# Forms of state-legal response in modern Ukraine: sectoral aspects

***(research conducted at the IOR)***

Institute for East European Law (IOR) has fruitfully been cooperating with Ukrainian specialists, exploring complex problems of modern development of Ukrainian statehood. Within the framework of this cooperation, the DAAD scholarship holder, Doctor of Law, Doctor of Theology, Professor, Head of the Laboratory at the National University "Odessa Law Academy" Yevgen L. Streltsov has been conducting his research during his currant stay at the Institute, dedicated to the architectonics of the future state and legal development of Ukraine.

The presented publication was prepared by him within the framework of his scientific project, commissioned by the national Ukrainian weekly "Legal Herald of Ukraine" and is dedicated to the forms of legal response of the state to the ongoing complex events.

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# Regarding the Forms of Criminal-legal Reaction of the State: Modern Trends

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The development of social processes, which is always inherent in social progress, at certain times acquires, generally speaking, a certain dynamism and even hyperdynamism, which is also, to a certain extent, characteristic of modern times. Certainly, these are different processes in many of their indicators, and this fact, in turn, gives rise to a number of objective difficulties in terms of understanding such processes, their interpretation, development of measures, forms and types of state reaction to them. This also concerns problems that occur in the legal plane at the general and sectoral levels. Doctor of Law, Doctor of Theology, Professor, Corresponding Member of the National Academy of Legal Sciences of Ukraine, Honored Scientific Worker of Ukraine **Yevgen L. Streltsov** shares his thoughts on the complex problems of applying criminal-legal measures in modern conditions. Considering that he's been currently working as a researcher at the Institute of East European Law (Regensburg, Germany) as a DAAD fellow, his reflections are supplemented by a comparative analysis of the aforementioned issues.

https://www.onua.edu.ua/en/streltsov

## On the Possibilities of Science

I believe this study should begin with reflections on the possibilities of science, because traditionally in most scientific publications the latter, in particular the legal science, is given secondary attention, often without giving consideration to the potential of science as a sphere of human activity engaged in the cognition of the surrounding world, in our case, the complex social processes, the place of man in this social "circle", systematization of the obtained information, assessment of their real impact on social, including socially negative processes, speaking from the standpoint of criminal law. Of course, objectivity of science, its reality and productivity should serve as the necessary condition for such properties.

It is precisely these requirements that legal science as a whole and its individual branches must meet. It should also be taken into account that one of the most important conditions for the existence of society, its structure, its functioning is the organization of the behavior of individuals and interaction between individuals, when positive behavior is approved and even encouraged, and negative behavior, taking into account interests of society, is limited and prohibited. It is also necessary to keep in mind that in some periods the development of society may be accompanied by objective civilizational difficulties, and sometimes these difficulties may be significantly aggravated by "unusual" processes of an objective and a subjective nature. This is precisely the time that almost the entire world community is experiencing today at the universal, regional, group levels, and at the level of individual states. Speaking of individual states, we must mention Ukraine, which has occurred in an extremely difficult situation, the further development of which is difficult to predict. Moreover, the complexity of such a situation is further aggravated not only by rapid changes that cannot always be controlled, but also by the fact that such social difficulties have virtually no analogues in our past and/or in the practice of other countries, and we do not yet have enough experience to try to explain them and influence them.

It also needs taking into account that the legal interpretation of such processes, the search for legal measures of real influence on them should always have the necessary level of authenticity (from the Greek *authentikos* – real), that is, they should be as real and reliable as possible. This concerns the whole variety of social processes, including negative ones. It should be, in addition, mentioned that scientific research should focus not only on developing new measures aimed at the future: it should largely rely on processes that have already occurred, on understanding their content, the reasons for their occurrence, including the corresponding behavior of an individual. Such a research methodology, in particular in the criminal law field, allows, on the one hand, to analyze the stage of "post-criminal" behavior, and on the other - to particularly look at the events and processes, causes and circumstances that have generated such behavior, that is, to a certain extent, "provoked" it. In addition, such an approach can provide more objective arguments regarding the understanding of the essence of such social processes, their determinants, measures aimed at developing socially positive processes and limiting/terminating socially negative ones. It should also be noted that legal science, as is known, is focused on the most socially significant processes and events of a fairly constant nature. In any case, in such conditions, legal research should be considered as the mandatory (in reasonable terms) and necessary "prerequisite" for generating meaningful and thoughtful social decisions.

However, the possibilities of legal science must be assessed with a certain degree of caution. The complexities that accompany social processes should not give rise, on the one hand, to "outright" voluntarism in the development of relevant decisions, the obvious "isolation" of the proposed measures from the realities of social life, and on the other hand, - to a certain skepticism in society regarding the possibilities of legal science, the rationality of the provisions that can be proposed by it, etc.

In many respects, this is how legal, in particular, criminal law science is carried out in foreign countries, for example, in Germany. And the scientific research that I conduct at the Institute of East European Law in Germany (IOR) confirms this. Therefore, the traditional approach to understanding the role of science, according to which thoughtfulness, validity, and the necessary social realism regarding the reality and feasibility of implementing the proposed measures, remains unchanged. Same approach should be applied, of course taking into account sectoral specifics, when assessing criminal law research.

