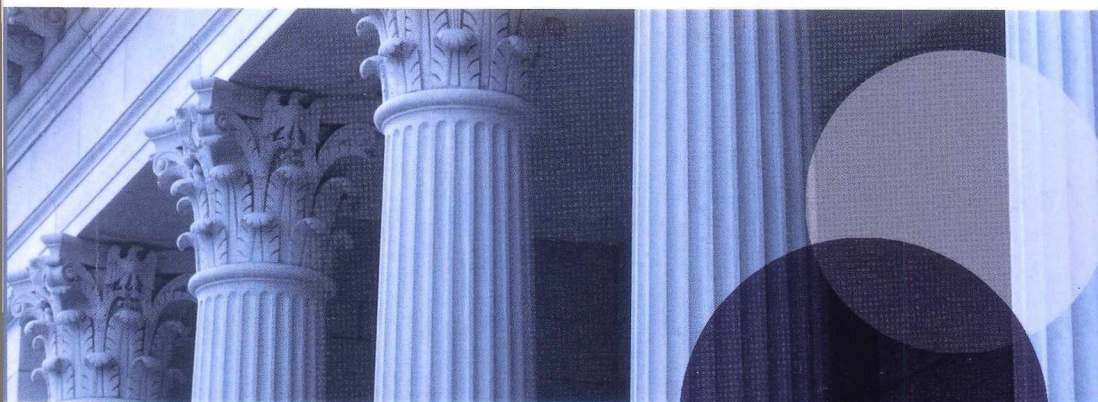


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CRIMINAL LAW OF UKRAINE

Punishment and Other Criminal
Measures: National Approach

Training Manual



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National University "Odesa Law Academy"

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(Punishment and Other Criminal Measures:
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Criminal Law of Ukraine on punishment and other criminal measures is analysed in this training manual as a Part of scientific and educational project on formatting the academic background and training bachelors of law in English. The set of training sessions and basic ideas on Fundamentals of Punishment and other coercive measures in Ukraine in comparison with ECHR practice and modern Criminal Law concepts is given. The training manual was prepared under auspices of Fundamental scientific research "Euro integrational criminal-legal policy of Ukraine" No. 0118U003677 and would be helpful for scholars in the field of comparative Criminal Justice, Future judges, detectives, investigators, prosecutors and members of the Bar.

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PREFACE

Law, in any civilized country, always has several basic goals. But the main one, especially at the present difficult stage of humanity's development, is the one, which is aimed at the legal enforcement of the necessary conditions for the further development of the state, the tranquillity of public life, and the well-being of citizens.

Law, as a social phenomenon, has its own system. The largest element in the system of law is the branch of law, which is formed by a set of legal norms governing the regulation (protection) of a qualitatively homogeneous group of public relations. Therefore, each branch of law has its own subject and method. All branches of law, figuratively speaking, are equal in their authority, but still traditionally three which have a certain dominant are distinguished. These are: constitutional (state) law, civil law and criminal law¹.

In this triad, criminal law defines those socially dangerous acts, the commission of which provides an opportunity for the state, in the person of authorized bodies for this, to apply various coercive measures to the person who committed these acts in order to prevent him and others from committing such actions in the future. Such characteristic of criminal law makes it possible to consider security as its main function, which is aimed at ensuring the legal security of people, society and the state.

Criminal law is a set of generally binding rules secured by the power of the state, which appeared together with the state, accompanies humanity throughout its development and has, however "sad" it may sound, a foreseeable prospect. By prohibiting particular types of behaviour that infringe on the most important values and interests, and providing criminal liability for the violation of such prohibitions, criminal law, thus, creates the necessary legal

¹ Honoré T. About Law: An Introduction. Oxford : Clarendon Press ; New York : Oxford University Press, 1995. P. 14.

basis for the official (legal) application of rather severe coercive measures of state influence on persons who commit such deeds. This is a very difficult task, which, on the one hand, should not create preconditions for suppressing any behaviour that the state "for some reason does not like", but, on the other hand, should not "promote" impunity for those who commit really socially dangerous acts. As a whole, such a general task facing criminal law is realized through the qualities that are characteristic of the entire history of its existence, and those that are characteristic of it within the framework of a specific stage of socio-historical development. Especially such a combination of qualities of criminal law is manifested in those states that are going through difficult stages in their functioning, which is happening now in Ukraine. In general, throughout the whole history of the development of criminal law, including the modern period, there are different theories of the social and legal purpose of criminal law, among which are traditionally distinguished: the theory of "deterrence", the theory of "prevention", the theory of "correction", the theory of "redressing harm", the theory of "compensation", their combination and etc. All these theories, to one degree or another, found their implementation in legislation and practice at different stages of human development.

In recent decades, in connection with fundamental changes in global, regional policy, the activities of a particular state, criminal law "is going through" certain general changes, which include: "habitual" search for its opportunities in the context of modern dynamic reforms; criminalization of new types and decriminalization of existing types of socially dangerous acts; the possibility of combining international legal regulations (in connection with the processes of globalization) and national dogmas (in connection with the sovereignty of states), in which the interests of the injured party and strict observance of the legitimacy in relation to persons who have committed prohibited criminal-unlawful offenses must always be taken into account. Moreover, and this should be emphasized, in most areas

there is a certain commonality in their development, for example, the refusal of general confiscation of property, the search for types of punishments that are alternative to imprisonment, an extension of the list of grounds for exemption from criminal liability, the need for further “clarification” of criminal law measures against minors and etc. At the same time, not all of such events have the same focus. For example, if some states not only find an alternative, but “simply” refuse from the death penalty as a type of punishment, then others not only stipulate this type of punishment at the legislative level, but also actually impose it. Moreover, the death penalty is used in states that are not only not similar in their main features, but are also in well-known social “contradictions”, for example, the United States and China.

Why do people even commit such acts, why does humanity need criminal law? What is the reason for this: in the “vicious” human essence, which in spite of everything is inclined to commit such acts, or is it certain problems in the development of society and the functioning of the state, which “push” to such acts, or a certain combination of both, or something else? Maybe “low-quality” legislation does not create the necessary legal basis for this, or is the problem in the poor-quality enforcement of criminal law? Therefore, given that the state counteraction to such acts as a whole is carried out constantly, but the number of criminal-unlawful offenses remains a certain stability, all civilized states together and independently, as indicated above, are constantly looking for new measures of influence on the totality of such socially dangerous acts or return to “forgotten”, including through the reform of criminal law. Criminal law reform is underway in Ukraine as well. This is carried out not only at the scientific, but also at the official level. In August 2019, a Commission on Legal Reform was established under the President of Ukraine, which includes a Working Group on the Development of Criminal Law, which is actively developing the provisions of modern criminal law/legislation.

Of course, there is no need to idealize the possibilities of criminal law, seeing the only, “all-conquering” force of influence on negative phenomena in it. Therefore, criminal law is not an “ambulance”, but a permanent state protective “tool”. It is the state that should think over and develop a general set of measures aimed at countering socially dangerous acts, which is traditionally called criminal policy. In addition, the state has a sphere of criminal justice, the structures and bodies of which must, in practice, implement criminal law measures and provisions of criminal law. But criminal law, and special attention should be paid to this once again, is the legal basis, the legal foundation that makes it possible to “launch” and implement the entire complex mechanism of criminal law to counteract criminal-unlawful actions.

All this emphasizes that every civilized state should strive to ensure that the criminal legislation that acts on “its” behalf was necessary and sufficient to solve the problems facing the state and the sphere of criminal justice.

You should also understand this, because in many respects it will depend on you in a very short period of time how criminal law will “look” at the legislative level, how practical activities will be carried out for its application, what scientific developments will be with proposals for its further improvement. And it all begins today, while you study criminal law as an academic discipline, at a time when you begin to learn to work with legal regulations and legislative provisions. Therefore, it is not only about the grades you are getting now. Yes, assessment is a necessary activity that shows the level of your knowledge. But it is equally important that during your studies at the university you learn to work with law/legislation, starting with the ability to gradually understand, interpret, apply legal prescriptions. Difficult, but, believe, very interesting activity.

And in the end, the essence, characteristics and features of criminal law are studied at all universities in all countries

of the world. A lawyer cannot be considered qualified if he does not have knowledge about criminal law. Criminal law is also taught at the National University "Odessa Law Academy". However, the professor's and teaching staff of the university believes that for a deeper understanding of the basics of criminal law, to give university graduates better competitive opportunities, the teaching of this fundamental academic discipline has been conducted in English for a number of years.

Of course, we understand that listening to lectures, preparing for practical classes, taking exams in English is more difficult, but at the same time, we want you to set advanced tasks and make additional efforts to overcome them already on the student bench. Only by so doing a highly qualified professional, capable of solving complex legal problems, is being formed, that the Department of Criminal Law sincerely wishes you, along with the success in mastering the legal specialty in general, criminal law in particular, and is always ready to help in the implementation of your educational and scientific tasks.

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INTRODUCTION

The proposed training manual that you are holding in your hands seems to be a logical extension to the one, issued in Riga, dated back to 2017 (Crime, Criminal Legislation and Responsibility: General Provisions of Criminal Code of Ukraine, 2001)², that formed the basis of the educational process regarding the study of Part I of the General Part of the Criminal law of Ukraine, conducted in English, constitutes Part II of its learning and is considered to be the concluding stage of the course called 'Criminal Law (General Part)', which is being taught at the National university "Odesa Law Academy".

Starting with the circumstances excluding criminality of an act to the system of General Part of criminal law of foreign countries, it is dedicated to the research of the peculiar issues of discharge from criminal liability, punishment and its types, imposition of punishment, discharge from punishment and from serving it, conviction, other measures of criminal-legal nature, along with specific features of criminal liability and punishment of minors, and is designed to help students shape the basic understanding of the General Part of criminal law of Ukraine. The main concept of the course is, by no means, punishment and sentencing that is the essence of National Ukrainian criminal-legal concept in the field of Criminal responsibility and its realization.

Criminal law is a phenomenon, the studying of which is an extremely complicated in itself, while doing it in English is much more tremendous path to choose, an incredibly difficult job, which demands a huge proportion of time, efforts, passion and dedication.

² Crime, Criminal Legislation and Responsibility: General Provisions of Criminal Code of Ukraine, 2001 : Training Manual / Vyacheslav A. Tulyakov, Eugene L. Streltsov, Eugene Y. Polyansky, Elena N. Polishchuk. 2nd ed . Riga, Latvia : Izdevnieciba "Baltija Publishing", 2017. 104 p. (Series: Study Guides).

However, by doing so, we would like to refer to the famous quote which Malcolm X once told, that 'education is the passport to the future, for tomorrow belongs to those who prepare for it today', by studying hard these days, we wish you to become the very best of a master of your craft you can ever be in the nearest future.

SYNOPSIS OF THE LECTURE COURSE

TOPIC 1. CIRCUMSTANCES EXCLUDING CRIMINALITY OF AN ACT

Circumstances excluding criminality of an act are foreseen in the law on criminal liability, seemingly similar to criminal offences, socially expected and useful lawful actions which exclude the ground for criminal liability for harm to legally protected rights and interests.

The exhausted list of circumstances excluding criminality of an act is enshrined in Articles 36–43 of Chapter VIII (“Circumstances excluding criminality of an act”) of the Criminal Code of Ukraine and includes *necessary defense, imaginary defense, detention of a person committing a criminal offence, extreme necessity, physical or mental coercion, obeying an order or command, an act involving risk and undertaking a special mission to prevent or uncover criminal activities of an organized group or criminal organization.*

According to Article 36 of the Criminal Code of Ukraine, *necessary defense* refers to actions taken to defend legally protected rights and interests of the defending person or another person, along with public interests and interests of the state against socially dangerous encroachment by causing such harm to those who encroach, as is necessary and sufficient in a given situation to immediately prevent or stop the encroachment, provided that there has been no exceedance of the limits of the necessary defense.

Imaginary defense, pursuant to Article 37 of the Criminal Code of Ukraine, should be conceived as actions relating to the causation of harm in such circumstances, when there was no real socially dangerous encroachment and the person only

mistakenly presumed the reality of such encroachment while misinterpreting actions of the victim.

Detention of a person committing a criminal offence, under Article 38 of the Criminal Code of Ukraine, is understood as actions of the victim or other persons immediately after having committed the encroachment, aimed at the apprehension of the offender and bringing him to the relevant government authorities, unless there was no exceedance of the measures necessary to detain such a person.

Pursuant to Article 39 of the Criminal Code of Ukraine, *extreme necessity* is defined as causing harm to legally protected interests in order to avert danger, which is threatening directly to the person or legally protected rights of this person or other persons, as well as public interests or interests of the state, unless if this danger could not be eliminated by other means within the given situation and in case if there was no exceedance of the measures of the extreme necessity.

