю. С. Шемшученко (відп. ред.) [та ін.]. К. : Українська енциклопедія ім. М. П. Бажана, 2001. Т. 3:К - М. - С. 115; Виникнення класичної школи кримінального права. [http://megalib.com.ua/content/10685\\_Viniknennya\\_klasichnoi\\_shkoli\\_kriminalnogo\\_prava.html](http://megalib.com.ua/content/10685_Viniknennya_klasichnoi_shkoli_kriminalnogo_prava.html) Класична школа кримінального права. <http://radnuk.info/pidrychnuku/46-stashus1/862-s-1-.html>; <http://ukrknighta.org.ua/ukrknighta-text/717/108/>

term tactical objectives, or does it reflect a strategic decision with a deeper, long-term normative trajectory? Furthermore, as will be shown below, such changes - when assessed from a scholarly perspective - should be regarded either as a transition to a different, possibly fundamentally new stage in the development of criminal law, or as the emergence of a temporary, hybrid form of criminal law that is intended to operate under the complex conditions of contemporary social development.

To lend greater expressiveness to the following reflections on the importance of preserving - and, where appropriate, synthesizing - legal traditions (axioms) with innovation (development), it is useful to turn, by way of analogy, to another field of human endeavour. While perhaps somewhat allegorical, this comparison is, in my view, both relevant and necessary. I refer here to the field of medicine, which, much like the legal sphere, performs essential social functions, serves the public good, protects collective well-being, and, ultimately, exists (or ought to exist) to serve the individual and human dignity.

This social parallel is not merely conceptual - it is also underscored by more practical commonalities. Both medicine and law are governed by professional standards, legislative frameworks, and, in many instances, ethical codes (such as medical or legal ethics). Practitioners in both fields must demonstrate high levels of professional competence and moral maturity. Perhaps most importantly, they must possess a deep sense of responsibility for the lives and well-being of others - individuals whose fate, at crucial moments, may depend significantly on their judgment and conduct. Moreover, both professions frequently engage with vulnerable populations and operate under conditions of considerable stress. Yet their responsibilities go far beyond technical proficiency. Without exaggeration, the work of legal and medical professionals helps shape the moral compass of society and contributes decisively to the overall health of the social fabric.

To be more specific, surgery, within the field of medicine, represents a domain focused on radical methods of treatment involving invasive intervention - penetration into bodily tissues or organs - which, nevertheless, does not (and should not) violate the fundamental integrity of the human body. Surgical intervention is employed only when other approaches - such as pharmacological or therapeutic treatments - prove ineffective. The surgeon resorts to such intervention, often traumatic and painful, with the goal of preserving or saving a person's health or life. Despite its severity, surgery frequently constitutes the sole means by which serious illness can be addressed or overcome. More broadly, it is accepted that, in certain cases, recovery or the preservation of health is only possible through surgical means.<sup>45</sup> Does this logic not seem familiar when we turn to the concept of restorative

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<sup>45</sup>Загальна хірургія. Вибрані лекції: Навч. посібник /Б. І. Дмитрієв, А. М. Торбинський, В. М. Демидов, О. І. Журавок, І. Ф. Львов, П. Г. Литвинов, В. І. Саввов; За ред. Б. І. Дмитрієва. Одеса: Одес. держ. мед. ун-т, 1999. 356 с.; Кіт О.М., Ковальчук О.Л., Вардинець І.С., Боб А.О. Хірургія. Підручник. Тернопіль: Укрмедкнига, 2004. 644 с.



justice or, more broadly, to the role of criminal law? Criminal law, in its essence, fulfils a comparable function - both with regard to specific individuals (or groups) and to society. It may be viewed as a form of “legal surgery” undertaken when the social “organism” is afflicted by criminally unlawful conduct, and when only decisive, often coercive intervention - punishment or other criminal-law measures - can restore social equilibrium and prevent further deterioration.

A criminal offense, in this analogy, is one of the most serious forms of social pathology, and the response of criminal law is the mechanism by which this pathology is localized and addressed. Just as a surgeon excises a malignant tumour to preserve the integrity of the body, so too does criminal law act to “isolate” the offender or to apply other coercive measures in order, figuratively speaking, to safeguard society and, where possible, rehabilitate the individual.