## Some reflections on the general provisions of criminal law as a form of state response to socially dangerous acts

As is well-known it is the basic general provisions of criminal law that largely determine its social essence, and it is criminal law (in the sense of both law and legislation) that acts as the most acute, the most "socially traumatic instrument" among other means of state response to the relevant processes. Therefore, the main thing in an attempt to establish the possibilities of criminal law as an appropriate form of state response is the definition and understanding of the main goals and objectives of criminal law. The goals of criminal law, as they are enshrined in criminal legislation, are to create a regulatory framework for the protection of basic international and national social values and interests from unlawful encroachments, i.e. the legal regulation of the activities of the state "through" relevant bodies and organizations, which activities are based on such a regulatory framework. To this end, criminal law, within the framework of its tasks, must determine: the grounds for criminal liability; the concept and features of the general composition of a criminal offense; specific criminal offenses; the concept and types of punishments, other criminal-legal measures applied to persons committing unlawful encroachments; the grounds and characteristics of release from punishment and its serving; the introduction of so-called new "intermediate" links in an attempt to influence a person who has committed such actions, for example, probation, etc. Highlighting these goals and objectives, I would like to emphasize once again: there is no need to endow criminal law with any "superpowers", thanks to which it should act as the main, fundamental, in a word, "all-conquering" means of the entire criminal policy, all activities in the sphere of criminal justice, in fact, all law enforcement activities of the state. On the other hand, of course, and here again I would like to highlight, one should not underestimate the possibilities of criminal law, because its provisions create real opportunities for granting legitimacy to any significant coercive intentions of the state and the activities of the relevant structures, and can also have a reverse effect on the activities of the state *(See in more detail: Стрельцов Є.Л. Раціональний дискурс про кримінальне право: монографія. Київ: Юрінком Прес,2024. 468 с.).*

In general, a real assessment of criminal law and the application of its capabilities allows the state to "introduce" some actions into the sphere of criminal law as the most socially dangerous, that is, to transfer them to the category of criminally unlawful encroachments. Of course, this should be done with the mandatory identification and consideration of those law-making factors that determine the admissibility, possibility and expediency of recognizing a socially dangerous actions as criminal one. This, in turn, allows the state, through the activities of the relevant bodies and organizations, to legally apply coercive measures to persons who have committed such actions, without violating the established general legal order and the rights of persons subject to such influence. Speaking about this procedure in more detail, it represents, firstly, the criminalization of the relevant actions, which creates legal grounds for assessing the relevant actions as criminal offenses, and, secondly, these are practical opportunities for the state to respond through legal provisions to persons who have committed such acts. Speaking about this in another way: it is criminal law that creates the necessary legal grounds for the application of a relevant response to such actions, which is implemented, no matter how we interpret it, in the form of adequate social retribution for what was done.

According to my observations, traditionally in the course of conducting theoretical and applied research, the main attention is paid to the issues of legal assessment of the relevant actions (using medical terminology, “to establishing a diagnosis”), and less attention is paid to punishment and other measures of criminal law that are objectively necessary as a result of the legal assessment of an action (i.e. specific treatment, specific medications that are necessary in this case, again speaking from the point of view of medicine). This is why the main statistical indicators that demonstrate (that should demonstrate) the social usefulness of criminal law as a response of the state are mainly based on general and specific data on punishments (i.e. analysis of the effectiveness of the “treatment” process). The punishment itself, in a broad sense, mirrors those real results of the application of the provisions of criminal law that served as the basis for the corresponding criminal-legal “diagnosis”. In many ways, it is precisely due to the indicators characterizing the punishment (as well as other criminal-legal measures) applied to a specific person, a group of persons, a certain “layer” of persons (for example, “white-collar” criminals etc.), that may further be taken into account when assessing the effectiveness (successfulness) of the entire process of applying the provisions of criminal law at the general level, the appropriateness of such measures in relation to a particular guilty person (whether there was a relapse) or other persons who may have been inclined to commit such or similar acts, etc. In any case, the legal assessment of the relevant actions and the particular state “penalty” for such actions are equal basic “components” of criminal law, which deserve equal attention.

**Succinctly on Punishment**

Regardless of the ongoing discussions, punishment remains one of the main (if not the main) forms of “materialization” of the state's reaction to an action prohibited by law. That is, it is through punishment, including through the choice of the type and amount of punishment, that the state's legal assessment of the committed action is materialized. Therefore, despite the different points of view on this issue, in my opinion, the state's criminal-legal reaction should still be based on postulates that create unity in the application of the criminal law measures. An appeal to foreign experience in this regard reveals that on the whole traditionally in most foreign, primarily developed Western countries the goals of criminal legislation are not defined. In some countries an attempt was made to define such goals at least through punishment, which, incidentally, additionally stresses its role in the understanding and existence of criminal law as a whole. A similar approach, in particular, is implemented in Germany, which in many ways reveals a number of important, in my opinion, even fundamental problems that are inherent in criminal law, despite ongoing discussions.

To justify criminal punishment two types of basic criminal law theories have been developed in Germany: absolute and relative theories. Absolute criminal law theories, which are based on “retribution” for the harm caused by a criminal offense, have recently been subject to certain clarifications. The need to punish a person who has committed a criminal offense is most often justified taking into account general and special prevention. From the standpoint of general prevention, criminal punishment affects, on the one hand, persons potentially capable of committing such actions, in the sense that it warns them against committing criminally punishable offences (the negative general prevention), and on the other hand, it affects a society as a whole in that the availability of punishment and its application demonstrate protection of law and order by the state (the positive general prevention). The special preventive effect of punishment follows from the fact that it serves (should serve) the resocialization of the criminal (the positive special prevention), and on the other hand, it protects society from the offender (the negative special prevention). However, it should be emphasized that both from the point of view of positive general prevention and that of the negative special prevention, it is still about the application of criminal punishment. Therefore, the concept, definition, and interpretation of criminal punishment still require careful analysis.

There are also more modern views, in relation to which criminal law has two main purposes. First, it has a "peacekeeping" purpose. This means that it channels and balances the public's need for "revenge" or social "retribution" by means of a regulated process, which is a collectively organized public response to wrongdoing. Second, this law has a so-called protective purpose, which is that by subjecting the offender to criminal punishment, it demonstrates to the public the inviolability of the rule of law, which ultimately leads to the strengthening of law-abiding behavior of the people.