According to Article 40 of the Criminal Code of Ukraine, *physical or mental coercion* should be conceived as action or omission of a person, which caused harm to legally protected interests, committed under the direct influence of physical coercion, in which a person was unable to control his deeds.

Obedying an order or command, pursuant to Article 41 of the Criminal Code of Ukraine, refers to action or omission of a person, which caused harm to legally protected interests, if it was committed with the aim of obeying a lawful order or command.

An act involving risk under Article 42 of the Criminal Code of Ukraine, is defined as act (action or omission), which caused harm to legally protected interests, if this action was committed in the circumstances of justified risk for the achievement of a significant socially useful goal.

Undertaking a special mission to prevent or uncover criminal activities of an organized group or criminal organization, according to Article 43 of the Criminal Code of Ukraine, is understood as forced causing of harm to legally protected interests by a person, who was undertaking a special mission according to the law, by participating in activities of an organized group or criminal organization, with the aim of preventing or uncovering their criminal activities.

Normative reference:

Articles 36–43 of Chapter VIII of the Criminal Code of Ukraine

Additional attention to be paid to:

Articles 118, 124 of the Criminal Code of Ukraine

TOPIC 2. DISCHARGE FROM CRIMINAL LIABILITY

Discharge from criminal liability is the exercise of the competence by the state, in the person of court, according to which it is refusing from the state condemnation of a person, who committed a crime, along with imposition of the restrictions of personal, material or other character, prescribed by the law for the commission of such crime, under the conditions specified in the Criminal Code of Ukraine.

The grounds of the discharge from criminal liability are foreseen in Articles 44–49 of Chapter IX (“Discharge from criminal liability”) of the Criminal Code of Ukraine; these are: the *discharge from criminal liability in view of effective repentance, reconciliation of the offender and the victim, admission of a person to bail, due to a change of situation and the expiration of the limitation period*.

According to Article 45 of the Criminal Code of Ukraine, a person who has committed at first a crime of minor gravity or reckless crime of moderate gravity, except corruption crimes,

for the first time, is *discharged from criminal liability in view of effective repentance*, if he sincerely repented, actively facilitated the investigation of the crime and fully compensated for the losses caused by him or eliminated the harm caused after the commission of the crime.

Pursuant to Article 46 of the Criminal Code of Ukraine, a person who has committed a crime of minor gravity or reckless crime of moderate gravity, except corruption crimes, is *discharged from criminal liability in view of reconciliation of the offender and the victim* if he reconciled with the victim and compensated for the losses caused by him or eliminated the harm caused.

A person who has committed a crime of minor gravity or reckless crime of moderate gravity, except corruption crimes, for the first time and sincerely repented, under Article 47 of the Criminal Code of Ukraine, might be *discharged from criminal liability in view of admission of a person to bail* collective of an enterprise, institution or organization on their motion under the condition that within one year from the day of the admission of him to bail, he will justify the trust of the collective, will not avoid the re-education measures and will not violate public order.

A person who has committed a crime of minor gravity or reckless crime of moderate gravity, except corruption crimes, for the first time might be *discharged from criminal liability due to a change of situation*, according to Article 48 of the Criminal Code of Ukraine, if it is considered that at the time of criminal proceedings, due to a change of situation, the act committed by him has lost social danger or this person ceased to be socially dangerous.

A person is *discharged from criminal liability due to the expiration of the limitation period* pursuant to Article 49 of the Criminal Code of Ukraine, if the following periods have elapsed since the day of the commission of the crime and to the day of the entrance of the sentence into legal force: two years – in

case of the commission of the crime of minor gravity, for which the less severe than the restraint of liberty punishment is prescribed; three years – in case of the commission of the crime of minor gravity, for which the punishment in the form of the restraint of liberty or imprisonment is prescribed; five years – in case of the commission of the crime of moderate gravity; ten years – in case of the commission of the grave crime; fifteen years – in case of the commission of the especially grave crime.

Normative reference:

Articles 44–49 of Chapter IX of the Criminal Code of Ukraine

Additional attention to be paid to:

Articles 191, 262, 308, 312, 313, 320, 357, 410, 210, 354, 364, 364¹, 365², 366¹, 368–369², 109–114¹, 437–439 and Part 1 of Article 442 of the Criminal Code of Ukraine

TOPIC 3. PUNISHMENT AND ITS TYPES

Punishment is the coercive measure that is imposed on the behalf of the state by the sentence of the court, on a person who is found guilty of committing a crime, and consists in the restriction of the rights and freedoms of the convicted person foreseen by the law.

Punishment *is aimed* not only at the retribution but also at the reformation of the convicted persons, as well as the prevention of the commission of new crimes by both convicted and other persons.

Twelve types of punishments which may be imposed on persons convicted of committing a crime by the court are foreseen in Article 51 of the Criminal Code of Ukraine; these are: fine; revocation of a military or special title, rank, grade or qualification class; deprivation of the right to occupy certain positions or engage

in certain activities; community service; correctional labour; service restrictions for military servants; confiscation of property; arrest; restraint of liberty; custody of military servants in a disciplinary battalion; imprisonment for a determinate term; life imprisonment.

According to Article 52 of the Criminal Code of Ukraine, the system of punishment consists of *primary* and *additional* punishments.

Primary punishments include community service, correctional labour, service restrictions for military servants, arrest, restraint of liberty, custody of military servants in a disciplinary battalion, imprisonment for a determinate term and life imprisonment.

Additional punishments include revocation of a military or special title, rank, grade or qualification class, and confiscation of property.

Fine and deprivation of the right to occupy certain positions or engage in certain activities may be imposed either as primary or additional punishments.

Fine is a monetary penalty which is imposed by the court in cases and within the limits defined in Special Part of the Criminal Code of Ukraine, considering the provisions of Part 2 of Article 53 of the Criminal Code of Ukraine.

A person convicted of grave crime or especially grave crime who has *military, special title, rank, grade or qualification class* may be deprived of this title, rank, grade or qualification class by the sentence of the court.

Deprivation of the right to occupy certain positions or engage in certain activities may be imposed as primary punishment for a term of two to five years or as additional punishment for a term of one to three years.

Community service consists in the performance of unpaid socially useful works, type of which is determined by the bodies of local self-government, by the convict in the time off from work or study.

Punishment in the type of *correctional labour* is imposed for a term of six months to two years and is served at the place



of work of the convict. The allocation into the revenue of the state is conducted in the amount, established by the sentence of the court, in the range from 10 to 20 percent, from the sum of earnings of the convicted of correctional labour.

Punishment in the type of *service restrictions* is imposed to the convicted military servants, except military servants of fixed-term military service, for a term of six months to two years in cases, foreseen by the Criminal Code of Ukraine, and also in cases when the court, considering the circumstances of the case and the identity of the convict, would find it possible to impose service restriction instead of restraint of liberty or imprisonment for a term of not more than two years for the same term.

Punishment in the type of *confiscation of property* consists in the compulsory unpaid seizure of all or a Part of property, which is owned by a convicted person into the ownership of the state. The court has to specify exactly what Part of property is confiscated or enumerate objects that are confiscated if a Part of property is confiscated.

Punishment in the type of *arrest* consists in the detention of the convict in conditions of isolation and is imposed for a term of one to six months.

Punishment in the type of *restraint of liberty* consists in the detention of person in the criminal enforcement institutions of open type without isolation from society in conditions of exercising supervision of him with compulsory involvement of convict in work.

Punishment in the type of *custody of military servants in a disciplinary battalion* is imposed to military servants of fixed-term military service, military servants who have performed military service under contract, persons of officer corps, who have performed professional military service, persons of officer corps, who have performed military service under conscription, military servants, who have been conscripted for military service at the time of mobilization, for special period (except women-military servants),

for a term of six months to two years in cases, foreseen by the Criminal Code of Ukraine, and also if the court, considering the circumstances of the case and the identity of the convict, would find it possible to substitute imprisonment for a term of not more than two years by custody of military servants in a disciplinary battalion for the same term.

Punishment in the type of *imprisonment* consists in the isolation of convict and his placement to criminal enforcement institution of closed type for a certain term.

Life imprisonment is imposed for the commission of especially grave crimes and applied only in cases, specifically foreseen by the Criminal Code of Ukraine, if the court would not find it possible to impose imprisonment for a determinate term.

Normative reference:

Articles 50–64 of Chapter X of the Criminal Code of Ukraine

Additional attention to be paid to:

Articles 389, 390, 77 and Part 4 of Article 68 of the Criminal Code of Ukraine

TOPIC 4. IMPOSITION OF PUNISHMENT

According to Part 1 of Article 65 of the Criminal Code of Ukraine, the court *imposes punishment*: 1) within the limits prescribed by the sanction of Article (sanction of Part of Article) of Special Part of the Criminal Code of Ukraine that foresees criminal liability for the crime committed, except the cases, foreseen by Part 2 of Article 53 of the Criminal Code of Ukraine; 2) pursuant to the provisions of General Part of the Criminal Code of Ukraine; 3) considering the gravity of the crime, the identity of a perpetrator and circumstances mitigating and aggravating punishment.

When imposing a punishment, as *circumstances mitigating punishment*, recognized: 1) appearance with confession, sincere repentance or active assistance in the investigation of the crime; 2) voluntary compensation for the damage caused or elimination of the harm inflicted; 2¹) provision of medical or other aid to victim immediately after the commission of the crime; 3) commission of the crime by minor; 4) commission of the crime by a woman in the state of pregnancy; 5) commission of the crime owing to the concurrence of serious personal, family or other circumstances; 6) commission of the crime under the influence of threat, coercion or due to material, professional or other dependence; 7) commission of the crime under the influence of extreme emotional disturbance, caused by ill-treatment or by such that is degrading dignity and honour of a person, and also by the existence of systemic character of such behaviour on the Part of the victim; 8) commission of the crime with the exceedance of the limits of extreme necessity; 9) undertaking a special mission to prevent or uncover criminal activities of an organized group or criminal organization combined with the commission of the crime foreseen by the Criminal Code of Ukraine.

When imposing a punishment, as *circumstances aggravating punishment*, recognized: 1) commission of the crime by a person repeatedly or recidive of crimes; 2) commission of the crime by a group of persons upon prior conspiracy (Part 2 or 3 of Article 28 of the Criminal Code of Ukraine); 3) commission of the crime based on racial, national or religious hatred or enmity or based on gender identity; 4) commission of the crime in connection with the fulfilment of official or public duty of the victim; 5) grave consequences, caused by the crime; 6) commission of the crime against an elderly person, person with a disability or a person, who is in a helpless state, or a person, suffering from mental illness, in particular, dementia, has disadvantages in intellectual development, and also commission of the crime against young child or in the presence of a child; 6¹) commission of the crime

against spouses or former spouse, or another person, with whom the perpetrator is (was) in family or close relationship; 7) commission of the crime against a woman who, to the knowledge of the perpetrator, was in the state of pregnancy; 8) commission of the crime against a person, who remains in material, professional or other dependence on the perpetrator; 9) commission of the crime with the use of a minor or a person, suffering from mental illness or dementia; 10) commission of the crime with particular cruelty; 11) commission of the crime with the use of the conditions of state of war or emergency, other extraordinary events; 12) commission of the crime in a globally harmful way; 13) commission of the crime by a person, who is in a state of alcohol intoxication or in a state, caused by the consumption of narcotic or other stupefying drugs.

When imposing a punishment for the *unconsummated crime*, the court, guided by the provisions of Articles 65–67 of the Criminal Code of Ukraine, considers the gravity of an act committed by a person, the degree of the realization of criminal intent and the reasons owing to crime was not consummated.

When imposing a punishment for *accomplices in a crime*, the court, guided by the provisions of Articles 65–67 of the Criminal Code of Ukraine, considers the character and degree of the participation of each of them in the commission of the crime.

In *cumulative crimes*, the court, imposed punishment (primary and additional) for each of the crimes separately, defines final punishment by the absorption of less severe punishment by more severe or by full or partial overlapping of the imposed punishments.

If the convict commits a new crime after sentencing but before the punishment has been entirely served, the court fully or partially *cumulating* unserved Part of *punishment* from the *previous sentence* to the punishment, imposed by the *new sentence*.

Normative reference:

Articles 65–73 of Chapter XI of the Criminal Code of Ukraine

Additional attention to be paid to:

Part 2 of Article 53, Articles 69–71, Parts 2–3 of Article 28, Articles 65–67, 109–114¹, 437–439, Part 1 of Article 442, Articles 443, 72, 70 of the Criminal Code of Ukraine

TOPIC 5. DISCHARGE FROM PUNISHMENT AND FROM SERVING IT

Discharge from punishment and from serving it of a convict, substitution by a milder, and also mitigation of the imposed punishment, except the discharge from punishment or mitigation of punishment on the basis of the Law of Ukraine on amnesty or an act of pardon might be imposed only by the court in cases, foreseen by the Criminal Code of Ukraine.