It is important to underscore that both surgery and criminal law are not merely utilitarian “tools.” Rather, they are grounded in foundational axioms and principles that persist over time, even amidst technical and procedural innovation. In surgery, these enduring axioms include, first and foremost, the principle of *primum non nocere* - “first, do no harm” - which demands that any intervention be both conscious and justified. Surgery is understood as a measure of last resort, applied only when less invasive or conservative methods have proven ineffective. It also requires an individualized approach, recognizing that each human body is unique and must be treated accordingly. Finally, the surgeon’s personal responsibility is paramount: the outcome rests squarely on the surgeon, who must possess not only advanced qualifications and technical skill, but also a comprehensive understanding of both traditional and innovative methods, including diagnostic tools and procedural techniques.

A similar logic applies to criminal law, which may be seen as a kind of “legal surgery”. Despite the evolution of legal technologies - such as the digitalization of criminal proceedings, the growing use of artificial intelligence in investigative processes, and the increasing role of remote interrogations at various stages - criminal law remains firmly anchored in a set of traditional axioms. Chief among these is the principle of culpability: criminal liability arises only when guilt has been established, and guilt, in turn, can only be attributed to a sentient individual possessing consciousness, free will, and rationality - in a figurative sense, a soul. Only a human being is capable of the intentional conduct necessary for criminal liability and, thus, only a human being can justly be held accountable under criminal law.

Given the inherently severe and coercive nature of criminal law, it must be applied exclusively in cases where the guilt of a specific individual has been clearly established, proven, and documented. The imposition of criminal liability absent such proof - especially when applied to an “illusory” entity - risks transforming the law into an instrument of mere formalism. In such instances, criminal law ceases to serve justice and instead becomes a mechanism of arbitrariness and repression, undermining the very foundations of the rule of law.

It must be emphasized that these axioms are not merely declarative - they are clearly enshrined in the foundational provisions of Ukrainian criminal law, specifically in the General Part of the Criminal Code, which remains in force to this day. I will outline these key legal provisions in sequence:

1. Criminal liability is personal and applies only to natural persons. A person subject to criminal liability (i.e., the subject of a criminal offense) is defined as a **sane individual** (*bolded for emphasis*) who committed a criminal offense upon reaching the age of criminal responsibility as determined by the Criminal Code (Part 1 of Article 18).

2. Liability arises only upon a finding of guilt. Article 62 of the Constitution of Ukraine stipulates that a person shall be presumed innocent of a crime and shall not be subject to criminal punishment unless and until their **guilt** (*bolded for emphasis*) is proven in accordance with the law and confirmed by a court's guilty verdict. This constitutional guarantee is echoed throughout the Criminal Code, including in Article 2(2), which reiterates that a person is presumed innocent until **their guilt is established** (*bolded for emphasis*) in the manner prescribed by law and recognized by a guilty verdict. Moreover, Article 23(1) defines guilt as the mental attitude of a person toward their act or omission and its consequences, expressed in the form of **intent or negligence** (*bolded for emphasis*). The requirement to establish a person's guilty mindset is reinforced by other provisions as well. For instance, the subject of a criminal offense must be a sane individual (as defined in Article 18). Article 19(1) further explains that a **sane person** is one who, at the time of committing a criminal offense, was capable of **understanding** their actions and **controlling** them (*bolded for emphasis*). Therefore, the presumption of innocence and the requirement of establishing guilt in accordance with due process are fundamental. These principles ensure that criminal liability is grounded in personal culpability, thereby excluding the doctrine of objective imputation, which would hold someone liable without fault.

3. Criminal liability is inherently personal in nature. Article 61(2) of the Constitution of Ukraine provides that legal liability is of an individual nature. This principle is implemented in several provisions of the Criminal Code. For example, the definition of the subject of a criminal offense reflects its individualized nature. Similarly, Articles 26 and 27, which address the concept and types of accomplices, reject the notion of collective or group-based liability - systems of responsibility that, historically, were characteristic of totalitarian or theocratic states. The emphasis on personal responsibility is critical to ensuring fairness in the application of criminal sanctions.

4. The individualization of criminal liability is closely connected with the principles. It applies not only to the classification of the criminal act but also to the sentencing process. Punishment must be determined not according to a rigid formula, but based on the specific circumstances of the case and the individual characteristics of the offender. This approach reinforces both

the educational and preventive functions of criminal law, by tailoring justice to the individual, rather than to a generic standard.

It is also necessary to highlight additional core principles that are fundamental to criminal law:

- the principle of legality - *nullum crimen, nulla poena sine lege* - holds that there is no crime and no punishment without a clear provision in law;
- the principle of justice requires that punishment (or criminal liability) be proportionate to the offense committed;
- the principle of individualization of punishment (criminal-legal influence) demands that each case be evaluated on its own merits, taking into account the circumstances of the offense, its consequences, the character of the offender, and the nature and degree of guilt;
- the principle of humanism obliges the state, even when imposing punishment, to maintain respect for human dignity;
- the presumption of innocence is the cornerstone of justice - comparable, metaphorically, to antisepsis in surgery - without which legal safety and integrity are impossible.