In contrast, such criteria as the resocialization of the criminal and the protection of society from him are the so-called secondary goals of criminal law, which can also be achieved by other (non-criminal law) means (Prof. Dr. Dr. h.c. Uwe Hellmann). It should be noted that these conclusions are also based on the need to apply "punishment" as a reaction of society, as an action of the state aimed at "retribution" for the committed offence. It is worth reminding that the term "retribution" as a certain form of social reaction is based on the Greek term *antimisthia,* which is interpreted as "revenge", "retribution", "punishment" *(https://1675.slovaronline.com/27513-помста; http://ukrlit.org/slovnyk/помста)*.That is, speaking about criminal law, including criminal punishment, it is always necessary to both "unite" and differentiate them in terms of: the essence of criminal law and criminal punishment, their nature, their properties, their legal and socio-legal tasks and goals, etc. Each of these concepts exists both independently and in combination with other concepts, therefore a comprehensive and specific definition of the essence of these socio-legal institutions contributes to their more accurate understanding and perception. Yet each of these formulations has its own content, its own understanding and interpretation that must always be taken into account.

The above reasoning allows dwelling in more detail on punishment as the main form of "materialization" of criminal law, the "materialized" form of the state's reaction. It is worth noting that it is punishment that has at its core penalty as a necessary and obligatory component. It is penalty that not only constitutes punishment in general, but also allows distinguishing more clearly punishment from other forms of criminal law implementation, analyzing "traditional" and "new" types of punishment, makes it possible to "rework" the list of punishments into a whole system of punishments, to come closer to the implementation of the principles of "legality" and "justice", etc. It is with this in mind that "penalty" is also introduced in general criminal law provisions. The concept of "penalty" as an integral part of punishment is directly enshrined in the current Criminal Code of Ukraine (Part 2 of Article 50). Also, Section 3.2. "Punishment" of the draft Criminal Code prepared by the Working Group, in Article 3.2.1. "The Concept and Purpose of Punishment" establishes that punishment is a criminal-legal means imposed by a court sentence to a person found guilty of committing a criminal offense in order to achieve the goal of protecting an individual, society and the state from new criminal offenses through *(https://newcriminalcode.org.ua/upload/media/2024/08/02/kontrolnyj-tekst-proyektu-kk-stanom-na-01-08-2024.pdf).* Consequently, punishment as a necessary form of criminal-legal provisions implementation is a prerequisite for maintaining law and order in society. Simultaneously, a "poor-quality" choice of the punishment type not only complicates or makes it impossible to achieve the necessary results, but also in general undermines the authority of justice, violates human rights and freedoms *(See: Дудоров О. О. Спеціальні засади призначення покарання. Слово Національної школи суддів України. 2012. № 1. С. 121–135)*.This allows dwelling in more detail on punishment and its punitive capabilities, which will be further done taking largely into account foreign experience, including with the help of statistical data.

**On Punishment, based on foreign statistics**

At the outset, a few preliminary important considerations should be made. First. In the past, familiarity with the legislation and practice of foreign countries, in particular European ones, had an introductory nature, and nothing more. However, the development of social relations, especially in recent years, the similarity of many processes occurring in our country and in other countries, including negative ones, gives the study of foreign legislation a real practical character, allowing us to search for, develop, and propose similar measures of criminal law, taking into account, of course, national characteristics.

Second. In general, in foreign countries, primarily those that we traditionally "call" Western countries, there are two main groups of punishment, which are sometimes called types of punishment. The one is restriction of liberty in a broad sense, which includes all kinds of restrictions, deprivation of the opportunity to enjoy liberty. The second one is property punishment, also in a broad sense of this concept.

We should begin with the analysis of one of the types of punishment included in the general group of restriction of liberty, namely, with deprivation of liberty, which in almost any country is considered as one of the main, if not the main type of punishment. It should be emphasized that the implementation (also in a broad sense) of this type of punishment is accompanied by certain difficulties. This is why this issue has actively been discussed in our country over the past few years. This is not only because of the importance of this type of punishment in itself and its effectiveness, but also because of the organizational, financial and other components of its implementation, which further complicates the application of this type of punishment. It should be noted that this problem is quite complex not only for us: many foreign countries face similar difficulties. Therefore, it is worth in this regard turning to foreign experience.

Let us first turn to the English experience because of the number of reasons. The main one is related to the fact that today in England this problem has acquired not only an organizational and legal character, but also a purely political one. The Labor Party, which had formed a new government in July of this year, thanks to its victory in the general elections against the Conservatives, immediately encountered, as it turned out, one of the main national problems, namely, the prison overcrowding that requires an immediate solution at the government level. According to general information, there currently are 87 500 prisoners in the prisons of England and Wales (traditionally, in all Western countries, this number consists of the number of convicted and arrested at the pre-trial stage) while there are about one and a half thousand "vacant" places in the correctional facilities of England and Wales, and when they are completely filled, the police will not be able to detain offenders, and the courts will not be able to convict them due to the lack of vacant places. It is believed that such a situation can directly paralyze the whole state system of combating the entire range of criminal encroachments, and if organizational and operational measures are not taken to overcome this situation, according to the Minister of Justice Shaban Mahmud, this will not only paralyze the entire criminal justice system, but will also provoke a "rampant" crime *(https://www.bbc.com/ukraine/articles/c2lkzx5lxvgo).*

It should be noted that the current situation did not arise suddenly: it was well known before, to the previous government. Even a corresponding plan for significant improvement of this situation was developed, but the former Prime Minister Rishi Sunak did not dare to implement it before the elections, which turned out to be disappointing for him anyway. By the way, this is a well-known situation, when even in a purely democratic country political ambitions prevail over vital necessity.

According to English experts, operational measures can free up to 5 thousand places in prisons, but these measures will last for a maximum of a year and a half. A significant reform of the criminal justice system, criminal justice, police, social rehabilitation and reintegration of former prisoners is needed. Without such radical changes, it is almost impossible to eliminate the causes of the difficult situation in which the English criminal justice system has occurred. However, this is not an easy task, because first it is necessary to establish: which measures should be recognized as a priority, which – as primary, which – as secondary, which – as additional; what should underlie relevant decisions - political expediency or well-thought-out legal arguments. Indeed, these are complex questions, especially because of their connection with the criminal policy. Nevertheless, the situation in England, taking into account the above facts and comparing it with the state of affairs in other countries, does not look catastrophic. Rather, it is about the fact that today in England the number of prisons and the number of people committing criminal offenses "do not coincide", that is, there is a certain "inconsistency" between the directions of criminal policy, the activities of the criminal justice sphere, the practical implementation of the relevant provisions, etc., which requires analysis and adoption of relevant measures.