The grounds of the discharge from punishment and from serving it are foreseen in Articles 74–87 of Chapter XII (“Discharge from punishment and from serving it”) of the Criminal Code of Ukraine; these are: *the discharge from punishment on probation; discharge from punishment on probation for pregnant women and women having children under the age of seven; discharge from serving a punishment due to the expiration of limitation periods for enforcement of sentence; conditional-early release from serving the punishment; commutation of the remaining Part of the punishment; discharge from punishment for pregnant women and women with children under the age of three; discharge from punishment due to illness; discharge from punishment on the basis of the Law of Ukraine on amnesty or an act of pardon.*

If the court, except the cases of the conviction for corruption crime, when imposing a punishment in the type of correctional labour, service restrictions for military servants, restraint of liberty, imprisonment for a term of not more than five years, considering the gravity of the crime, the identity of a perpetrator and other circumstances of the case, comes up to the conclusion about the possibility for the correction

of a convict without serving the punishment, he may adopt a decision about the *discharge from punishment on probation*.

In case of the imposition of the punishment in the type of the restraint of liberty or imprisonment for *pregnant women and women having children under the age of seven*, except the convicted to the imprisonment for a term of more than five years for the grave and especially grave crimes, and also corruption crimes, the court may discharge such convicts from serving both primary and additional punishment with the setting of a probation period, to which a woman might be released from work in connection with pregnancy, childbirth and until the child reaches the age of seven years according to the law.

A person is *discharged from serving a punishment*, if from the day of the entrance of the sentence into legal force, it had not been carried out in the following *terms*: 1) two years – in case of the conviction to the punishment less severe than restraint of liberty; 2) three years – in case of the conviction to the punishment in the type of restraint of liberty or imprisonment for the crime of minor gravity; 3) five years – in case of the conviction to the punishment in the type of imprisonment for the crime of moderate gravity, and also when convicting to imprisonment for a term of not more than five years for the grave crime; 4) ten years – in case of the conviction to the punishment in the type of imprisonment for a term of more than five years for the grave crime, and also when convicting to imprisonment for a term of not more than ten years for the especially grave crime; 5) fifteen years – in case of the conviction to the punishment in the type of imprisonment for a term of more than ten years for the especially grave crime.

Conditional-early release from serving the punishment may be applied to the persons, who are serving the punishment in the type of correctional labour, service restrictions for military servants, restraint of liberty, custody of military servants in a disciplinary battalion or imprisonment. A person might be also conditional-early released fully or partially from serving the additional punishment.

The unserved Part of punishment of persons, who are serving the punishment in the type of restraint of liberty or imprisonment may be *commuted* to milder punishment by the court. In these cases, milder punishment is imposed within the time limits set in General Part of the Criminal Code of Ukraine for the given type of punishment and must not exceed the term of the unserved Part of punishment, imposed by the sentence.

Convicted to restraint of liberty or imprisonment women, who had become pregnant or given birth to children while serving the punishment, except women convicted to imprisonment for a term of more than five years for the intentional grave and especially grave crimes, may be *discharged from serving the punishment* by the court within the time limits to which a woman might be released from work in connection with pregnancy, childbirth and until *the child reaches the age of three years* according to the law.

A person, who became *mentally ill* while serving a punishment that deprived him of the ability of understanding the meaning of his actions (omissions) or controlling them is discharged from serving it. Compulsory medical measures may be applied to such person according to Articles 92–95 of the Criminal Code of Ukraine.

A convict may be fully or partially *discharged from serving the primary and additional punishments on the basis of the Law of Ukraine on amnesty or an act of pardon*. Amnesty is declared by the Law of Ukraine concerning certain categories of persons. Pardon is carried out by the President of Ukraine concerning the particular individual.

Normative reference:

Articles 74–87 of Chapter XII of the Criminal Code of Ukraine

Additional attention to be paid to:

Part 1 of Article 72, Articles 49, 91¹, 71–72, 76, 437–439, 442, 81, 92–95, 80, Part 5 of Article 72 of the Criminal Code of Ukraine

TOPIC 6. CONVICTION

A person is deemed as one who has a *conviction* from the day of the entrance of the sentence into legal force and until the expunging or the revocation of a conviction. A *conviction* has legal consequences in case of the commission of a new crime, and also in other cases, foreseen by the laws of Ukraine.

According to Article 89 of the Criminal Code of Ukraine, as ones, who do not have a conviction, are recognized: 1) persons convicted in accordance with Article 75 of the Criminal Code of Ukraine, if they do not commit new crime during the probation period and if the decision on discharge from serving the punishment on probation is not abolished on other grounds foreseen by the law within a specified time period. If the term of the additional punishment exceeds the duration of the probation period, a person is recognized as not having a conviction after serving this additional punishment; 2) women convicted in accordance with Article 79 of the Criminal Code of Ukraine, if they do not commit new crime during the probation period and if the decision on sending to serve the punishment imposed by the sentence of the court has not been taken after the expiring of this term. If the convict was not discharged from the additional punishment and its term is exceeding the probation period, then a woman is recognized as not having a conviction after serving this additional punishment; 4) persons who served the punishment in the type of service restrictions for military servants or custody of military servants in a disciplinary battalion or early released from these punishments, and also military servants who served the punishment in a guardhouse instead of arrest; 5) persons convicted to primary punishment in the type of fine in the amount of not more than three thousands of tax-free minimum incomes, deprivation of the right to occupy certain positions or engage in certain activities, community service, correctional labour or arrest, if they do not commit new crime within one year from the day

of the serving the punishment (primary and additional); 6) persons convicted to restraint of liberty, and also convicted for the crime of minor gravity to imprisonment, if they do not commit new crime within two years from the day of the serving the punishment (primary and additional); 7) persons convicted to imprisonment or primary punishment in the type of fine for the crime of medium gravity, if they do not commit new crime within three years from the day of the serving the punishment (primary and additional); 8) persons convicted to imprisonment or primary punishment in the type of fine for the grave crime, if they do not commit new crime within six years from the day of the serving the punishment (primary and additional); 9) persons convicted to imprisonment or primary punishment in the type of fine for the especially grave crime, if they do not commit new crime within eight years from the day of the serving the punishment (primary and additional).

Time limits for *expunging a conviction* are calculated from the day of serving of the primary and additional punishment.

Time, during which the sentence was not enforced, if that the limitation of the enforceability of sentence was not interrupted, is counted in the time limits for *expunging a conviction*. If the sentence has not been enforced, a conviction is expunging upon expiration of the time limit on the enforceability of sentence.

If a person has proved his correction by his exemplary behaviour and conscientious attitude to work after serving the punishment in the type of restraint of liberty or imprisonment, the court may *revoke a conviction* before the expiration of the terms set in Article 89 of the Criminal Code of Ukraine.

Normative reference:

Articles 88–91 of Chapter XIII of the Criminal Code of Ukraine

Additional attention to be paid to:

Articles 75, 79, 89 of the Criminal Code of Ukraine, the Criminal Procedural Code of Ukraine

TOPIC 7. OTHER MEASURES OF CRIMINAL-LEGAL NATURE

In 2017 Criminal Code was amended by Chapter XIII¹ on *restrictive measures applicable to perpetrators of domestic violence*. Due to it the court may apply to a person who committed domestic violence, one or more restrictive measures, according to which (which) the following obligations may be imposed on the convict: prohibition to be in the place of cohabitation with a person who has suffered from domestic violence; restriction of communication with the child in the event that domestic violence is committed against the child or in his presence; a ban on approaching a certain distance to a place where a person who has suffered from domestic violence may permanently or temporarily reside, temporarily or systematically stay in connection with work, study, treatment or for other reasons; prohibition of correspondence, telephone conversations with a person who has suffered from domestic violence, other contacts through means of communication or electronic communications in person or through third parties; referral for a program for offenders or a probation program.

Compulsory medical measures are the provision of ambulatory mental health care, placing of a person, committed socially dangerous action, falling within the signs of the action, foreseen by Special Part of the Criminal Code of Ukraine, to special medical institution with the purpose of his compulsory treatment, and also to prevent the commission of socially dangerous acts by him.

Depending on the nature and severity of the disease, gravity of the committed action, to the extent of the degree of danger of mentally ill for himself or other persons, the court may apply the following *compulsory medical measures*: 1) provision of the ambulatory mental health care under compulsion; 2) hospitalization to the institution providing mental health care with the regular supervision; 3) hospitalization to the institution

providing mental health care with the enhanced supervision;
4) hospitalization to the institution providing mental health care with the strict supervision.

Continuation, change or discontinuation of the application of compulsory medical measures is exercised by the court on the application of the representative of the institution providing mental health care (doctor-psychiatrist), who provides psychiatric help to a person. The application has to be followed by the conclusion of the commission of doctors-psychiatrists, that substantiates the necessity of the continuation, change or discontinuation of the application of such compulsory measures.

Compulsory treatment may be applied by the court regardless of the imposed punishment to persons, who committed crimes and have disease, which constitutes a danger to the health of other persons.

Special confiscation lies in the compulsory unpaid seizure of money, assets and other goods into the ownership of the state by the decision of the court in cases, defined by the Criminal Code of Ukraine, under the condition of the commission of intentional crime or socially dangerous action, that is falling within the signs of the action, foreseen by Special Part of the Criminal Code of Ukraine, for which the primary punishment is foreseen in the type of imprisonment or fine of more than three thousands of tax-free minimum incomes, as well as foreseen by Part 1 of Article 150, Article 154, Part 2 and 3 of Article 159¹, Part 1 of Article 190, Article 192, Part 1 of Article 204, 209¹, 210, Part 1 and 2 of Articles 212, 212¹, Part 1 of Articles 222, 229, 239¹, 239², Part 2 of Article 244, Part 1 of Articles 248, 249, Part 1 and 2 of Article 300, Part 1 of Articles 301, 302, 310, 311, 313, 318, 319, 362, Articles 363, Part 1 of Articles 363¹, 364¹, 365² of the Criminal Code of Ukraine.

The grounds for the application of *measures of criminal-legal nature regarding legal entities*, pursuant to Part 1 of Article 96³ of the Criminal Code of Ukraine, are: 1) the commission

of any of the crimes, foreseen in Articles 209 and 306, Part 1 and 2 of Article 368³, Part 1 and 2 of Article 368⁴, Articles 369 and 369² of the Criminal Code of Ukraine by its authorized person on behalf and in the interests of the legal entity; 2) failure to ensure the fulfilment of the responsibilities regarding taking measures to prevent corruption entrusted to its authorized person by the law or the constitutive documents of legal entity, which caused the commission of any of the crimes, foreseen in Articles 209 and 306, Part 1 and 2 of Article 368³, Part 1 and 2 of Article 368⁴, Articles 369 and 369² of the Criminal Code of Ukraine; 3) the commission of any of the crimes, foreseen in Articles 258–258⁵ of the Criminal Code of Ukraine by the authorized person on behalf of the legal entity; 4) the commission of any of the crimes, foreseen by Articles 109, 110, 113, 146, 147, Part 2–4 of Article 159¹, Articles 160, 260, 262, 436, 437, 438, 442, 444, 447 of the Criminal Code of Ukraine by the authorized person on behalf and in the interests of the legal entity.

According to Part 1 of Article 96⁶ of the Criminal Code of Ukraine, the following *measures of criminal-legal nature* may be applied by the court to *legal entities*: 1) fine; 2) confiscation of property; 3) liquidation.

A legal entity is *exempted from the application of measures of criminal-legal nature* to it, if from the day of the commission of any of the crimes, specified in Article 96³ of the Criminal Code of Ukraine by an authorized person, and to the day of the entrance of the sentence into legal force such terms are expired: 1) three years – in case of the commission of the crime of minor gravity; 2) five years – in case of the commission of the crime of moderate gravity; 3) ten years – in case of the commission of the grave crime; 4) fifteen years – in case of the commission of the especially grave crime.