These principles underscore that the axioms of criminal law are not merely theoretical abstractions preserved out of tradition. Rather, they are mental-legislative foundations: codified into legislative constructs, they serve to stabilize criminal law, provide it with consistency, particularly in periods of societal or legal transformation, and ensure its continuity. Adherence to such civilizational principles ensures, on one hand, that an individual is held personally accountable for their actions, and on the other, that the rights of the individual - in whatever capacity they are involved - are protected. Even where coercive measures are applied, these principles help preserve a social perception of criminal liability that remains calm or, at minimum, tolerable. Thus, amid political changes or technological reforms, it is this legal stability - grounded in such axiomatic foundations - that reflects the true legal identity of a state.

Moreover, it must be emphasized that these axiomatic provisions have been systematically internalized into the legal consciousness of the legal community over many decades - particularly among those who study, apply, teach, or conduct academic research in the field of criminal law. For this reason, these principles have acquired the status of legal “dogmas”, enjoying a kind of undisputed authority. Therefore, from the standpoint of preserving both legal consciousness and legal culture in society, it is of paramount importance to maintain the traditional provisions of criminal law. These very provisions - regardless of the technological or procedural format, whether the case exists on paper or as part of a digital database, whether proceedings are held in a courtroom or via videoconference - form the foundation of theoretical, legislative, and practical criminal justice thinking. Ultimately, these axioms elevate criminal law from being merely a set of normative rules to a responsible social intervention - a form of state-imposed legal force that exists not for the sake of

retribution, but primarily for the restoration of a violated legal order and the protection of the individual and society.

Thus, bodily surgery and “legal surgery” are united in their core mission: both are resorted to when no other means are effective, both operate with decisive force, and yet both remain strictly bound by professional and ethical axioms. Their objective is not destruction, but healing; not retribution, but the restoration of health - be it physical or social. This makes them not merely technical forms of medical or legal practice, but fundamental safeguards of life and public order.

An analysis of criminal law from a general perspective - when coupled with its doctrinal detail - allows us to argue that criminal law, by its very nature and socio-legal function, should be regarded as a traditional branch of law, into which innovations must be introduced with utmost caution and only in ways that do not violate its foundational axioms. In my view, there is no compelling or principled necessity for such foundational shifts, whether one examines the issue “in detail” or from a broader systemic perspective.

In any case, the application of criminal law measures to an “illusory” subject, such as a legal entity, cannot and should not be viewed as the only - or inevitable - form of legal liability. Rather, it demands a distinct, carefully considered approach and legal assessment, especially given the fundamental principles of guilt, personal responsibility, and individualization that underpin classical criminal law.

More broadly, analysing the interplay between detailed provisions and general principles within criminal law makes it possible to identify internal inconsistencies, enhance the systematic coherence of legal regulation, and promote more accurate and just application of legal norms in practice. This methodological approach contributes - and should contribute - to the clarification of core legal concepts, the resolution of legal conflicts, and the development of a stable scientific foundation for criminal law, which is of particular significance during periods of legal transition and reform.

## VIII. ON THE QUESTION OF THE “ILLUSORY” (OR “IMAGINARY”) SUBJECT (PERPETRATOR) OF CRIMINALLY UNLAWFUL ACTS

While firmly maintaining the need to adhere to established axioms in criminal law, it is nevertheless essential to approach emerging changes, directions, trends, and even new conceptual frameworks without undue prejudice. Therefore, continuing with the analysis of the previously stated topic, we remain focused on the core element of a criminal offense - the perpetrator, commonly referred to in this study as such.

Given modern trends in civilizational development - particularly its technological and socio-economic trajectory, shaped by the digital revolution and the transition to a so-called “smart” society - it becomes increasingly plausible that a new type of perpetrator may emerge: artificial

intelligence (hereinafter, AI).<sup>46</sup> The active and multifaceted integration of AI into various aspects of contemporary life, along with its real and virtual characteristics, suggests that we must be theoretically prepared for the possibility that, as AI systems evolve, their “involvement” in criminally unlawful conduct may shift in qualitative terms - from mere instruments of commission, to direct agents of criminal offenses. Although AI is not currently recognized as a subject of crime in most legal systems, such discussions are already emerging at the academic and policy-making levels.<sup>47</sup> This obliges the legal community - at least at a preliminary stage - to engage in the theoretical exploration of this issue.