When the material for this article was almost ready, some interesting information about the development of these events came from England. Firstly, as of mid-August, there were only 300 vacant places left in the so-called closed prisons, so special measures were introduced, within which the police had to keep suspects in police station cells longer than is provided for. Secondly, and even more interestingly, the UK magistrates' courts, which are the courts of first instance, were instructed not to pass sentences on participants in anti-migrant riots until September this year due to prison overcrowding (!). Judge Nicholas Green of the Court of Appeal of England and Wales – one of the most senior judges in Britain – "advised" the magistrates' courts to postpone passing sentences on the offenders, who, by the way, were out on bail until at least September 10. That is, on the one hand, anti-migrant demonstrations, organized, as it is believed, by far-right groups, and often during their implementation escalating into pogroms, into clashes with migrants and the police, were accompanied by the destruction and damage of police stations, shops and mosques, the arson of various public institutions. The most significant violations of public order in late July - early August occurred in London, Bristol, Belfast, Southport, Halle, Liverpool, Manchester, Stoke-on-Trent, Blackpool. At least 90 organizers and the most active participants in these pogroms were detained *(https://www.eurointegration.com.ua/news/2024/08/23/7192721/)*. However, on the other hand, due to the lack of vacancies in England's prisons, the perpetrators were not only released on bail, but their cases have been postponed from trial for now.

This, in turn, gives grounds to draw an appropriate conclusion about the effectiveness of criminal policy, the efficiency of the criminal justice system as a whole and its individual components, etc. In any case, in my opinion, one circumstance causes indignation: neither the severity of the committed actions, nor the features characterizing such persons, nor other features that to a certain extent additionally characterize this event, are the main ones when making a balanced judicial decision, and the "recommendation" of an official becomes the basis for making a decision regarding the trial of a specific criminal case and the selection (in this case - non-selection) of a preventive measure for the suspected person ! It turns out that here, too, as an assumption, politics dominates! It gives food for thought...

Continuing this analysis and realizing that in many ways these are similar problems in Western countries, let us briefly turn to the state of affairs in the criminal justice system in another prosperous European country - the Netherlands, which has faced with the same problem: the Netherlands lacks prisons, which, by the way, not long ago, largely at the request of business, were converted into entertainment centers, hotels and cinemas. In addition, today there is an acute shortage of personnel in prisons, which, of course, does not allow these institutions to perform their duties at all. This has led to the fact that some convicts in the Netherlands have been serving their sentences in prisons abroad, primarily in prisons in Belgium and Norway, and some convicts for whom vacancies have not been found are waiting their turn, since there are no "vacancies" available in prisons abroad either. In general, the presence of queues, especially the "extended" ones, indicates the presence of the so-called "critical" deficit. But how can such queues, that is, queues in prison, be characterized? What kind of deficit is this? It was usually believed that those who were at large were the ones who had committed the so-called minor crimes. However, according to recent information, among the guilty there are drivers who have committed quite serious crimes, in particular, drivers of vehicles that caused the deaths of people in traffic accidents, or persons convicted of significant sexual crimes. Some of them have been waiting for their real sentence for 8-9 months after their sentence was passed. So, as we can see, this country also has quite visible negative indicators characterizing the activities of the criminal justice sector *(https://newsyou.info/2024/08/u-niderlandax-brakuye-tyuremnogo-personalu-zasudzhenix-xochut-vidpravlyati-do-vyaznic-za-kordon).*

An analysis of information about people in prison allows us to pay attention to two types of systematization of such data. The first concerns the total number of prisoners, the second concerns the ratio of the number of prisoners to the total number of the population of a particular country who are at large. Regarding the first, general indicator, it should be noted that in general the number of prisoners in Europe (not only in England and the Netherlands) has recently been growing. For example, according to the Council of Europe, the number of prisoners at the end of last year shows an increase of 5.7 percent compared to 2022. At the same time, the majority of criminal offenses for which prisoners are serving sentences are drug-related (19% of convicts). Next come: murder and attempted murder (13%), theft (12%), sexual offenses (8.9%), violent attacks against property (7.7%), "ordinary" assaults and battery (6.7%). It should be noted that the data on these types of crimes remains constant, which follows from the Council of Europe data for 2020, according to which the same percentage ratio remains (https://www.coe.int/ru/web/portal /-/europe-s-imprisonment-rate-continues-to-fall-council-of-europe-s-annual-penal-statistics).

Regarding the number of prisoners in specific European countries, it should be noted that by the end of 2023 there were: in Turkey - 348,265 prisoners (+14.6 per year); the second place in terms of the number of prisoners is occupied by English prisons - about 90,000 (+3.1), the third place is occupied by France - 72,294 prisoners (+3.3%). The "advanced" countries in this regard also include: Germany - 58,098 prisoners (+3.2%), Italy - 56,127 prisoners (+3.2%), Spain - 55,909 prisoners (+1.5%), Azerbaijan - 24,698 prisoners (+10.6%), Romania - 23,040 prisoners (+0.1%). It should be noted that Poland, where there is a certain decrease in the number of prisoners compared to 2022 (- 0.9), at the same time continues to be among the European “leaders” in terms of the total number of prisoners - 71,228.

The data on Ukraine should be taken into account in light of two circumstances. Firstly, certain “clarifications” to these indicators were introduced by the events of 2014, when the number of places of detention located in the occupied territories was “excluded” from the data. Secondly, the accuracy of this information is also affected by the implementation of the provisions of the Law of Ukraine on the voluntary mobilization of certain categories of prisoners into the ranks of the Armed Forces of Ukraine, which was signed in May of this year.

