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VICTIMIZATION AND VICTIM-ORIENTED DEVELOPMENT OF CRIMINAL LAW: A COMPLEX APPROACH

Summary: In the 21st century, one of the essential roles of the Criminal Code is to protect the rights and interests of crime victims. Criminal law is a multifaceted field that must balance well-known principles with evolving societal dynamics. This includes various stakeholders, counting the state, perpetrators, victims, and civil society, each with differing views and implications on criminal law. The modern era, marked by post-truth narratives and a reputational society, has further complicated matters. Casuistry now prevails over systematic approaches, leading to a disconnect between criminal law’s foundational principles and intended societal outcomes. Contemporary criminal law operates on multiple dimensions, addressing individual, societal, and institutional levels while aiming to balance the interests of these entities. The transition from the “age of information” to the “age of reputation” underscores the importance of information subjected to external evaluation. In the context of state of victimization and the need to harmonize Ukrainian criminal legislation with EU and Council of Europe

norms, it is vital to protect human rights. This aligns with a Committee of Ministers recommendation that recognizes crime as a wrong against society and a violation of individual rights, emphasizing the importance of safeguarding victim rights. Approaching criminal law from a victimological perspective offers unique insights into victim participation in criminal liability, crime qualification, and offender culpability. This perspective encourages assessing the efficacy of criminal law prohibitions and promoting victim engagement in crime control on national and international level.

Key words: Criminal law, criminal policy, victim-oriented policy, victimology, human rights, victimization

1. Introduction: In the 21st century, the role of the Criminal Code is unequivocally intertwined with the protection of crime victims' rights and interests. However, the path of criminal law is far from straightforward; it navigates a complex landscape where established principles must coexist with ever-changing social dynamics. The intricate dance of criminal law involves a multitude of stakeholders, each with their distinct perspectives, including the state, perpetrators, victims, and civil society. These disparities even extend to European legal judgments, adding another layer of complexity. As Ukraine moves toward European integration, the protection of human rights through criminal law theory becomes paramount. This approach aligns with international recommendations, recognizing crime as both a transgression against society and a violation of individual rights, emphasizing the need to safeguard victim rights.

In this complex landscape, examining criminal law through a victimological lens provides invaluable insights into criminal liability, crime qualification, and offender culpability. It encourages a comprehensive assessment of the effectiveness of criminal law prohibitions and promotes greater victim engagement in the quest for crime control.

With the potential expansion of passive citizenship principles in criminal law and a focus on fundamental rights and freedoms, the ongoing evolution of criminal law is a journey that continues to adapt to localized traditions and diverse cultural influences.

2. Criminal policy and its development. It should be axiomatic in 21 century that 'one of the tasks of the Criminal code is to protect the rights

and interests of the victim of crime' [1] The evolution of criminal law is a complex endeavor, necessitating a delicate balance between its established tenets and the ever-shifting dynamics of public and social relations. This discord challenges traditional mechanisms of social control, implicating various stakeholders, including the state, perpetrators, victims, and civil society, each with divergent perspectives on criminal law.

Indeed, the concept of criminal law varies significantly across different segments of society, encompassing citizens, media, social groups, and law enforcement authorities. The autonomous concepts of criminal law, punishment and crime exist also in ECHR and ECJ judgments (ECHR Guide on Article 7 [2], ECJ, Case 80/86 criminal proceedings against Kolpinghuis Nijmegen BV [3])

The contemporary era, characterized by post-truth narratives and a reputational society, has exacerbated these disparities. Notably, there is a discernible predilection for casuistry over systematization, with an increased emphasis on situational ideas over the construction of explanatory models. These trends have contributed to a growing disjunction between the foundational principles of criminal law and their intended societal outcomes.

Historically, this disjunction finds its roots in the post-Soviet era, where the manipulation of the rule of law principle, ostensibly in pursuit of safeguarding human rights and countering totalitarianism, resulted in extensive rights violations, societal disarray, and disruptions in governance. During this period, organized crime and corruption emerged as alternative mechanisms for enforcing decisions. This erosion of the principle of responsibility led to the bifurcation of criminal-legal norms into two categories: those serving the collective good (positive) and those favoring individual interests (value). This phenomenon has culminated in an erosion of legal-criminal ideology, the proliferation of corruption, law enforcement fragmentation, legal breaches, anomie, and a crisis in state-level criminal-legal regulation.