Normative reference:

Chapter XIII¹, Articles 92–96² of Chapter XIV, Article 96³–96¹¹ of Chapter XIV¹ of the Criminal Code of Ukraine

Additional attention to be paid to:

Part 1 of Article 150, Article 154, Parts 2–3 of Article 159¹, Part 1 of Article 190, Article 192, Part 1 of Article 204, 209¹, 210, Parts 1–2 of Articles 212, 212¹, Part 1 of Articles 222, 229, 239¹, 239², Part 2 of Article 244, Part 1 of Articles 248, 249, Part 1–2 of Article 300, Part 1 of Articles 301, 302, 310, 311, 313, 318, 319, 362, Article 363, Part 1 of Articles 363¹, 364¹, 365², Part 9 of Article 100 of the Criminal Code of Ukraine

Articles 209, 306, Parts 1–2 of Article 368³, Parts 1–2 of Article 368⁴, Articles 369, 369², Articles 209, 306, Parts 1–2 of Article 368³, Parts 1–2 of Article 368⁴, Articles 369, 369², Articles 258–258⁵, 109, 110, 113, 146, 147, Parts 2–4 of Article 159¹, Articles 160, 260, 262, 436, 437, 438, 442, 444, 447, 109, 110, 113, 146, 147, Parts 2–4 of Article 159¹, Articles 160, 209, 260, 262, 306, Parts 1–2 of Article 368³, Parts 1–2 of Article 368⁴, Articles 369, 369², 436, 437, 438, 442, 444, 447, Article 93³, Articles 109, 110, 113, 146, 147, 160, 260, 262, 258–258⁵, 436, 436¹, 437, 438, 442, 444, 447 of the Criminal Code of Ukraine

TOPIC 8. SPECIFIC FEATURES OF CRIMINAL LIABILITY AND PUNISHMENT OF MINORS

A minor who has committed a crime of minor gravity or reckless crime of moderate gravity for the first time, may be *discharged from criminal liability* if his correction is possible without the imposition of the punishment. In these cases, the court applies the *compulsory measures of an educational nature*, foreseen by Part 2 of Article 105 of the Criminal Code of Ukraine to a minor.

Such *primary types of punishments* may be applied by court to minors, found guilty of the commission of the crime, as: 1) fine; 2) community service; 3) correctional labour; 4) arrest; 5) imprisonment for a determinate term. *Additional punishments*

in the type of fine and deprivation of the right to occupy certain positions or engage in certain activities may be applied to minors.

When *imposing a punishment on a minor*, the court takes into account the conditions of his living and upbringing, the influence of adults, the level of development and other peculiarities of the identity of a minor besides the circumstances, foreseen in Articles 65–67 of the Criminal Code of Ukraine.

The *discharge of minors from punishment on probation* is applied to minors according to Articles 75–78 of the Criminal Code of Ukraine, considering the provisions, foreseen by Article 104 of the Criminal Code of Ukraine. The discharge of minors from punishment on probation may be applied to a minor only if he was sentenced to arrest or imprisonment.

A minor, who committed a crime of minor gravity or moderate gravity, might be *discharged from punishment* by the court if it is considered that at the time of sentencing he does not require an imposition of punishment owing to sincere repentance and further exemplary behaviour. In this case the court applies such *compulsory measures of an educational nature* to a minor as: 1) warning; 2) restriction of leisure activities and imposition of specific requirements to the behaviour of a minor; 3) the transfer of a minor under the supervision of parents or persons who replace them or under the supervision of pedagogical or labour collective with its consent, and also individual citizens upon their request; 4) assigning of the obligation to compensate the caused material damages on minor, who reached the age of fifteen years and has property, assets or income; 5) referral of a minor to a special educational-care institution for children and teenagers until his correction, but for a term not longer than three years. The conditions of stay in these institutions of minors and the procedure of their leaving are determined by the law.

The *discharge from criminal liability and serving the punishment due to the expiration of limitation periods* of persons, who

committed the crime in the age under eighteen years is applied according to Articles 49 and 80 of the Criminal Code of Ukraine, considering the provisions, foreseen by Article 106 of the Criminal Code of Ukraine.

The *conditional-early release from serving the punishment* may be applied to persons who are serving the punishment in the type of imprisonment for the crime, committed in the age under eighteen years regardless of the gravity of the committed crime.

The *expunging and revocation of a conviction of persons*, who committed a crime in the age under eighteen years, is applied according to Articles 88–91 of the Criminal Code of Ukraine, considering the provisions of Article 108 of the Criminal Code of Ukraine.

Normative reference:

Articles 97–108 of Chapter XIV of the Criminal Code of Ukraine

Additional attention to be paid to:

Part 2 of Article 105, Articles 100, 103, Articles 65–67, 75–78, 49, 80, 71–72, 88–91, Part 1 of Article 91 of the Criminal Code of Ukraine

TOPIC 9. SYSTEM OF GENERAL PART OF CRIMINAL LAW OF FOREIGN COUNTRIES

General Part of criminal law of foreign countries is traditionally characterized by the existence of a wide range of such various constituent elements, as the general provisions of criminal law, the scope of the application of criminal law, the definition and categorization of criminal action, the subject of crime, the guilt, the complicity in the crime, the multiplicity of crimes, the circumstances excluding criminality of an act, the discharge from criminal liability, the definition and types of punishment,

the imposition of punishment, the discharge from punishment and from serving it, the conviction, the other measures of criminal-legal nature, including criminal responsibility of legal persons, the specific features of criminal liability and punishment of minors and other in one form or another.

Depending on the approach of the understanding of criminal law, its legislative definition and practical implementation in one or other country or region, the phenomenon of *crime* is taking shape in the form of the 'criminal offence', 'criminal action', 'unlawful act', 'socially dangerous action', 'antisocial phenomenon', 'delict', 'misconduct' and etc. For instance, according to § 11 No. 5 of the German Criminal Code, '*unlawful act*' means only an act which fulfils all the elements of a criminal provision, while pursuant to Part 1 of Article 11 of the Criminal Code of Ukraine, *crime* is a socially dangerous culpable act (action or omission) foreseen by the Criminal Code of Ukraine, committed by subject of crime.

The *system of punishments* also has its own distinctive features from one country to another. For instance, according to Part 1 of Article 33 of the Criminal Code of the Kingdom of Spain, the punishments are classified into '*serious*', '*less serious*' and '*minor*' depending on their nature and duration, while pursuant to Parts 1–3 of Article 52 of the Criminal Code of Ukraine, the system of punishment consists of '*primary*', '*additional*' and '*primary and additional*' punishments.

Security measures are also represented in different varieties throughout the world, starting from their definition, and ending with an appropriate terminology to designate them. For instance, according to Sections One-Two of Chapter Two of Title Three of the Criminal Code of the Swiss Confederation, there are *measures* and *other measures* that include therapeutic measures and indefinite incarceration, in-patient therapeutic measures, indefinite incarceration, good behaviour bond, prohibition from

carrying on an activity, contact prohibition and exclusion order, disqualification from driving, forfeiture, in particular, and others, while pursuant to Chapters XIII¹, XIV, XIV¹, XV of General Part of the Criminal Code of Ukraine, such *measures* are usually associated with restrictive measures, other measures of criminal-legal nature, including compulsory medical measures, compulsory treatment and special confiscation, in particular, measures of criminal-legal nature regarding legal entities, specific features of criminal liability and punishment of minors, in a Part of compulsory measures of an educational nature and others.

Normative reference:

The Criminal Code of Ukraine, the German Criminal Code, the Criminal Code of the Kingdom of Spain, the Criminal Code of the Swiss Confederation

Additional attention to be paid to:

§ 11 No. 5 of the German Criminal Code, Part 1 of Article 11 of the Criminal Code of Ukraine, Part 1 of Article 33 of the Criminal Code of the Kingdom of Spain, Parts 1–3 of Article 52 of the Criminal Code of Ukraine, Sections One-Two of Chapter Two of Title Three of the Criminal Code of the Swiss Confederation, Chapters XIII¹, XIV, XIV¹, XV of General Part of the Criminal Code of Ukraine

PLANS OF PRACTICAL TRAINING

TOPIC 1. CIRCUMSTANCES EXCLUDING CRIMINALITY OF AN ACT

1. The notion, signs and types of the circumstances excluding criminality of an act.
2. The notion, signs and conditions of the lawfulness of the necessary defense.
3. The notion and peculiarities of criminal liability in case of imaginary defense.
4. The notion, signs and conditions of the lawfulness of the detention of a person committing a crime.
5. The notion, signs and conditions of the lawfulness of the extreme necessity.
6. The notion and signs of physical and mental coercions.
7. The notion of obeying an order or command. The notion of lawful order or command. Criminal liability for obeying a criminal order or command.
8. The notion of an act involving risk.
9. The notion of undertaking a special mission to prevent or uncover criminal activities of an organized group or criminal organization.

Tasks

1. Please write down the general signs of the circumstances excluding criminality of an act.
2. Please name the conditions of the lawfulness of the necessary defense.

3. Please draw a distinction between the necessary defense and the extreme necessity.
4. Please give a brief description of the characteristic of the distinction between the extreme necessity and physical and mental coercions.
5. Please give a definition of an act involving risk.

Cases

Case 1. Three persons previously convicted of crimes on several occasions broke into a medical institution and took two medical workers as hostages while being under the influence of drugs. Later on, they have demanded money, narcotics and a car threatening with a hunting rifle and a knife. Intensive negotiations held with the criminals have been unsuccessful. They started abusing the hostages, caused serious injury to one of them. Shortly thereafter, a chief of an operational investigative unit ordered to summon snipers, who have used their weapons, as a result of which two criminals were killed, a third was seriously wounded.

Are there any circumstances excluding criminality of an act in a given situation?

Case 2. Married couple lived in a private house. A husband was often under the influence of alcohol, created countless scandals and started fights, while returning home. Then, one night, he went back home in a drunken state and started beating on his wife for no reason. She started to protect herself whereas a husband took a knife and tried to stab her. His wife pushed him away, grabbed an axe, which was lying near the stove and carried out two attacks on him, causing grievous bodily harm.

What should be an appropriate criminal-legal assessment of actions of these two persons?

Case 3. A heavily drunk man walked right up to a taxi, which was standing at a stop and started demanding to take a passenger off the car, and to deliver him in the opposite direction instead. In so doing, he used foul language and was dangling his lit cigarette in front of passenger's eyes, burned a hole in his jacket sleeve insisted on the requirements in a rude manner. A passenger pushed a man away through an open window of a cabin and he fell down hitting his head on the asphalt, having severe injuries.

Is a passenger criminally liable?

Case 4. An owner of the house heard that someone was moving around an attic of his house in the middle of the night. He loaded his hunting rifle, went out to the yard and yelled, 'Who's there?' An unknown person jumped off an attic and hid around the corner of the back of the house, and then lunged at him. An owner shot him and killed. Murdered man turned out to be a person repeatedly convicted for thefts on numerous occasions.

Is there an excess of the necessary defense in the actions of an owner of the house?

Case 5. Two tourists were left in the forest without food and water threatened to starve to death. Having found an empty ranger's station, they broke down the doors and grabbed the groceries in an amount, which ensured the possibility to get to a population centre.

Has there been a state of an extreme necessity?

Case 6. An operative worker of a special unit of criminal police became a member of organized criminal group, undertaking a special mission with the purpose of uncovering its criminal activity. In order to earn the trust, he was forced to take part in thefts, robberies and brigandisms committed by a group, using

violence against the victims once in a while. Then one day, during the next brigandism, a leader of a group ordered an undercover officer to kill a victim to be assured, with absolute certainty, about his 'reliability' and he did.

Please indicate the criminal-legal assessment of action of an operative worker.

TOPIC 2. DISCHARGE FROM CRIMINAL LIABILITY

1. The notion, legal grounds, procedure and types of the discharge from criminal liability.
2. Discharge from criminal liability in view of effective repentance.
3. Discharge from criminal liability in view of reconciliation of the offender and the victim.
4. Discharge from criminal liability in view of admission of a person to bail.
5. Discharge from criminal liability due to a change of situation.
6. Discharge from criminal liability due to the expiration of the limitation period.

Tasks

1. Please write down the types of the discharge from criminal liability into two columns: 'mandatory' and 'optional'.
2. Please mark the difference between 'conditional' and 'unconditional' types of the discharge from criminal liability.
3. Please name and characterize the legal ground of the discharge from criminal liability in view of effective repentance.

4. Please indicate the legal consequences in case if the conditions of the admission by bail are not satisfied.
5. Please name the cases when the running of the limitation period shall be suspended and when shall be forfeited.

Cases

Case 1. Head of private enterprise illegally obtained state targeted loan that caused major harm to a state. Fearing a liability in case of exposure of what he did, he came in voluntarily to the law enforcement bodies and reported what had happened, ensuring compensation for the damage caused in a month.

Please, examine Article 222 of the current Criminal Code of Ukraine. Is it possible to apply the discharge from criminal liability in view of effective repentance?

Case 2. Woman officially expressed to a court that she agreed with the discharge of an offender from criminal liability in view of reconciliation due to the fact that he compensated the damage inflicted to her and she is not pressing any further charges during the court hearing of a rape case.

Could he be discharged from criminal liability in view of reconciliation of the offender and the victim?

Case 3. A 45-year-old male has been prosecuted under the provisions of Part 1 of Article 311 of the current Criminal Code of Ukraine. Considering that he has never been previously tried or convicted of a crime before, along with the positive characteristic at the place of work as well as the fact that he actively facilitated the detection of the crime, sincerely repented and admitted guilt it was decided to discharge him from criminal liability in view of effective repentance.

