The Challenges and Opportunities in Law: Ukrainian Case under the Conditions of War, pp. 213-320
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Chapter 3

Realization of the Principles of Criminal Law under Martial Law

ABSTRACT

Despite international documents aimed at protecting human rights, national legislation, diplomatic relations and agreements, the Russian Federation has launched active hostilities in Ukraine.

A number of legal issues are on the raise because of the situation in Ukraine, among them the problem of the expediency of legislation and international agreements, the value of such documents, the importance of research in this area, the significance and purpose of criminal law, and realization of the principles of criminal law.

The aim of the article is to optimize the implementation of the principles of the criminal law during martial law.

This chapter consists of three sections. In the first section, we analyze issues of approximation of European norms in the context of realization principles. The problem faced by Ukraine does not concern a single country, but all humanity. Following the aggressive military actions against Ukraine, there is a threat to the security of other countries of the world if an effective counteraction mechanism is not developed. It has been established that any armed invasion of the territory of another state in the 21st century is not only an encroachment on its territorial integrity, but an encroachment on European values. These values have been developedfor centuries in response to the experience of war. After the outbreak of war in Ukraine, European community demonstrated the power of European values, and the effectiveness of the European sanction mechanism.

The second sectionfocuses on the questions about the essence of criminal law. It is expressed through its principles. Among them are the principles of humanism, legality, certainty, proportionality, individualization and differentiation of criminal responsibility, presumption of innocence, and inevitability of criminal liability. Fair punishment should comply with the principles of criminal law during martial law as well.

In the third section, we analyzed the issues of interpretation of these principles in the practice of the European Court of Human Rights (ECtHR). The practice of the ECtHR is dynamic and changing. The interpretation of the principles is dynamic and changing as well.

The best way to deal with crimes against humanity, including war crimes, is the integration and unity of the international community in combating these crimes.

Last but not least, the number of crimes committed by the Russian Federation isincreasing significantly. The more crimes committed, the more anger is stirred up among Ukrainians and people all over the world who support Ukraine. However, the civilized world must respond and ensure security by means of civilized methods.

Keywords: war crimes, principles of criminal law, international standards, victims, casualties of war, war in Ukraine.

Introduction

Despite international documents aimed at protecting human rights, national legislation, diplomatic relations and agreements, on 24 February 2022, the Russian Federation began active hostilities on the territory of Ukraine.

Currently, more than ever, the question of the expediency of legislation and international treaties arises. The issues of the value of such documents, scientific research in this field, purpose and principles of criminal law, are of paramount importance today.

Many researchers and scholars have studied the issue of the principles of criminal law. In particular, V.O. Gatselyuk carried out a comprehensive study on the implementation of the criminal law of Ukraine's principle of legality (Gatselyuk, 2006), N.A. Orlovskarevealed in her research the problems of the principles of criminal sanctions' construction (Orlovska, 2011), S.P. Pogrebnyak considered the issue of meaningful characteristics of the fundamental principles of law (Pogrebnyak, 2008). V.O. Tulyakov investigated the peculiarities of the principle of legality in the practice of the European Court of Human Rights (ECtHR), M.I. Khavronyuk examined the principles of criminal law in the context of its reform, V.V. Shablystiy considered the issue of criminal law principles in its dimension of security (Shablystiy, 2015). In addition, certain issues of theoretical understanding and development of humanism in the field of criminal law were investigated by modern Ukrainian criminal law researchers, D.O. Balobanova, Y.V. Baulin, M.I. Panov, E.O. Pysmenskyi, Y.A. Ponomarenko, N.A. Savinova, P.L. Fries, O.V. Kharitonova, P.V. Khryapinsky, as well as other scientists and scholars.

Research in the fields of war crimes, crimes against humanity, international humanitarian law and international criminal law should also be mentioned here.

In particular, O.V. Senatorova investigated the issue of human rights in the reality of armed conflicts (Senatorova, 2018).

The issue of realization the principles of criminal law takes on a new meaning in connection with the situation in Ukraine.

3. The Purpose and Objectives of the Research

The purpose of the work is to bring the national criminal legislation closer to international standards in the context of combating crimes against humanity and ensuring the implementation of the principles of criminal law.

In order to achieve this goal, the following tasks were set:

1. To establish the inadmissibility of violation of fundamental human rights and freedoms, which are stipulated in international documents.
2. To define the necessity for integration and unity of the international community in combating crimes against humanity and war crimes.
3. To substantiate the need for additional guarantees of implementation of the international institutions' decisionsconcerning the aggressor state.
4. To establish the need to observe human rights standards when bringing to justice perpetrators of crimes against humanity, as well as those involved in committing them.

Methodology

The application of the *dogmatic method* contributed to clarifying the content of international treaties that provide for responsibility for war crimes and those that provide for fundamental human rights. The *dialectical method* contributed to the analysis of the concept of war crimes and crimes against humanity in international and national criminal law. The *comparative legal method* was applied during the international criminal law in order to use the globalexperience in establishing responsibility for war crimes and crimes against humanity. The methods of *deduction, analysis and generalization* were used in the framework of the study of doctrinal provisions on the researched issue. The *systemic-functional method* made it possible to analyze the available resources, including the issue of responsibility for war crimes and the concept and characteristic features of implementation. The *Narrative method* was used in the analysis of specific situations related to the implementation of the principles of criminal law, and *Case study* in the analysis of the practice of the ECtHR, the Supreme Court of Ukraine and the Constitutional Court of Ukraine.

It is extremely important for everyone to have the opportunity to learn and understand the grounds of criminal responsibility. This is one of the main requirements of the "social contract" (J.J. Rousseau, 1895). Violation of agreements must inevitably lead to responsibility. However, a person should know about the contract's existence, its subject, conditions and terms of validity. Owing to this purpose, international treaties and conventions on the protection of fundamental human rights have been adopted.

The concept of crime and punishment is conditional. It changes over time. The main idea is that the list of crimes and punishments for them should be clearly and unambiguously formulated in the legislation. Everyone should be able to know which actions result in criminal liability.

Moreover it is crucial to mention the approach of the classical school of criminal law: "punishment for a crime." It is based on the fact that the state reacts with legal measures that correspond to the act considered a crime in contemporary criminal law. No one can be punished only for thoughts or feelings. Even Goethe noted in *Faust* (Goethe, 1808) that thought could not create or act, therefore, "In the beginning was the Deed."

Only a person who has committed a crime can be held criminally liable. Every person must clearly and unambiguously know about such responsibility. And those who have already committed a crime, should be prosecuted in accordance with the law. In modern criminal law, the principle of certainty is one of its main principles.

Any meaning in a person's life must be realized in compliance with the principle of humanity. After all, humanity is a feature that distinguishes man from animals. According to V. Frankl, by realizing meaning in life, people realize themselves. By realizing the meaning contained in suffering, people realize humanity. When people are helpless and hopeless, unable to change their situation, they feel a need for change. People always decide whether they want to realize a certain meaning or not. Making sense always involves making a decision (Frankl, 1946, 13). At the same time, V. Frankl notes that people always can say "no" to their passions and should not always say "yes" to them. When they say "yes" to them, it is always only by identifying with them (Frankl, 1946, p. 14).[1]

According to E. Toffler, it would be foolish to assume that the fundamentally changed material conditions of life do not affect personality or, more precisely, social character. By changing the deep structures of society, we are also changing people. Even if one believes in some fixed human nature, society still rewards and produces

[1] Freedom is freedom in relation to three things, namely: 1. In relation to passions (tendencies, urges). 2. In relation to heredity. 3. In relation to the environment. (Frankl V., 2008. 1946).

certain character traits and punishes others, which leads to evolutionary changes in some human character traits. Character traits of the "human of the future" arise not only under the influence of external pressure on people. They arise from the tension that exists between the internal needs or desires of many individuals and the external needs or pressures of society. But, once formed, these general character traits influence the economic and social development of society (Toffler, 2004, p. 259).

N.N. Taleb has noted some very true things about the Russian-Ukrainian war. There are two imperial models: either a heavy model, as in Russia, or a coordination of states on the model of NATO. This war not only opposes Ukraine and Russia, it is a confrontation between two systems, one modern, decentralized and multi-headed, the other archaic, centralized and monocephalous. Ukraine wants to belong to the liberal system: being Slavic-speaking, like Poland, it wants to be part of the West (Taleb, 2022).

Since the beginning of the full-scale war of the Russian Federation against Ukraine, 23,766 crimes of aggression and war crimes and 11,462 crimes against national security have been registered (Uryadovyy kur″yer, 2022).

War is a high price to pay, but it shows whether a person is ready to cross the line, cross *human values* and commit a crime. It shows whether a person is ready to sell humanitarian aid to compatriots, to extort money under the guise of volunteering, guide the enemy's fire and pass information to the foe. Every person, society as a whole, and the international community can implement the principles and values laid down in legislation, in particular European and international, by their actions.

1. Challenges of European Integration in the Criminal-Legal Policy of Ukraine in the Reality of War

The war in Ukraine has become an unexpected and devastating event not only for Ukraine, but for the whole world. It has demonstrated the effectiveness of European values, their importance not only in documents, but in concrete steps towards integrating Ukraine with European countries, in the sanctions against Russia.

Moreover, the war strengthened Ukraine's orientation towards the European Union (EU). On 23 June 2022, the European Council announced its opinion on EU candidate status for Ukraine. The implementation of the Association Agreement and the possibility of maintaining the EU candidate status requires changes in Ukrainian legislation, including criminal law, but now this goal has become closer.

Separate aspects related to the problems of European integration have been studied by: G.V. Yepur, O.O. Zhitny, V.V. Kornienko, K.O. Trichlib, M.I. Khavronyuk and others. Various problems of the European integration course are considered in different works. In particular, V.O. Tulyakov examines the issue of European integration in criminal law of Ukraine (Tulyakov, 2018, pp. 63-65), L.A. Harbovsky considers the features of the application of confiscation of property according to European Union legislation (Harbovsky, 2009), V.V. Kornienko outlines the peculiarities of the structure of European Union criminal law (Kornienko, 2011). R. Klymkevich, O.M. Moskalenko and K.V. Smirnova in their works consider the peculiarities of the source of law of the European Union (Klymkevich, 2021; Moskalenko, 2006; Smirnova, 2005). O.Y. Tragniuk examines the peculiarities of the principle of subsidiarity under the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Tragniuk, 2003, pp. 25-26).

From 2018 to 2020, the project "European integration criminal law policy of Ukraine" was implemented at the National University "Odesa Law Academy" (State registration number: 0118U003677). At the same time, significant changes in legal relations as a result of the conclusion of the Association Agreement require further research and development of optimal models of the criminal law of Ukraine's Europeanization and preservation of its own identity.

On 28 February 2022, President V. Zelenskyy signed the application for Ukraine's membership in the European Union. On 8 April 2022, during her visit to Kyiv, the President of the European Commission, Ursula von der Leyen, personally handed over to the Ukrainian side a questionnaire for obtaining the status of a candidate for EU membership. On 18 April 2022, the President of Ukraine handed over the completed questionnaire to the Head of the Delegation of the European Union to Ukraine, Matti Maasikas, and Ukraine received the second part of the questionnaire regarding the assessment of the compliance of Ukrainian legislation with the EU acquis (Acquis communautaire) (Ukrinform, 2022).

The Chairman of the European Council, Charles Michel, said at a joint briefing with the President of Ukraine in Kyiv that Ukraine demonstrates its commitment to European principles and freedoms every day: "You are fighting not just for the future of Ukrainian children, but for the fundamental values, the foundations of Europe." That is, Ukraine has common values with the countries of the European Union, including: respect for the rule of law, human rights and fundamental freedoms, non-discrimination, and respect for diversity (Timofieieva, 2020).

The above-mentioned values are also reflected in other international documents, the Convention for the Protection of Human Rights and Fundamental Freedoms, decisions of the ECtHR, EU Directives, documents of the Council of Europe and the

EU.[2] These values are really common to many countries of the world, because they are universal.

Values directly affect all activities of the EU. The Association Agreement and EU legal acts lay down several important goals that Ukraine seeks to implement and thus approach EU legislation. Among them are the following: combating illegal migration and human trafficking, organized crime, terrorism, environmental protection, strengthening interpersonal contacts. These goals are highlighted for a reason, because they address the causes of the greatest damage not only at the national, but also international level.

Areas such as migration and asylum, the fight against terrorism and the protection of personal data, which have a global dimension, must be addressed both within the EU and in relations with third countries.

The prospect of granting Ukraine the status of an EU candidate (decision made on 23 June 2022) has a number of requirements. First of all, these requirements are related to the level of values, in particular, the genuine provision of the principle of the rule of law, the inadmissibility of corrupt practices, the openness and transparency of government.

The document of the European Commission of 23 June 2022 separately specifies the list of requirements for Ukraine: 1) to implement the legislation on the selection procedure of judges of the Constitutional Court of Ukraine, including the preselection process based on an assessment of their integrity and professional skills, in accordance with the recommendations of the Venice Commission; 2) to complete the integrity check by the Ethics Council of candidates for membership of the

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[2] The system of sources of European law, according to O.M. Moskalenko, includes: the first level—foundingtreaties, decisions of the Council, general principles of EU law; the second level—international legal obligations of the European Communities and the Union, which arise from all sources of international law; the third level—precedents of the EU Court; the fourth level—normative legal acts adopted by EU bodies within the framework of the European Communities, closed conventions between member states concluded within the framework of the European Communities, customs formed in the process of European integration. (Moskalenko, 2006, p. 7). Directives are one of the important sources of criminal law of the European Union. In particular, the following Directives can be singled out, which are important for the application of criminal law. Directive on strengthening certain aspects of the presumption of innocence and the right to be present in court during criminal proceedings 2016/343/EU dated 9 March 2016. Directive on the freezing and confiscation of the means and proceeds of crime in the European Union 2014/42/EU dated 3 April 2014, Directive on the protection of natural persons regarding the processing of their personal data by competent authorities for the purposes of prevention, investigation, detection and prosecution of criminal offenses or the execution of criminal penalties, as well as the free transfer of such data 2016/680, dated 27 April 2016. (Klimkevich, 2021, pp. 47-53).

High Council of Justice; 3) to strengthen the fight against corruption, particularly at a high level, through active and effective investigations; to complete the appointment of the new head of the Specialized Anti-Corruption Prosecutor's Office by approving the winner of the competition, and to start and complete the process of selection and appointment of the new director of the National Anti-Corruption Bureau of Ukraine; 4) to ensure compliance of the anti-money laundering legislation with the standards of the Financial Action Task Force (FATF), to adopt a comprehensive strategic plan for reforming the entire law enforcement sector as part of Ukraine's security environment; 5) to introduce an anti-oligarchic law to limit the excessive influence of oligarchs on economic, political and social life; this must be done in a legally sound manner, taking into account the forthcoming opinion of the Venice Commission on the relevant legislation; 6) to overcome the influence of vested interests by adopting a law on mass media that harmonizes the legislation of Ukraine with the EU Directive on audiovisual media services and empowers an independent mass media regulator; 7) to complete the reform of legislation on national minorities, in accordance with the recommendations of the Venice Commission.

The European Commission will monitor Ukraine's progress in implementing these steps and report on them together with a detailed country assessment by the end of 2022 (*Yevropeys'ka Pravda*, 2022).

According to the UN Sustainable Development Goals (No. 16 Peace, Justice and Strong Institutions), it is envisaged to "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels" (UN Sustainable Development Goals, 2015).

Without peace, stability, ensuring human rights and effective governance based on the principles of the rule of law, one cannot hope for sustainable development. We live in an increasingly divided world. Some regions have achieved lasting peace, security and prosperity, while others have been caught in a seemingly endless cycle of conflict and violence. However, such a situation is by no means inevitable and must be resolved.

High levels of armed violence and instability have a devastating impact on a country's development. They have a negative impact on economic growth and often lead to resentment that can last for decades. In situations of conflict or in the absence of the rule of law, sexual violence, crime, exploitation and torture are also common, and countries must take measures to protect the most vulnerable individuals.

The Sustainable Development Goals are aimed at significantly reducing all forms of violence, as well as at finding, together with state bodies and communities, long-term solutions to overcome conflicts and improve security. Strengthening the rule of law and strengthening human rights are key factors in this process, as are reducing

illicit arms trafficking and increasing the participation of developing countries in global governance institutions.