In the contemporary landscape, multiple layers of criminal-legal regulation coexist concurrently. The multidimensional and intricate nature of criminal law necessitates analysis on several planes, including material, informational, static, dynamic, and an additional dimension characterized as energetic or spiritual, embodied in individual law enforcement actions.

Transitioning from a binary framework (statics vs. dynamics, positive law vs. law as a value), criminal law operates on various dimensions, manifesting at individual, societal, and institutional levels. Its primary function is to maintain equilibrium among the individual, society, and the state by safeguarding the objects of criminal-law protection.

We are currently witnessing a paradigm shift from the “age of information” to the “age of reputation,” emphasizing the importance of information that has undergone external evaluation and commentary.

3. Victimization and Criminal law: Lessons of Ukrainian War. New era needs to clarify new emergent criminal policies as part of international and state`s public policy in preventing deviance and treatment of victims.

These emergent criminal policies concepts development is based on victims` fair treatment landscape through protection of human rights.

But there are huge contradictions in the way of how we could do it. More than 13 million people are displaced, about 8 million of them abroad. The war is taking place on Ukrainian soil, with its cities being bombarded to rubble, its factories razed, its people turned destitute. If the war grinds on like this for years, it will be worth asking — are we letting Ukraine get destroyed in order to save it?” — asked Fareed Zakaria from CNN [4].

Despite these fearful notices, to Ukrainians the only way is victory. Victory to protect their European choice, their Motherland, their urge to Freedom, to decolonization from the Past. With approximate war casualties since February 24, 2022, till the middle of 2023 as around 120,000 and average UA family size in 2.59, at least 310,000 Ukrainian citizens have lost direct family members dead or wounded [5]. If we include more distant relatives, the number rises to millions. Almost every Ukrainian citizen has now felt the direct consequences of the war on their ordinary lives — economic, political, and cultural. With every day that the war is progressing, the questions as to what they are suffering for, have been generated in numbers. Unfortunately, this way is accomplished with thousands of victims not in my own country, but in our neighborhood, beyond Ukraine. More than 6 million Ukrainians have become forced migrants. Their non-return will cost the economy more than \$113 billion The potential labor shortage due to the war is estimated in millions. According to experts, it could reach 4.5 million people, which is about \$45 billion in lost taxes over 10 years. Failure to return forced migrants

to their homeland will cost Ukraine \$113 billion in lost GDP over 10 years (in 2021 prices). A probable number of UA refugees and IDPs exceeds 24 000 000 persons since February 24, 2022 [6]. Half population of the country became affected nomads. While there is no doubt that many Ukrainian refugees in Europe have experienced hardship and challenges, including discrimination and xenophobia, the level of victimization can vary greatly depending on the individual's circumstances and the host country's policies and attitudes towards refugees. Despite their primary victimization due to the war and their need to flee their homes, Ukrainian refugees in Europe are at great risk of falling victim to organized crime, sexual exploitation, human trafficking, illegal supply chains, as well as classical crimes such as theft, burglary, and fraud, etc.[7]

While Ukrainian refugees can be targeted at different stages of their journey, Europol said the highest risks concern the targeting of victims under the presence of promising transportation, free accommodation, employment or other sorts of support [8]. These numbers of UA people stressing from war and being victimized before and in the process of their travel, need some extra explanations. Approximately 3,000,000 of them are so called pendulum migrants who came to UK and Europe every year to season work after liberating Schengen Regime to UA citizens. Nearly 5 000 000 refugees from Ukraine registered for Temporary Protection or similar national protection schemes in Europe. Among the 11 000 000 who have returned to Ukraine, we find a huge amount of season workers who has returned for three months to UA and then will arrive again to Europe in order not to violate Temporary Protection Directive conditions, and moms with children fleeing from hostilities of war for a couple of spring months and then returning. Those who are not familiar with language and professions are staying for a couple of months in the border countries of UA Crisis Response (Romania, Poland, Hungary, etc.). Those who have previous arrangements or specialties are finding success in the West ongoing to work in European neighborhood, formatting their cultural alliances and assimilating in European ones [9; 10].