Please, examine Article 311 of the current Criminal Code of Ukraine. Is it possible to apply the discharge from criminal liability in view of effective repentance given that he has been already discharged from criminal liability in view of reconciliation of the offender and the victim two years ago?

Case 4. A diary factory worker committed an act of hooliganism under Article 296 of the current Criminal Code of Ukraine. Taking into consideration the request of the collective body of an enterprise and sincere repentance he was discharged from criminal liability in view of admission of a person to bail. But after two months he quit his job and moved to another place, wishing to avoid the influence of the collective body.

What are the legal consequences of the discharge from criminal liability in view of admission of a person to bail? What legal implications would such a situation have?

Case 5. Former husband maliciously avoided paying child alimony for a considerable time. As fate would have it the child died in March 2015 but a criminal case under Part 1 of Article 164 of the current Criminal Code of Ukraine was opened only in May 2019.

Are there any grounds for the discharge from criminal liability? Please give a legal assessment of the situation.

TOPIC 3. PUNISHMENT AND ITS TYPES

1. The definition, signs, purpose and functions of punishment.
2. The notion of the system of punishment and the classification of the types of punishment.
3. The definition and concept of fine.
4. The notion of revocation of a military or special title, rank, grade or qualification class.

5. The grounds and procedure for the imposition of deprivation of the right to occupy certain positions or engage in certain activities.
6. The grounds and procedure for the imposition of community service.
7. The grounds and procedure for the imposition of correctional labour.
8. The grounds and procedure for the imposition of service restrictions for military servants.
9. The grounds and procedure for the imposition of confiscation of property.
10. The grounds and procedure for the imposition of arrest.
11. The grounds and procedure for the imposition of restraint of liberty.
12. The grounds and procedure for the imposition of custody of military servants in a disciplinary battalion.
13. The grounds and procedure for the imposition of imprisonment for a determinate term.
14. The grounds and procedure for the imposition of life imprisonment.

Tasks

1. Please draw a distinction between punishment and other coercive measures imposed on behalf of the State, in particular administrative and disciplinary penalties.
2. Please name and characterize the types of the prevention as one of the constituent units of the purpose of punishment.
3. Please specify and explain the arguments whether the punishment is aimed at the rehabilitation of sentenced persons.
4. Please write down the types of punishment into three columns 'primary', 'additional' and 'mixed'.

5. Please recount and briefly characterize the types of punishment of material nature.
6. Please identify the range of persons to whom community service may not be imposed.
7. Please clarify the category of persons to whom correctional labour shall not be imposed upon.
8. Please indicate the types of punishment that can be imposed on pregnant women.
9. Please write down the types of punishment that do not relate to deprivation of liberty.

Cases

Case 1. Two poachers have caught valuable species of fish, amounting to UAH 2070 that caused significant damage to the fishing industry. In this regard, they were convicted for illegal fishing under Part 1 of Article 249 of the current Criminal Code of Ukraine and were sentenced to a fine equal to UAH 170 for each of them. Being disagreeable in the appeal, a prosecutor requests to overturn the conviction on the basis of an incorrect application of the criminal law in terms of the imposition of punishment.

What decision should the court make?

Case 2. A young man was convicted to three years of imprisonment under Part 3 of Article 185 of the current Criminal Code of Ukraine. At the same time, he was discharged from punishment on probation with a probation period of 2 years under Article 75 of the current Criminal Code of Ukraine and sentenced to a fine equal to UAH 510 as an additional punishment under Article 77 of the current Criminal Code of Ukraine.

Is the fine properly imposed as an additional punishment?

Case 3. A young man was convicted for a violation of the traffic rules. In accordance with the verdict of a court, he committed a hit-and-run on a pedestrian, causing grave bodily injury, while moving along the highway, riding his broken motorcycle without driver's license, knowledge to drive, driving skills and registration documents in respect of the motor vehicle. As a consequence, he was convicted under Part 2 of Article 286 of the current Criminal Code of Ukraine to imprisonment for a term of three years and the deprivation of the right to operate transport for a term of two years.

Can such a court decision be considered as justified in the light of the fact that he did not have a driver's license and the right to operate vehicles as it transpires from the case files and the court verdict?

Case 4. An official person of a state body was convicted to eight years of imprisonment with forfeiture of everything he owned including residential building in the countryside, where he lived permanently with his family for a misappropriation of property by malversation in an especially gross amount.

Is such house subject to forfeiture?

Case 5. A birthday boy having a celebration party on the occasion of his eighteenth anniversary, picked up a large-scale massive fight motivated by hooliganism. He stabbed twice one guy in the chest and once another in the stomach. The first one died in hospital early hours of the next morning and the second one died five days later. Right after that, he was charged with criminal offences under the Paragraph 1, 7 of Part 2 of Article 115 of the current Criminal Code of Ukraine.

Can the court sentence him to life imprisonment in case if he would be found guilty?

Case 6. An elderly man was convicted to one year of restraint of liberty under Part 1 of Article 296 and discharged from punishment on probation with a probation period of 1 year under Article 75 of the current Criminal Code of Ukraine as he reached the retirement age at the time of the hearing of a case in the court.

Is the criminal law regarding the imposition of restraint of liberty applied correctly?

TOPIC 4. IMPOSITION OF PUNISHMENT

1. General principles of imposition of punishment.
2. Victim impact statement, plea agreement.
3. Circumstances mitigating punishment.
4. Circumstances aggravating punishment.
5. Circumstances characterizing the gravity of the crime committed and the identity of a perpetrator.
6. Imposition of punishment for unconsummated criminal offense and criminal offense committed in complicity.
7. Imposition of punishment milder than prescribed by the law.
8. Imposition of punishment under mitigating circumstances.
9. Imposition of punishment for cumulative criminal offenses.
10. Imposition of punishment by cumulating sentences.
11. Rules of adding up punishments and merging previous terms. Calculation of terms of punishment.

Tasks

1. Please name the principles of imposition of punishment that court is guided by in its work.

2. Please define and write down the difference in legal regulation of the circumstances mitigating and aggravating punishment.
3. Please give a brief description of the characteristic of the identity of a perpetrator.
4. Please specify the conditions of imposition of punishment milder than prescribed by the law.
5. Please mark the difference between imposition of punishment for '*cumulative criminal offenses*' and by '*cumulating sentences*'.
6. Please formulate a rule of the imposition of additional punishments in case of imposition of punishment for cumulative criminal offenses and by cumulating sentences.
7. Please clarify the calculation of terms of punishment in case of substituting, adding up or merging of pretrial detention.

Cases

Case 1. A young woman was driving her personal car right after the consuming of narcotic substance. Under the influence of drug, she committed a violation of the traffic rules, causing grievous bodily harm to a pedestrian.

Does a court have the right to admit a state of intoxication as a circumstance mitigating punishment at the time of its imposition? Please argument your point of view.

Case 2. A middle-aged man was stealing valuable property, which he really thought was acquired unlawfully, from the apartments of bureaucrats and afterwards was selling it on the commodity market. The money he had received, he transferred to children's homes and orphanages by mail.

Are there any circumstances mitigating punishment in a given situation?

Case 3. The police officer caused intended grievous bodily injury to his wife during a disagreement. Hearing that their next-door neighbor came running and tried to hide the assaulted woman away in her apartment when he also hit her inflicting intended minor bodily injury that caused a short-term health disorder. As a result, he was convicted to five years and six months of imprisonment under Part 1 of Article 121 and two years of restraint of liberty under Part 2 of Article 125 of the current Criminal Code of Ukraine. In the end, the final conviction of the Court was seven years of imprisonment and revocation of the special title – police captain.

Please, give a legal assessment of the condemnatory court judgement.

Case 4. A warehouse worker was found guilty for the commission of three crimes and convicted under Part 1 of Article 185, Part 2 of Article 186 and Part 2 of Article 187 of the current Criminal Code of Ukraine to fine of fifty tax-free minimum incomes, imprisonment for a term of five years and imprisonment for a term of ten years with the forfeiture of property respectively.

What is the procedure of the imposition of a final cumulative punishment for three or more criminal offenses? What are the limits of such imposition in general and of this given situation?

Case 5. A twice-convicted man was sentenced to seven years' deprivation of liberty under Part 4 of Article 296 of the current Criminal Code of Ukraine. Once the judgement has been handed down, he immediately expressed his disagreement and dissatisfaction with a court verdict, threatening to kill a judge and prosecutor. As a result, he was convicted under Part 1 of Article 377 and Part 1 of Article 345 of the current Criminal Code of Ukraine to imprisonment for a term of three years on both occasions.

How should a final punishment be imposed in such an event? What shall the final term not exceed in cumulating punishments of imprisonment?

TOPIC 5. DISCHARGE FROM PUNISHMENT AND FROM SERVING IT

1. The notion and types of the discharge from punishment and from serving it.
2. The notion and legal consequences of the discharge from punishment on probation.
3. Discharge from punishment on probation for pregnant women and women having children under the age of seven.
4. Discharge from serving a punishment due to the expiration of limitation periods for enforcement of sentence.
5. Conditional-early release from serving the punishment.
6. Commutation of the remaining Part of the punishment.
7. Discharge from punishment for pregnant women and women with children under the age of three.
8. Discharge from punishment due to illness.
9. Discharge from punishment on the basis of the Law of Ukraine on amnesty or an act of pardon. Amnesty. Pardon.

Tasks

1. Please indicate the case when a person shall be immediately discharged from punishment imposed by a court (according to Part 2 of Article 74 of the current Criminal Code of Ukraine).
2. Please write down the list of obligations that a court may impose on the convicted person in case of the discharge from punishment on probation.
3. Please specify the types of additional punishments which may be imposed in case of the discharge from primary punishment on probation.

4. Please name features and characteristics which differentiate the discharge from punishment for pregnant women and women with children under the age of three from the discharge from punishment on probation for pregnant women and women having children under the age of seven.
5. Please mark the difference between the discharge from serving a punishment due to the expiration of limitation periods for enforcement of sentence and the discharge from criminal liability due to the expiration of the limitation period.
6. Please name the conditions of the announcement of amnesty.
7. Please choose the correct statement and explain why:
 - a) pardon shall be announced in regard of a certain category of persons;
 - b) pardon is granted in regard of a particular individual.

Cases

Case 1. A very enthusiastic young woman was convicted under Part 1 of Article 309 and Part 2 of Article 307 of the current Criminal Code of Ukraine to one year of imprisonment and one year of imprisonment with the forfeiture of property belonging to her by the ownership right, which ultimately result in five years of imprisonment and forfeiture of an aforementioned property for cumulative criminal offenses under Article 70 of the current Criminal Code of Ukraine. Immediately thereafter, she was discharged from serving the primary punishment on probation with a probation period of three years with the obligations imposed on a person discharged on probation under Article 75 and Article 76 of the current Criminal Code of Ukraine, while maintaining the punishment of the forfeiture of property.

Did the court correctly apply the additional sentence as to the release from serving the basic sentence?

Case 2. A privileged young woman was convicted for murder, committed with exceptional violence, based on religious intolerance and sentenced to imprisonment for a term of fifteen years. Once a verdict was reached, but prior to entry into force, it was established that she was pregnant.

How the issue of the execution of the sentence should be resolved?

Case 3. A court denied a conditional-early release from serving the punishment of a person convicted under Part 2 of Article 121 of the current Criminal Code of Ukraine for the intended grievous bodily injury, which caused death of the victim to imprisonment for a term of seven years on the ground that he committed an intended grave offense and the time he had already spent in prison was not sufficient to demonstrate his reformation. But at the same time, the case file revealed that he served four years and nine months, so did displayed decent behaviour and diligence in work.

Did the court properly decide the case?

Case 4. A middle-aged woman was convicted for an unlawful exercise of medical activities, which caused death of the victim through negligence to imprisonment for a term of three years. After one year and two months, she requested the court to set her free on conditional-early release from serving the punishment.

Should this motion be granted by a court? What are the grounds and procedure for the conditional-early release from serving the punishment, stipulated under the criminal law? Is commutation of the remaining Part of a sentence possible in this case?

Case 5. A senior citizen born 1950 was convicted under Part 2 of Article 310 of the current Criminal Code of Ukraine to imprisonment for a term of three years by court judgement of 29 August 2015. Further, pursuant to Article 75 of the current

Criminal Code of Ukraine, she was discharged from punishment on probation with a probation period of one year. In accordance with Paragraph 'r' of Article 1 of the Law of Ukraine "On Amnesty" of 22 December 2016, she was discharged from punishment.

Did the court correctly apply the amnesty law?

TOPIC 6. CONVICTION

1. The notion and legal consequences of a conviction.
2. Time limits for the expunging a conviction.
3. The procedure for calculating of the time limits for the expunging a conviction.
4. Revocation of a conviction.