Human rights protection mechanisms in the EU. The Convention not only declares the need to protect human rights, but also establishes a mechanism for ensuring such protection. The European mechanism for the protection of human rights is specific. One of the principles in the Convention on which the protection of human rights is based is the principle of "non-illusory rights." It means that the state cannot hide violations of human rights. Certain bodies are established for the realization of rights and freedoms. In particular, the European Committee for the Prevention of Torture was created to prevent torture. In addition, activities aimed at combating crime are carried out by Europol, Interpol, etc. Many actions are aimed at prevention.

The EU's activities are also related to assistance in identifying persons involved in ***terrorism,*** including foreign terrorists. The focusing of the national legislation on effective exchange of information with other countries, in particular on suspected criminals, is necessary.

In September 2018, the EU Council and the European Parliament adopted two pieces of legislation, a regulation establishing the European Travel Information and Authorization System (ETIAS) and an amendment to the Europol Regulation regarding the purpose of establishing ETIAS. ETIAS will be a centralized EU information system that will allow pre-screening of visa-free third country nationals traveling to the Schengen area in order to identify potential security, illegal immigration and health risks. To assess these risks, the personal data used in the ETIAS programs will be compared with the data contained in the records, files or alerts registered in the EU information systems or databases (Newsletter, 2020). It is extremely important to harmonize the national legislation with such innovations.

It is necessary to develop tools that will help in identifying and removing content from the Internet that promotes terrorist acts. To that end, it is also necessary to establish cooperation with Internet providers. These instruments must additionally be complemented by appropriate legislative measures. In March 2018, the Commission published a Recommendation on measures to effectively work and combat illegal content on the Internet, including terrorist propaganda on the Internet. Member States must also ensure the possibility of intervention of competent authorities in the terrorist content on the Internet. In addition, it imposes obligations on Internet service providers to report to law enforcement authorities when they discover content that poses a threat to life or safety. Online service providers are required to retain the content that they remove. This functions as protection against accidental deletion and ensures that potential evidence is not lost for the purpose of preventing, detecting, investigating and prosecuting terrorist criminals.

Directive of the European Parliament and the Council (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing is the main legal instrument to prevent the use of the Union's financial system for the purposes of money laundering and terrorist financing.

Pursuant to point (4) of the Directive of the European Parliament and of the Council (EU) 2018/843 of 30 May 2018 amending Directive (EU) 2015/849 on preventing the use of the financial system for the purposes of money laundering or terrorist financing and amending Directives 2009 /138/EU and 2013/36/EU, despite significant improvements in the adoption and implementation of the Financial Action Task Force (FATF) standards and the approval by member states of the Organization for Economic Co-operation and Development's transparency activities in recent years, there is an obvious need of further increasing the overall transparency of the economic and financial environment of the Union. The prevention of money laundering and terrorist financing cannot be effective if the environment is not hostile to criminals who seek shelter for their finances through non-transparent structures. The integrity of the financial system of the Union depends on the transparency of corporate and other legal entities, trusts and similar legal entities. The purpose of this Directive is not only to detect and investigate money laundering, but also to prevent it from occurring. Increasing transparency can be a strong deterrent. Countering any crimes should be carried out without violating the fundamental principles of law (Timofieieva, 2023).

Migration. In connection with the war in Ukraine, mass migration began, in particular to neighboring countries. Millions of Ukrainians migrated to Poland, Lithuania, the Czech Republic, Moldova, Germany, Great Britain, the Netherlands and other countries of the world.

Such mass migration also causes problems related to the growth of crime, related in particular to the problems of crossing the border. There were rare cases when the border was crossed using an internal passport in the absence of a foreign one. Also, the requirement to declare goods was removed from the border crossing rules for a certain period of time. When the requirement returned, violations in this regard increased.

Implementing Decision of the Council (EU) 2022/382 of 4 March 2022 established the presence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and introduced temporary protection, which includes the right to housing, education, work, social securityand medical assistance. Such rights become available after registration in the chosen place of residence in any EU country. The status is established for one year and can be extended

for another two years, and in the event of a change in the situation in Ukraine, it can be terminated.

The Directive and the Decision of the Council of the EU on its activation for Ukrainians establish only the minimum standards of protection that each country must provide. The legislation of an individual EU country may also set additional requirements (Directive on temporary protection in EU countries, 2022).

The legal regime of temporary protection has advantages for Ukrainian immigrants in European countries, compared to visiting for tourismor receiving refugee status. But at the same time, it is a crime prevention measure in this area, as people who seek to save their lives get legal grounds for staying and working in another country.

Border crossing rules ensure safety and are preventative measures against crime, including smuggling of goods, cigarettes, and precious metals.

However, this war is not the only one. At the same time, wars in other countries of the world continue, including, in particular, the war in Syria, in which the Russian Federation participates as well. Syria remains the country experiencing the world's largest displacement crisis. More than 13 million people either fled the country or became internally displaced.

The countries that have hosted more than 5.6 million Syrian refugees need international support. These countries are experiencing increasing financial problems, especially in light of the devastating socio-economic consequences of the COVID-19 pandemic. Refugees and host communities have suffered greatly, losing their livelihoods and facing the rising prices of food and other essentials. A number of international treaties contain provisions regarding refugees, in particular those related to protecting their rights and freedoms, as well as combating crime among refugees.

According to Article 2 of the Convention Relating to the Status of Refugees (Ukraine joined the Convention on the basis of Law No. 2942-III dated 10 January 2002) and the Protocol of 16 December 1966, all refugees have obligations to the receiving country, according to which, in particular, they must comply with the laws and regulations of that country, as well as the measures taken to maintain public order. Article 3 of the Convention contains provisions regarding the inadmissibility of discrimination against refugees based on their race, religion or country of origin. The Contracting States shall grant refugees in their territories at least as favorable a treatment as their own nationals with regard to the freedom to practice their religion and the freedom to provide their children with the religious education (Article 4).

In addition, international treaties contain safeguards according to which a refugee cannot be forcibly deported to a country where there is a danger to his or her life, in particular as a result of war, political persecution, etc.

According to Article 33 of the Convention Relating to the Status of Refugees (Prohibition of Expulsion or Return): 1. The Contracting States will not in any way expel or return refugees to the borders of the country where their life or freedom would be threatened because of their race, religion, nationality, membership of a particular social group or political opinion. 2. This resolution, however, cannot be applied to refugees who are considered for good reasons to be socially dangerous and pose a threat to the security of the country in which they are, or who have been convicted by a valid sentence for committing a particularly serious crime.

Ukrainian legislation contains similar provisions. According to Part 1 of Article 31 of the Law On the Legal Status of Foreigners and Stateless Persons No. 3773-VI of 22 September 2011, foreigners or stateless persons cannot be forcibly returned or forcibly expelled or extradited or transferred to countries: where their life or freedom would be threatened on the basis of race, religion, nationality, citizenship, belonging to a certain social group or political beliefs; where they face death penalty, torture, cruel, inhuman or degrading treatment or punishment; where their life or health, safety or freedom is threatened by widespread violence in situations of international or internal armed conflict or systematic violation of human rights, or natural or technological disaster, or lack of life-sustaining medical treatment or care; where they are at risk of deportation or forced return to countries where these cases may occur. According to Part 2 of Article 31 of this law, collective forced deportation of foreigners and stateless persons is prohibited.

Consequently, the principle of personal responsibility must be observed and each case must be considered individually.

For example, A. arrived in Ukraine in 2012 legally, using a Syrian ID, which was subsequently lost. He studied at a university and graduated. In 2017, he committed an administrative offense and the immigration service issued a decision on forced deportation to the country of origin. This decision was disputed in court. The Primorsky District Court of Odesa, on 5 July 2019, in the case 522/6238/19, recognized such a decision as illegal. However, in this context, it is also necessary to consider measures against such foreigners, in particular, if they continue being unregistered with the immigration service and commit administrative or even criminal offenses.

The law provides grounds for banning the entry of foreigners and stateless persons into Ukraine in the interest of national security. According to Article 13 of the Law On the Legal Status of Foreigners and Stateless Persons No. 3773-VI of 22 September 2011, an entry of a foreigner or a stateless person into Ukraine is not allowed: in the interests of the national security of Ukraine or protecting public order, or combating organized crime; if it is necessary to protect health, rights and legitimate interests of citizens of Ukraine and other persons living in Ukraine; if such a person knowingly submitted false information or forged documents when applying for

entry to Ukraine; if the passport of such a person or the visa is forged, damaged or does not correspond to the established model or belongs to another person; if such a person violated the rules of crossing the state border of Ukraine, customs rules, sanitary norms or rules of crossing the state border of Ukraine, or did not comply with the legal requirements of the personnel of the state border protection authorities, customs and other authorities exercising control at the state border; if during the previous stay on the territory of Ukraine, a foreigner or a stateless person did not comply with the decision of a court or state authorities authorized to impose administrative fines, or has other unfulfilled obligations to the state, natural or legal persons, including those related to the previous expulsion, even after the expiration of the ban on further entry into Ukraine; if such a person, in violation of the procedure established by the legislation of Ukraine, entered or exited the temporarily occupied territory of Ukraine or the area of an anti-terrorist operation or made an attempt to enter these territories outside the entry-exit control points.

EU countries also have similar bans. In particular, in connection with the war in Ukraine, a decision was made to ban certain individuals from entering a number of EU countries. Also, as of 1 July 2022, a visa regime for the citizens of the Russian Federation was introduced in Ukraine.

The Judgment of the ECtHR in the case Sufi and Elmi v. the United Kingdom, Application No. 8319/07 and 11449/07, of 28 June 2011, is also important. Following a series of serious criminal convictions against both applicants, citizens of Somalia, deportation orders were issued. However, the situation in Somalia and the possibility of ill-treatment of the applicants were not taken into account. In their complaints, the applicants referred to the fact that they would be at risk of ill-treatment if deported to Somalia.

The group known as al-Shabaab, which originated as an armed group of the Union of Islamic Courts, has emerged as the most powerful and effective armed force in the country, especially in southern Somalia, and is steadily advancing towards Mogadishu.

Regarding compliance with Article 3 of the Convention, the only issue in the expulsion case is whether in the circumstances of the case there are sufficient grounds to believe that the applicants, in the event of their return, would face a genuine risk of ill-treatment as defined in Article 3.

If the existence of such a risk is established, the applicants' expulsion will inevitably violate Article 3 of the Convention, regardless of whether the risk arises from the general situation of violence, the applicant's personal characteristics or a combination of these two factors. However, not every situation of general violence creates such a risk. On the contrary, a general situation of violence can reach a sufficient intensity to gives rise to such a threat only "in extreme cases." For the purposes

of determining the level of intensity of the conflict, the following criteria (which are not exhaustive) are important: whether the parties to the conflict use methods and tactics of military actions that increase the risk of casualties among the civilian population; whether the use of such methods and/or tactics is widespread among the parties to the conflict; whether the collisions are localized or widespread; and finally, the number of civilians killed, injured and displaced as a result of the clashes. As for the situation in Somalia, Mogadishu, the intended point of return, has been subjected to indiscriminate bombing and military attacks, and unpredictable violence is rife there.

In addition, there was a significant number of casualties among the civilian population and displaced persons. Although a person with connections could obtain protection there, only connections at the highest level could provide it, and a person absent from Somalia for any length of time was unlikely to acquire such connections. As a result, the violence reached such a level of intensity that any person in the city, perhaps, except for those who were particularly strongly connected with "powerful figures" (in particular, the ECtHR case NA. v. United Kingdom, application no. 25904/07 of 17 July 2008) would be exposed to a genuine risk of ill-treatment.

It is reasonable to assume that returnees who did not have close family ties or were unable to pass safely to an area where they had such ties may have sought refuge in IDP camps or refugee camps. Therefore, the ECtHR must consider the conditions existing in these camps, which are characterized as oppressive. In this regard, the court noted that if the crisis is mainly caused by direct and indirect actions of the parties to the conflict, as opposed to poverty and the lack of state resources to overcome phenomena of natural origin, such as drought, then it is necessary to take into account a better approach to assess Article 3 of the Convention. According to the judgement in the case of M.S.S. v. Belgium and Greece of 21 January 2011, the goverment should take into account the applicant's essential needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of improving his situation in in the near future. The applicants would be at real risk of ill-treatment if they remained in Mogadishu. They arrived in the UK at a young age (one in 2003 when he was 16, the other in 1988 when he was 19), so they had no experience in living under the repressive Al-Shabaab regime. As such, they would be at real risk if they sought refuge in Al-Shabaab-controlled territory. A similar situation would occur if they were forced to seek refuge in IDP camps or refugee camps.

Spreading the conflict. On 31 July 2022, the conflict in Serbia and Kosovo escalated. Kosovo is a partially recognized state in Southeast Europe, on the Balkan Peninsula. According to the Serbian constitution, the territory of the Republic of Kosovo is part of Serbia as the Autonomous Province of Kosovo and Metohija, but in fact Kosovo is not controlled by the Serbian authorities. In an address to the popula-

tion, the President of Serbia, Aleksandar Vučić said that the Kosovo police would launch a military operation against the Serbs on the night of 31 July. Prior to this, the authorities of Pristina announced that from 1 August, special documents would be issued upon entry into Kosovo, and Serbian documents would be considered invalid. Belgrade did not recognize Kosovo's decision (Suspilne, 2022).

The NATO-KFOR mission responsible for ensuring stability in Kosovo has issued an official statement regarding the conflict between Belgrade and Pristina. The troops of the mission in Kosovo are placed in full combat readiness and are ready to intervene in the situation in the case of further escalation of the conflict. "The general security situation in the northern municipalities of Kosovo remains tense. The NATO-KFOR mission is closely monitoring the situation and is ready to intervene, in accordance with its mandate, if stability is threatened," the mission said in a statement. NATO added that the KFOR mission "is focused on the daily fulfillment of its mandate to ensure security and freedom of movement for the entire population of Kosovo."

"NATO also continues to fully support the process of normalization of relations between Pristina and Belgrade through EU-facilitated dialogue and calls on all parties to continue negotiations. There will be no real prospects for a better future in the Balkans without full respect for human rights and democratic values, the rule of law, internal reforms and good neighborly relations," the Alliance representatives said.

Environmental issues. Ukraine's obligations under international agreements on biodiversity conservation must be respected. Annex XXX to the Association Agreement between Ukraine and the European Union in the Nature Conservation sector provides for measures to approximate national legislation to Directive No. 2009/147/EU on the conservation of wild birds (the Bird Directive) and Directive No. 92/43 EU on preservation of natural habitats and species of natural fauna and flora (the Habitats Directive). The Forest Strategy of the EU until 2030 was adopted as part of the European Green Deal. It seems that it should be taken into account by Ukraine.

The main EU directives that provide legal regulation of environmental liability are Directive 2004/35/EC On environmental liability for the prevention and elimination of the consequences of environmental damage, and Directive 2008/99/EC On environmental protection through criminal law. The purpose of the Environmental Liability Directive is to establish a framework for environmental liability based on the "polluter pays" principle to prevent and remedy environmental damage. The purpose of the Environmental Liability Directive is to ensure that the financial consequences of certain types of damage to the environment are borne by the economic operator that caused the damage.

Reconstruction works and infrastructure restoration processes should take place taking into account the principles of the European Green Deal, including the EU

Biodiversity Strategy until 2030. When developing projects of infrastructure and industrial facilities, the EU Taxonomy should be taken into account, which provides criteria for environmentally sustainable, "green" projects and types of activities. Land use and environmental problems related to it, which directly affect the food security of Ukraine and the world, as well as other environmental and social problems also require an urgent response, especially in the period of their exacerbation due to the Russian invasion.

In order to meet the demand for wood, simultaneously with the preservation of forest biodiversity and ecosystem services of natural forests, the bequest value of forests should be respected.

In particular, the draft Law of Ukraine On the territories of the Emerald Network No. 4461 of 30 November 2020 establishes legal and organizational principles for defining the territories of the Emerald Network and their management in Ukraine for the preservation of natural habitats and species of fauna and flora subject to special protection; legal and organizational principles of impact assessment on the territory of the Emerald Network in the process of decision-making on the implementation of economic activities that may have a significant impact on the territory of the Emerald Network, taking into account state, public and private interests; legal and organizational principles of the creation of a central executive body that ensures the implementation of government policy in the field of protection and use of the nature reserve fund, and preservation of biodiversity.

The provisions of the draft Law of Ukraine On Amendments to Certain Legislative Acts on Forest Conservation No. 5650 of 11 June 2021 provide for the inclusion of self-forested lands in the forest fund. Thus, an increase in the number of forests in Ukraine can be ensured.

It is necessary to make changes to the rules of felling (transition to non-continuous types of felling, as well as reshaping artificial plantations to a structure close to natural). The stability of the forest sector of the Ukrainian economy should be achieved by expanding the use of non-timber forest resources, in particular by stimulating tourism and strengthening legal responsibility for violations of the law, along with increasing the severity of punishment.