In the broadest terms, three general approaches to the analysis of this problem can be identified today:

*Arguments in Favor of Recognizing AI as a Subject of Crime.* Proponents of this position argue that certain technological and functional characteristics of artificial intelligence systems justify, or at least necessitate, a reconsideration of traditional criminal law concepts: 1) autonomous decision-making, particularly in the case of high-level AI systems (Levels 3–4 and above); it is assumed that such systems may act independently of direct human intervention, making their actions resemble those of autonomous agents rather than passive tools; 2) predictability of consequences: if an AI system can be trained to engage in behaviour that results in legal violations, and if the outcome of such behavior can be anticipated or inferred from its programming, then the AI’s capacity to cause harm “intentionally” (within the logic of its algorithms) suggests a level of agency; 3) liability gap: if it is determined that the AI acted without the culpable involvement of any human actor, a legal vacuum may arise, leaving the harm unaccounted for in terms of responsibility. In such cases, some scholars propose viewing AI as a form of “quasi-subject” of crime, analogous in a certain sense to legal entities, precisely due to the illusory or non-physical nature of their existence.

*Arguments Against Recognizing AI as a Subject of Crime (Axiomatic Position).* This view is rooted in classical criminal law theory and holds that only a human being can be a subject of criminal

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<sup>46</sup>Оцоколич В., Набув чинності Європейський закон про штучний інтелект. Про основні вимоги та зобов’язання при використанні штучного інтелекту. [https://biz.ligazakon.net/analytics/229699\\_nabuv-chinnost-vropeyskiy-zakon-pro-shtuchniy-ntelekt-pro-osnovn-vimogi-ta-zobov-yazannya-pri-vikoristann-shtuchnogo-ntelektu](https://biz.ligazakon.net/analytics/229699_nabuv-chinnost-vropeyskiy-zakon-pro-shtuchniy-ntelekt-pro-osnovn-vimogi-ta-zobov-yazannya-pri-vikoristann-shtuchnogo-ntelektu)

<sup>47</sup>I contend that our current understanding of AI remains at the level of what might be termed the “bat theory”. The fundamental premise of this theory is that, metaphorically speaking, even if one sleeps upside down during the day, clings to a branch with one’s feet, and consumes flies at night, one does not thereby become a bat. In other words, when attempting to study and comprehend AI, humanity must avoid approaching it solely through preconceived notions or superficial analogies that fail to capture its complex and, for most, largely inscrutable nature. Instead, it is imperative to develop and establish substantive and methodological frameworks that enable a genuine understanding of AI’s true essence - how it “perceives” or “understands” itself. Only with such insight can we meaningfully evaluate AI’s behavior, its “consciousness,” and its “intelligence,” and subsequently progress toward a legal assessment of its actions. I developed a scientific essay on this topic during my fellowship at the DAAD and while conducting research in 2024 at the Institute for East European Law in Regensburg, Germany. The preface to this article was graciously authored by the current director of the Institute, Prof. Dr. Dr. h. c. Herbert Küpper. For more detailed discussion, see: Streltsov Ye. Artificial intelligence from the perspective of the “bat” phenomenon: a humanitarian essay. Preface Herbert Küpper (Regensburg, Germany). Legal Herald of Ukraine. №№ 2-4, January - February 2025.



liability. Key arguments include: 1) lack of consciousness, will, and guilt: AI systems, regardless of complexity, lack fundamental qualities necessary to constitute a legal subject of crime - namely, awareness, intentionality, and moral or legal culpability; 2) AI as an object, not a subject: an AI system is a tool, no different in essence from a knife, a vehicle, or a trained animal. It may be used to commit a crime, but it does not independently commit one in the legal sense; 3) criminal liability must always rest with a natural person - such as the developer, user, or owner - who created, programmed, or deployed the AI system; 4) recognizing AI as a subject of crime could complicate efforts to identify and prosecute actual human actors responsible for misconduct, much like the challenges discussed earlier in relation to attributing guilt to legal entities.

*Neutral or Intermediate Positions.* This group of approaches acknowledges the complexity of the issue and seeks a balanced legal response through evolving or hybrid frameworks: 1) AI as a mediator of crime: AI is considered an indirect or mediated instrument through which a person commits a criminal act. In this model, the AI's actions are attributable to a human actor operating behind the scenes; 2) creation of a special legal status for AI: in certain jurisdictions, notably the European Union, proposals have been made to introduce the concept of an "electronic personhood" for AI systems. For example, the Draft Report on Civil Law Rules on Robotics (2020) contemplates the creation of a special legal personality for AI - though, thus far, this remains confined to the sphere of civil liability; 3) distributed liability models: another approach envisions a model of shared responsibility among multiple stakeholders - developers, owners, operators, and potentially the algorithmic system itself - based on their respective roles in creating or enabling the AI's harmful behaviour.<sup>48</sup>

It is also worth noting that recent claims by Chinese researchers purport to show that AI systems may already exhibit cognitive processes similar to human thought.<sup>49</sup> While this remains a subject of scientific debate, such findings are often cited by advocates of granting AI some form of legal subjectivity, reinforcing the perceived legitimacy of these emerging legal-theoretical constructions.