Surely, that should relate to secondary victimization that depends on lack of services, implication of different kinds of state bureaucracy, negative attitudes, fear of migrants and hate speech. There are some cases when UA citizens fled for material help to EU countries, renting out their estates to

UA IDPs who came from East, primarily influenced by armed aggression, and then return to UA living for rent and EU help. We know also that some borderline ethnic groups with double passports, living legally in one country, moved to another asking for material help from neighboring government and social services as UA refugees. Thus, in some EU neighboring countries system of obligatory periodical registration of UA migrants who received material help from the State, was created... There is a gap, influenced on victims' marginalization from one side, and states' interests to use migrants' resources. In a country with high demand of migration: "The war is only a trigger that continues to force Ukrainians to go abroad, and they would return to their homeland, but some host countries have been preparing for their arrival for years... In nominal terms, each Ukrainian in Poland additionally created almost 5.8 thousand dollars of GDP, while a Pole — only about 1.9 thousand dollars of GDP. When the Polish government announced in March 2022 the allocation of \$1.7 billion to support 1.2 million Ukrainian refugees, it deliberately went to such costs to 'hook' them in Poland, because they understand the additional income each Ukrainian will bring to the Polish economy... 30% of those who left after February 24 are already working in Poland", — notes one of the leading Ukrainian economists in local media interview[11].

The European Central Bank expects that the participation rate of Ukrainian refugees of working age in the labor force of the Eurozone countries will be between 25% and 55% in the medium term. Estimates of the potential growth of the labor force in the EU are 0.2–0.8%, or 0.3–1.3 million people [12].

In any case, victims of war in UA are ready to spend huge sums of money in the European neighborhood. After the outbreak of war, Ukrainians transferred abroad 7 times more money from their bank accounts than in peacetime. Surely, migration has its positive economy background. However, migrants and IDPs have to deal with a huge psychological trauma. Stress, fear, anger, hate, anxiety, nostalgia and frustration are everyday companions of UA forced migrants. Before the full-scale war, 4% of UA people had nightmares all the time. And now it's a third of population. Surely peoples' minds are flexible but in a constant stress there is a tremendous amount of negative impact.

Therefore, the primary and secondary victimization of victims of aggression against Ukraine, is to be considered as direct victimization of genocide, war crimes, crimes against humanity and the limitation of the rights to compensate and redress in national criminal and civil law as well as in International Humanitarian Law.

Due to the UN soft law and IHL there existed different forms of reparation: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, I remain. “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” [13]. Right to redress, rehabilitate and to compensate goes close to violations of arts 2, 3, 5, 8, art. 1 of 1 Protocol of European Convention on protecting of Human rights and fundamental freedoms. More than 300 billions of USD that belong to RF and their oligarchs were frozen. But usage of this money to compensate and repair UA victims and damaged economy is restricted, because compensation needs confiscation. Complex holistic approach based on mutual recognition of all parties’ rights and obligations should give positive effort in combatting war crime and new law constructing as the result of new security paradigms based on the internationalization of domestic laws. The shift for criminalizing non-obeying with sanctions on the EU level is a strict argument for the abovenamed proposal [14].

Tertiary victimization in Ukrainian society is influencing not only on families of victims, or even witnesses of Russian terror. It is also connected with promotion of Russian oriented ideology and narratives, and certain treatment of victims. Since Odesa Massacre in 2014, hate and fear, misuse of narratives of Nazi ideology and the promotion of stereotypes of immortal the international Slavonic role in bipolar world leads to “evil empire thinking”. While the potential diffuse victims may not be the intended victims or primary target, they have still been victimized because of the crimes and violations of international law committed in contradiction with art 8–13 of ECHR (hate crimes and narratives of dehumanization through the idea of the denazification of Ukrainians).

Finally, the EU initial intelligence analysis of different criminal threats identified crime patterns in several areas including human trafficking, online fraud, cybercrime and firearms trafficking. Thus, according to some experts’

opinion, the evolution of the situation in Ukraine may potentially lead to an increase of criminal activities (and primary, secondary and tertiary victimization) in all 10 EMPACT priority crime areas[15].

To resist this trend, it is important to use human rights law as the basis for the development of criminal law and the scientific foundations of criminalization, taking into account victimological knowledge. The security of the state depends on the vector of development, ideology of victimizing society (victim-lamb, victim-hero), absolutization of human rights and harmonious (proportional and legal) responsibility for their violation. Therefore, the security of the individual cannot be secondary to the security of society or the state.