If we turn to the second indicator, reflecting the ratio of the number of prisoners to the total number of the population at large, then after Turkey, which also occupies the “first” place here (408 prisoners per 100,000 population), come Georgia (256), Azerbaijan (244), Moldova (242), Hungary (211), Poland (194), Slovakia (183), Albania (179), the Czech Republic (176), Lithuania (174) and Latvia (172). It is noteworthy that the former Warsaw Pact countries are in the lead in this indicator. Therefore, the question arises, what is the reason for such indicators? Can it be explained by the difficult living conditions in these “transitional” countries; or by certain fluctuations in the directions of their social development, creating certain preconditions for negative responses; or by a tough criminal policy, which is “artificial” or has no alternative? Returning to the above-mentioned issue of overcrowding in European prisons, it should be noted that this problem is not unique to Great Britain and the Netherlands. For example, in Cyprus 166 prisoners are “housed” in 100 places, in Romania - 120, in France - 119, in Belgium - 115, in Hungary - 112, in Slovenia - 107. High prison population density is also observed in Greece (103), Sweden (102), Northern Macedonia (101), Croatia (101) and Turkey (100). As we can see, the list of these countries includes developed countries, in particular, France, Belgium, Sweden. Thus, it seems relevant to pose the question of what factors influence this state of affairs, what is the “unifying” factor among such indicators in countries with different levels of development.

It should be taken into account that such indicators can also be influenced by foreigners committing criminal offenses in “foreign” countries, but then, being prisoners, influence these indicators of criminal statistics. Moreover, it is about real figures. For example, the largest number of foreigners is held in the penitentiary facilities in Luxembourg (78%), Switzerland (71%), Greece (57%), Cyprus (55%), Austria (51%). Another interesting indicator that gives food for thought, is: which age category in a particular country is most susceptible to committing criminal offenses? Thus, the average age of prisoners in European prisons as of last year was 38 years. The lowest average age was observed in Bulgaria (33 years), Sweden (34), France (35), Spain and Portugal (41), Italy (43), Georgia (44), the highest in Serbia - 50 years.

Returning to the issue on the number of prisoners in Ukraine, it can be stated that at the beginning of the war there were 48,200 prisoners in Ukraine, and over the year their number decreased to 42,700. As of May 2024, there are 44,691 prisoners in Ukrainian prisons. These figures indicate a certain “constancy” of such indicators. This applies, in particular, to the data on life-sentenced prisoners over the past decade: in 2013 there were 1,810 such persons, now - 1,596. *(https://www.slovoidilo.ua/2024/06/14/infografika/suspilstvo/skilky-uvyaznenyx-tyurmax-krayin-yevropy-ta-yak-zminyuvalasya-yix-kilkist-ukrayini).*

In conclusion of this part of the study, it is worth highlighting that similar problems as to organization of work in the sphere of criminal justice objectively exist in many countries, despite the different levels of their development and the different legal systems which they belong to. Assumably, in many respects the essence of these problems lies in the fact that the relevant measures are not always based on a reasoned concept of counteraction to criminal-legal encroachment at the general and specific levels, on a well-thought-out scientific doctrine, on clear general recommendations on the practical application of the provisions of criminal law, not excluding at the same time purely political decisions, which quite often pursue opportunistic goals of implementing political programs, etc., which further worsens the difficult situation associated with the impact on the most dangerous violations of the established legal order.

**As to the search...**

When analyzing the institution of punishment, one important point should be noted: it is necessary to clearly establish the need for its application not only in general terms, but with regard to its specific capabilities, first of all, in relation to the specific typical features of crimes and characteristics of the persons who committed them. It is worth emphasizing that distinction in this case should be made not between the forms of application of the provisions of criminal law, but specifically within the institution of punishment. This approach will underlie this part of the publication.

Recently, specialists in almost all countries have actively been searching for new, along with existing, public coercive measures in the form of punishment against persons who have committed crimes of various types. This form of state reaction is necessary and widely used in different countries. However, this, in my opinion, should have a proven level of effectiveness so that during implementation and later such decisions bring public benefit.

That is why, from the very beginning, such a search, in my opinion, should largely depend not only on the general, but also on the specific features of a criminal offense. Assessing the nature and degree of public danger of a particular criminal encroachment from the standpoint of the composition of the criminal offense, attention should be paid, first of all, to the action as a formalized conscious and volitional behavior of a person followed by visible and "invisible" social and legal consequences. Then, establishing the nature and degree of social danger of a specific action, its goals, etc., we, along with the above circumstances, begin to analyze in more detail the mental attitude of a person to this action, the characteristics of the person, his mental manifestations at different levels, etc. By and large, explaining the essence of legal assessment of a specific action in simple language, we need to identify (or to try to identify) the following: why (for what purposes) a specific person committed this crime, combining in such an assessment both personal characteristics of an offender, and his thoughts and intentions at the time he was committing (trying to commit) an offence. That is why, when looking for new (alternative) measures of state reaction, speaking about punishment, it is needed from the very beginning to understand that they will be applied to a specific person who committed specific offences, taking into account the current situation and prospects. I consider the nature and degree of public danger, let it not be perceived as "heretical" thoughts, a "secondary" assessment of an offence, which is, of course, equally important, but the general, comprehensive legal assessment of the entire "event", including the characteristics of the personality of the offender, is more important, especially when choosing a punishment.

Therefore, when developing (proposing) forms of state and legal response, first of all, punishment, it is vitally important to identify the purpose and content of a particular criminal action of a specific person. Were there, for example, intentions to cause harm to life and health; or to encroach on sexual freedom? Or were particular crimes committed against the economy, or against public state security, etc.? My view is that it is precisely these arguments that must be put forward as a basis for such a search, because it is impossible to apply the same, "single" punishment to a murderer, a corrupt official, a traitor to the state, and again, this should be given consideration when, in particular, proposing (applying) new (alternative) types of punishment. So, concluding these thoughts, I believe, illegal actions of a particular content (in the broad sense) should be opposed by proportional (adequate) punishments as a concrete form of state reaction to the relevant action of a reprehensible person who has reached the prescribed age for this.