In any case, issues related to the establishment of responsibility for AI can already be regarded as an emerging trend that is receiving increasing scholarly attention. While current criminal law

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<sup>48</sup> Жорнокуй Ю. Штучний інтелект: питання відповідальності на сучасному етапі розвитку доктрини. *Forum Prava*. 2024. № 79(2), с. 118–127); Радутний О. Відповідальність штучного інтелекту. Інформація і право". Науковий журнал. 2017. № 2(21), с. 124-132; Туз Т. Перспективи встановлення кримінальної відповідальності внаслідок використання штучного інтелекту. *Грані права: XXI століття* : матеріали Всеукраїнської науково-практичної конференції (м. Одеса, 19 травня 2018 р.) У 2-х т. Т. 2 / за ред. Г. О. Ульянової ; уклад.: Ю. Д. Батан, М. В. Сиротко [та ін.]. Одеса : Видавничий дім «Гельветика», 2018. С. 140-142; Шепітько М. Перспективи впровадження, використання та відповідальності штучного інтелекту в ЄС та Україні. *Вісник асоціації кримінального права України*. 2023. № 2(20), с. 48 – 61; Грига В. Штучний інтелект як потерпілий від злочину. *Молодий вчений*. 2019. № 5 (69), с. 188 – 192.

<sup>49</sup> Пономаренко Д. Вчені вперше знайшли докази того, що штучний інтелект може мислити як людина. <https://www.unian.ua/techno/neiroseti/chi-mozhe-shi-dumati-vcheni-vpershe-predstavili-perekonlivi-dokazi-13040028.html>

frameworks do not recognize AI as a subject of crime, the development of autonomous systems and the potential emergence of new characteristics - some of which we may not yet even be able to fully anticipate - make the discussion of a special legal regime for AI, including the possible introduction of its “direct” responsibility, a matter deserving of serious academic and theoretical consideration. At present, these debates remain within the realm of doctrinal discourse and theoretical modelling rather than formal legal regulation. Nevertheless, as the Latin maxim reminds us, *Futura incerta sunt* - the future is uncertain.

In this regard, let us shift to a more general level of analysis and recall that, in a number of essential features, AI resembles characteristics that are also typical of legal entities. This parallel opens the possibility of anticipating the emergence in criminal law not merely of isolated anomalies but of a broader, novel category - what might be termed an “illusory” or “imaginary” subject of criminally unlawful acts. Such a subject does not, strictly speaking, possess the legal capacity required for criminal liability, yet increasingly “claims” a quasi-subjective role in discussions of accountability.

Moreover, historical reflection reveals that attempts to assign criminal responsibility to non-human actors are not entirely new. For example, in medieval Europe, animals were brought before courts and subjected to criminal trials. These proceedings occurred from approximately the 9th to the 17th centuries, reaching peak frequency between the 14th and 16th centuries across countries such as France, Switzerland, Italy, and Germany. Animals were prosecuted for a range of offenses - often for causing harm to humans or crops - and the judicial process closely mirrored that applied to humans, complete with formal accusations, legal representation (defence counsel was sometimes appointed), and sentencing. Punishments typically included execution. These trials were divided into ecclesiastical proceedings (often involving pests like rats) and secular courts (dealing with domesticated animals).

The rationale for such proceedings rested on a number of core principles. In particular, religious beliefs played a central role: animals were sometimes viewed as instruments of the devil or as violators of divine order. Trials thus carried not only punitive but also symbolic and purificatory significance, reflecting the intent to cleanse the community from evil influences.

These acts of “justice” were not merely about enforcing law but affirming the power and reach of authority - be it religious or secular - over all beings within a given territory. One could argue that, even then, there existed a rudimentary worldview that sought to project human moral and legal frameworks onto the natural world. By the 17th century, such practices began to wane. The decline was driven by a complex interplay of factors: the transformation of political structures, the rise of market economies, the gradual rationalization of legal systems, and the weakening of mystical-religious explanations of the world. The shift toward scientific reasoning and secular governance found its expression in the evolution of legal norms, rendering such trials obsolete.