4. Victim-oriented policy and Criminal Law. In the context of Approximation of EU aquis and COE norms to Ukrainian criminal legislation, it becomes evident that contemporary criminal law serves as a fundamental tool for safeguarding human rights. This theoretical framework aligns with Recommendation CM/Rec (2023)2 of the Committee of Ministers of the European Council, which underscores the paramount importance of protecting individual human rights. “Crime is a wrong against society and a violation of the individual rights of victims. Member States should, therefore, ensure the effective recognition of, and respect for, the rights of victims with regard to their human rights; they should, in particular, respect the liberty, security, property, dignity, private and family life of victims and recognise the negative effects of crime on victims” [16]. This statement pertains to the development of criminal law theory, specifically in the context of victim rights and the recognition of crime as a violation of both societal norms and individual rights. Let’s break down the key points and elaborate on their implications within criminal law theory:

Crime as a Wrong Against Society and Violation of Individual Rights: This foundational principle underscores the dual nature of criminal acts. Crimes are seen as offenses not only against the state or society as a whole but also as violations of the rights of individual victims. This perspective acknowledges that crimes cause harm not only to the social order but also to the individuals who suffer as a result.

We should consider this dual nature of crimes when developing theories of punishment, deterrence, and rehabilitation. The justice system should aim to address both societal interests and the rights and needs of individual victims.

Respect for the Rights of Victims: Member States are encouraged to respect and protect the human rights of victims. This includes safeguarding their liberty, security, property, dignity, and various aspects of their private and family life. It recognizes that the consequences of crime extend beyond physical harm and can affect victims in various ways. Criminal law theorists should incorporate victim-centric approaches into their theories. This means not only focusing on the offender but also considering the impact of criminal acts on victims. Theories of restorative justice, for instance, emphasize the need to repair the harm done to victims and restore their dignity and well-being.

Non-Discrimination: Member States are urged to ensure that the measures designed to protect victim rights are applied without discrimination based on various factors such as sex, gender, race, religion, and others. This underscores the importance of equal treatment and access to justice for all victims, regardless of their background or circumstances. Criminal law theorists should examine how discrimination and bias can affect both victims and offenders within the criminal justice system. This can lead to discussions about fairness, equity, and the need to eliminate bias in law enforcement, prosecution, and sentencing.

Inclusion of Vulnerable Individuals: The recommendation suggests extending these rights to victims with a criminal record and those suspected of committing a crime, to the extent possible. This recognizes that these individuals may also be victims of crime or may have unique needs. Criminal law theorists should explore the complexities of victimhood and offender status, particularly when individuals occupy both roles simultaneously. This may lead to discussions on diversion programs and alternative sentencing approaches that consider the underlying reasons for criminal behavior while addressing the needs of victims.

In summary, the Recommendation highlights the evolving understanding of crime and its impact on society and individuals. It calls for a more holistic approach to criminal law theory, one that not only considers the punishment of offenders but also emphasizes the protection of victim rights,

non-discrimination, and inclusivity within the criminal justice system. These principles can inform the development of more comprehensive and equitable criminal law theories and practices.

The overarching goal is to develop a theoretical model of the Criminal Code, with a parallel objective of enhancing awareness of criminal policy in transitional countries. It is crucial to underscore that crime represents not only a transgression against society but also a violation of individual rights, underscoring the paramount importance of safeguarding individual human rights.

This theoretical approach constitutes a groundbreaking development in intergovernmental communication, particularly within the context of the Ukrainian conflict and its path towards European integration. It highlights the fragility of conventional legal instruments and the necessity for innovative approaches to aquis approximation and international and local human rights protection. Member States are strongly urged to recognize and respect the rights of victims, particularly concerning their human rights.

In light of these evolving circumstances, the utilization of human rights law as a foundational element for criminal law theory and harmonization with EU law is of paramount significance. However, the pursuit of justice and equity necessitates mandatory victimization and criminological assessments in draft laws and criminalization processes.

The security of the state is contingent upon its developmental trajectory, societal ideology, the primacy accorded to human rights, and the establishment of equitable responsibility for rights violations. The methodology for aquis approximation includes the examination of current EU legislation, European Court of Justice case law, European Commission decisions, and EC Directives on criminal policy, spanning substantive, procedural, penitentiary, and preventive dimensions [17].