## Economic Criminal Offenses

Here, in my opinion, it is necessary to clarify whether (or not) the same punishment as for economic criminal offenses in general, in the broad sense of this meaning, should apply to specific manifestations of such offenses, for example, to white-collar criminal offenses, to corruption manifestations, etc., which relate specifically to economic crimes. What approach should be applied here? The state, when choosing the forms and types of its reaction, may first of all, in my "subjective" opinion, be guided by the following "considerations". For example, a person has committed an offence, which is recognized as criminally unlawful in the economic sphere, therefore he must be subjected to punishment for the violation of a "parental ban". However, there are several main types of such a reaction: either "imprisonment" (in a broad sense), or the application of measures according to the rule "like is treated with like", that is implementation of economic measures of primarily financial and property nature in "response". The latter one will not only facilitate the return of money lost due to such violations, but will also "restrain" the state from expenditure associated with the implementation of punishment in the form of imprisonment. By the way, such types of expenditure constitute significant amount of what is considered to be public money, but in fact these are "our" funds. As the "iron" Lady Margaret Thatcher once said: "There is no such thing as public money, it is taxpayers' money" *(https://www.finversia.ua/finhandbook/aphorisms?page=2).*

More about such "money" and expenses... Let's start "from the end", namely - from the stage of keeping prisoners in the relevant facilities at the expense of the public budget, including the functioning of such facilities, providing prisoners with the necessary living conditions, expenses for the personnel etc. It is also necessary to take into account the significant costs of the functioning of the courts and the law enforcement system. On the whole, the state must spend significant amount of money on the implementation of criminal policy, instead of directing this money to the development of more important social spheres. *(See, for example: Олексій Баганець. Десятиліття корупції в Україні: побороли чи очолили? Аналіз стану досудового розслідування та судового розгляду корупційних кримінальних правопорушень за останні 10 років (2013–2023 рр., де саме бюджетні витрати на утримання антикорупційної інфраструктури спеціально досліджуються окремо. Юридичний вісник України; № 31–32 (1515–1516), 1–15 серпня 2024 року ).*That is, if the perpetrator (and other persons involved) is imprisoned for economic criminal offenses that has caused real economic harm, then, figuratively speaking, the state suffers further harm when responding to the offense through the functioning of the penitentiary system. On the contrary, by applying economic measures in the form of punishment, the state both contributes to compensation for damage and does not bear additional costs for implementing its response. Even more, given that the imprisonment usually affects the mentality of the convicted person, which is quite often the case in real life, forming stable criminal stereotypes for him, advantages of application of property penalties are obvious. Of course, when speaking about economic criminal offenses, it should be taken into account that it is the economic motives and/or economic consequences of the relevant acts, which drove guilty person from the very beginning, and this should be identified when assessing the content of the relevant illegal act, since such consequences can also occur as a result of "other" offences. Therefore, only those criminal offenses should be considered as economic ones, which in terms of the content, directions, ways of implementation, and consequences are of a purely financial and property nature.

**Briefly about the main provisions of property penalties**

Firstly, property penalties are those that primarily affect (should affect) the property status of the person in question. It is important to note that this group of penalties should have the same characteristics as other types of punishment: they should be punitive in nature in order to ensure, as was stated in the 2010 French Criminal Code, the “disadvantage” of repeating a criminal offense, and thus should not be considered as “additional”, “mitigating” types of punishment.

In the conditions of a market economy, where financial well-being and property security are of the utmost importance, it is necessary to reasonably assess the appropriateness of such penalties and apply them thoughtfully. Thus, property penalties, like other types of punishment, should be assigned in accordance with the nature and degree of public danger of the committed offence and have the necessary punitive component. This is the first mandatory condition that should be taken into account when analyzing these penalties. However, in my opinion, this essential circumstance is not taken into account today at the official level. This is confirmed, for example, by the indication of a fine, which should be considered one of the most real and effective types of punishment, especially in the conditions of a market economy, where money talks everything, first in the general classification of types of punishment (Article 51 of the Criminal Code of Ukraine), thereby being recognized as the most lenient type of punishment.

Secondly, property penalties belong to the current group of penalties provided for by the criminal law of Ukraine. Therefore, they are characterized by the basic, dogmatic components of any type of punishment, namely: 1) punishment is a coercive measure; 2) punishment is applied on behalf of the state; 3) punishment is applied by a court sentence; 4) punishment is applied only when a criminal offense is committed; 5) punishment is applied only to the guilty person; 5) punishment consists of deprivations and restrictions of certain rights and freedoms of the individual; 6) deprivations and restrictions that make up the punishment must be provided for by criminal law; 7) denial of the purpose of causing physical suffering and humiliation of the human dignity of the guilty party; 8) the need to apply punishment; 9) the sufficiency of the application of punishment, which must be determined by the proportionality of the nature and degree of social danger of the committed action and the characteristics of the personality of the guilty.

And finally, there is one more mandatory condition: property penalties should include those types of penalties that, as indicated above, are associated with the restriction of the property rights of a person convicted specifically for economic criminal offenses, with the aim of “preserving” (in the relevant criminal law measure) an adequate, proportionate relationship between the intentions of the person who committed an illegal action of a property nature, and the corresponding reaction of the state to such intentions of the guilty person. In this case, it is fundamentally necessary to distinguish (!) between criminal law measures and that of other branches of law, which are “only” aimed at compensating for material damage. Generally speaking, legal liability is a concept that includes almost all types of duties, obligations, debts arising by virtue of the provisions of a contract, tort or law. For example, the method of protecting subjective civil rights is the substantive legal means of a compulsory nature, enshrined in law, by means of which the restoration (recognition) of violated (disputed) rights and the impact on the offender are carried out. In criminal proceedings, it is also considered appropriate to apply measures to the guilty person aimed at compensating for property damage, but here these serves accompanying measure.