The initial systematization of this material provides insight into the fact that, throughout their evolution, humans have periodically, for various reasons - religious, financial, technological - sought, and continue to seek, an “illusory” (“imaginary”) being as a “new” subject (perpetrator) of a crime. Such a being, regardless of its ontological status, has been (in the past), is currently, or may be in the future, subjected to the application of various criminal law measures - primarily punishment - without possessing personal culpability or the capacity to understand the nature of its actions. This circumstance raises an important question for scholarly discussion: are these processes of applying criminal law measures to various categories of “illusory” (“imaginary”) subjects a fragment of legal policy relevant to a specific stage in a state’s development, a recurring trend that periodically manifests itself in human history and, above all, within the actions of authorities, or does this reflect the emergence of a new concept according to which an “unreal” entity (being) may be recognized as a subject (perpetrator) of a criminal offense? Understanding this phenomenon makes it possible to pose yet another critical question—one that concerns the traditions of criminal law as will be discussed below.

## IX. ON THE CONCEPTUAL “PURITY” OF CRIMINAL LAW

Criminal law has historically been regarded - and continues to be regarded, at least within the framework of traditional legal understanding - as the strictest and most punitive branch of the legal system across all jurisdictions worldwide. At a general level, this area of law, in its commonly accepted interpretation, imposes significant limitations on an individual’s rights, including, most notably, the deprivation of liberty, and in some jurisdictions, even life. It delivers a negative moral and legal judgment on a person’s conduct and does so with the mandatory establishment of guilt in relation to the act committed.

It is important to recognize that debates concerning the nature of criminal law are often complicated by an initial failure to distinguish between various interpretative approaches. However, given the objective complexity of this phenomenon, criminal law can - and indeed should - be interpreted from multiple perspectives: philosophical, historical, sociological, and legal (both general and specialized), among others. Each of these perspectives offers its own conceptual framework and interpretative content, which do not necessarily coincide with one another. Put more broadly, the application of criminal law provisions is not merely a punitive response, but rather represents, in figurative terms, a form of negative “value-based” judgment rendered by society upon an individual who is deemed capable of understanding their actions, of making choices between lawful and unlawful behaviour, and who consciously chooses a course of action prohibited by the state.

At the same time, if we accept the premise that the subject of a criminal offense may be an “unreal” or “imaginary” figure - one lacking consciousness and will, such as an animal, a legal entity, or AI - then the very rationale for applying criminal law begins to erode. This is because there no longer exists a subject capable of internally comprehending guilt for their actions. Punishment or other criminal legal measures begin to lose their rehabilitative and preventive function, since, in a conventional sense, it is impossible to educate or morally reform a legal entity or an AI system. Moreover, such an approach creates the risk of a so called “dilution of guilt”, whereby accountability is shifted to a “phantom” subject, allowing real individuals to evade responsibility, which underscores the potentially erosive nature of such trends.<sup>50</sup>

In this context, the conceptual “purity” of criminal law is not an archaism, but rather a deliberate effort to preserve its normative and value-based rigor, to prevent legal uncertainty, and to maintain the efficacy of criminal law in protecting fundamental societal values. It seeks to avoid transforming criminal law into a mere technical instrument for formally addressing wrongs without reference to moral culpability.

In my view, regardless of how the imposition of liability on an “illusory” subject may be justified, such an approach ultimately obscures the proper “addressee of responsibility” - that is, the need to establish precisely who committed the criminal offense. Personal accountability is replaced by institutional responsibility, which permits the imposition of sanctions without the need to prove consciousness, will, or guilt - without establishing the actor’s mental attitude toward the offense.<sup>51</sup> This could potentially open a *Pandora’s box*, enabling dangerous manipulation of criminal law, whereby law enforcement officials might “assign” blame to, for instance, a company or organization, thereby avoiding the more rigorous task of identifying and proving the guilt of a specific individual.

Indeed, the introduction of “phantom” subjects of criminal liability is largely driven by simplified pragmatics: it is more convenient, expedient, and procedurally efficient.<sup>52</sup> Yet, this is very much a double-edged sword. On the one hand, it might be seen as a response to the emergence of new forms of crime; on the other hand, it poses genuine risks of replacing authentic justice with its substitute - a situation in which one can arbitrarily select among multiple potential “subjects” for a single offense.

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<sup>50</sup>Erosion in the socio-legal context refers to the gradual weakening or deterioration of social and legal norms, principles, and institutions, resulting in diminished effectiveness of legal regulation and a decline in social stability. In other words, it constitutes the “loss” or “distortion” of the fundamental rules upon which public order and the legal system are established.