Pragmatical development of holistic methodology. Approaching criminal law from a victimological perspective offers multifaceted insights. Pragmatically, it entails an exploration of the role of victims in criminal liability and their integration into the Special Part of criminal legislation. Criminal law, transitioning from its historical repressive functions to contemporary preventive principles within democratic states, plays an instrumental role in fostering social justice and curbing crime. This transition has led to an intricate regulation of the victim's physical and social characteristics, behavior,

status, and the harm inflicted upon them, significantly influencing crime qualification and the offender's culpability.

In navigating these regulatory provisions, it becomes imperative to discern how victimization knowledge applies to criminal law relations and the broader process of criminalization. This encompasses various issues, including victimization in criminalization, the role of victims in criminal law, their impact on the doctrine of crime, the doctrine of punishment, and the classification of criminal offenses.

Victimology affords a unique lens through which to scrutinize the alignment between formal legal norms and public perceptions of crime. The examination of these correlations facilitates an assessment of the efficacy of criminal law prohibitions and the identification of measures to promote prosocial victim engagement in crime control [18].

Expanding the application of passive citizenship principles within the ambit of criminal law could hold the potential to enhance justice. This expansion entails extending jurisdiction to encompass crimes committed by foreign citizens against the rights and freedoms of Ukrainian citizens or the interests of Ukraine abroad. Enacting real citizenship principles for crimes committed outside Ukraine against Ukrainian citizens could further fortify the cause of social justice.

Prioritizing the protection of fundamental rights and freedoms necessitates revisiting select aspects of modern criminal law theory, including the recognition of specific individuals, legal entities, and social groups as objects of crime. The amplification of victim protection within criminal law relations, with a concentrated focus on compensation and restitution, constitutes an intrinsic and ongoing process in alignment with societal expectations.

Next step should be implementation of bilateral Ljubljana-the Hague Convention (Ljubljana-the Hague Convention [19] This document as a milestone step in mutual legal assistance and prosecution of international crimes after Rome Statute represents a significant development in the realm of international legal assistance and extradition, addressing crucial gaps in this field. The convention underscores a victim-centric perspective within international criminal law, all the while upholding the principles of equitable justice for those accused of criminal wrongdoing. Central to its mandate is the elucidation of procedural intricacies, the delineation of substantive content,

and the delimitation of the scope pertaining to legal assistance. Furthermore, the Convention categorically prohibits the provision of amnesty in cases involving international crimes. Due to Conventional understanding and rules “Victims” means natural persons who have suffered harm as a result of the commission of any crime to which this Convention applies. “Victims” may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art, science or charitable purposes, or to their historic monuments, hospitals and other places and objects for humanitarian purposes. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation, including ill-treatment, to victims and witnesses and, as appropriate, their relatives or representatives, experts as well as any other persons participating in or cooperating with any investigation, prosecution or other proceedings within the scope of this Convention. Each State Party shall, subject to its domestic law, ensure that the victims of a crime to which the State Party applies this Convention, have the right to reparation for harm consisting of but not limited to, as appropriate, restitution, compensation or rehabilitation insofar as either: the crime has been committed in any territory under the jurisdiction of that State Party; or that State Party is exercising its jurisdiction over the crime. Each State Party shall, subject to its domestic law, establish procedures, as appropriate, to permit victims to participate in and enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against alleged offenders in a manner not prejudicial to the rights of the defendant. Each State Party shall, to the extent provided for in its domestic law and if so requested, give effect to a judgment or order in criminal proceedings, issued in accordance with the domestic law of the requesting State Party, to provide restitution, compensation or rehabilitation to victims of crimes to which they apply this Convention [19].

Of note is the Convention’s commitment to streamlining various aspects of asset management. It introduces simplifications in the processes associated with the freezing, seizure, confiscation, and conversion of assets. Additionally, the Convention contains explicit provisions concerning the disposal of such assets, with a specific emphasis on the interests of victims of international

crimes. It also addresses the identification and tracing of property or proceeds linked to criminal activities. Importantly, the treaty acts as a consolidating force, transforming established practices in asset management into a comprehensive legal framework. This framework fills a void that had persisted for an extended period, enabling individual states and associations to circumvent asset confiscation on the basis of its prior absence.

Mostly it will give a new theoretical landscape to criminalize unified crimes against humanity and war crimes in national substantial criminal legislation.