Tasks

1. Please give a definition of a conviction.
2. Please indicate the negative consequences of a conviction.
3. Please give a brief description of the characteristic of the purpose of the institution of a conviction.
4. Please draw a distinction between the expunging and revocation of a conviction.
5. Please indicate the legal consequences of the expunging and revocation of a conviction.

Cases

Case 1. Pursuant to the verdict of the local court, proclaimed on 17 March 2019, a young fellow was convicted for the hooliganism

under Part 1 of Article 296 of the current Criminal Code of Ukraine and sentenced to a fine. Shortly thereafter, on 1 April 2019, he committed a serious disturbance of the public order based on motives of explicit disrespect to community in a most outrageous or exceptionally cynical manner again, for which he was convicted under Part 3 of Article 296 of the current Criminal Code of Ukraine for the hooliganism committed by a person previously convicted of hooliganism.

Please consider whether it was justifiable to convict such a person under Part 3 of Article 296 of the current Criminal Code of Ukraine?

Case 2. A 35-year-old pregnant woman was convicted to five years of imprisonment for committing a crime under Part 1 of Article 201 of the current Criminal Code of Ukraine. Furthermore, she was discharged from punishment until the child attains three years of age under Article 83 of the current Criminal Code of Ukraine in connection with childbirth while serving the punishment. When a child attained the age of three years, she was discharged from punishment. Until then, she has already served one year and two months of imprisonment.

When a person shall be held to have no conviction?

Case 3. Five young people were convicted under Part 2 of Article 190 of the current Criminal Code of Ukraine to imprisonment for a term of three years, imprisonment for a term of three years with the discharge from punishment on probation with a probation period of three years, four years of restraint of liberty, two years of correctional labour and a fine of 90 tax-free minimum incomes, respectively.

When will these persons be considered as non-convicted?

TOPIC 7. OTHER MEASURES OF CRIMINAL-LEGAL NATURE

1. The notion, purpose and grounds for the application of compulsory medical measures.
2. The types of the compulsory medical measures.
3. The specificities of the continuation, change or discontinuation of compulsory medical measures.
4. The notion, legal nature, and criminal-legal concept of compulsory treatment.
5. The notion and cases of application of special confiscation.
6. The notion and grounds for the application of measures of criminal-legal nature regarding legal entities.
7. The types of measures of criminal-legal nature regarding legal entities. Fine. Confiscation of property. Liquidation.
8. General rules and grounds for the application and exemption of a legal entity from the application of measures of criminal-legal nature.

Tasks

1. Please identify the range of persons to whom compulsory medical measures may be applied.
2. Please give a brief description of the characteristic of the persons to whom compulsory treatment may be ordered.
3. Please draw a distinction between the compulsory medical measures and the compulsory treatment.
4. Please mark the difference between '*special confiscation*' and '*confiscation of property*' as the type of punishment prescribed in Article 51 of the current Criminal Code of Ukraine.
5. Please characterize the legal entities to which measures of criminal-legal nature may be applied.

6. Please formulate and write down the general rules of the application of measures of criminal-legal nature regarding legal entities.
7. Please specify the peculiarities of the application of measures of criminal-legal nature regarding legal entities for the cumulation of criminal offenses.

Cases

Case 1. District police office initiated criminal proceedings against dangerous violent man for an unconsummated criminal attempt to murder a supermarket security guard under Part 3 of Article 15 and Part 1 of Article 115 of the current Criminal Code of Ukraine. However, during the examination of a case, he developed a reactive psychosis and required an imposition of compulsory medical measures according to the conclusion of the judicial-psychiatric expertise. In this regard, the court discharged him from criminal liability and imposed such compulsory medical measure as hospitalization in a reinforced-security mental institution.

Whether the court correctly solved the case?

Case 2. A criminal investigation has been instituted into the intended grievous bodily injury inflicted in excess of necessary defense under Article 124 of the current Criminal Code of Ukraine. During the pre-trial phase, the judicial-psychiatric expertise concluded that the accused presented signs of a paranoid schizophrenia and therefore was insane as to a socially dangerous act which he committed. With regard to the excessive aggression and bitterness of the sick, a commission of psychiatrists has indicated the need for the imposition of such compulsory medical measure as hospitalization in a high-security mental institution.

How the court has to decide the case?

Case 3. A young man became acquainted with a detainee in a building of a detention facility, introducing himself as a remand centre director, promising to release detainee's brother from detention if he paid him the sum of UAH 250. Once he got the money, he vanished. It had further been established that he did exactly the same thing to two other detainees, obtaining the total sum of UAH 500 from both of them. It was later established that this young man was suffering from mental illness and needed special treatment in a psychiatric institution according to the conclusion of experts-psychiatrists.

Are there any legal grounds to apply the compulsory medical measures to him? Who is authorized to decide the question of application of the compulsory medical measures? If there is reason to believe that there are legal grounds to apply the compulsory medical measures, which type of psychiatric facility he should be admitted to?

Case 4. Middle-aged woman was convicted to three years of imprisonment under Part 3 of Article 133 of the current Criminal Code of Ukraine. At the same time, the court ordered to undergo compulsory treatment for syphilis in respect of her in accordance with Part 1 of Article 96 of the current Criminal Code of Ukraine. One year and seven months later, the motion for her conditional-early release from serving the punishment was submitted to the court under Paragraph 1 of Part 3 of Article 81 of the current Criminal Code of Ukraine. The court declined to do so, arguing that she has not finished her treatment.

Is such a decision of the court reasonable?

Case 5. Lonely man was accused of intentional endamagement of somebody else's property by way of setting fire that caused significant damages. According to the judicial-psychiatric expert evaluation, which was held during a pre-trial stage

of the investigation, he has suffered from organic brain damage. Although such mental disorder does not exclude criminal sanity, he was not completely aware of and could not fully control his acts at the time of the commission of the criminal offence.

Should this mental disorder be considered by the court in sentencing?

Case 6. A young man who was previously convicted of a crime had committed a crime again during the probation period. For about an hour, he was turning over nearly 30 monuments and pulling out almost 10 crosses from the gravestones at a cemetery. According to the conclusions of experts-psychiatrists, he has suffered from a morbid mental disorder in the form of acute alcoholic hallucinosis due to alcohol abuse.

Is he criminally liable under Article 297 of the current Criminal Code of Ukraine?

TOPIC 8. SPECIFIC FEATURES OF CRIMINAL LIABILITY AND PUNISHMENT OF MINORS

1. The specificities of the discharge of minors from criminal liability.
2. Types of punishment imposed on minors. Fine. Community service. Correctional labour. Arrest. Imprisonment for a determinate term.
3. Peculiarities of imposition of punishment on minors.
4. The specificities of the discharge of minors from punishment and from serving it.
5. The discharge of minors from punishment on probation.
6. The discharge of minors from punishment with the application of compulsory measures of an educational nature.

7. The discharge of minors from criminal liability and punishment due to the expiration of limitation periods.
8. Conditional-early release of minors from serving the punishment.
9. The expunging and revocation of a conviction of minors.

Tasks

1. Please recount and briefly characterize the types of punishment which cannot be imposed on minors.
2. Please write down the types of punishment which may be imposed on minors, who have reached the certain age before the commission of a criminal offense into three columns: *'fourteen years'*, *'sixteen years'* and *'eighteen years'*.
3. Please name the types of additional punishment which may be imposed on minors (according to Part 2 of Article 98 of the current Criminal Code of Ukraine).
4. Please specify the circumstances which a court shall consider when imposing a punishment on a minor.
5. Please identify and give a brief description of the types of the discharge of minors from punishment and from serving it.
6. Please clarify the conditions of the discharge of minors from punishment with the application of compulsory measures of an educational nature.
7. Please name the case when preterm revocation of conviction of minors shall be permissible.

Cases

Case 1. 17-year-old boy murdered his classmate out of jealousy, dismembered the corpse, wrapped it up in polyethylene and threw into the river. Eight years later, this complicated case was solved.

Could he be criminally liable? How is the issue of the discharge from criminal liability and punishment of minors due to the expiration of limitation periods addressed?

Case 2. A seventeen-year-old male was convicted to three years of imprisonment under Part 1 of Article 152 and five years of imprisonment under Part 2 of Article 153 of the current Criminal Code of Ukraine, which ultimately resulted in seven years of imprisonment by cumulating sentences.

After what period of time can he be conditional-early released from serving the punishment, if he proves his reformation?

Case 3. A boy of fourteen, who was clearly attracted to organic chemistry, stole several reagents and three devices for a conduction of experimentations at home from a school chemistry lab. The amount stolen was UAH 500. Examining the case, the court found that reformation of an offender is possible without the imposition of punishment, considering his character, the nature, motives and circumstances of the offence.

What decision may the court adopt in this case?

Case 4. A minor was discharged from criminal liability in view of reconciliation of the offender and the victim on 6 April 2018. A year later he stole a bag with some clothes at the railway station.

Is it possible to discharge him from criminal liability with the application of compulsory measures of an educational nature?

Case 5. A schoolboy, being of minor age, was walking near the playground and saw his classmate, who bragged that he got a brand-new high cost mobile phone. While he was talking to his friends with great enthusiasm, his phone was gone. It further found that

a minor committed a secret theft under Part 1 of Article 185 of the current Criminal Code of Ukraine, causing material damage in the amount of UAH 3 399, equal to the value of the phone. Subsequently, the case was dismissed. In turn, he was discharged from punishment with the application of compulsory measures of an educational nature and placed under the supervision of his mother without specifying of the duration of such measure.

Is the court's decision correct?

Case 6. A 17-year-old college student stole a laptop computer, which costs about UAH 4 299 secretly from the nightwatchman's room in a dormitory. The proceedings in the case concerning the commission of the socially dangerous act prescribed by Part 1 of Article 185 of the current Criminal Code of Ukraine were discontinued by the court ruling. Nevertheless, he was subjected to several compulsory measures of an educational nature at a time, including his placement under the supervision of college's teaching staff and restriction of leisure time in the form of a prohibition to appear in public places after 9:00 p. m., as well as the attendance of computer clubs, Internet-cafes and entertainment without a teacher until he comes of age.

Please comment on this case.

TOPIC 9. SYSTEM OF GENERAL PART OF CRIMINAL LAW OF FOREIGN COUNTRIES

1. General characteristic, notion and structure of system of General Part of criminal law of foreign countries.
2. Criminal act in criminal law of foreign countries.
3. Punishment in criminal law of foreign countries.
4. Security measures in criminal law of foreign countries.
5. Main features of other institutes of General Part of criminal law of foreign countries.

Tasks

1. Please provide a few examples of normative and doctrinal definitions of criminal act in criminal law of foreign countries.
2. Please give a brief description of the characteristic of the system and types of punishment in criminal law of foreign countries.
3. Please briefly characterize the grounds and procedure for the imposition of the '*death penalty*' as the type of punishment in criminal law of foreign countries.
4. Please give a definition of preventive criminal-legal impact in criminal law of foreign countries.
5. Please mark the difference between '*security measures*' and '*punishment*' in criminal law of foreign countries.

Cases

Case 1. Please look over Articles 3–10 of Chapter II ("Law on criminal liability") of the current Criminal Code of Ukraine concerning the issues of the operation of the law on criminal liability and compare to Articles 1–9 of Title One ("Scope of Application") of the Criminal Code of the Swiss Confederation.

Please identify the similarities and differences.

Case 2. Please examine the provisions of the Criminal Code of the French Republic, in particular with respect to the categorization of the criminal offences, indicate concrete Articles, provide the precise definitions and compare the findings with the Article 12 of the current Criminal Code of Ukraine.

As a result, please discuss the similarities and differences in the approaches within the context of the correlation of the domestic and foreign experience.

Case 3. Please analyse the provisions of the Criminal Code of the Federal Republic of Germany concerning the sanctions. Name, define and briefly characterize the types of penalties applicable to the offenders.

Do they differ from the types of punishment prescribed in Article 51 of the current Criminal Code of Ukraine?

Case 4. Please get acquainted with the content of Articles 27–31 bis of Title II (“On persons criminally responsible for felonies and misdemeanours”) of the Criminal Code of the Kingdom of Spain and compare it to Article 18 of Chapter IV (“Criminally liable person (criminal offender)”) of the current Criminal Code of Ukraine.

Please define the term “criminal offender” according to the national criminal legislation of Ukraine and compare it to “... those, who can be criminally responsible for felonies and misdemeanours ...” under the criminal legislation of the Kingdom of Spain. Who can be considered as the “principals” and “accessories” in this regard? Please clarify the interplay and distinction between these three concepts.

Case 5. Chapter XV of the Criminal Code of Georgia is devoted to the issues related to the amnesty, pardon and record of conviction. According to Part 1 of Article 77 of the Criminal Code of Georgia, amnesty shall be declared by the Parliament of Georgia with respect to an individually unspecified group of people, while Part 1 of Article 78 enshrines that pardon shall be granted by the President of Georgia to an individually specific person.