<sup>51</sup> Streltsov Ye. Human consciousness and legal awareness in the perception of Artificial Intelligence. *Łódzkie Studia Humanistyczne*. 2025 № 1, p. 8-12.

<sup>52</sup>Налуцишин В. В., Налуцишин В. В. Суб’єкт злочинного посягання: європейський досвід. *Південноукраїнський правничий часопис*. 2022. № 4. Ч. 2. С. 134 – 142. [http://www.sulj.oduvs.od.ua/archive/2022/4/part\\_2/21.pdf](http://www.sulj.oduvs.od.ua/archive/2022/4/part_2/21.pdf)  
Кримінальна відповідальність юридичних осіб: аргументи «за» і «проти». [http://lib-net.com/content/9445\\_Kriminalna\\_vidpovidalnist\\_uridichnih\\_osib\\_argymenti\\_zh\\_i\\_proti.html](http://lib-net.com/content/9445_Kriminalna_vidpovidalnist_uridichnih_osib_argymenti_zh_i_proti.html)

In my view, such variability in assigning liability has no place in criminal law. It may be permissible in civil or, to some extent, administrative law, where the consequences of legal regulation are not so severe. But in criminal law - as in surgery - the application of the “scalpel” must always be precise, unequivocal, and without alternatives.

Therefore, I reiterate that when discussing the issue of liability for “illusory” (“imaginary”) subjects, one must not assume that the discourse on the application of criminal law measures excludes the possibility of alternative forms of liability, as discussed earlier. It should be emphasized that such alternative liability may serve to develop regulatory, compensatory, and supervisory frameworks in a fundamentally different manner. This can be achieved - indeed, has already begun to be achieved - by shifting the primary focus of liability away from punishment and toward prevention and control; by establishing compensatory funds within these frameworks; and through mechanisms such as risk insurance, mandatory audits, and other proactive legal instruments. For instance, administrative liability of an enhanced nature may be applied to both AI’s systems and corporate entities. This form of liability does not require proof of intent, yet still allows for the imposition of serious sanctions, including substantial fines, suspension of activities, and other restrictive measures. Importantly, such liability does not carry the stigmatizing effect associated with criminal law.<sup>53</sup>

The sum of these arguments - by no means exhaustive - underscores the notion that the “purity” of criminal law is not a limitation, but rather a fundamental strength. I maintain: if we begin to confer the status of criminally liable subject on any actor that simply “causes harm,” regardless of the presence of consciousness or guilt, criminal law risks becoming an instrument of automatic repression, devoid of the moral and ethical foundations that justify its application in a democratic society. Therefore, in my view, it is both more appropriate and more principled to preserve criminal law for “human subjects”, in whom consciousness, moral awareness, and inner freedom are integral. At the same time, it is necessary to develop parallel systems of legal liability for those instances where harm occurs, but where the classical requirements for criminal guilt cannot be satisfied. Such forms of liability should not merely mimic the structure of criminal liability, but they should also not fall

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<sup>53</sup>In criminal law, stigmatization can be understood at two distinct levels: formal and informal. Formal stigmatization encompasses the legally prescribed consequences of a criminal conviction, including the maintenance of a criminal record - even if subsequently expunged - which may impose various restrictions. These include prohibitions on employment in certain sectors (such as education or civil service), limitations on obtaining visas, loans, or firearms, and the possible annotation of a criminal record in official documents and certificates. Informal stigmatization, although not codified by law, also exerts a significant impact. It may manifest in discriminatory behaviors such as employers refusing to hire individuals with a criminal history or social ostracism by peers who, aware of the criminal record, avoid interaction. Society often continues to perceive such individuals negatively, even when they have reformed. Overall, stigmatization within the criminal justice context can hinder the process of resocialization - the reintegration of individuals into normative social life. In some instances, this barrier contributes to recidivism, as the individual struggles to adapt to society and consequently reoffends.

short of it in terms of stringency and effectiveness, particularly when applied to non-human actors, including legal entities, artificial intelligence systems, and other similar constructs.