Conclusion. As the landscape of criminal law continues to evolve, principles such as equality, legal certainty, proportionality, predictability, subsidiarity, and legality must be reframed within the context of human rights and the security of victims. Striking a balance between coercion and compensation, restitution, rehabilitation, and the prevention of future harm to victims becomes a pivotal endeavor. In addition, the development of the European Strategy on Criminal Justice [20] envisages consideration of issues related to combating family violence, environmental crimes, corruption offenses, as well as cooperation in the field of justice through mutual recognition and protection of the rights of victims of crime. This is linked to the developments (Questions and Answers: Amending the Victims' Rights Directive [21] in justice (child-friendly and victim-centred justice), society (e.g., increased need for coordinated approach to ensure constant availability of the victims' support services during crises (such as health crises) and developments of technology (digitalisation, and availability of new technologies to victims' support, protection, and access to justice).

Evidently, the future trajectory of criminal law will be substantially influenced by localized traditions and the convergence of coercive measures drawn from diverse cultures based on human rights victim-oriented approach and secure policy of the state.

References

1. Baulin Yu.V. Yevropeizatsiia Zahalnoi chastyny proektu KK Ukrainy [Baulin Y. V. Europeanization of the General Part of the Draft Criminal Code of Ukraine] (2020) URL: <https://newcriminalcode.org.ua/upload/media/2020/07/27/baulin-yu-v-yevropeyizatsiya-zagalnoyi-chastyny-novogo-kku.pdf>
2. Case 80/86 criminal proceedings against Kolpinghuis Nijmegen BV (1987), ECR- 3982 3 Case 68/88 ; Commission v. Greece [Greek maize case] [1989], ECR-2695
3. Guide on Article 7 of the European Convention on Human Rights / No punishment without law: the principle that only the law can define a crime and prescribe a penalty Updated on 31 August 2022 (2022) — Council of Europe/European Court of Human Rights URL: https://www.echr.coe.int/documents/d/echr/Guide_Art_7_ENG
4. Fareed Zakaria Opinion: There is a path to ending the Ukraine war URL: <https://edition.cnn.com/2023/02/24/opinions/fareed-zakaria-ukraine-column/index.html>
5. Counting Civilian Casualties: An Introduction to Recording and Estimating Nonmilitary Deaths in Conflict. Taylor B. Seybolt (ed.), Jay D. Aronson (ed.), Baruch Fischhoff (ed.), Oxford academic publishing, 2013. URL: <https://doi.org/10.1093/acprof:oso/9780199977307.001.0001>.
6. UNCHR Ukraine situation Flash Update. URL: <https://data.unhcr.org/en/situations/ukraine>.
7. Human traffickers luring Ukrainian refugees on the web targeted in EU-wide hackathon (2023) URL:<https://www.europol.europa.eu/media-press/newsroom/news/human-traffickers-luring-ukrainian-refugees-web-targeted-in-eu-wide-hackathon>
8. Elena Sanchez War in Ukraine raises fears over crime threat in Europe EUObserver 9th March 2023 URL: <https://euobserver.com/world/154743>
9. Tuliakov Viacheslav (2023) Victims of international crimes through the war in Ukraine: human rights discourse / Victimología y violencia: conectar con las víctimas. / Victimology and violence: connecting with victims. — Thomson-Reuters(Aranzadi), 2023, p.p.23–34.
10. Tuliakov V. O. Justice for victims in times of war *Transformatsiia pravovoykh system v umovakh zbroinykh konfliktiv : mater. kruhloho stolu (m. Odesa, 10 liutoho, 2023 r. (Transformation of Legal Systems in the Context of Armed Conflicts: materials of the round table (Odesa, February 10, 2023) Odesa, 2023. — C. 7–10. (in English) URL: <http://dspace.onua.edu.ua/handle/11300/23574>*

11. Yuliya Samayeva, ZN.UA Economics Editor. Andriy Gaidutsky: “30% of those who left for Poland after February 24 are already working there” ZN.UA, 26 September, 2022, URL: <https://zn.ua/eng/andriy-gaidutsky-30-of-those-who-left-for-poland-after-february-24-are-already-working-there.html>