One of the mechanisms for financing appropriate measures should be the monetization of forest ecosystem services. In the field of protected affairs, it is necessary to develop the Nature Reserve Fund (increasing the area and efficiency of management based on scientific justifications) and strengthen capacity (from regulatory to financial); establish a system for monitoring activities and preserving biodiversity; create a data infrastructure of the Nature Reserve Fund of Ukraine and ensure its openness; strengthen the interaction between society and the territories of the Nature Reserve Fund of Ukraine (recreation, information, public involvement). It is also

necessary to reform the Environmental Protection Fund in order to provide sources of funds for restoration and establish the procedure for recovering damages from the Russian Federation (*Ekolohiya-Pravo-Lyudyna*, 2022).

On 20 June 2022, the Verkhovna Rada adopted in the second reading and as a whole thelaw No. 2207-1-d On Waste Management. "Ukraine is finally taking the first step on the way to civilized waste management. In fact, today Ukraine is the only country in Europe where the state does not have control over waste, and more than 90% of it is buried in the ground," as noted by the Minister of Environmental Protection and Natural Resources of Ukraine Ruslan Strilets.

The adoption of the framework law "On Waste Management" provides an opportunity to start the changes that Ukraine needs in order to become a member of the European Union. The draft law is proposed: to implement the European hierarchy of waste management; to organize the planning of the waste management system at the national, regional and local levels; to close the old landfills, and to upgrade the remaining ones to European standards; to create conditions for the construction of modern waste processing infrastructure in Ukraine according to European rules and open borders for investors; to establish the "polluter pays" principle; to introduce extended producer responsibility, where the product manufacturer is obliged to ensure complete disposal of the packaging released on the market together with the goods (*Uryadovyy portal*, 2022).

The Law No. 2207-1d only establishes a framework for new modern rules for the functioning of the waste management system in Ukraine. A number of other necessary sectoral laws will be developed on its basis. The ultimate goal is to make waste management more efficient and safer for people and the environment.

Moreover, due to the aggression of the Russian Federation, the problems of large territories of Ukraine being mined should be addressed.

EU sanctions. The EU introduced unprecedented sanctions against the Russian Federation for its war against Ukraine. The representative of the European External Action Service, Luc Devigne, spoke at the European Parliament's Committee on Foreign Affairs, which held a hearing on the effectiveness of sanctions against Russia on 20 April 2022. In total, five packages of restrictions have already been introduced. He noted, "We believe that sanctions work, even if they take time to have a full effect. And we believe that these measures significantly increased the price of Russian aggression and created limitations for its military capabilities" (Sheyko, 2022). The agreed package, approved on 8 April 2022, includes a number of measures aimed at increasing pressure on high-ranking officials of the Russian Federation, the state leadership and the economy, as well as limiting the resources of the Russian Federation for the aggression. It is planned that the coal embargo will be effective from August 2022. The sanctions apply in particular to the import of coal from the Russian

Federation. The conclusion of new contracts is prohibited from the day of adoption of restrictive measures, and it will still be possible to supply coal from the Russian Federation to the EU within four months under the current contracts. In addition, the package prohibits the access of Russian vessels to EU ports, and Russian and Belarusian road freight carriers will also not be allowed to transport goods to the EU.

Sanctions against four banks of the Russian Federation. The EU also imposed a blanket ban on transactions at four key Russian banks. After disconnection from SWIFT, these banks are subject to asset freeze and are completely isolated from EU markets. In addition, the EU Council imposed sanctions on companies whose products or technologies played a role in the invasion of Ukraine, key oligarchs and businessmen, propagandists, and family members of those already under sanctions (Shepeleva, 2022).

On 4 May 2022, the President of the European Commission, Ursula von der Leyen, presented the sixth package of sanctions against the Russian Federation. It includes a gradual embargo on Russian oil, the disconnection of three banks from SWIFT and sanctions for the siege of Mariupol. The first element will be personal sanctions against Russian officers and other persons who "committed war crimes in Bucha and who are responsible for the inhumane siege of Mariupol" (Sheyko, 2022).

On 15 July 2022, the European Commission approved a joint proposal for the seventh package of sanctions against the Russian Federation; the new restrictions include a partial ban on the import of Russian gold and greater control over the export of dual-use and advanced technologies. As part of the new package of sanctions, the European Union plans to add to the sanctions list the First Deputy Prime Minister of Russia A. Belousov, the Mayor of Moscow S. Sobyanin and two Russian actors, as well as introduce additional sanctions against the largest bank in Russia—Sberbank (*Yevropeys'ka Pravda*, 2022).

According to EU's chief diplomat Josep Borrell, "Russia seriously depends on its significant export of raw materials. But at the same time, it depends on significant imports to the Russian Federation of products with high added value, which it does not produce. 45% of all advanced technologies used by Russia are obtained from Europe, 21% from the USA, and only 11% from China. Sanctions limit access to these technologies. In the field of military technology, which is crucial in the context of the war in Ukraine, sanctions limit Russia's ability to produce high-precision missiles such as the Iskander or X-101. Almost all foreign car manufacturers have also decided to leave Russia, and some cars of Russian manufacturers will be sold without airbags and automatic transmissions" (Borel, 2022).

It seems that such sanctions are effective and can cause significant economic consequences for the aggressor state, shake people's trust, and shake the government as such. War is not a cheap event and needs money. However, financial sanctions do

not workquickly. Therefore, the aggressor does not immediately experience their magnitude. Ordinary people were affected almost immediately due to the increase in food prices, the shortage of certain goods (in particular, cereals, sugar and salt). Isolation as a sanction against the aggressor is also effective. Large companies, Internet sites and social networks refuse to work in the Russian Federation. The significant dissatisfaction of Russians is also related to the restrictions on using Instagram, since many of them have businesses on this platform. Sanctions should be painful (punishment), but they should also have a preventive effect.

To sum up, unforeseen problematic situations show how ready we are to implement the principles laid down in official documents. The price of this war is high, but it has united European countries, becoming a basis for demonstrating the EU's sanctioning capabilities.

European integration trends require the approximation of Ukrainian legislation to European legislation. It is necessary to approach this issue, taking into account national characteristics.

Last but not least, European legislation is based on values. Taking into account the need to protect these values, their implementation in law enforcement practice, appropriate bodies are created, normative legal acts are adopted and sanctions are established for their violation. European law is sufficiently progressive and provides for a combination of criminal-legal, procedural, criminal-executive, preventive, and restorative measures. Such an integration of measures will effectively solve the tasks facing the Ukrainian criminal justice system. Therefore, such an approach needs to be implemented in the national practice.

2. The Guarantees of "Just War." International Convention

The international community has adopted documents aimed at protecting universal values and human rights. In particular, the universal human rights and freedoms are provided for by the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The countries that ratified the Convention agreed that these rights and freedoms are common to all people and their violation is inadmissible, except in cases specifiedby the law. It was adopted precisely in order to emphasize, after World War II, what is important for everyone and to counteract the violation of these fundamental rights.

In addition, fundamental human rights are enshrined in the following conventions: the Convention on the Elimination of All Forms of Discrimination against Women of 1979; the Convention on the Prevention and Punishment of the Crime of

Genocide of 1948; the Convention on the Rights of the Child of 1989; the International Convention on the Elimination of All Forms of Racial Discrimination of 1965; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984.

The Rome Statute of the International Criminal Court of 17 July 1998 (Rome Statute) provided for crimes against humanity, war crimes, and crimes against aggression.

The Preamble of the Rome Statute states, among other things, that during the 20th century, millions of children, women and men became victims of unimaginable crimes that deeply shook the conscience of humanity; these most serious crimes threaten the general peace, security and well-being; the most serious crimes of concern to the entire international community should not go unpunished and their effective prosecution should be ensured both by measures taken at the national level and by the intensification of international cooperation.

The Preamble to the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, signed on 18 October 1907 (date of entry into force for Ukraine: 24 August 1991) states that, together with the search for means for preservation of peace and prevention of armed conflicts between peoples, it is also necessary to keep in mind the case when it will be necessary to take up arms in connection with events which, despite all efforts, proved impossible to prevent; wishing even in this extreme case to serve the cause of humanism and the ever-evolving demands of civilization. Until a more complete body of the laws of war is issued, the High Contracting Parties consider it expedient to declare that, in cases not provided for by the rules approved by them, the local inhabitants and belligerents remain under the protection and supremacy of the principles of the law of nations, as they arise from the usages established between civilized peoples, from the principles of humanity and the requirements of social consciousness.

The Contracting States issue orders to their land forces that correspond to the Regulations concerning the Laws and Customs of War on Land constituting annex to this Convention. According to Article 3 of the Convention, a belligerent party that violates the provisions of this Regulations shall be liable to pay compensation, if there are grounds for this. It is responsible for all actions committed by persons who are part of its armed forces.

Therefore, states have realized that stopping all wars is impossible. However, at least they can agree on customs of war, preserve the lives of civilians and put the warring parties in a more or less clear framework.

The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was adopted on 14 May 1954, while the Second Protocol to it on

26 March 1999. Ukraine joined it on 30 April 2020 (Law of Ukraine No. 585-IX). According to Article 12 of the Protocol "The Parties to a conflict shall ensure the immunity of cultural property under enhanced protection by refraining from making such property the object of attack from any use of the property or its immediate surroundings in support of military action." According to Article 15 of the Protocol to the Convention,

> 1. Any person commits an offence within the meaning of this Protocol if that person intentionally and in violation of the Convention or this Protocol commits any of the following acts: a. making cultural property under enhanced protection the object of attack; b. using cultural property under enhanced protection or its immediate surroundings in support of military action; c. extensive destruction or appropriation of cultural property protected under the Convention and this Protocol; d. making cultural property protected under the Convention and this Protocol the object of attack; e. theft, pillage or misappropriation of, or acts of vandalism directed against cultural property protected under the Convention. 2. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the offences set forth in this Article and to make such offences punishable by appropriate penalties. When doing so, Parties shall comply with general principles of law and international law, including the rules extending individual criminal responsibility to persons other than those who directly commit the act (*Protocol to the Hague Convention*, 1999).

In 1977, the Additional Protocols to the Geneva Conventions of 1949 were adopted: on the protection of victims of international armed conflicts and on conflicts of a non-international nature.

The following conventions aimed at banning certain types of weapons were also adopted:

The Convention on the Prohibition of the Development, Production, Stockpilingand Use of Chemical Weapons and ontheir Destruction of 13 January 1993 (the Convention was ratified by Law of Ukraine No. 187-XIV of 16 October 1998); according to its Article 1:

> Each State Party to this Convention undertakes never, under any circumstances:
> (a) To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;
> (b) To use chemical weapons;
> (c) To engage in any military preparations to use chemical weapons;
> (d) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.

> Each State Party undertakes to destroy chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention.
> Each State Party undertakes to destroy all chemical weapons it abandoned on the territory of another State Party, in accordance with the provisions of this Convention.
> Each State Party undertakes to destroy any chemical weapons production facilities it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention.
> Each State Party undertakes not to use riot control agents as a method of warfare. (*Conventionon the Prohibition of the Development, Production, Stockpiling, Use of Chemical Weapons*, 1998).

In 2017, the Treaty on the Prohibition of Nuclear Weapons was adopted, which has not yet entered into force, but almost all nuclear powers have declared that they would not become parties to it.

The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 1968 and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 1989 were also adopted.

It is also particularly important to create judicial mechanisms for bringing-criminals to justice for committinginternational crimes, including war crimes. The Nuremberg and Tokyo tribunals should be noted here. In 1993 and 1994, respectively, the resolutions of the UN Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) as its subsidiary bodies. They were created as ad hoc tribunals, i.e., for specific situations.

As for the situation in Ukraine, it is not clear what model the tribunals will be based on and on the territory of which country. But this issue is hotly debated, and more and more countries (Latvia, Lithuania, and New Zealand) were joining the case of Ukraine against the Russian Federation in the context of genocide at the International Court of Justice.

As O.V. Senatorova said:

> The adoption of international treaties became an important step for the development of IHL. However, the realities of international relations significantly reduced the value of these documents. The scientific and technical progress and the latest technologies have led to the creation of more destructive types of weapons. The number of intrastate armed conflicts has increased (Senatorova, 2018, p. 17).

A substantial number of countries have confirmed that this problem doesnot concern a single country, but the whole of humanity. In this situation, after the aggression against Ukraine, there is a threat to the security of other countries of the world. In addition, other wars continue around the globe (somewith the involvement of the Russian Federation), e.g., the war in Syria, the conflicts between Serbia and Kosovo, Israel and Palestine, China and Taiwan etc. These conflicts escalated in 2022.

It is impressive how war united the countries all over the world in supporting Ukraine. For instance, they provide financial support, weapons, and solidarity. Poland accepted more than a million Ukrainians, supported families who agreed to host them, offered help to Ukraine in its efforts to join the EU. Lithuania, Moldova, Romania, the United Kingdom, Germany and other countries also accept Ukrainians refugees. The EU countries agreed to disconnect the Russian Federation from SWIFT, imposed financial sanctions on the Russian Federation, seized its funds in banks. Many companiesrefused to operate in the Russian Federation.

On 9 May 2022, a historic event took place. President of the USA Joe Biden signed the "Lend Lease" act on the supply of weapons to Ukraine. As of 18 August 2022, such weapons have not yet been delivered, but Ukraine hopes to receive them soon.

On 22 July in Istanbul, Ukraine, Turkey and the UN signed an agreement to unblockports and Ukrainian grain exports. Russia also signed a mirror agreement with Turkey and the UN. On 23 July, Russians launched an attack on the Odesa Sea Trade Port, using Kalibr cruise missiles. This is another proof of the treacherous nature of the Russian Federation's actions.

On 29 July 2022, ambassadors of the G7 countries arrived in Odesa to support the implementation of the concluded agreement on exports of grain from Ukraine. The US representative in Ukraine, Bridget Brink, noted that the United States, like the rest of the world, would monitor how Russia fulfills its part of the agreement: "We are here today to support Ukraine, to do everything we can to get this grain to the people who need it, to hungry people all over the world. And also draw attention to the fact that it is very important for Russia to comply with its obligations regarding the permission to export this grain. The United States and the rest of the world will ensure that Russia lives up to the agreement." UN representative Osnat Lubrani also arrived in Odesa with the ambassadors of the Big Seven countries.

"The United Nations has pledged to remain fully involved so that the parties effectively comply with the agreement. And this agreement is important not only for Ukraine and the Ukrainian economy, it is important for the world because it will help prevent a global food crisis" said Ms. Osnat Lubrani, the UN Resident and Humanitarian Coordinator in Ukraine. Razoni, the first ship with unblocked Ukrain-

ian grain, left the Odesa port on 1 August, bound for the Lebanese port of Tripoli, carrying 26,000 tons of Ukrainian corn that will sail through a safe corridor.

UN Secretary General António Guterres welcomed the departure of the ship with a cargo of corn from the Odesa port, noting that it was possible to resume the exports of Ukrainian agricultural products thanks to the efforts of the coordination center established with the participation of the UN.

On 22 June 2022, Ukraine received the status of a participating partner in the Three SeasInitiative. The Three Seas Initiative unites 12 countries of the European Union located between the Adriatic, Baltic and Black seas. This union currently includes Austria, Bulgaria, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Croatia, the Czech Republic and Estonia.

For a long time after the beginning of the war, NATO refused to close Ukrainian skies, as well as to provide fighter jets to Ukraine, because it did not want to enter into a direct confrontation with the Russian Federation. But the Lend Lease Act can significantly improve Ukraine's situation in this war. Attacks on peaceful settlements increase, in particular in Vinnytsia (14 July 2022—a hotel in the city center), Kramatorsk (8 April 2022—a railwaystation), Kremenchug (a shopping center), Odesa (23 April 2022—a residential building in Odesa, 1 July 2022—a residential building and recreation center in Sergiyivka, Odesa Province) and others. More and more countries of the world identify Russia as a terrorist state because of such actions.

The Russian Federation currently shows disrespectnot for the integrity of the territory of Ukraine, but for international values as a whole. To Russia, agreements mean nothing, official documents ratified by it mean nothing, principles of international law mean nothing. When parties agree on humanitarian corridors or a ceasefire for evacuation of civilians, the Russian Federation violates these agreements. Russian soldiers kill civilians, open fire on vehicles with humanitarian aid, steal that aid, and rape captive women, use heavy weapons against residential buildings, hospitals, kindergartens, and dormitories. This is appallingand violates international norms. Moreover, the political leaders of the Russian Federation said that they were defending themselves from Ukraine's aggression. In particular, the Minister of Foreign Affairs of the Russian Federation S. Lavrov told journalists during the talks in Turkey that "Russia has not attacked Ukraine," while the Russian Federation has moved its troops into the territory of Ukraine and killsits civilian population, but calling it "defense."