Is such a situation considered equitable under the criminal legislation of Ukraine? Please motivate your reflection by referring to Articles 85–87 of the current Criminal Code of Ukraine.

LIST OF QUESTIONS FOR THE EXAM PREPARATION

1. The notion, signs and types of the circumstances excluding criminality of an act.
2. The notion, signs and conditions of the lawfulness of the necessary defense.
3. The notion and peculiarities of criminal liability in case of imaginary defense.
4. The notion, signs and conditions of the lawfulness of the detention of a person committing a criminal offence.
5. The notion, signs and conditions of the lawfulness of the extreme necessity.
6. The notion and signs of physical and mental coercions.
7. The notion of obeying an order or command. The notion of lawful order or command. Criminal liability for obeying a criminal order or command.
8. The notion of an act involving risk.
9. The notion of undertaking a special mission to prevent or uncover criminal activities of an organized group or criminal organization.
10. The notion, legal grounds, procedure and types of the discharge from criminal liability.
11. Discharge from criminal liability in view of effective repentance.
12. Discharge from criminal liability in view of reconciliation of the offender and the victim.
13. Discharge from criminal liability in view of admission of a person to bail.
14. Discharge from criminal liability due to a change of situation.

15. Discharge from criminal liability due to the expiration of the limitation period.
16. The definition, signs, purpose and functions of punishment.
17. The notion of the system of punishment and the classification of the types of punishment.
18. The definition and concept of fine.
19. The notion of revocation of a military or special title, rank, grade or qualification class.
20. The grounds and procedure for the imposition of deprivation of the right to occupy certain positions or engage in certain activities.
21. The grounds and procedure for the imposition of community service.
22. The grounds and procedure for the imposition of correctional labour.
23. The grounds and procedure for the imposition of service restrictions for military servants.
24. The grounds and procedure for the imposition of confiscation of property.
25. The grounds and procedure for the imposition of arrest.
26. The grounds and procedure for the imposition of restraint of liberty.
27. The grounds and procedure for the imposition of custody of military servants in a disciplinary battalion.
28. The grounds and procedure for the imposition of imprisonment for a determinate term.
29. The grounds and procedure for the imposition of life imprisonment.
30. General principles of imposition of punishment.
31. Circumstances mitigating punishment.
32. Circumstances aggravating punishment.

33. Circumstances characterizing the gravity of the crime committed and the identity of a perpetrator.
34. Imposition of punishment for unconsummated criminal offense and criminal offense committed in complicity.
35. Imposition of punishment milder than prescribed by the law.
36. Imposition of punishment under mitigating circumstances.
37. Imposition of punishment for cumulative criminal offenses.
38. Imposition of punishment by cumulating sentences.
39. Rules of adding up punishments and merging previous terms. Calculation of terms of punishment.
40. The notion and types of the discharge from punishment and from serving it.
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42. Discharge from punishment on probation for pregnant women and women having children under the age of seven.
43. Discharge from serving a punishment due to the expiration of limitation periods for enforcement of sentence.
44. Conditional-early release from serving the punishment.
45. Commutation of the remaining Part of the punishment.
46. Discharge from punishment for pregnant women and women with children under the age of three.
47. Discharge from punishment due to illness.
48. Discharge from punishment on the basis of the Law of Ukraine on amnesty or an act of pardon. Amnesty. Pardon.
49. The notion and legal consequences of a conviction.
50. Time limits for the expunging a conviction.
51. The procedure for calculating of the time limits for the expunging a conviction.
52. Revocation of a conviction.

53. The notion, purpose and grounds for the application of compulsory medical measures.
54. The types of the compulsory medical measures.
55. The specificities of the continuation, change or discontinuation of compulsory medical measures.
56. The notion, legal nature, and criminal-legal concept of compulsory treatment.
57. The notion and cases of application of special confiscation.
58. The notion and grounds for the application of measures of criminal-legal nature regarding legal entities.
59. The types of measures of criminal-legal nature regarding legal entities. Fine. Confiscation of property. Liquidation.
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61. The specificities of the discharge of minors from criminal liability.
62. Types of punishment imposed on minors. Fine. Community service. Correctional labour. Arrest. Imprisonment for a determinate term.
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65. The discharge of minors from punishment on probation.
66. The discharge of minors from punishment with the application of compulsory measures of an educational nature.
67. The discharge of minors from criminal liability and punishment due to the expiration of limitation periods.
68. Conditional-early release of minors from serving the punishment.
69. The expunging and revocation of a conviction of minors.

70. General characteristic, notion and structure of system of General Part of criminal law of foreign countries.
71. Criminal act in criminal law of foreign countries.
72. Punishment in criminal law of foreign countries.
73. Security measures in criminal law of foreign countries.
74. Main features of other institutes of General Part of criminal law of foreign countries.

LIST OF USED AND RECOMMENDED CASES AND SOURCES

Cases

1. *Affaire Grava c. Italie*. The European Court of Human Rights (First Section). 10 juillet 2003. Requête No. 43522/98. URL: <http://hudoc.echr.coe.int/eng?i=001-65762>
2. *Case of Cantoni v. France*. The European Court of Human Rights (Grand Chamber). 11 November 1996. Application No. 17862/91. URL: <http://hudoc.echr.coe.int/eng?i=001-58068>
3. *Case of Del Río Prada v. Spain*. The European Court of Human Rights (Grand Chamber). 21 October 2013. Application No. 42750/09. URL: <http://hudoc.echr.coe.int/eng?i=001-127697>
4. *Case of Engel and Others v. the Netherlands*. The European Court of Human Rights (Plenary). 8 June 1976. Applications No. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72. URL: <http://hudoc.echr.coe.int/eng?i=001-57479>
5. *Case of Funke v. France*. The European Court of Human Rights (Chamber). 25 February 1993. Application No. 10828/84. URL: <http://hudoc.echr.coe.int/eng?i=001-57809>
6. *Case of Jorgic v. Germany*. The European Court of Human Rights (Fifth Section). 12 July 2007. Application No. 74613/01. URL: <http://hudoc.echr.coe.int/eng?i=001-81608>
7. *Case of Jussila v. Finland*. The European Court of Human Rights (Grand Chamber). 23 November 2006. Application No. 73053/01. URL: <http://hudoc.echr.coe.int/eng?i=001-78135>

8. *Case of Kafkaris v. Cyprus*. The European Court of Human Rights (Grand Chamber). 12 February 2008. Application No. 21906/04. URL: <http://hudoc.echr.coe.int/eng?i=001-85019>
9. *Case of Maktouf and Damjanović v. Bosnia and Herzegovina*. The European Court of Human Rights (Grand Chamber). 18 July 2013. Applications nos. 2312/08 and 34179/08. URL: <http://hudoc.echr.coe.int/fre?i=001-122716>
10. *Case of Nechiporuk and Yonkalo v. Ukraine*. The European Court of Human Rights (Fifth Section). 21 April 2011. Application No. 42310/04. URL: <http://hudoc.echr.coe.int/eng?i=001-104613>
11. *Case of Nevmerzhitsky v. Ukraine*. The European Court of Human Rights (Second Section). 5 April 2005. Application No. 54825/00. URL: <http://hudoc.echr.coe.int/eng?i=001-68715>
12. *Case of Petukhov v. Ukraine (No. 2)*. The European Court of Human Rights (Fourth Section). 12 March 2019. Application No. 41216/13. URL: <http://hudoc.echr.coe.int/eng?i=001-191703>
13. *Case of Quinn v. Ireland*. The European Court of Human Rights (Fourth Section). 21 December 2000. Application No. 36887/97. URL: <http://hudoc.echr.coe.int/eng?i=001-59098>
14. *Case of Saunders v. the United Kingdom*. The European Court of Human Rights (Grand Chamber). 17 December 1996. Application No. 19187/91. URL: <http://hudoc.echr.coe.int/eng?i=001-58009>
15. *Case of Vinter and Others v. United Kingdom*. The European Court of Human Rights (Grand Chamber). 9 July 2013. Applications nos. 66069/09, 130/10 and 3896/10. URL: <http://hudoc.echr.coe.int/eng?i=001-122664>

16. *Case of Welch v. The United Kingdom*. The European Court of Human Rights (Chamber). 09 February 1995. Application No. 17440/90. URL: <http://hudoc.echr.coe.int/eng?i=001-57927>
17. Decision of the Grand Chamber of the Constitutional Court of Ukraine No. 1-r/2019 dated February 26, 2019 in the case upon the constitutional petition of 59 People's Deputies of Ukraine on conformity of Article 368² of the Criminal Code of Ukraine to the Constitution of Ukraine (constitutionality). URL: http://www.ccu.gov.ua/sites/default/files/docs/1_r_2019_0.doc
18. Summary to the Decision of the Grand Chamber of the Constitutional Court of Ukraine No. 11-r/2020 of September 16, 2020 in the case upon the constitutional petition of 50 People's Deputies of Ukraine on compliance of certain provisions of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" with the Constitution (constitutionality). URL: http://www.ccu.gov.ua/sites/default/files/docs/11_r_2020.doc

Sources

1. Crime, Criminal Legislation and Responsibility: General Provisions of Criminal Code of Ukraine, 2001 : Training Manual / Vyacheslav A. Tulyakov, Eugene L. Streltsov, Eugene Y. Polyansky, Elena N. Polishchuk. 2nd ed. Riga, Latvia : Izdevnieciba "Baltija Publishing", 2017. 104 p.
2. Dressler J. Black Letter Outline on Criminal Law. 4th ed. Saint Paul, USA : West Academic Publishing, 2019. 354 p.
3. Dressler J. Understanding Criminal Law. 8th ed. North Carolina, USA : Carolina Academic Press, 2018. 648 p.
4. Eser A. Strafgesetzbuch Kommentar / ed. by A. Schönke, H. Schröder. 29th ed. München : C. H. Beck, 2014. § 12, Rn. 4.
5. Fris P. L. Kryminalne pravo Ukrainy. Zahalna chastyna : pidruchnyk. 2-he vyd. Kyiv : Atika, 2009. 512 s.

6. Horder J. Ashworth's Principles of Criminal Law. 9th ed. Oxford : Oxford University Press, 2019. 584 p.
7. Horokh O. P. Suchasni kryminalno-pravovi problemy zvilnennia vid pokarannia ta yoho vidbuvannia : monohrafiia / O. P. Horokh ; Nats. Un-t "Kyievo-Mohylianska akad." ; nauk. red. A. A. Muzyky ; rets. V. O. Tuliakov ta in. ; Kyiv. rehion. tsentr NAPrN Ukrainy. Kyiv : Dakor, 2019. 676 s.
8. Hoyer A. Systematischer Kommentar zum Strafgesetzbuch / ed. by W. Jürgen. 9th ed. München : Carl Heymanns, 2017. Band 1: Allgemeiner Teil (§§ 1–37). § 12, Rn. 2.
9. Kryminalne pravo Ukrainy : navch.-metod. posibnyk / S. V. Kivalov, S. V. Albul, N. L. Berezovska, N. A. Myroshnychenko, V. M. Pidhorodynskyi, Ye. V. Polianskyi ; red. V. O. Tuliakov ; NU "OİuA". Odesa : Yuryd. lit., 2014. 612 s.
10. Kryminalne pravo Ukrainy. Zahalna chastyna : pidruchnyk / za red. V. V. Stashysa, V. Ya. Tatsiia. 4-te vyd., pererobl. i dopov. Kharkiv : Pravo, 2010. 456 s.
11. Kryminalne pravo Ukrainy. Zahalna chastyna : zakon, zlochyn, vidpovidalnist : tekst lektsii / V. O. Tuliakov, N. A. Myroshnychenko, D. O. Balobanova ; rets. N. A. Orlovska ; NU "OİuA". Odesa : Yuryd. lit., 2014. 128 s.
12. Kryminalne pravoporushennia: natsionalnyi ta zarubizhnyi vymiry : materialy Mizhnar. nauk.-prakt. konf. (m. Odesa, 24 trav. 2019 r.) / redkol.: Ye. L. Streltsov, V. O. Tuliakov ; Pivden. rehion. tsentr NAPrN Ukrainy, NU "OİuA". Odesa : Yuryd. lit., 2019. 232 s.
13. Kryminalnyi kodeks Ukrainy vid 05.04.2001 № 2341-III. *Verkhovna Rada Ukrainy* : ofits. veb-sait. URL: <http://zakon2.rada.gov.ua/laws/show/2341-14> (data zvernennia: 29.02.2020).
14. Künnecke A., Kuzmin E. E. On the Verge of Change: Ukrainian Understanding of the Notion of Crime & the Model of the Federal Republic of Germany. *Kryminalne pravoporushennia: natsionalnyi ta zarubizhnyi vymiry* : materialy Mizhnar. nauk.-prakt. konf. (m. Odesa, 24 trav.