Criminal penalties of a property nature, unlike other types of property "compensations" provided for by other branches of law, are the implementation of one of the main forms of state reaction to a criminal offence with all its inherent mandatory features, including punishment! I would like to emphasize again that punishment is a symbolic action, which in its essence cannot be equivalent to a crime and has no relation to the harm caused to the victim. Punishment, including property penalties, is exclusively a sign that social and legal damage has been caused to society, which must be compensated in a certain way in the social and legal dimension precisely through punishment (Prof. Dr. X. Giertsen). Therefore, it is important to take into account that punishment, having the appropriate properties, must actually affect the offender. If there is no such influence, that is, the person does not perceive the measure applied to him as punishment, then this, on the contrary, can strengthen the feeling of impunity in him, with all the ensuing consequences.

**Search for compromises in the conditions of paradoxical solutions**

The number of criminal offenses, as noted above, is growing in almost all countries. And no matter how "statistics" is "manipulated", and even if to believe that the increase in the number of crimes is not critical, there are still no fewer of them, which keeps maintaining permanent social tension in society in many respects. And the state's attempts to influence this situation are, using economic terminology, "unprofitable". That is, the state makes many different efforts, in particular, organizational, legal, financial and economic, political ones, etc., but the results that the state and the population of the country in question hope for do not occur.

Of course, this publication will not attempt to establish why is this happening, what are the reasons for this situation. This is a very complex problem, which may be based on: significant social determinants, complexities in ideology and problems dealt with legal consciousness, miscalculations in planning and implementation of the state's security function, in particular, criminal policy in general and its individual areas. Obviously, this problem requires serious analysis at all levels, but provided the state really wants all its numerous efforts to be profitable, again, using economic terminology. And this is exactly what I drew attention to above, noting that it is necessary to analyze not only "post-criminal" behavior, but also much earlier... But for one reason or another, this often is not given sufficient attention

On the contrary, quite often such a situation develops further, and that allows us to assert its certain paradoxical nature. On the one hand, the state is aware (should be aware) that criminal law measures are not sufficiently "profitable", and on the other hand, it still very often tries to solve some more or less significant problem arising in society by applying criminal law measures, which often does not contribute to improving a particular situation: that is, on the one hand, there is a large number (without exaggeration) of recorded crimes, criminal offenders, and on the other hand, there are in general unproductive efforts to overcome such a situation. And this concerns not only Ukraine.

That is why, in my opinion, the state is trying to find "any" ways to at least reduce its large expenditures on everything that is to some extent "connected" with the state's punitive response to criminal offenses. It is for this reason that new or old, but modified, means are introduced, reflecting attempts to somehow, if not influence the determinants of crimes and the persons who commit them, then at least "reduce" the large expenditures that the state must bear in dealing with the entire set of criminal offenses. Here it is worth dwelling on two such measures: a plea bargain and an experiment on the possibility for a person to choose improved conditions of detention in pretrial detention centers.

The regulation of the concept and application of the institute of "agreement with the investigation" is contained in Articles 468-476 of the Criminal Procedure Code of Ukraine. It is believed that such an agreement is a type or an additional component of an agreement on admitting guilt, a so called "plea deal", which provides for an official agreement between prosecutors and the suspect/accused on the latter's confession to the crime. This gives the suspect/accused hope for a reduction in the term of imprisonment or the application of an alternative punishment of a property nature rather than a punishment associated with imprisonment. This also serves to the "interest" of the state and creates advantages for the functioning of the criminal justice system, associated, for example, with a certain saving of time, when trials are not delayed, and in most cases, subject to an appropriate agreement, are very quick and consist, as a rule, of just one court hearing, during which the court approves the terms of punishment established in the agreement between the accused and the investigation. This also saves the public money at all stages of criminal proceedings. However, when mentioning this institution, it should be noted that its implementation, subject to the mandatory condition of admitting guilt and compensating for all types of property damage, is associated not only with mitigating the type of punishment or reducing its amount: its implementation also requires a number of mandatory, possibly "initial" (underlying) conditions, the application of which does not allow this institution to be considered a "veiled" means of "avoiding" criminal liability. The suspect, in addition to admitting his illegal actions, is required to provide the investigation with complete information or testimony that allows other persons who are the organizers (accomplices) of the crime to be brought to criminal liability. Of course, there are relevant provisions that allow establishing the objectivity of such data and avoiding far-fetched slander against other persons. Our fairly new experience in this matter is largely based on the established foreign practice, which believes that it is "exposure" as a mandatory condition for the application of this institution that is considered one of the most effective ways of identifying unlawful behavior that infringes on public interests *(https://www.eurointegration.com.ua/articles/2024/08/8/7191317/)*

Consequently, something much more is needed, than just admitting one's guilt. Therefore, no matter how we mentally perceive this mandatory condition, but, as is known, *dura Lex, sed Lex*. And the guilty either agrees to such conditions or not – *nulla terti aoptio*. In particular, it was precisely these basic requirements, in addition to admission of guilt and compensation for damages, that were highlighted during the first discussion on the draft law on an agreement with the investigation regarding corruption related criminal offenses held by the Verkhovna Rada in July of this year.

The next such provision deals with the use of VIP ("paid") cells during the stay of a person taken into custody in pre-trial detention facilities of the state penitentiary service. The provision on the experimental application of such a project is regulated by the Resolution of the Cabinet of Ministers of Ukraine dated April 22, 2020, No. 305 "On the introduction of an experimental project for a paid service with the provision of improved living conditions and food to persons taken into custody in pre-trial detention facilities of the State Penitentiary Service (as amended by the Resolution of the Cabinet of Ministers", No. 1297 dated December 9, 2021 and No. 514 dated April 26, 2022).