Such distortion of information and creation of a reality convenient for the authorities has already been described by J. Orwell. It was so in the Soviet times and continues now, because there are people who introduce and support a totalitarian regime, who are ready to achieve political and economic goals at the cost of human lives, at the cost of the life of the nation.

Information warfare is an important part of the overall strategy. The Russian leadership allocateshuge funds for propaganda. Many researchers, in particular N.A. Savinova draws attention to the phenomenon of "zombification" of the Russian population.

The most sensitive topics related to the principles of Criminal Law are revealed in the literature about the political regimes of the past, about torture in concentration camps, about the abuse of the people by the state.

J. Orwell's novel *1984* now takes on a completely different meaning than before. Previously, it was about the past, about the Soviet government, about its criminal methods. Now it is about the present, especially when it comes to the "Ministry of Truth" that deals with lies and manipulation of information, the "Ministry of Love" that deals with torture, the "Ministry of Peace" that deals with war, the thought police that does not allow thinking, and any alternative opinion, or analysis, or feeling is considered a crime…

In the state described in this novel, there are no laws and no punishments prescribed for crimes. But everyone understands that doing anything that is directly "not allowed," that "others donot do," being different, having "different" thoughts and views is a crime. The main character of the novel buys a notebook in an old store and already feels like a criminal, especially when he starts writing a diary. This novel reflects the most sensitive principles of criminal law—certainty and humanism.

According to Article 8 of the Rome Statute, war crimes mean, among other things:

> (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury; (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; (ix) Intentionally directing

attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives (Rome Statute, 1998).

In particular, such actions are carried out in Ukraine. The strikes are aimed at residential high-rise buildings, killing civilians, children and women. This is not an exhaustive list of what the Russian Federation is doing against the civilian population.

As of 17 March 2022, Ukraine has not yet ratified the Rome Statute of the International Criminal Court of 17 July 1998, although the issue has been raised for a long time, at least since 2014. Therefore, no international tribunal has jurisdiction to investigate and prosecute the crime of aggression and occupation of the territory of Ukraine by the Russian Federation, in contrast to potential genocide, crimes against humanity and war crimes, which the ICC can and has begun to investigate.

On 28 February 2022, the Prosecutor of the International Criminal Court (ICC) announced his decision to request permission to open an investigation into the situation in Ukraine based on the Office's preliminary findings arising from his preliminary review and covering new alleged crimes falling under the jurisdiction of the ICC. The ICC prosecutor's office received referrals regarding the situation in Ukraine from 39 member states of the ICC, as provided for in Article 14 of the Statute.[3] These referrals allowed to open an investigation of the situation in Ukraine in the time period from 21 November 2013, thus covering any previous and current allegations of war crimes, crimes against humanity or genocide committed in any part of the territory of Ukraine by any person.

During the preliminary review of the situation in Ukraine, the Office already found reasonable grounds to believe that crimes subject to the jurisdiction of the Court have been committed in Ukraine, and identified potential cases that would be admissible for consideration by the Court. On 7 March 2022, public hearings in this

[3] These include: Republic of Albania, Commonwealth of Australia, Republic of Austria, Kingdom of Belgium, Republic of Bulgaria, Canada, Republic of Colombia, Republic of Costa Rica, Republic of Croatia, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, Republic of France, Georgia, Federal Republic of Germany, Hellenic Republic, Hungary, Republic of Iceland, Republic of Ireland, Republic of Italy, Republic of Latvia, Principality of Liechtenstein, Republic of Lithuania, Grand Duchy of Luxembourg, Republic of Malta, New Zealand, Kingdom of Norway, Kingdom of the Netherlands, Republic of Poland, Republic of Portugal, Romania, Slovak Republic, Republic of Slovenia, Kingdom of Spain, Kingdom of Sweden, Swiss Confederation, United Kingdom of Great Britain and Northern Ireland *(ZayavaProkurora MKS, pana Karima, 2022).*

case began at the International Court of Justice (The Hague) (*The Case of Ukraine v. Russian Federation*, 2022).

Every witness who can report the facts of the killing of civilians by the Russian occupiers, barbaric rocketand shelling attackson hospitals, schools, residential buildings and other civilian objects can do so directly to the Prosecutor of the International Criminal Court by e-mail. A special website https://www.ukrainetjdoc.org has also been created to document war crimes (*Ukraine transitional justice and documentation*, 2022).

The order of the UN International Court of Justice in the dispute regarding the interpretation of the Convention on the Prevention and Punishment of the Crime of Genocide was announced on 16 March 2022: the Russian Federation's request to remove the case from the Court's List was rejected, the case will be considered on the merits; an armed attack cannot be justified by accusations of genocide by the victim of aggression; the court did not find any evidence to support the Russian Federation's claims of genocide on the territory of Ukraine; the court orders the Russian Federation to take the following temporary measures: immediately stop the military operations that it commenced on 24 February 2022 in the territory of Ukraine; ensure that any military or any other entity or person under Russian control does not continue military operations. The court unanimously orders both parties to refrain from actions that aggravate the situation (*International Court of Justice*, 2022).

According to Article 1 of the United Nations Charter of 26 June 1945, the UN has purpose to: maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace. Chapter VII of the Charter defines "Actionwith respect to threats to the peace, breaches of the peace and acts of aggression." In accordance with Article 39 of the Charter, the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security. In accordance with Article 40, in order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures. The Security Council may decide what measures

not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations (Article 41). Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nation (Article 42) (*United Nations Charter*, 1945).

On 22 July 2022, Latvia submitted to the Registry of the ICJ an application to join the case regarding the accusations of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation). In July 2022, Lithuania, and New Zealand sought to intervene before the International Court of Justice in Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), leading a potential avalanche of interventions in this ongoing case. The Court determined its jurisdiction in another Genocide Convention case, the Gambia v. Myanmar, in which other states have already indicated their intent to intervene.

According to Article 63 of the Statute of the Court, when it comes to the interpretation of a convention to which states other than those participating in the case are parties, each of these states has the right to enter the process. In this case, the interpretation provided by the Court's decision will be equally binding on them.

The Government of Latvia stated that "[a]s a party to the Genocide Convention, Latvia has a direct interest in the interpretation that may be included in this agreement in the judgment of the Court during the review." It was also stated that Latvia wishes to submit its explanations regarding the interpretation of the Convention, both in terms of substance and jurisdiction. The governments of Ukraine and the Russian Federation were invited to provide written comments on Latvia's statement (Article 83 of the Statute).

In addition, it is also important for the participants in hostilities in Ukraine to strictly adhere to the current norms of international humanitarian law. And although it is difficult to talk about the justice and expediency of war and bloodshed, it is precisely the observance of rules and agreements known in advance that puts the parties in more or less clear norms. As Dr. Gregory Noone noted, "laws are never perfect either in their creation or in their application. Of course, laws meant to regulate something as radical as war will fall into the same pitfalls as simpler laws. The law of armed conflict is designed to protect those who cannot defend themselves,

and to encourage nations and combatants to fight within the limits of the law of armed conflict" (Gregory Noone, 2018).

Hugo Grotius in his treatise *On the Law of War and Peace* asked whether a war can be just and what kind of war is just. That which is contrary to the nature of rational beings is contrary to justice. According to Cicero in the treatise *On Duties* (Book II, chapter I), it is against nature to harm another for one's own benefit; and as a proof of this he cites the fact that under such circumstances human society and mutual communication of people would inevitably collapse. It is a sin for a person to have evil thoughts about another person. As I see it, no political ambition is worth human life. But observing the norms of the law against the enemy, observing the international norms that appeared precisely because of the wars of the past, is necessary. It is adherence to agreements and humanistic values (Timofeyeva, 2020) that makes people civilized.

O.V. Senatorova said that international human rights law is a system of principles and norms of international law that determine the obligations of subjects of international law (primarily states) to ensure and observe basic human rights and freedoms without any discrimination as in peacetime, as well as during armed conflicts, and regulate the mechanisms of prosecution for violations of these rights (Senatorova, 2018, pp. 47-48).

Therefore, international human rights law applies both in peacetime, when its norms are in full force, and during armed conflicts, when these norms can be limited and partially replaced by the norms of a special field—international humanitarian law—which can act to ensure certain rights as *lex specialis* (Senatorova, 2018, pp. 47-48).

The norms of international human rights law are intended, first of all, to protect people from the arbitrariness of the government of their own country, not that of a hostile country. This is the right to fight against authoritarian and totalitarian regimes, the right that protects a person as the highest value. The state's obligation to ensure human rights in international humanitarian law depends on whether a particular person is under its jurisdiction. IHL only applies if a person is in a territory controlled by that state, including occupied territories (territorial jurisdiction principle), or if the state exercises effective control over (e.g., detains) persons who are outside its territorial jurisdiction (the principle of personal jurisdiction) (Loizidou v. Turkey, 1995, *Őcalan* v. Turkey, 2005).

International humanitarian law is a branch of international law, a system of principles and norms that regulate the behavior of belligerents during armed conflicts, limiting or prohibiting certain means and methods of conducting hostilities, as well as protecting people who do not take part in hostilities or have stopped participating in them. International humanitarian law was specifically created for use only during

armed conflicts. It does not cover situations of internal turmoil, internal tension or isolated acts of violence. Such situations are regulated by the norms of national law and international human rights law.

Other approaches to the perception of war are also discussedin the literature. In particular, in Orwell's *1984*, war is considered as a necessity for a government to control people and the state. The absence of war, in the presence of population growth, will lead to overpopulation, constant dissatisfaction with the government, riots, etc. War can explain many things and justify inaction or illegal actions. Especially when in fact it does not constitute a threat to the state.

Noting the need to align domestic criminal laws with international criminal law, it is necessary to take into account the significant differences in the approaches of international and national legal systems to the definition of an act as a criminal offense. In Ukrainian law, the Criminal Code provides for the composition of criminal offenses and determines the type and degree of punishment. Norms of international law establish the criminality of certain acts, mostly the composition of crimes, but, as a rule, they do not contain clear explanations regarding the types and limits of punishment. It remains at the discretion of the state.

The draft Law on amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine No. 7290 of 15 April 2022 contains important provisions regarding the criminalization of certain war crimes, crimes against humanity, crimes of aggression, and the inaction of military commanders (as of 29 June 2022) (*Draft Law No. 7290*, 2022).

Article 6 of the Charter of the Nuremberg International Military Tribunal (Nuremberg Tribunal) formulated the types of crimes that were subject to its jurisdiction, and Article 27 explicitly stated its right to impose the death penalty or other punishment on the individuals found guilty. However, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 excluded the death penalty from the list of possible punishments and clearly defined approaches to sentencing the accused. Namely: when determining the term of imprisonment, be guided by the general practice of issuing prison sentences in the courts of the former Yugoslavia; when passing a sentence, take into account factors such as the gravity of the crime and specific circumstances affecting the defendant; in addition to imprisonment, orders may be made to return any property and proceeds of crime to their rightful owners.

The situation that has developed in connection with the full-scale invasion of Ukraine also revises the issue of the implementation of the principles of international law and the fundamental principles of international humanitarian law (IHL). In particular, the fundamental principles of International humanitarian law are the

principle of equality of belligerents and the absence of the principle of reciprocity, the balance between the principle of humanity and military necessity, the principle of proportionality, the principle of demarcation between military and civilian objects/combatants and non-combatants, the need to apply precautionary measures, as well as taking into account the Martens Reservation (Senatorova, 2018).

Jean Pictet proposed to combine the norms of international humanitarian law and the international human rights law under one term "the right of humanity," however, over time, he changed his opinion, explaining that international humanitarian law is an important part of international public law which is inspired by the ideas of humanity but focuses on the protection of individuals precisely during the war and that the international humanitarian law and the international human rights law are "close, opposite, and should remain so, as they perfectly complement each other" (Pictet, 2001).

International humanitarian law is based on a balance between military necessity and humanity. On the one hand, it is clear that when a war begins, it is accompanied by killings, injuries and destruction, which are allowed at this time, provided that the norms of international humanitarian law are observed. On the other hand, war should not turn into total violence and it is not an excuse for the belligerents to do whatever they want. International humanitarian law clearly establishes that military necessity must be balanced by the principle of humanity, the essence of which is as follows: one cannot use more violence than necessary to achieve the objective of war—weakening the power of the enemy. In order to win a war, it is not necessary to kill enemy soldiers, it is enough to capture them or force them to surrender in any other way. To win a war, there is no need to kill civilians, it is enough to weakenthe military forces. It makes no sense to devastate the opposing country—it is enough to occupy it. Civilian infrastructure facilities should not be destroyed—it is enough to destroy only those facilities that make an effective contribution to the conduct of hostilities. If there is an opportunity to choose a more humane weapon or method of waging war—whenever the military situation allows it, one should capture, rather than wound, combatants, or wound them instead of killing, and if there is no other option than to kill, then this can only be done with weapons that do not cause excessive suffering (Senatorova, 2018, p. 71). Considerations of humanity also impose limitations on the means and methods of waging war and require that those who fall into the hands of the enemy should be treated humanely at all times.

3. Realization of the Principles of Criminal Law

The principles of criminal law must be observed both at the level of law enforcement and law-making, as well as at the level of interpretation of normative legal acts. This is important both during peacetime and during war. However, there are certain features of this implementation. And this applies to both general legal and special branch principles.

The Presumption of Knowledge of the Law and the Dynamics of Criminal Legislation in Connection with War and the Peculiarities of Ensuring National Security

One of the most important requirements of the law is its stability and certainty. However, given the huge number of changes to the criminal legislation of Ukraine, it cannot be called stable. Obviously, the period of the martial lawhas been no exception.

Until 2014, Chapter I of the Criminal Code of Ukraine, Criminal Offenses Against National Security, had remained the only not amended one. But in connection with the relevant events, a number of changes have been made to it. In particular, the Law On Amendments to the Criminal Code of Ukraine No. 1183-VII of 8 April 2014 added Article 114-1 which provides for criminal liability for obstructing the lawful activities of the Armed Forces of Ukraine and other military formations during a special period. In addition, amendments were made to Article 49 of the Criminal Code of Ukraine excluding the possibility of applying the statute of limitations also to the crimes against the foundations of the national security of Ukraine, provided for in Articles 109-114-1 of the Criminal Code, and not only to the crimes against the peace and security of humanity, provided for in Articles 437-439 of the Criminal Code of Ukraine and Article 442 of the Criminal Code of Ukraine. The scope of responsibility under Articles 110, 111, 113, and 114 of the Criminal Code of Ukraine was increased.

According to the Law of Ukraine On Amendments to the Criminal Code of Ukraine Regarding Criminal Liability for Financing Separatism No. 1533-VII of 19 June 2014, the Criminal Code of Ukraine was supplemented with a new Article 110-2, which provides liability for financing actions committed to forcibly change or overthrow the constitutional order,to seize state power, or to change the boundaries of the territory or the state borderof Ukraine.

According to the Law of Ukraine On Amendments to the Criminal Code and the Criminal Procedure Code of Ukraine Regarding the Inevitability of Punishment for Certain Crimes Against the Foundations of National Security and Public Secu-

rity, and Corruption Crimes No. 1689-VII of 7 October 2014, sanctions provided for in Articles 109, 110, 111, 112, 113, 114, 258, 258-1, 258-2, 258-3, 258-4, 260, 261 of the Criminal Code of Ukraine were supplemented with the words "with or without confiscation of property." Hence, it is possible to apply confiscation of property in such cases.

In addition, the Verkhovna Rada of Ukraine adopted a number of amendments to the Criminal Code of Ukraine in connection with the invasion by the Russian Federation and the start of aggressive war on 24 February 2022. Among such changes, in particular, the Law On Amendments to the Criminal Code of Ukraine on Strengthening Liability for Crimes Against the Foundations of National Security of Ukraine in Conditions of Martial Law No. 2113-IX of 3 March 2022 increased punishment for treason (Article 111 of the Criminal Code) and sabotage (Article 113 of the Criminal Code). The amendments to Part 4 of Article 86 of the Criminal Code limit the application of amnesty to persons who have committed treason and sabotage.