- 2019 r.) / redkol.: Ye. L. Streltsov, V. O. Tuliakov, V. P. Kedyk ta in. ; peredm. S. V. Kivalova ; vidp. za vyp. Ye. L. Streltsov. Odesa : Yurydychna literatura, 2019. S. 161–165.
15. Kuzmin E. E. Kryriminalne pravo zarubizhnykh krain : navch.-metod. posib. / peredm. Ye. L. Streltsova. Odesa : Helvetyka, 2018. 96 s.
16. Pro zlochyny ta pokarannia: evoliutsiia kryriminalno-pravovoi doktryny : materialy Mizhnar. nauk.-prakt. konf., prysviach. 250-richchiu traktatu Chezare Bekkaria (m. Odesa, 13 cherv. 2014 r.) / holov. red. S. V. Kivalov ; Pivden. rehion. tsentr NAPrU, NU "OIuA". Odesa : Yuryd. lit., 2014. 356 s.
17. Streltsov E. Contemporary Possibilities of State Impact on Crime: Some Reflections. *Journal of the South Regional Center of National Academy of Legal Sciences of Ukraine*. 2014. № 1. P. 151–160.
18. Streltsov Ye. Kryriminalno-pravova komparatyvistyka: suchasni aspekty. Yurydychnyi Visnyk Ukrainy. 2017. 1–7 veres. S. 5.
19. Streltsov Ye. Rehuliuвання складних соціальних процесів у міжнародному та національному праві. *Yurydychnyi visnyk*. 2014. № 1. S. 249–255.
20. Streltsov Ye. Zlochyn i pokarannia: zovsim ne apolohetychni rozdumy. Yurydychnyi Visnyk Ukrainy. 2019. 1–7 lystop. S. 6–7.
21. Tekst proiektu novoho kryriminalnogo Kodeksu. URL: <https://newcriminalcode.org.ua/criminal-code>
22. Testovi zavdannia z kryriminalnogo prava: dlia pidhotovky do ZNO dlia vstupu do mahistratury : navch. posib. / D. O. Balobanova ta in. ; peredm. S. V. Kivalova ; vidp. red. Ye. L. Streltsov ; NU «OIuA». Odesa : Yurydychna literatura, 2019. 260 s.
23. Tuliakov V. O. Hlobalizatsiia kryriminalu vs kryriminalnist hlobalizatsii: novi vyklyky novoho stolittia. *Mizhnarodni chytannia z mizhnarodnogo prava pam'iaty profesora P. Ye. Kazanskoho* : materialy chetvertoi mizhnar. nauk. konf. (m. Odesa, 8–9 lystop. 2013 r.). Odesa : Feniks, 2013. S. 236–239.

24. Veresha R. V. Kryriminalne pravo Ukrainy. Zahalna chastyna : navch. posibnyk : konspekt lektsii. Kyiv : Prav. yednist, 2019. 362 s.
25. Yemelianov V. P. Kryriminalne pravo Ukrainy. Zahalna chastyna. Osnovni pytannia vchennia pro zlochyn : nauk.-prakt. posibnyk. Kharkiv : Pravo, 2018. 142 s.
26. Zakon, prostupok, vidpovidalnist : zb. nauk. prats : rehional. nauk. seminar, prysviach. 85-richchiu prof. L. V. Bahrii-Shakhmatova (m. Odesa, 1 liutoho 2013 r.) / vidp. red. V. O. Tuliakov ; NU "OIuA", Pivden. rehion. Tsent. NAPrN Ukrainy. Odesa : Yuryd. lit., 2014. 176 s.

AFTERWORD

Certain social tasks facing the state are common to all countries. One of such tasks is to protect the rights, freedoms and legitimate interests of citizens and people from criminal encroachments.

Criminal laws are one of the mechanisms to ensure the implementation of this task. Definition of responsibility, definition of punishment, differentiation and individualization of criminal responsibility and punishment as elements of realization of criminal policy of any state play a significant role in the organization of system of criminal legal protection.

In this regard, no lawyer working in the field of criminal justice has the right to limit their knowledge of the right to punishment only to the initial information obtained from the course of the General Part of Criminal Law, analysis of the preconditions for criminal prosecution within procedural relations, and analysis characteristics of execution of punishment within the course of criminal executive law. Modern criminal law regulation in the paradigm of human rights and the rule of law strives for universality and generality, but it is restrained by the framework of sovereignties in election of methods in legal regulation of the state, society and culture.

Often, such a systems confrontation leads to the consequences as the collisions of the colonizing criminal law and society. The most significant demonstration of resistance to suppression is the emergence of "virtual states" going beyond the jurisdictions of states and most urgently requiring a common criminal law platform for conflict resolution and Safety, Security and Justice achievement. The ideology of such a platform in an open society is changing, and the mechanisms of its influence are universal. But at the state level, they are still subject to the traditions and experience of the states, and require comprehension of the changes through the creation of a uniform universal platform of criminal law regulation.

The prison society, by scattering power between different actors, spreads disciplinary practices of force and coercion that are not limited to judicial protection procedures. The modern world is raging with revolutions of people's disagreement with the phenomena of obvious unpunished crimes infringing on basic human values and human rights.

Revolutions and wars, provoked and broken out in different regions of the Earth, arising from outrage over the escalation of crime against the masses, and generating new waves of aggressive crime, indicate the inability of modern platforms of criminal regulation to ensure the security and sovereignty of the individual and states, without taking into account the effect of information effects – the effect Post-Truth.

Colonizing Criminal Law means certain attack on its purity and clear subject as law of Crime and Punishment. One considering emerging issues in modern criminal justice, has to analyze zemiotic and narrative tendencies in legal policy associated with diversification of the sense of Criminal to administrative and disciplinary practices (ECHR, Engel's Rule).

This widespread characteristic of state's punitive power interprets in criminal legal sphere considering necessary guarantees of the Right to fair trial and principle of Legality (Art. 6, 7 of European Convention on Human Rights).

Next path is narrative approach. We know that people and states differ each other. National and Peoples' Sovereignities are constructed on their own Cultural and Religious platforms that differ from the State one.

Sometimes the effect of Informational society and Networks triggers social anomy and protest against State Sovereignty as Narcissistic energy boom.

While we want to harmonize Crime and Punishment, Justice and Prevention notions not on the level of National or People's narratives but on the level of legal Dynamics and Ideology, we should divide and unite them.

Does the State have to make a plain Criminal Legislation version, or we have to find proper ways to correct National and Peoples Laws' interpretation approximating State's Justice to people's needs.

New national and international actors need a new place at Public law balances and distribution of powers' background. These attempts to colonize criminal law tendency are stable and popular at international level.

As time goes by, we have to analyze criminal responsibility, offence construction and trends in sentencing while colonizing criminal law at National level. It means that usage of new methodological approach (triangle or holistic) formats Legality depending on diverse narratives of law enforcement and judiciary.

The Law in action needs protective usage of new approaches from modern economy (by Becker, Taleb), psychiatry, neuroscience, sociology, political science. Colombia Law scholars account for the influences and limits of the other disciplines and revive the interest in comparative and international law at special Course devoted to inspiration of scientific perspectives in Criminal law.

So, Crime, Criminal responsibility, and Punishment will be considered from the limits of internationally recognized substantive forms of conduct that necessary to criminalize, margins of criminal responsibility and the nature of punishment in comparison with preventive detention, security measures and criminal restitution on international, different narrative and national level.

There is a concept of criminal law in the broadest sense (Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms), which applies to all cases of disciplinary coercion by the state, which, according to standard ECHR practice, are related to the qualification of an offense legislation, an analysis of the nature of the offense and the severity of the punishment that the person may suffer.

This requires special attention to the issue of awareness of the jurisprudence of the ECHR in sentencing.

From our point of view, the regulatory function of Criminal law is not simply to ensure the security of criminal-law objects by normative-determined measures of state coercion, but to achieve harmony in relations between the state and citizens, where the responsibility of the offender corresponds to the state's duty to search, fair punishment and rehabilitation of the offender; compensation and restitution to an injured person of a criminal offense; achievement of social peace and harmony at the national, local and individual levels.

This fully corresponds to the interpretation of the jurisprudence of the implementation of the provisions of Article 7 of the Convention, according to which the court must verify whether the act of state coercion is punishable and that the imposed penalty does not exceed the established limitations (ECHR *Coëme and Others v. Belgium*, § 145; *Del Río Prada v. Spain* [GC], § 80).

Orientation to the external, purely dogmatic side, or subjective political will does not provide an opportunity to understand the essence of phenomena that is criminalized. The key to this is a lot of gaps in advancing the ideas of "eternal" crimes, sometimes the collapse of the current system of legal norms in the field of combating crime in general.

At the same time, the rise of the value of Human Rights and a new narrative system in general, makes obsolete structures of legal regulation dead and ideologically particularly unacceptable that inhibit the development of public relations and annoy society with inefficiency and clichés.

The content of guarded criminal legal relations covers only the relations between the state and the offender concerning the commitment of a criminal offense and a social reaction to it. However, society expects the criminal legal regulation of modern decisions, in order to obtain for themselves Safety, Security and Justice.

Thus, ECHR jurisprudence defines the Convention on Human Rights as a “constitutional instrument of the European public order” in the field of human rights. The same can be said about the broad approach to punishment and disciplinary measures.

The European court found, for example, in case of *S. V. and A. V. Denmark* that any flexibility of law enforcers and law-makers in the application of the deprivation of human rights and freedoms should be limited to certain guarantees provided for in Conventions’ paragraph 5 of Article 5 including the deprivation of liberty, and the requirement that the offense must be specific and specifically defined, and the authorities indicate that the potential offender may be restricted in rights, if this does not damage the fair procedure for his detention and he will be entitled to a refund.

This fully corresponds to the interpretation of legality principle in implementation of the provisions of Article 7 of the Convention, whereby the court must verify whether the act of state coercion is punishable and that the penalty imposed does not exceed the limits imposed.

Thus, Criminal Law in its modern rewriting has to:

- 1) identify models for improving the criminal law legislation of states based on the current paradigms of Human Rights and the Rule of Law, on the basis of an integrated analysis of the decisions of the European Court of Human Rights and other institutions of international jurisprudence;
- 2) determine changes in social expectations depending on global, national, regional social changes, identify the main directions of harmonious dynamics of criminal law regulation at all levels of jurisdiction using modern capabilities of Big Data, on the basis of analysis of social networks, as a display of intellectual and emotional reactions to safety and security encroachments (or such expectations), as well as social assessments of injustice;
- 3) abandon the understanding of criminal law regulation as a state influence on a criminal, but to see it more broadly,

taking into account the need to ensure proper viewing both with the criminal and with the victim. In the context of the development of securities phenomenon, the actualization of social values exclusively for the affirmation of justice can ensure the proper authority of criminal law regulation and the safety of systems.

Being aware of this data, we should evaluate it as a factor, entailing to imbalances of what is right and what is wrong described on different levels of social interaction. Sometimes the effect of networks triggers social anomy and protest. Therefore, Principle of Legality validates dependence more on General Values of Happy Nation, Happy and Prosperous Social Group nor Happy State, aggressively contradicting to Enemies image and Rule of Law's State Concept.

These restrictions do not provide a complete picture of empirical evidence of the need for criminal law regulation at the global level. However, as such evidence, it is probably advisable to further use the quantitative and qualitative testimony of statisticians applying to the European Court of Human Rights from citizens affected by failed criminal law measures during the period of imbalance in such territories. But time is changing...

Hope that these suggestions on Crime and Sentencing should be useful not only by scholars but also future investigators and judges on their path to Justice and Fairness.

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NOTES

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Кримінальне право України (покарання та інші заходи кримінально-правового впливу: національний підхід) : навч. посіб. / Стрельцов Є. Л., Туляков В. О., Кузьмін Е. Е. — Одеса : Видавничий дім «Гельветика», 2020. — 80 с.

Кримінальне право України щодо покарань та інших заходів кримінально-правового впливу аналізується у цьому навчальному посібнику як частина науково-освітнього проекту з форматування академічного досвіду та підготовки бакалаврів юридичних наук англійською мовою. Наведено комплекс навчальних занять та основні ідеї з Основ покарання та інших заходів примусового характеру в Україні у порівнянні із практикою ЄСПЛ та сучасними концепціями кримінального права. Навчальний посібник підготовлений під егідою Фундаментального наукового дослідження «Євроінтеграційна кримінально-правова політика України», державний реєстраційний номер 0118U003677, і буде корисним для науковців у галузі порівняльного кримінального права, майбутніх суддів, детективів, слідчих, прокурорів та членів адвокатури.

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