Of course, this idea did not find full support among experts, who believed that this can be attributed to the violation of the so-called principle of equality among persons committed criminal offenses*(See: Копотун І.М. Платні камери у слідчих ізоляторах: черговий реформаторський крок чи порушення принципів справедливості ув'язнених перед законом. Наше право. Науково-практичний журнал, 2020, № 2, с. 51- 58).*It can be assumed that here the state is trying to "divide" its property "burden" between itself and the person who committed the relevant acts. Such approach of the state, to put it mildly, can be understood. For example, according to the latest data, the cost of maintaining one prisoner in Ukraine is approximately 10 thousand hryvnia per month (*https://dyvys.info/2021/08/12/vartist-utrymannya-v-yaznya-v-ukrayini-zbilshylas-vdvichi/).*If to multiply this figure by the total number of prisoners, then my considerations about the costs of prisoners receive material confirmation. Therefore, it is necessary to pay attention to the proportional relationship between the functioning of criminal policy and all its components with the real expenditures of the state. I believe thatinevitability of criminal liability, clarity and legality when implementing criminal law measures should always exist. This is precisely one of the main signs of state sovereignty, which I constantly insist on. However, on the other hand, it is necessary to approach this in a balanced manner, since the application of any criminal law measures should not only be duly justified, but also have, whether we want it or not, a socially traumatic nature. Therefore, again I insist: such measures of a purely "surgical" nature should always be duly justified. That is, in other words, there is no need to first perceive criminal law idealistically as something that will cope with everything, and then face problems, including financial ones, associated with its practical application, and look for ways to, using everyday slang, then "sort it all out".

**Something about mandatory conditions for the application of property penalties**

It is important to immediately note that the conditions for the direct assignment of property penalties have "peculiarities" of their application, the absence of which will "deprive" such penalties of the necessary essence. In many ways, such conditions for the application of property penalties are directly related to the presence (necessity) of a clear, effective and really functioning system of control over the entire process of the "circulation" of income of individuals and legal entities, their level, volumes, ways of receipt, etc. in the country. If this is not the case, then the effect of the punishment not only does not become lower than expected by society, but, by and large, it may be absent altogether. Moreover: in the absence of such control, property penalties can be considered as "veiled" ways of avoiding criminal liability. It is worth again emphasizing that "penalty" is the "constant" component of criminal punishment (Part 2 of Article 50 of the Criminal Code), including its property types.

It should be noted that Ukraine has recently been taking steps to streamline this system as a whole and its individual components. Thus, the introduction of the requirement to declare income by the relevant category of persons, the activities of the National Agency on Corruption Prevention (NACP), the National Anti-Corruption Bureau of Ukraine (NABU), the Special Anti-Corruption Prosecution (SAP), investigations by independent journalists have already made real steps towards organizing the necessary financial control, primarily with respect to the income of individuals. Thus, in July 2024, the NACP conducted 78 full audits of declarations, as a result of which incorrect information was revealed in the amount of UAH 376 million *(https://sud.ua/ru/news/ukraine/307690-v-iyule-napk-provelo-78-polnykh-proverok-deklaratsiy-vyyavleno-nedostovernykh-svedeniy-na-376-mln-grn),* including specific facts of concealment, which serves as a reason for opening criminal proceedings (*https://hromadske.ua/polityka/229967-dvoye-mistsevykh-deputativ-podaly-deklaratsiyi-z-nedostovirnymy-danymy-na-23-mln-hryven-nazk?traffic_source=ukr.net)*

Foreign experts also positively assess the level of such efforts, admitting that however there is still real potential for improvement. For example, as the US Special Representative for Ukraine Reconstruction Ms. Penny Pritzker noted during her farewell visit to Ukraine in July of this year, one of the 5 mandatory conditions that Ukraine must fulfill is the fight against the shadow economy *(https://espreso.tv/svit-do-kieva- pribula-spetspredstavnitsya-ssha-z-pitan-vidbudovi-ukraini-penni-pritsker),* and this is not just a statement, these are certain requirements for us.

For example, in August of this year, the EU Mission to monitor the Ukraine Facility Plan began working in Kiev, which in general has positively assessed the work already done. However, according to the members of the commission, a number of requirements, including legal ones, still remain unmet, at least at the required level. It is about increasing the staff of the Specialized Anti-Corruption Prosecutor's Office, the entry into force of the amendments regarding the fights against corruption to the Criminal and Criminal Procedure Codes, approval of the action plan for the implementation of the Asset Recovery Strategy for 2023-2025, etc.*( https://interfax.com.ua/news/economic/1008347.html)*

Indeed, this problem needs a gradual solution. To understand its scale in Ukraine, it is sufficient to note that, for example, the population officially earns 1 trillion hryvnia per year, and actually spends 3 trillion hryvnia, which not only excludes this money from the tax system, but also allows it to be used in various unofficial areas, including the further development of not only the shadow, but also the criminal economy*(https://www.obozrevatel.com/ekonomika-glavnaya/fea/pravila-uzhestochat-dlya-vseh-kakie-ogranicheniya-na-perevodyi-s-bankovskih-kart-vvedut-i-pochemu-etogo-malo.htm).* This is why international partners constantly insist that the financial assistance they provide us must be combined with measures to “search” for and use our national finances. Returning to the question of the reality of property penalties, it must be emphasized that only the existence of a real system of control over the income of individuals and legal entities will give such measures a punitive nature.

## Some final thoughts

At the current, very complex stage of development of Ukraine, the process of reforming the legal system, the system of law, each branch of law, including criminal law, is dynamic. These processes, in particular concerning criminal law, should be thought out thoroughly, so that both traditional and latest provisions of law and legislation in this area are as balanced and justified as possible, so as to prevent the “devaluation” of criminal law from the very beginning, which in turn will directly affect the reality of criminal policy, the effectiveness of counteracting criminal offences, the formation of an appropriate level of legal awareness in society, the reality and productivity of all forms of state response. Moreover, such processes can, of course, be of both a strategic and tactical nature. This concerns criminal law substance as a whole and its individual components, including the institution of punishment. Indeed, it should be taken into account that punishment, its content and specific characteristics are largely determined by the culture of the nation, so in such matters it is impossible to rely on “instincts” (N. Christie). Therefore, punishment, in all its manifestations, as the most visible form of “materialization” of criminal law, deserves, especially in modern conditions, special attention both independently and in conjunction with other basic institutions of criminal law.

***Key words*:** goals and tasks of criminal law, criminal law science, criminal law, criminal legislation, crime, criminal offense in Ukraine, criminal punishment, economic criminal offenses, property penalties, Institute for East European Law (IOR)