Attention should also be paid to the criminalization of "acts of wartime collaboration" (Article 111-1 of the Criminal Code) in accordance with the Law On Amendments to Certain Legislative Acts of Ukraine on Establishing Criminal Liability for Acts of Wartime Collaboration No. 2108-IX of 3 March 2022. In particular, according to Part 1 of Article 111-1 of the Criminal Code of Ukraine, a citizen of Ukraine is subject to criminal liability for public denial of armed aggression against Ukraine; establishment and approval of the temporary occupation of part of the territory of Ukraine;public calls to support the decisions and/or actions of the aggressor state, its armed formations and/or administration of the occupied territories; collaborating with the aggressor state, its armed formations and/or administration of the occupied territories; non-recognition of the extension of the state sovereignty of Ukraine to the temporarily occupied territories of Ukraine. The existence of this article does not allow for distancing oneself from the events taking place, continuing doing business with the Russian Federationor maintaining other ties with the aggressor country, including informational ones.

Many articles of the Criminal Code of Ukraine include the qualifier "in conditions of martial law or a state of emergency in accordance with the Law On Amendments to the Criminal Code of Ukraine on Toughening Liability for Looting No. 2117-IX of 3 March 2022." At the same time, these are important changes, since in many Internet sources theft during the war is defined as "looting." Looting is provided for in Article 432 of the Criminal Code of Ukraine.

The Law of Ukraine On Amendments to the Criminal Code of Ukraine No. 2155-IX of 24 March 2022 criminalized acts defined in Article 201-2 Illegal Profiting from Humanitarian Aid, Charitable Donations or Charitable Aid. In connection with martial law, the cases of fraud in the scope of collecting charitable aid allegedly

for the needs of the Armed Forces, the resale of goods obtained as humanitarian aid, etc., have become more frequent. This article provides for criminal liability for the sale of items obtained as humanitarian aid, the use of charitable donations or the conclusion of other transactions related to the disposal of such items for the purpose of obtaining profit, committed on a large scale. Penalties are provided for such actions committed repeatedly, by prior collusion by a group of persons, by an official using an official position (Part 2 of Article 201-2 of the Criminal Code of Ukraine), committed by an organized group or on a particularly large scale, or during a state of emergency or martial law (Part 3 of Article 201-2 of the Criminal Code of Ukraine).

According to the resolution of the Cabinet of Ministers of Ukraine of 20 March 2022 No. 329, the procedure for importing humanitarian aid into the territory of Ukraine has been simplified, and the declarative principle of its customs clearance has been introduced, however, although such measures significantly facilitate and optimize logistical procedures, they also increase the risk that the humanitarian aid will be used illegally. The Law of Ukraine On Amendments to the Tax Code of Ukraine and Other Legislative Acts of Ukraine Regarding Individual Aspects of Taxation and Financial Reporting During Martial Law simplified the procedure for recognizing goods that are socially important as humanitarian aid, the list of which is approved by the Cabinet of Ministers of Ukraine, without the adoption of relevant decisions on recognizing them as humanitarian aid help.

Resolution No. 224 of the Cabinet of Ministers of Ukraine dated 7 March 2022 approved the list of categories of goods recognized as humanitarian aid without carrying out the procedure for recognizing such goods as humanitarian aid in each specific case, for the period of the martial law. Electronic declarations for the custom clearance of imported humanitarian aid at the border crossings have become operational. On 4 May 2022, electronic customs declarations for humanitarian aid became available, and now, in any country of the world, e-declarations for humanitarian cargo can be filled out in advance, speeding up the customs clearance and helping reduce queues at border crossings. At the same time, taking into account the positive changes in the legislation, there are numerous cases of the use of humanitarian aid goods for purposes other than their intended purpose and for illegal profit, which in fact became the reason for the introduction of criminal liability for such actions.

In connection with a significant increase in prices of primary use products, with wages remaining at the pre-war level, the buying power of individuals has decreased considerably. Poverty is a significant factor in the committing of criminal offenses for personal motives. It is also time to return to penalizing traders for cheating and illegal markups on essential goods. Especially today, it is necessary to cultivate trust in the state. Taxes, fees and donations should be transparent. Every citizen should

see the movement of humanitarian and material aid. Corruption practices slow down these processes, and also slow down the process of accepting European values and accession to the EU.

Law of Ukraine No. 2149-IX of 24 March 2022 On Amendments to the Criminal Code of Ukraine Regarding Increasing the Effectiveness of Combating Cybercrime under Martial Law amended Article 361 and Article 361-1 of the Criminal Code of Ukraine Development for the Purpose of Illegal Use, Distribution or Sale, of Harmful Software or Technical Means, as Well as Their Distribution or Sales.

The Law of Ukraine On Amendments to the Criminal Code and the Criminal Procedure Code of Ukraine No. 2160-IX of 24 March 2022 introduced Article 114-2 about unauthorized dissemination of information about movement of weapons and other military supplies to Ukraine, movement, transfer or location of the Armed Forces of Ukraine or other military formations formed in accordance with the laws of Ukraine, committed in conditions of war or the state of emergency.

Many "bloggers" have begun to post photos and videos of such movements, air defense operations, explosions, etc. Criminal law of Ukraine, in the present realities of information war and information warfare, has received a completely updated content.

The principle of humanism is expressed in the fact that a person who commits a crime, including a war crime—ora crime against humanity—is still a human who possesses rights and freedoms. When thelaw has been broken, the state must react. But such a reaction should not turn into a crime. Moreover, the state aims (Article 50 of the Criminal Code) to correct such a person using the means provided for by criminal law, and not only punish him or her.

No person should be subjected to torture, inhuman or degrading treatment (Part 3, Article 50 of the Criminal Code). Torture and inhumane treatment are expressly prohibited by Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

Correction reflects the implementation of the principle of humanism in relation to the perpetrator, as the state gives him or her a chance to be a law-abiding member of the society (working, studying, engaging in legal activities); takes into account mitigating circumstances when sentencing; makes it possible to lessen the severity of punishment if relevant conditions are met (Article 82 of the Criminal Code); grants parole (Article 81 of the Criminal Code), etc. Preventing new crimes involves the manifestation of the principle of humanism in relation to the victim and third parties; ensures their safety; contributes to the prevention of crimes committed by victims who, due to their dissatisfaction with the administration of justice, are ready to commit crimes in order to restore what they perceive to be justice.

In reality, punishment, especially life imprisonment, causes suffering to the perpetrators. The effectiveness of the modern penitentiary system (based on the results of observation and statistical data) does not contribute to the correction of inmates, and neither does it contribute to (or aim at) compensating theirvictims. Therefore, it seems that the current conditions of serving life imprisonment sentencedo not contribute to the achievement of the established goals.

A human being should not be used for achieving political goals, and criminal law should not be a means of revenge.

The provisions of the Geneva Convention also follow from this principle. According to Article 3 of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949,

> persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) Taking of hostages; (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment; (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples (Geneva Convention, 1949).

According to Article 3 of the Regulations concerning the Laws and Customs of War on Land of 1907, the armed forces of the warring parties may consist of combatants and non-combatants. In case of capture by the enemy, both enjoy the rights of prisoners of war. According to Article 4 of the Regulations on the Laws and Customs of War on Land, prisoners of war are under the authority of the government of the opposing side, and not of individuals or units that captured them. They should be treated humanely. All their personal belongings, with the exception of weapons, horses and military documents, remain their property. According to Article 7 of these Regulations, the maintenance of prisoners of war is entrusted to the government in whose hands they are. In the absence of a special agreement between the warring parties, prisoners of war enjoy the same board, lodging and clothing as the troops of the government that captured them.

Participants in hostilities in Ukraine must strictly observe the current norms of international humanitarian law. Wars are unacceptable to a civilized society, but they happen. And although it is difficult to talk about the justice and expediency

of war, about the bloodshed, it is the observance of the previously accepted rules and agreements that puts the parties in equal positions. That is why international humanitarian law exists.

No one has the right to commit crimes under the jurisdiction of the International Criminal Court, including Ukraine, on the territory of which these terrible events are taking place, and the citizens of this country. Ukrainians often show dissatisfaction with the humane treatment of prisoners of war, with regard to the provision of food, hygienic standards, necessary clothing and medicines. But if Ukrainians treat them cruelly, their countrywill also violate international norms, in particular the Geneva Convention ratified by Ukraine.

In addition, there are plenty of problems connected with following the requirements of the Geneva Convention, because the funds available for this goal are not sufficient. However, under no circumstances the prohibition of torture could be abandoned. In the context of inhuman treatment, the interpretation of which is expanded from time to time taking into account the dynamic nature of the Convention, it is necessary to ensure the provision of necessary medical care, nutrition and hygiene items. It should also be taken into account that, in fact, military personnel of the Russian Federation commit the criminal offense provided for in Article 332-2 of the Criminal Code, namely the illegal crossing of the state border of Ukraine. V.O. Navrotsky noted that they can be held criminally liable under this article. It seems that this will not violate any of the principles of criminal law and ensure implementation of the inevitability of criminal law response, even if it seems unusual from the point of view of the principles of international humanitarian law. Their liability must be approached individually, in compliance with the principle of personal culpability and guarantees of protection.

A valid argument regarding the formulation of the principle of humanism in the draft of the new Criminal Code of Ukraine is given by O.O. Dudorov and O.O. Pys′mens′kyy. Part 3 of Article 1.2.7 of the draft law states that the exercise of the rights of a person to whom this Code applies must not violate the rights of the victim. This provision lacks proper clarity and comprehensibility, and therefore it constitutes a violation of the mentioned principle of legal certainty, besides raising doubts about the direct connection with the principle of humanism. A more global question arises here: is the targeting of this principle precisely and only at the victim justified? (With the exception of Part 2, according to which punishment and other criminal law measures are not intended to cause physical suffering or degrade human dignity.) However, the principle of humanism should not be understood unilaterally (Dudorov, 2022, p. 17).

The realization of the principle of humanism in criminal legislation is aimed at: applying sufficient and necessary punishment, taking into account the principles,

goals, tasks and functions of criminal lawand methods of criminal law regulation; as mild or severe a punishment as corresponds to the nature and behavior of the person at the time of the crime; socio-demographic characteristics of a person; the nature of the damage caused to the victim, third parties and the state; other circumstances of the case, including the nature and severity of the crime, as well as pre-criminal and post-criminal behavior.

It should be noted that the humanistic paradigm provides for a balance in the realization of the principle of humanism both in relation to the person who committed the crime and the victim, as well as to society as a whole and the state. In practice, victim are frequently not notified about the application of post-criminal incentives to the perpetrator (in particular, exemption from criminal responsibility, parole, amnesty, pardon, etc.).

The Principle of Stimulating Lawful Behavior

This principle is considered only by some researchers of the criminal justicecycle. At the same time, a number of provisions of the criminal legislation are related to its implementation.

It seems that this principle, like other principles, must be considered at different levels of law enforcement. In particular, a problem arises at the level of execution of the sentence, notably in connection with the lack of review of life imprisonment. Based on the fact that inmates serving such a sentence do not actually have a "right to hope," their legitimate behavior is not encouraged (cases of Winter v. Great Britain, complaints Nos. 66069/09, 130/10 and 3896/10 of 09 July 2013, László Magyar v. Hungary, application No. 73593/93 of 20 August 2014, Hutchinson v. Great Britain No. 57592/08 17 of January 2017, Petukhov v. Ukraine (No. 2), application No. 41216/13 of 12 March 2019). No matter what criminal offense they commit in the future, they still face nothing more than life imprisonment.

Individuals who have committed serious crimes remains human beings and possess certain rights that do not relieve them of responsibility for violating the rights and freedoms of other persons. For violent crimes, for crimes that are committed repeatedly, strict measures of criminal law impact should be provided, but not so much that the punishment itself becomes a crime against humanity. Ensuring the security of society and the state is an extremely important task, but in balance with ensuring the freedom of a person and a citizen. Ensuring the safety of society cannot be the basis for excluding personal responsibility of everyone and violating the rights and freedoms of the person who committed the crime. Otherwise, the meaning of punishment is lost.

In the "case of German generals," the attorney at law L.A. Vitvinsky defended two German officers, in the armed forces since 1898, who were subsequently hanged at the end of January 1946 on Kalinin Square (now Independence Square). They were charged under Article 1 of the Decree of the Presidium of the Supreme Soviet of the USSR dated 19 April 1943, which provided for the death penalty by hanging or hard labor for 15 to 20 years for nazicriminals who committed murders and tortures of the civilian population and prisoners. The lawyer said: "…the accused, Chammer, did not show any special personal diligence in cruelty and atrocity, and mainly acted as an automatic executor of the orders and directives of his higher command … from the age of 13 he lived, grew and was brought up in a specific spirit of strict discipline and drill of the German army … All this does not remove responsibility, but, of course, it should be weighed and also taken into account…" (*Sudova promova chlena Kyyivs'koyi kolehiyi advokativ O. L. Vytvins'koho*, 2000).

This also applies to life imprisonment in the context of ensuring adequate protection. And protection is not about excusing the inmates, but about ensuring compliance with their rights and freedoms, helping to take into account the circumstances that can improve their situation.

In conditions of martial law, protection of homeland is added to provisions related to the necessary defense.

According to Part 5 of Article 36 of the Criminal Code of Ukraine: "It is not considered as exceeding the limits of necessary defense and does not result in criminal liability to use weapons or any other means or objects to protect oneself or other person against an attack by an armed person or an attack by a group of persons, as well as to fight off an illegal and violent invasion of a dwelling, regardless of the severity of the damage caused to the aggressor." Therefore, in the listed cases, a person can defend himself or herself and exericize the right to the necessary defense in any way.

In addition, these exclusions are related to inflicting death during war. Therefore, criminal liability is excluded for inflicting death during war if the customs of war and other international norms regarding the conduct of war have been observed.

In accordance with Article 1 of the Law of Ukraine On Ensuring Participation of Civilians in Defense of Ukraine No. 2114-IX of 3 March 2022, during the martial law, citizens of Ukraine, as well as foreigners and stateless persons who are legally present on the territory of Ukraine (civilians), may participate in repelling and deterring armed aggression of the Russian Federation and/or other states, including obtaining firearms and ammunition in accordance with the procedure and requirements established by the Ministry of Internal Affairs of Ukraine "On ensuring the participation of civilians in the defense of Ukraine" 2114-IX, 2022). According to Article 5 of this law, civilians are not responsible for the use of firearms against persons who commit armed aggression against Ukraine, if such weapons are used on

the basis and in the manner specified in Article 1 and Article 4 thereof. Chapter II of the Criminal Code of Ukraine, Final and Transitional Provisions, is supplemented with Clause 22 with similar provisions. At the same time, there are questions about the reasons for the lack of such responsibility.

Moreover, the Criminal Code of Ukraine was amended with Article 43-1 "Exercising the duty to protect the homeland, independence and territorial integrity of Ukraine as a circumstance that excludes the criminal illegality of an act" in accordance with Law No. 2124-IX 15 March, 2022. According to this article, an act (or omission) committed under martial law or during armed conflict and aimed at repelling and deterring the armed aggression of the Russian Federation or another country against Ukraine is not a criminal offense if it inflicts harm or death on an individual who participates in such an aggression.

According to Part 2 of Article 43-1 of the Criminal Code, every person has the right to protect the independence and territorial integrity of Ukraine. According to Part 3 of Article 43-1 of the Criminal Code, no one can be subject to criminal liability for the use of weapons, ammunition or explosives against individuals who participate in the armed aggression against Ukraine, or for damage or destruction of property in connection with this.

As Y.A. Ponomarenko said,

> The question of the legality of causing other damage to the aggressor state, such as, in particular, undermining its economic or banking system, information security, food security, creating or stimulating social conflicts on its territory, etc., seems ambiguous. Such actions, although they harm the aggressor, are clearly not covered by Article 43-1 and point. 22 of the Final and transitional provisions of the Criminal Code of Ukraine. Therefore, the question of their legality should be determined on the basis of Article 36 (necessity defense), Article 39 (extreme necessity) and other articles of the Criminal Code, as well as in accordance with other norms, national or international, written or natural (Ponomarenko, 2022, p. 12).

O.M. Sharmar also draws attention to the issue of fulfilling the duty to protect independence and territorial integrity of Ukraine as a circumstance that excludes criminal liability (Sharmar, 2022).

According to the Law of Ukraine amending Article 263 of the Criminal Code of Ukraine No. 2150-IX of 24 March 2022 and regarding the release from liability in cases of voluntary surrender of weapons, military supplies, explosives or devices, a person who voluntarily handed over weapons, ammunition, explosives or explosive devices to the authorities, is not subject to criminal liability ("not subject to criminal liability" instead of "released from criminal liability"—note by T.L.) for committing actions provided for in part 1 and 2 of Article 263 of the Criminal Code

of Ukraine. If a person is "realeased from criminal responsibility," then the court states that he or she committed a criminal offense, but is exempted, by virtue of law, from such responsibility. If a person is "not subject to criminal liability," he or she should not be subject to criminal prosecution at all.

The Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907 (date of entry into force for Ukraine: 24 August 1991). In particular, the criteria for being recognized as a warring party are important. Article 1 of the Annex states that military laws, rights and duties apply not only to armies, but also to militia and volunteer units, provided that they meet the following conditions: 1. they are under the command of a person responsible for their subordinates; 2. they have a fixed distinctive emblem that can be recognized from a distance; 3. they openly carry weapons; and 4. they conduct hostilities in accordance with the laws and customs of war.

In the countries in which militias or volunteer units constitute or are part of the army, they are included in the category "army."

According to Article 2 of the Regulations concerning the Laws and Customs of War on Land. 18 October 1907, the inhabitants of a territory that was not occupied, who, upon the approach of the enemy, voluntarily take up arms in order to resist the invading troops, but did not have time to organize themselves in accordance with Article 1, are considered belligerents if they openly bear arms and observe the laws and customs of war.

The Principle of Legality

The concept of crime and punishment is conditional and changes over time. The main idea is that the list of crimes and punishments for them should be clearly and unambiguously formulated in relevant laws. Everyone should be able to know which actions result in criminal liability.

Also related to this is the approach of the classical school of criminal law "punishment for a crime." It is based on the fact that the state reacts with criminal law measures precisely adequate to the committed act considered a crime in the current criminal law. No one can be punished for thoughts, for feelings or for thinking as such.

Only a person who has committed a criminal act, which is defined as a crime in the criminal law, can be held criminally liable. Everyone must be clearly and unambiguously aware of such responsibility. And if an individual has already committed

a crime, then he or she should be held accountable to the law. In modern criminal law, the principle of certainty is one of its main principles.

Wide interpretation of the law can also become a violation of the principle of legality. In Jorgic v. Germany, the ECtHR recognized the wide interpretation as corresponding to Article 7 of the Convention. The applicant was convicted of acts of genocide committed on the territory of the former Yugoslavia, although his actions were aimed not at the physical or biological destruction of a certain ethnic group, but at its destruction as a social unit. The ECtHR stated that at the time of the relevant actions in 1992, many judicial bodies interpreted the concept of genocide narrowly, i.e., as actions aimed at the physical or biological destruction of a certain ethnic group. At the same time, individual scientists, as well as international institutions, gave a broad interpretation of genocide, which covered the actions of the applicant. For the first time, German courts, applying the norm on genocide, took a broad interpretation as a basis. According to the ECtHR, this approach corresponds to the essence of the violation and was reasonably foreseeable (Hylyuk, 2014).

Vasiliauskas vs. Lithuania, in which the European Court of Human Rights recognized Lithuania's violation of Article 7 of the European Convention on Human Rights, is also interesting in the context of the expanded interpretation of genocide. In this case, Lithuania retroactively applied the expanded definition of genocide laid down in national legislation. This definition was created in order to prosecute persons who carried out Soviet repressions in Lithuania occupied by the Soviet Union after the Second World War. However, the ECtHR's decision was accepted by only a minimal margin, and there were many dissenting opinions with the majority criticizing that it chose too formal a path and failed to satisfy the justice that victims of Soviet repression still crave (Žilinskas, 2016, pp. 67-71).

At the same time, in the case of Drelingas v. Lithuania based on application No. 28859/16 of 12 March 2019, the ECtHR decided that the applicant's conviction for the genocide of opponents of the Soviet government can be considered predictable in accordance with Article 7 of the Convention. In the days of the Soviet Union, the applicant was in the service of the MGB and the KGB. In 1956, he took part in an operation to arrest two partisans/oppositionists who were in opposition to the Soviet government in Lithuania. After the arrest, the man was sentenced to death, and the woman was sentenced to imprisonment in a prison camp.

After Lithuania regained independence, criminal proceedings for genocide were opened against the applicant in connection with the participation in the mentioned operation. The applicant was accused of committing genocide. The court noted that the man was a well-known partisan/oppositionist who resisted Soviet power and a representative of the Lithuanian people. The purpose of this operation

was to eliminate a part of the national group, therefore the applicant was guilty of genocide. The legislation did not provide a statute of limitations for genocide.

The court rejected the applicant's remark that he did not personally participate in the arrest of the partisans and did not sentence them to death. The applicant was sentenced to imprisonment. The higher courts upheld the decision of the court of first instance. The Court of Cassation took into account the conclusions of the decision of the Grand Chamber of the ECtHR in the case Vasiliauskas v. Lithuania, as the courts defined the partisans/oppositionists as a separate "political group." However, such a group was not protected under the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, and the applicant's conviction in that case was not foreseeable.

In the applicant's case, the Court of Cassation explained why the dissidents were to be considered members of a separate national and ethnic group and therefore subject to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Therefore, at the time of the events described at the beginning of the ECtHR's decision in this case, the applicant should have been aware of his criminal liability for genocide.

Analyzing the practice of the ECtHR, P.V. Hylyuk concludes that in making decisions on substantive and legal issues, the ECtHR prefers a meaningful approach, rather than a formal one, and is guided by the logic inherent in the Anglo-American legal system—normative legal acts are mandatory, but they can be adjusted by the courts (Hylyuk, 2014, p. 96).

The principle of legality also has other manifestations, in particular the requirement to *prohibit the retroactive application of the criminal law*. In the decision of the ECtHR in the case of Maktouf and Damjanovic v. Bosnia and Herzegovina No. 2312/08 and 34179/08 of 18 July 2013, the court of Bosnia and Herzegovina found Maktouf guilty and sentenced him under the 2003 Criminal Code of Bosnia and Herzegovina for aiding the taking of two civilian hostages, a war criminal offense committed during the war of 1992-1995, to five years in prison, applying the provisions of reduction of punishment. According to Maktouf, the Criminal Code of 1976, which was in effect at the time of the commission of the crime, provides for milder sanctions. However, it cannot be argued that any applicant could have received a less severe sentence under the application of the 1976 Criminal Code. What is most important is that Maktouf could have been given a lighter sentence. The complaint was declared inadmissible (manifestly ill-founded). The Criminal Code of Bosnia and Herzegovina of 1976 cannot be considered as a less stringent law (*Maktouf and Damjanovic v. Bosnia and Herzegovina*, 2013).

In the history of the application of criminal law in the Soviet era, there are cases concerning the retroactive application of the criminal law, for example, the cases of

Rokotov and Neyland, in which the Court unreasonably violated the prohibition of the retroactive effect of the criminal law, and, accordingly, the principle of humanism towards the person who committed a criminal offense.

According to the Decree On Fighting Embezzlers of Socialist Property and Violators of the Rules on Foreign Currency Transactions of 5 May 1961, Y.T. Rokotov and V.P. Faybyshenko were sentenced by the court to 15 years imprisonment without the possibility of parole and replacing the unserved part of the sentence with a lighter one on 15 June 1961. The decree was issued after the arrest of Y.T. Rokotova and V.P. Faybyshenko. The term of imprisonment for these criminal offenses was increased from three to fifteen years. The Decree of 5 May 1961 specifically stated that in this case the law had retroactive effect, so, it had applied to already committed offenses. But it did not stop there. M.S. Khrushchev, at a meeting of the Presidium of the Central Committee of the CPSU on 17 June 1961 expressed the opinion that foreign currency holders deserve an exceptional measure (execution). On 6 July 1961, the article of the Criminal Code on violation of the provisions related to foreign currency transactions was amended again. Similar to the articles on bribes and particularly grave embezzlement, it provided for the death penalty as an exceptional measure. On 27 July, Rokotov and Faybyshenko were executed by shooting. This process became a signal for the initiation of other similar court cases concerning the theft of socialist property. Hundreds of people were executed by shooting.

Part 2 of Article 7 of the Convention says that the article is not an obstacle to the judicial punishment of any person for any act or omission which at the time when it was committed constituted a criminal offense in accordance with the general principles of law recognized by civilized countries.

Interestingly, these rules also apply to judicial interpretation. Legal positions must meet the quality criteria that the ECtHR sets for the sources of criminal law, i.e., the legal positions set forth in them must be clear, accessible and reasonably predictable. Legal positions that worsen the situation of a person cannot be applied in cases where they were issued after the committing of a crime by a person whose actions are subject to criminal law (Hylyuk, 2014, p. 98).

Part 4 of Article 3 of the Criminal Code of Ukraine prohibits the application of criminal law by analogy, but there is no prohibition of the interpretation of criminal law provisions by analogy.

Y.A. Ponomarenko provides examples of how the Supreme Court of Ukraine has been filling gaps in the Criminal Code of Ukraine in the matters relating to the determining of the rules for the application of criminal liability measures by analogy (Ponomarenko, 2006, pp. 9-16).

In accordance with Article 8 of the Constitution of Ukraine, the criminal law of Ukraine is based on the Basic Law of the state, as well as on generally recognized

principles and norms of international law. Moreover, it must comply with the provisions contained in current international treaties ratified by the Verkhovna Rada of Ukraine. It is obvious that in the event of a conflict between the provisions of the Criminal Code and the provisions of the Constitution or international law, the latter prevail. In connection with this, the question arises as to the impact of the specified acts on solving issues of criminal law, and whether they can be considered sources of the criminal law of Ukraine. Taking into account the extremely general and declarative nature of the provisions of the Constitution and international legal acts, and the lack of a description of specific signs of socially dangerous acts and sanctions, it can be stated that neither the Constitution of Ukraine nor the majority of international legal acts are sources of criminal legislation in the sense indicated above. On their basis, it is impossible to prosecute and impose punishment. International legal acts of direct effect are the only exception. However, none of them, including the Statute of the International Criminal Court, has been ratified by Ukraine to this day, and their classification as sources of criminal legislation is rather hypothetical. They act as "sources of sources" for the criminal law of Ukraine, addressed not to law enforcement or potential offenders, but to the legislator (Navrotsky, 2006, pp. 116-125). But to this end, judicial practice should also be published in relevant collections. In today's reality, with the Supreme Court's decisions often reflecting different positions, it is extremely difficult to follow them and find a suitable decision.

The Principle of Humanism in Relation to the Victim

Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012, which introduces minimum standards for the rights, support and protection of victims of crimes, states that victims of crimes require respectful, fair and professional treatment, which excludes any discrimination. Victims must be protected from secondary and repeated victimization, from intimidation and revenge, receive appropriate support, have access to justice (9). Victims should be given information about the offender's release or escape from prison (32). At the same time, such rights and guarantees of the victim are not taken into account either by legislation or practice.

This is more relevant than ever in connection with war, as victims must receive appropriate compensation and restitution. In particular, we are talking about the families of the dead, people who lost their homes or whose homes were destroyed, or whose property was stolen or damaged. Raped women and children also need appropriate psychological help. Compensation for lost housing should be received not

only by those citizens who lost it after the events of 24 February 2022, but also by forced migrants from Luhansk and Donetsk Provinces that lost their homes in 2014.

Besides, attention should be paid not only to war crimes committed by the aggressor, but also to other crimes. Their numbers do not decrease during war. Nevertheless, they require careful recording and investigating.

There are numerous problems related to ensuring the genuine participation of victims at the pre-trial stages, as well as at the stage of execution of the sentence. The victims are not informed about the consideration of issues related to parole of the person who committed the crime, amnesty, pardon, etc. Moreover, they are not asked about their opinion. Compensation for damage to the injured person by the person who committed the criminal offense is not taken into account.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985, enshrines that victims should be treated with compassion and respect for their dignity. They have the right to access to justice and compensation for the harm that they have suffered (clause 4). In addition, the need to include restitution as one of the measures of punishment in criminal cases in addition to other criminal sanctions is indicated. In the Ukrainian practice of criminal law, if the person who committed a criminal offense does not have funds or property to compensate for the damage, this issue remains unresolved, because the state does not compensate for damages.

The issues of criminal compensation and restitution were included in the alternative project of the Criminal Code of 2001, developed by V.N. Smitienko (*Draft of the Criminal Code of Ukraine*, 2001).

However, these ideas were not accepted by the legislator. When developing new criminal legislation, the working group on the development of criminal law also considers the issues of legislative regulation of restitution and compensation, as well as expanding the consideration of the rights and legitimate interests of the victim.

In particular, in Article 1.1.1. it is stated that the Criminal Code of Ukraine is the only law of Ukraine that, on the basis of the rule of law, regulates social relations between the state, victim and criminals. According to Article 1.1.2., the aim of the Criminal Code of Ukraine is to ensure by legal means that the human and civil rights and freedoms, the interests of society, the state and the international community are protected from criminal offenses (*Draft of the Criminal Code of Ukraine*, 2022).

Significantly, it seems that the problem of the victim in criminal law is demonstrated in the implementation of the principle of a humane treatment of victims. Article 1.2.6. of the draft of the new Criminal Code of Ukraine ("Humanism") emphasizes the importance of the role of the victim. In particular, part 2 of this article states that the Criminal Code of Ukraine ensures recognition and observance

of the rights, freedoms and legitimate interests of the victim, including the right to restitution and compensation. Part 4 of this article states that the exercise of rights by a person who has committed an act stipulated by the Criminal Code should not harm the rights of the victim and the interests of society. Perhaps this time these ideas will be accepted not only by the legislator, but also in practice.

It should also be noted that problems related to victims are particularly evident in emergency situations, in particular during the martial law. Such situations demonstrate the unpreparedness of the state for the challenges related to ensuring the rights and freedoms of human and citizen in unpredictable conditions, the state's perception of a victim and the damage caused to him or herin the process of committing a criminal offense. Compensation measures for war victims require special attention.

As V.O. Tulyakov said, if the state failed to protect a citizen from criminal acts, then it must bear responsibility for the damages. Such a provision reflects the real expectations of the population interested in effective protection of their constitutional rights and freedoms (Tulyakov, 2000, p. 5).

In such circumstances, it seems that the law enforcement agencies would treat the victim more carefully, provide the victim with the procedural status in a timely manner, and contribute to the compensation for his or her damages, restoration of rights, and comprehensive psychological assistance from competent authorities or volunteer organizations. If the role of the victims in criminal law and their needs are not taken into account, this may further increase the number of crimes committed by "former victims" and cases of lynching, and also affect the level of trust in government and its effectiveness. In addition, attention should also be paid to the level of state compensation to victims within the framework of the decisions of the European Court of Human Rights. Restorative justice would help ensure humane treatment of victims, provide an opportunity to meet their needs, and also contribute to the restoration of social justice.

In Recommendation No. R(99)19 of the Committee of Ministers to member States of the Council concerning mediation in penal matters of 15 September 1999, attention is drawn to the recognition of the legitimate interest of the victim in the possible consequences of victimization, interest in dialogue with the offender in order to obtain an apology and certain compensation for the damages, i.e., what classic criminal justice cannot provide. This is also noted in later recommendations. According to Recommendation CM/Rec(2018)8 of 3 October 2018, it is necessary to strengthen the participation of stakeholders, including the victim and the offender, other affected parties and the wider community, in addressing and eliminating the harm caused by crime. Thus, restorative justice is recognized as a method. Thanks to this method, the needs and interests of these parties can be identified and met in

a balanced, fair and collaborative manner. In addition, it is necessary to pay more attention to the legitimate interest of victims, in particular, regarding responding to their victimization, dialogue with the offender and receiving compensation for damage in the court.

As V.O. Tulyakov said, improving access of crime victims to the criminal justice system and fair and humane treatment of them can to some extent reduce fear of crime (Tulyakov, 2018). According to S.G. Mason, true reform requires paying attention to the lived experiences of those directly affected (Mayson, 2020).

Inhumane treatment of victims is especially reflected in practice, because they had no real opportunity to exercise their rights. Illegal protection mechanisms (in particular, blog posts, blacklists on websites, use of personal connections, etc.) are more effective. However the problem is in violating principles in this way. In such circumstances, only the illusion of justice is created.

The victims have procedural opportunities to familiarize themselves with the materials of the criminal proceedings. At the same time, responsibility for not providing access to the materials of criminal proceedings that directly concern the victim is not provided for. However, such violations are rare. In addition, there is no requirement to justify not conducting investigative actions initiated by the defense attorneys, to inform them about the impracticality of conducting such investigative actions, etc. Accordingly, the Criminal Procedure Code of Ukraine provides for such a right of a defender, but there is no responsibility for unjustified disregard of such a right and corresponding initiatives of a lawyer, in particular as a representative of a victim.