Therefore, I would like to emphasize that regardless of how persuasively the need for assigning criminal liability to an “illusory” (“phantom”) subject may be argued, such an approach - whether one supports it or not - inevitably blurs the “addressee of responsibility”, that is, the specific individual who has actually committed the criminal offense in question. As a result, personal responsibility risks being supplanted by institutional or collective responsibility, which permits the imposition of criminal liability without establishing the requisite elements of consciousness, volition, or guilt - without determining the perpetrator’s awareness of, and attitude toward, their actions. This shift opens the door to a dangerous potential for legal manipulation, whereby, for example, a law enforcement officer may arbitrarily “assign” guilt to an entity - a company, a group, or a community - without undertaking the necessary and rigorous task of identifying and proving the individual guilt of a particular person under the required legal standards. Admittedly, the incorporation of “illusory” (“phantom”) subjects of criminal liability is often driven by pragmatic considerations: it is said to be simpler, more efficient, and more convenient.<sup>54</sup> However, this is truly a double-edged sword. On the one hand, it may respond to the real need to combat emerging and complex forms of criminality; on the other, it presents serious risks of replacing genuine justice with a mere *ersatz*.<sup>55</sup> Much depends on the manner and motivation behind the application of such institutions - on the prevailing legal culture, and on the integrity of judicial and law enforcement systems. Yet, in my view, criminal law does not permit variability in the identification of liability: “it could be this way, or it could be that way”. Such flexibility may be tolerable in civil or, to some extent, administrative law, where the consequences of applying legal norms are less severe. In criminal law - as in surgery - the use of the “scalpel” must always be precise, definitive, and without ambiguity.

Thus, the expansion of the range of criminally liable subjects to include so called “illusory” or “phantom” perpetrators - regardless of the justifications offered, including the increasing difficulty in identifying the perpetrators of modern crimes – cannot and should not, in my opinion, undermine the axiomatic foundations of criminal law. The personal nature of guilt, the principle of legal certainty, and the inadmissibility of imposing harsh criminal law measures without the mandatory establishment of the subjective element of the offense - that is, the individual’s mental attitude toward the act - are not outdated principles. Rather, they constitute fundamental guarantees of justice. They define the

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<sup>54</sup>Дурова О. Новый закон про кримінальну відповідальність юридичних осіб: що за ним стоїть. *Юридична газета Online*. <https://yur-gazeta.com/publications/practice/kriminalne-pravo-ta-proces/noviy-zakon-pro-kriminalnu-vidpovidalnist-yuridichnih-osib-shcho-za-nim-stoyit.html>; Приходько Т. Проблемні аспекти дефініції суб’єкта злочину. *Науковий вісник Національної академії внутрішніх справ*. 2017. № 4 (105), с. 262 – 274.

<sup>55</sup>Гаврилішин А., Козирева В. Проблеми кримінальної відповідальності юридичних осіб: зарубіжний досвід. *Юридичний вісник*. 2018. № 2 (47), с. 160 – 165.



most severe form of legal liability and demand unwavering observance. Without them, the legal system as a whole loses its legitimacy.

## X. CONCLUSION

The well-known maxim *Facilitas fundamenta labefactat* (“simplification undermines the foundations”) aptly underscores that when, for the sake of “convenience” - regardless of the justification - simplifications or exceptions to established legal provisions and their underlying axioms are introduced, it leads (or may lead) to the erosion of the very essence of criminal law. Such erosion compromises criminal law’s core function as an instrument of justice, a safeguard of public order, and a protector of individual rights and freedoms - transforming it instead into a mere tool of coercion.

I firmly believe that without conceptual clarity and adherence to constructs of an axiomatic nature, criminal law loses its foundational meaning and purpose. It becomes unpredictable and, consequently, not only unjust but also dangerous - a conclusion supported by numerous examples throughout human history. Therefore, criminal law must, notwithstanding the conventionality of this assertion, serve to foster public trust and social stability by preserving legal certainty and upholding the rule of law in a manner consistent with its protective and justice-oriented role.

### **Кримінальне право України на роздоріжжі: у пошуках нової концепції чи на шляху до його ерозії?!**

#### *Анотація*

Дослідження присвячене аналізу взаємозв'язку між традиційним розумінням суб'єкта кримінального правопорушення та сучасними трансформаціями цього поняття в контексті розвитку української правової системи. Розглянуто історичні (зокрема середньовічні), сучасні й потенційні майбутні підходи до його тлумачення. Особливу увагу приділено концепції так званих «ілюзорного» або «фантомного» суб'єктів як теоретичних конструкцій, що відображають зміну уявлень про суб'єкта кримінально-протиправного посягання. Обґрунтовується теза про визначальне значення зазначеної проблематики для розуміння сутності та якісних характеристик кримінального права, а також висловлюється припущення, що відповідні концептуальні «зрушення» можуть свідчити або про переосмислення базових доктринальних положень, або про поступову «ерозію» фундаментальних принципів кримінального права.

**Ключові слова:** перехідний стан; кримінальне право України; суб'єкт кримінального правопорушення; винність; індивідуальна відповідальність; юридична особа; штучний інтелект; «ілюзорний» («фантомний») суб'єкт