12. Olha Tucha, Inna Spivak, Olha Bondarenko, Olha Poharska. Vplyv ukrainskykh mihrantiv na ekonomiky krain- retsypiientiv — Doslidzhennia NBU, hruden 2022 (Olga Tucha, Inna Spivak, Olga Bondarenko, Olga Pogarska. The Impact of Ukrainian Migrants on the Economies of Recipient Countries — NBU Research, December 2022) URL: https://bank.gov.ua/admin_uploads/article/Migration_impact_2022-12-15.pdf. (in Ukrainian)

13. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted 16 December 2005 by the UN General Assembly resolution 60/147. URL: <https://www.un.org/ruleoflaw/blog/document/basic-principles-and-guidelines-on-the-right-to-a-remedy-and-reparation-for-victims-of-gross-violations-of-international-human-rights-law-and-serious-violations-of-international-humanitarian-law/>

14. Ukraine: Commission proposes to criminalise the violation of EU sanctions URL: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7371.

15. Fight against organized crime: Council sets out 10 priorities for the next 4 years. URL: <https://www.consilium.europa.eu/en/press/press-releases/2021/05/26/fight-against-organised-crime-council-sets-out-10-priorities-for-the-next-4-years/>.

16. Recommendation CM/Rec(2023)2 of the Committee of Ministers to member States on rights, services and support for victims of crime (2023) (Adopted by the Committee of Ministers on 15 March 2023 at the 1460th meeting of the Ministers’ Deputies) URL: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680aa826

17. Туляков В. О. Апроксимація кримінального права України у контексті законодавчої роботи ЄС: перспективи та методи. *Вісник Національної академії правових наук України*. 2023. Т. 30, № 3. С. 323–335.

18. Tuliakov V. O. War, Crime, Victimology, Human Rights and Criminal Justice Holistic Approach. The Challenges and Opportunities in Law: Ukrainian Case under the Conditions of War : monograph / edited by: Tomas Davulis, Ligita Gasparėnienė. Kraków : Księgarnia Akademicka Publishin, 2023. Chapter 7. P. 635–650.DOI: <https://doi.org/10.12797/9788381388887.07>

19. The Ljubljana-The Hague MLA convention on International Cooperation in the Investigation and Prosecution of Genocide, Crimes against Humanity, War Crimes and Other International Crimes of 26.05.2023 (2023) URL: <https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/The-Ljubljana-The-Hague-MLA-Convention-English-v6.pdf>

20. EU strategy on criminal justice (2022) URL: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/eu-strategy-criminal-justice_en

21. Questions and Answers: Amending the Victims' Rights Directive (2023) URL: https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_3725

Туляков В. Віктимізація та віктимологічний розвиток кримінального права: комплексний підхід

Анотація. У XXI столітті однією з найважливіших функцій Кримінального кодексу є захист прав та інтересів жертв злочинів. Кримінальне право є багатогранною галуззю, яка повинна забезпечувати баланс між загальновідомими принципами та динамікою суспільства, що розвивається. Це стосується різних зацікавлених сторін, включаючи державу, злочинців, потерпілих і громадянське суспільство, кожна з яких має різні погляди і наслідки для кримінального права. Сучасна епоха, позначена наративами постправди та суспільством репутації, ще більше ускладнила ситуацію. Казуїстика тепер переважає над системними підходами, що призводить до розриву між основоположними принципами кримінального права та очікуваними суспільними результатами. Сучасне кримінальне право оперує багатьма вимірами, звертаючись до індивідуального, суспільного та інституційного рівнів, прагнучи збалансувати інтереси цих суб'єктів. Перехід від «епохи інформації» до «епохи репутації» підкреслює важливість інформації, що підлягає зовнішній оцінці. У контексті стану віктимізації та необхідності гармонізації українського кримінального законодавства з нормами ЄС та Ради Європи, життєво важливим є захист прав людини. Це узгоджується з рекомендацією Комітету Міністрів Ради Європи, яка визнає злочин злочином проти суспільства та порушенням прав особистості, підкреслюючи важливість захисту прав потерпілих.

Підхід до кримінального права з віктимологічної точки зору пропонує унікальне розуміння участі жертв у кримінальній відповідальності, кваліфікації злочинів та винуватості правопорушників. Така перспектива сприяє оцінці ефективності кримінально-правових заборон та залученню потерпілих до боротьби зі злочинністю на національному та міжнародному рівнях.

Ключові слова: кримінальне право, кримінальна політика, віктимологічна політика, віктимологія, права людини, віктимізація .