In particular, Article 374 of the Criminal Code of Ukraine provides for criminal liability for violation of the right to defense. The article does not mention the victim, nor is there a criminal law rule that would provide for responsibility for violating the victim's right to representation. Article 397 of the Criminal Code of Ukraine provides for criminal liability for interfering with the activities of a defense attorney or a person's representative. At the same time, this corpus delicti covers only active actions and does not cover the violation of the right to protection of the victim in the form of inaction, or rather the violation of the right to representation. Therefore, it is impossible to bring perpetrators of such actions to justice.

This situation vividly reflects the problems of humane treatment of the victim, in particular, in conditions of quarantine. Victims find themselves alone with the experience of violence, the possibility of repeatedly encountering the offender, as well as the arbitrariness, inaction, and formalized approach of law enforcement agencies. This results in mistrust towards the authorities, the law enforcement system and the system of justice, and, consequently, in despair and further criminal offenses.

Impunity corrupts. Problems also arise when exercising the rights of a suspected, accused, or convicted person.

Of course, this is not only a problem of the letter of the law, but, essentially, of the work organization of the law enforcement agencies. At the same time, the work of criminal justice should be perceived holistically. Therefore, attention should also be paid to the need of reforming not only criminal law, but also criminal procedural and penitentiary legislation.

It seems that, taking into account the accompanying circumstances, not giving the victims a real opportunity to participate in the criminal proceedings, as well as not informing the victims about the progress of the investigation, can be considered as inhumane treatment within the meaning of Article 3 of the Convention (ECtHR judgments in Moldova and others v. Romaniaof 12 July 2005, application No. 64320/01; Beketov v. Ukraine of 19 February 2019, application No. 44436/09; Matushevskyi and Matushevska v. Ukraine, application No. 59461/08 of 23 June 2011). In this context, the positive obligations of the state in connection with the ratification of the Convention on the Protection of Human Rights and Fundamental Freedoms consist not only in the legislative provision of the protection of human rights, but also in the effective investigation of violations of such rights.

Realization of Principles During Implementation of Restorative and Transitional Justice

It is extremely important that restorative practices enable subjects to directly participate in solving important issues in their lives. The dialogue promotes the acceptance of the diversity of people, different perceptions of reality and decisions regarding one's own behavior, optimizes the discussion of important issues related to committing a criminal offense, in particular, regarding compensation for damage, assistance to the victim, restitution, etc.

In addition to material compensation, perhaps even more important is the "effect of presence" when meeting with the Other *(*H.U. Humbrecht), which is mostly used in restorative and dialogue practices. It is important to acknowledge the experience of violence of another, in particular the victim and the criminal. Presence implies that the parties are able to hear each other, to hear about the reasons for committing the crime and its circumstances, about remorse, about the pain of the victim of the committed crime. Dialogue facilitates the acceptance of the Other through the experience of harm caused by the crime; acceptance of differences between people, different perceptions of reality and decisions concerning one's own behavior.

However, this is not the right time to talk about restorative justice. Specialists in this field talk about transitional justice. It takes many years and a change of generations for people to forgive (if it is possible at all). In particular, this concerns dialogues of understanding with Germany regarding World War II.

Addressing the past during transitions from conflict or repressive rule encompasses various mechanisms or approaches (criminal prosecution, truth-seeking, reparations, legislative and institutional reform); highly contested and often fragile contexts ("transitions"); rapid growth of measures, goals and expectations. Scholars highlight contradictions within transitional justice, such as between the goal of justice for victims and "causal beliefs" about promoting democratic transition, as well as between "incompatible goals", such as maintaining order and promoting transformation. Broad concepts such as justice, truth, reconciliation, peace, and democracy, while controversial, require a certain degree of clarity and focus, and the relationship between the concepts also requires clearer theorization (Gready Paul and Robins Simon, 2020, p. 292).

An ecological model of social reconstruction was developed by Fletcher and Weinstein and Stover and Weinstein based on research in Rwanda and the former Yugoslavia. The authors question the role of individual criminal processes in promoting social repair and reconstruction in the context of community violence. They argue that people use war crimes trials in such settings to assert the collective innocence and victimization of their particular group. Alternatively, they propose that community violence requires a collective response that emphasizes collective guilt and responsibility for the violence. Such an approach would make it possible to recognize and start solving the problem of a deep social disorder. The "ecological" model of social reconstruction understands community and society as a social system. It is necessary to understand all aspects (social, economic, political) of this system, as well as the fact that a change in one place causes changes in another place of the system. Specifically, the authors propose a multi-layered intervention that targets individuals, families, communities, and the state to ensure social reconstruction. Interventions include: interventions at the state level; criminal proceedings (national or international); historical record commissions (truth commissions); individual and/or family psychosocial support; intervention of the community from outside; and community-based responses, among others (Fletcher, 2002).

According to the draft law On the Principles of the State Policy of the Transition Period No. 5844 of 9 August 2021, published by the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine (Proyekt Zakonu 5844, 2021), the transition period is aperiod of time when state policy is implemented, aimed at countering the armed aggression of the Russian Federation against Ukraine, restoring the territorial integrity of Ukraine and ensuring the state sovereignty of Ukraine

in the temporarily occupied territories, overcoming the consequences of the armed aggression of the Russian Federation against Ukraine, reintegration of temporarily occupied (de-occupied) territories and their inhabitants, building sustainable peace and non-repetition of occupation. The transitional justice is described as a set of measures defined by the present law and other laws aimed at overcoming the consequences of violations of the law, rights and freedoms of a human and a citizen caused by the armed aggression of the Russian Federation against Ukraine, including their restoration and compensation for the damages, ensuring accountability, justice and reconciliation, as well as protecting from similar aggression and occupation in the future.

Article 18 proposes to enshrine "Other measures carried out throughout the transition period". They include, in particular, the following: 1) search for missing persons in accordance with the Law of Ukraine On the Legal Status of Missing Persons; 2) implementation of a set of mine action measures in accordance with international humanitarian law, the International Mine Action Standards (IMAS) and the Law of Ukraine On Mine Action in Ukraine aimed at reducing the social, economic and environmental consequences caused by the armed aggression of the Russian Federation against Ukraine, which are an integral part of the state policy of reintegration of temporarily occupied (de-occupied) territories and their inhabitants, provision of their humanitarian needs; 3) commemoration of the victims of the armed aggression of the Russian Federation against Ukraine; 4) ensuring information security and overcoming the consequences of propaganda; 5) activation of national and patriotic education, primarily among children and youth; 6) protection of cultural values; 7) implementation of systematic measures for the resocialization of persons who suffered as a result of the armed aggression of the Russian Federation against Ukraine; 8) overcoming the environmental consequences of the armed aggression of the Russian Federation against Ukraine; 9) national dialogue and other dialogue processes.

The war with the Russian Federation is still going on. Therefore, it is not the right time to talk about such dialogues. However, one of the principles of restorative justice, which requires for the victim to be heard, is already being implemented. The whole world can see it, the whole world is helping. The investigation of war crimes and the work of international institutions are not progressing equally fast. Besides, the world has already done a lot.

We proceed from the fact that the victim belongs to the subjects of criminal legal relations, because the criminal offense causes damage to them. According to a broad approach, natural persons, legal entities, the state and society as a whole are considered as victims, since every criminal offense creates fear among the law-abiding part

of the population, undermines the authority of the state. Every person can become a victim.

The victim, as well as the person who committed a criminal offense (as well as the suspect, accused, convicted person) needs human treatment on the part of the state. It is especially crucial to provide the victim status in a timely manner, to provide a real opportunity to get acquainted with the progress of the proceedings, adapting to the current conditions. At the same time, the process and the law cannot be separated. The realization of procedural possibilities is a guarantee of the realization of material rights, protection and security.

However, the above does not mean equaling the role of the person who committed a criminal offense with the violation of his or her rights and guarantees. The enforcing of criminal law and protection of the rights of victims should not turn into a criminal offense against other persons. In order for the changes to occur, the state must realistically review its approaches to ensuring human security and freedom, and ensuring a balance between the rights and freedoms of the victim and the person who committed a criminal offense, as well as review its opportunities to popularize and expand alternative means of responding to criminal offenses and deviations, means of restoration of victims' rights, provision of compensation and restitution, as well as legislative regulation of these issues. In addition, it is necessary to establish the status of the victim in the Criminal Code of Ukraine. It seems that it is advisable to spread restorative, dialogue, mediation approaches and practices, as well as other forms of peaceful conflict resolution for certain categories of cases. They can become effective means of criminal law regulation.

The Principle of Personal Culpability

This principle is also called the principle of personal responsibility (*nulla poena sine culpa*). In the criminal law of Ukraine, it is closely related to the need to establish guilt and other signs of the subjective side of the crime. In the Anglo-Saxon legal system, it is related to the requirements of *mens rea*. It is important that each action and the actions of each person are qualified separately. The crimes committed by the Russian Federation in Ukraine are not the crimes of Putin alone, not only of the commanders who gave the orders. Each act has its own characteristics, so it must be evaluated individually and in accordance with the principle of personal culpable responsibility. According to the current Criminal Code of Ukraine, there is no collective responsibility. Each action is committed by a specific person.

Human behavior depends on both external (for example, an order) and internal factors. Internal (subjective) factors include the presence of guilt, i.e., the capacity to be aware of the criminal wrongfulness of an act.

The specifics of the commander-in-chief's responsibility are also interesting. As aptly noted by V.O. Navrotsky back in 2014, "It is not so important for a legal assessment that Mr. Putin personally did not cross the borders of Ukraine as part of Russian military units. After all, this does not mean that he did not plan, prepare or solve an aggressive war or military conflict. The actions of the commander-in-chief are different from those of privates and sergeants, officers and generals. Moreover, according to a rule known since the days of the Roman law, the one who should have stopped another and failed to do so is liable to the same extent as the one who acted. Therefore, Putin is responsible as an executor for the actions committed by his subordinates" (Navrotsky, 2014).

The criminalization of wartime collaboration (Article 111-1 of the Criminal Code) in accordance with Law No. 2108-IX of 3 March 2022 also does not contradict this principle, since a person must be aware that such activities contribute to the war crimes committed by the aggressor country. Criminal liability for wartime collaborationis provided for in the criminal legislation of other countries, in particular the Criminal Code of Lithuania.

When determining the degree of punishment for a war crime, the court must take into account that any punishment must first of all "reflect the guilt of the convicted." At the same time, the court, in addition to the guilt and gravity of the crime, takes into account: the degree of damage caused to the victims and their families; the nature of "illegal conduct" and the means used to commit the war crime; "degree of intention"; factors related to the method, time and place of the crime; age, level of education, social and economic status of the person found guilty; mitigating and aggravating circumstances. According to E.S. Logvinenko, the provisions of the Rome Statute of the International Criminal Court clearly demonstrate the development of international criminal law and the qualitative improvement of the legal certainty of its norms in terms of not only the criminalization of acts (in this case—war crimes), but also the establishment of punishments for their commission, as well as in determining the circumstances which are to be taken into account when sentencing, in other words—in the format of the generally recognized principle of criminal law *nullum crimen sine lege – nulla poena sine lege* (Logvinenko, 2019, p. 272).

As Stephanie Block points out, some jurisdictions, including the United States, England and Wales, France, and Denmark, provide for some form of strict liability, which allows a person to be held criminally liable without having to prove their guilt. The European Court of Human Rights accepts such restrictions on the basis of the presumption of innocence if they are limited to "reasonable limits of the restric-

tion that take into account the importance of what is at stake and preserve the rights of the defence" (Stefanie Bock, 2013). Given that international criminal tribunals are tasked with prosecuting the "most serious" crimes of concern to the international community as a whole, this would be disproportionate and therefore incompatible with the rights of the accused to establish a form of strict liability in international criminal law. In accordance with these considerations, the International Criminal Tribunal for the former Yugoslavia qualified *nulla poena sine culpa* as a "basic presumption," "the basis of criminal responsibility" and "a general principle of law." According to the Nuremberg International Military Tribunal, the principle of personal guilt serves two main functions: (1) to avoid mass punishment, i.e., to individualize guilt and responsibility, (2) to "ensure that innocent people are not punished," i.e., to protect and complement the presumption of innocence (Stefanie Bock, 2013, p. 186).

The presumption of personal guilt and the duty to know the law in light of Article 32 of the ICC Statute regarding criminal conduct is not required. In other words, "knowledge of the law defining the offense is not in itself an element of the crime." Returning to the ICC Statute, Article 30 requires that the material elements of the crime are committed with intent and knowledge, and thus links the mental element to the *actus reus*, i.e., the objective elements of the crimes, as set out in Articles 6-8 bis of the ICC Statute. Accordingly, knowledge is defined as "awareness that a circumstance exists or a consequence will occur in the ordinary course of event," which clearly refers to a factual, not legal, situation.

For example, a soldier shoots at a person he believes to be an enemy combatant, but who is actually a civilian. Because he does not know the civil status of the victim, he is not actually aware that he is shooting at a protected person and therefore does not meet the mental element required by Article 8(2)(a)(i) of the ICC Statute. If, on the other hand, a soldier shoots at a civilian with his full knowledge of the actual situation, but mistakenly believes that the law of armed conflict allows him to do so, he nevertheless knows that he is shooting at a civilian. His error of law does not affect his *mens rea* and thus does not exempt him from criminal liability.

I wonder if the rule of *error iuris nocet* can still be reasonably applied in international criminal law. On the face of it, it seems obvious that everyone should be aware that they are committing a legal crime when they commit the *actus reus* of one of the "worst crimes known to mankind." While it is true that no one can reasonably claim that they did not know that the systematic killing of innocent civilians is a criminal act, the provisions on war crimes—in particular, their complex interplay with the often rather imprecise rules of international humanitarian law—are much more difficult to assess.

Closely related to the principle of personal culpability is the issue of collective responsibility, especially in wartime conditions.

The Disciplinary Statute of the Armed Forces of Ukraine, approved by the Law of Ukraine of 24 March 1999 No. 551-XIV provides for certain features of the commander's responsibility for the actions of subordinates, but this is not criminal responsibility. The draft of the new Criminal Code of Ukraine solves this issue in a different way.

The Nuremberg trials have already dealt with cases of crimes against humanity. Officials and military personnel must understand the concept of a criminal order, and therefore they must not carry it out. For the sake of justice, it should also be noted that the servicemen of the Russian Federation carry out criminal orders not only out of fear for their own lives and future, but also for their families. The government of the Russian Federation has all the information about them and their relatives, and therefore it can coerce them in this way.

Hence, in addition to offering an opportunity of surrendering safely instead of carrying out criminal orders, it is also necessary to think about guarantees for the families of such servicemen.

Presumption of innocence. The Supreme Court, in its decision (7 June 2022, case No. 461/4421/18, proceeding No. 51-2847km21), formed a legal position regarding perjury (Article 384 of the Criminal Code). PERSON_1 was accused of giving false testimony regarding the circumstances of aroad accident involving Mercedes and Opel cars, in which one of the drivers was killed. The testimony was false in the scope that, during the interrogations as a witness, PERSON_1 reported the circumstances which suggested that PERSON_3 was driving the Mercedes car at the time of the accident, and not PERSON_2, as the pre-trial investigators believed. In paragraph 14 of the decision of the Supreme Court, it is noted that in order to be found guilty of the crime provided for in Article 384 of the Criminal Code, the prosecution must prove that the testimony of the witness (1) is unreliable, i.e., that it contains false information about the event that is the subject of the investigation and/or trial, and (2) the witness gave such information knowing it to be false.

According to Article 6 § 3(d) of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone charged with a criminal offense has the right "to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

On 7 December 2021 the Supreme Court of Ukraine (case No. 461/4425/18, proceedings No. 51-2424km21) considered the issue of the prosecution of a person suspected of a crime provided for in the Article 384 of the Criminal Code of Ukraine. The Supreme Court concluded that the courts' evaluation of evidence relating to the guilt or innocence of a person in other criminal proceedings contradicts the principle of presumption of innocence.

According to Part 3 of Article 62 of the Constitution of Ukraine, and the provisions of Article 17 of the Criminal Procedure Code, the prosecution cannot be based on evidence obtained illegally, as well as on assumptions; all doubts regarding the guilt of a person are interpreted in his or her favor.

Regardless of the seriousness of the charges and the principle of presumption of innocence, the requirements for the examination of evidence must be carefully addressed. Ensuring a fair trial is an indispensable requirement of any trial in a legal democratic country.

The Principle of Inevitability of Criminal Liability

On 11 April 2022, the information about using chemical weapons in Mariupol was confirmed. On 23 April 2022, on Easter Saturday, rockets were fired at Odesa. As a result, nine civilians died, including a three-month-old baby, and apartments were destroyed. On 24 April, Easter Sunday, Donetsk and Luhansk Provinces were also shelled, including churches there. On 9 May, a rocket hit a shopping mall in Odesa. Due to the curfew, there were security guards in it who were injured, windows were blown out by the blast wave in residential buildings near the shopping mall. Russian leadership called it fake news.

International institutions and the state must respond appropriately to all these crimes.

On 28 February 2022, the Office of the Prosecutor of the International Criminal Court began an investigation into the situation in Ukraine. On 13 April 2022, the prosecutor of the International Criminal Court visited Bucha in Kyiv Province as a place where war crimes were committed. But the Russian government continues to insist that the footage showing the corpses in Bucha has been staged by the United States.

The Ukrainian Helsinki Human Rights Union (UHHRU) summarized the events that took place in Odesa Province during the 121 days of the full-scale Russian-Ukrainian war, from 24 February to 24 June 2022. During the four months, Russian missiles damaged at least 210 objects of civilian infrastructure in Odesa. Almost half were residential buildings. 131 episodes were documented and entered into the database. Such data, as part of the global initiative "Tribunal for Putin" (T4P), was collected for the period from 24 February to 24 June 2022 by the Odesa regional organization of the NGO Committee of Voters of Ukraine, which documents international crimes (genocide, crimes against humanity, war crimes), probably committed by the Russian occupants in Odesa Province. The vast majority of events are missile strikes by various types of land-based missiles, as well as using warships and

strategic aircraft. It is worth noting separately the mine-lying in the Black Sea by the Russian military. After a storm, sea mines are torn from their mounts and driven to the coast, where they self-detonate or are detonated by explosive devices. During the 121 days of the war, there were already 12 such episodes, and one person died as a result. As of 24 June, 12 people were killed and 60 injured (*UGSPL*, 2022).

According to operational data, 39 people (including four children) were killed and more than 100 injured as a result of the missile attack on the Kramatorsk train station on 8 April 2022. This was a targeted attack on the passenger railway infrastructure, the residents of the city, as well as people who were awaiting evacuation.

On 27 June 2022, the Amstor shopping center in the city of Kremenchuk, in Poltava Province, came under rocket fire. The enemy hit with a Kh-22 missile. Several hundred people were in the shopping and entertainment center at that time. As a result of the shelling, 18 of them died, 59 sought medical help, and 25 were hospitalized (Zaborona, 2022). This once again confirms the terrorist orientation of the Russian Federation, the motivation to commit war crimes, violation of the customs of war and extermination of the Ukrainian people.

In the eveningof 1 July 2022, the occupiers launched a rocket attack on the village of Serhiivka in Bilhorod-Dnistrovsky District, Odesa Province. One of the rockets hit a nine-story building, others destroyed a recreation center. According to the Operational Command "South," Russian invaders hit the Belgorod-Dniester District of Odesa Province with three Kh-22 missiles launched from the Black Sea. As a result of the attack in Serhiivka, 21 people died. On 7 July, a 53-year-old employee of a recreation center who was injured during a Russian missile attack on Serhiivka died in hospital. Thus, the number of death sincreased to 22. The Security Service of Ukraine has launched an investigation into the rocket attack on civilian objects in Odesa Province. Proceedings have been opened under Part 2 of Article 438 of the Criminal Code of Ukraine (violation of the laws and customs of war) (Kivva, 2022).

On 14 July 2022, rockets were fired at the downtown of Vinnytsia. It is known that the office center and a parking lot were hit with Russian 3M-14E Kalibr cruise missiles. As a result of the attack, 25 people died, 197 were injured and eight were missing (Zaborona, 2022).

All committed crimes must be carefully registered and qualified in accordance with other principles of criminal law.

In the literature, the question of the "main principle" often arises. It seems that there is no such principle, because the main idea is their complex and balanced application to subjects of criminal law relations. But the working group on the development of criminal law of the Commission on Legal Reform under the President of Ukraine formulated this provision as a principle. In particular, M.I. Khavroniuk notes that "The main principle should be considered in the provisions of the draft

of the Criminal Code of Ukraine: 'this Code is applied in accordance with the principles defined in its articles 1.2.1–1.2.9,' and 'the draft of the Law on Amendments to this Code is considered by the Verkhovna Rada of Ukraine only in the presence of the conclusion of the Plenum of the Supreme Court of Ukraine regarding its accordance with the requirements of Articles 1.2.1–1.2.9 of this Code'" (Khavroniuk, 2020). One can fully agree with this, because this provision reflects the need for systematic application of principles both in law-making and law enforcement, in peacetime and wartime alike.

The Principle of Equality and Non-Discrimination

According to Article 24 of the Constitution of Ukraine, "citizens have equal constitutional rights and freedoms and are equal before the law. There can be no privileges or restrictions based on race, skin color, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, language or other characteristics." The prohibition of discrimination is provided for in Article 14 of the ECHR, which guarantees equality in the use of other convention rights.

In 2000, Protocol No. 12 to the Convention was opened for signature. It extends the prohibition of discrimination and creates guarantees of equality in the enjoyment of any rights, including the rights provided for by the national laws of member states. For today, not all EU member states have ratified this Protocol. The explanatory note to the Protocol states that its task is to strengthen protection against discrimination as a basic component of human rights guarantees. The protocol was the result of a discussion of ways to ensure, in particular, gender and racial equality (*Posibnyk z yevropeys'koho antydyskryminatsiynoho prava*, 2011).

Although equality is proclaimed by the Constitution, people are not equal in their rights and access to justice. Inequality is manifested in age, gender, social status, place of residence, etc. Regarding this issue, in particular, the following directives were adopted: the Employment Equality Directive, which introduced a ban on discrimination in employment on the basis of sexual orientation, religious beliefs, age and limited physical capabilities, and the Racial Equality Directive, which established a ban on discrimination on the basis of race and ethnic origin in the context of employment, as well as in matters of access to the welfare system, social protection, goods and services.

These directives significantly expanded the scope of EU anti-discrimination law and confirmed that guarantees of equal access to areas such as health care, education, and housing are necessary for individuals to fully use their opportunities on the labor market. In 2004, with the adoption of the EU Gender Directive on equal-

ity in access to goods and services, the prohibition of discrimination on the basis of gender extended to the sphere of goods and services.

At the same time, with the passage of time, other manifestations of inequality are also considered as forms of discrimination, in particular discrimination based on age (ageism), sex or gender (women and men), poverty, origin, language, appearance, etc. Article 161 of the current Criminal Code of Ukraine provides for criminal liability for violating the equality of citizens despite their race, nationality, religious beliefs, disability and other grounds.

Women have been given the opportunity to be conscripted and take direct part in hostilities. According to the Law of Ukraine On Amendments to Certain Laws of Ukraine Regarding Ensuring Equal Rights and Opportunities for Women and Men During Military Service in the Armed Forces of Ukraine and Other Military Formations No. 2523-VIII of 6 September 2018, part 12 of Article 1 of the Law of Ukraine On Military Duty, Communications and Military Service No. 2232-XII of 25 March 1992 was supplemented with Paragraph 2 of the following content: "Women perform military duty on an equal basis with men (except for cases provided for by legislation on maternity and childhood protection, as well as the prohibition of discrimination on the basis of gender).

However, it is important to leave it as an option and a right, not an obligation, for every woman. A person must have a choice in this respect.

Article 4.12.4 of the draft of the new Criminal Code of Ukraine proposes to provide for criminal liability for discrimination. According to this article, "person who directly or indirectly on the basis of race, skin color, political, religious or other beliefs, gender, disability or state of health, ethnic or social origin, property status, place of residence, language or on other basis: a) limited the equal right to access to public service or service in local self-government bodies, b) violated the equality of the rights of women and men, c) limited another constitutional right of a person or citizen, or d) established direct or indirect privileges for a person, commits a crime" (*Draft of the new Criminal Code of Ukraine*, 2022).

Criminalization of the above mentioned acts is a positive step. Various types of discriminatory treatment are also reflected in the current practice of the ECtHR. In the case Moldova and Others v. Romania (application No. 64320/01 of 12 July 2005), the ECtHR noted that discrimination on the basis of race itself can be considered as treatment that degrades human dignity, and therefore such discrimination is a violation of Article 3 of the Convention. In Lăcătuş v. Switzerland, the Court found that the city of Geneva had violated Article 8 of the ECtHR (respect for private and family life) against a young Roma woman by fining and eventually imprisoning her for begging. In weighing the interests, the Court found that the applicant was

in a clearly vulnerable position as a person who was poor, illiterate and completely without income. Therefore:

> the Court considered that the penalty imposed on the applicant had not been proportionate either to the aim of combating organised crime or to the aim of protecting the rights of passers-by, residents and shopkeepers. The applicant was an extremely vulnerable person who had been punished for her actions in a situation in which she had in all likelihood had no choice other than to beg in order to survive. In the Court's view, the penalty imposed had infringed the applicant's human dignity and impaired the very essence of the rights protected by Article 8, and the State had thus overstepped its margin of appreciation in the present case.

In considering the state's argument to protect the rights of passers-by and business owners, the Court ruled that "the motivation to make poverty less visible in the city and attract investment" is not a legitimate motivation for measures that limit human rights (Timofieieva, 2022). Ineffectiveness of less restrictive means convincingly was not demonstrated, either. In fact, this case demonstrated poverty discrimination. Ageism—discrimination on the basis of belonging to a certain age group, widespread in both formal and informal spheres of social life—manifests itself in the willingness to adequately perceive and cooperate only with people who meet certain age criteria. The concept of ageism was proposed by the American gerontologist Robert Butler (National Institute on Aging) in 1969 and was initially associated with age stratification and the normative values of society—productivity and effectiveness. Ageism is accompanied by the following processes: 1) labeling (identification of a person and an age group); 2) stereotyping, i.e., a negative assessment of the personal qualities of a certain age group; 3) discrimination (violating a person's rights and freedoms due to his or her belonging to an age group).

Ageism is based on the concept of norm and deviation; representatives of a certain age group consider themselves to be the norm, and others to be a deviation. Such discrimination, like any delinquent behavior, often escalates into criminal offenses. Discrimination against youth is connected, in particular, with the fact that youth is associated in other age groups with immaturity, oppositionality, irresponsibility, inexperience, lack of culture, etc. Labeling and stereotyping in this case causes the perception of young people as not fully capable, which leads to a lower level of remuneration (for example, searching for employees "under 25 years of age with work experience" in recruitment agencies, etc.).

This leads to the fact that excluded groups look for other ways of earning, including shadowy and criminalones.

Discrimination is mostly related to the rejection of the Other. But national legislation does not exhaustively reflect modern forms of discrimination.

It is important to use and popularize mediation and restorative practices to establish dialogue between different generations. Taking into account differences between people, their natural and social characteristics is not discrimination. The difference between people must be taken into account in criminal-legal qualification of an offence or in punishment. This is achieved, in particular, by implementing the principles of individualization and differentiation of criminal responsibility, humanism and other principles of criminal law.

Proportionality

Since the active phase of the war was not expected by the Government, after the full-scale invasion, a number of changes began to be made in the legislation, including the criminal one.

According to the Law On Amendments to the Criminal Code of Ukraine on Increasing Liability for Looting No. 2117-IX of 3 March 2022, the qualifier "in conditions of war or a state of emergency" was added to some articles of the Criminal Code. This, in particular, concerns the acts of theft (part 4 of Article 185 of the Criminal Code), robbery (Part 4 of Article 186, Part 4 of Article 187 of the Criminal Code), extortion (Part 4 of Article 189 of the Criminal Code), appropriation and wasting property or acquiring it by abuse of one's official position (Part 4 of Article 191 of the Criminal Code), etc. Here, we should once again refer to the expediency of introducing standard sanctions and placing qualifying features precisely in the General part of the Criminal Procedure Code of Ukraine, proposed by the draftspersons of the Criminal Procedure Code. If the General Part were structured in this way, changes would be much easier to make and it would be easier to track the impact of certain qualifying features on specific groups of articles. Likewise, it would be more logical to explain the purpose of this or that punishment.

These are important changes, since in many Internet sources theft during war is classified as *looting*. Looting is provided for in Article 432 of the Criminal Code of Ukraine. It involves stealing things from the killed or wounded on the battlefield. But such amendments contradict the title of the Law on Increasing Liability for Looting. After all, such amendments refer not only to looting, but also to ordinary criminal offenses against property, but "in conditions of war or a state of emergency." Article 432 of the Criminal Code of Ukraine was also amended pursuant to the Law No. 2117-IX of 3 March 2022. Before these amendments, the sanction of this

article provided for penalty of imprisonment for a term of 3-10 years, as compared to 5-10 years now.

Such changes violate the principle of proportionality, because theft value exceeding the minimum amount (0.2 non-taxable minimum income of citizens, which as of 2022 is equal to UAH 248.10) already qualifies as a crime in accordance with Part 4 of Article 185 of the Criminal Code of Ukraine. Obviously, it is disproportionate. In fact, the justice system is ignoring the corpus delicti provided for in parts 2 and 3 of that article, because in the reality of martial law, theft, regardless of whether it was committed repeatedly or by a group of persons, or involved breaking into someone's home, or caused significant damage—meets the criteria of Part 4 of Article 185 of the Criminal Code of Ukraine. This is also a violation of the principle of *differentiation of criminal liability***.** Ukrainian researchers are also paying attention to this problem, in particular Y.A. Ponomarenko.

As it seems, in order to solve this situation, it is necessary to provide this corpus delicti with additional circumstances, in particular, the commition of such a crime by a military serviceman, or the damage of a certain value, or other aggravating circumstances.

According to B. Bernard, the codification of the principle of proportionality will be an important step in the development of the law of war, filling a significant gap in the existing legislation on civil protection. Although the commanders will sometimes find it difficult to apply the principle of proportionality during wartime, they will generally be well informed about the desired military advantage, the means of warfare, and the military objectives, and this information will enable them to weigh the expected military gains against the likely civilian casualties. All commanders should be criminally liable for disproportionate acts committed as a result of their failure to exercise due care or willful or reckless conduct. If violations of proportionality are treated as war crimes and actively prosecuted, there is a reason to hope that proportionality can become integral part of military decision-making rather than an abstract principle of civilian protection (Brown, Bernard, 1976).

The Verdict of the Primorsky District Court of Odesa of 12 July 2022, Case No. 522/7115/22, Proceedings No. 1-kp/522/1823/22, approved the agreement concluded on 3 June 2022 on the admission of guilt between the suspect PERSON_1 and the prosecutor in criminal proceedings, registered in the Unified Register of Pretrial Investigations under No. 22022160000000105 dated 26 May 2022. PERSON_1 was found guilty of committing criminal offenses provided for in Part 2 of Article 109 and Part 1 of Article 110 of the Criminal Code of Ukraine for the distribution of posts on the *Odnoklassniki* social network service with calls for the overthrow of the constitutional order and non-recognition of the Ukrainian government. The posts also contained a map of Ukraine with certain territories of Ukraine, namely Odesa,

Mykolaiv, Kherson, Donetsk, Luhansk, Zaporizhzhia, Dnipropetrovsk, and Kharkiv provinces and the Autonomous Republic of Crimea, depicted as parts of the Russian Federation, and public calls for the overthrow of the constitutional order. On the user's profile, under the specified publication, which he made available from 30 March 2022 to 19 May 2022, there were multiple views, comments, etc., which indicates that other persons have read the mentioned information.

Taking into account the fact that there are circumstances mitigating the punishment, namely, his genuine remorse, no previous convictions, and absence of circumstances aggravating the punishment, the court imposed punishment for the criminal acts provided for in Part 2 of Article 109 of the Criminal Code of Ukraine—two years of imprisonment without confiscation of property and Part 1 of Article 110 of the Criminal Code of Ukraine—four years of imprisonment without confiscation of property. According to Article 75 of the Criminal Code of Ukraine, the court set a probationary period of two years. In accordance with Part 1 of Article 76 of the Criminal Code of Ukraine, the court imposed the following duties on PERSON_1: "to periodically report to the authorized probation body; notify the authorized probation body about changing place of residence, work or study; reading the book *History of Ukraine-Rus*' by Mykhailo Hrushevskyi."

It seems that the verdict is quite individualized. Perhaps this person came under the influence of propagandists, of whom there are many on the Internet. Also, he made only a few posts, and according to the opinion of the court, he expressed remorse. Perhaps the reading of the book will bring more benefit than the actual punishment in the form of imprisonment.

The verdict of Primorsky District Court of Odesa of 4 July 2022, Case No. 522/5652/22, Proceedings No. 1-kp/522/1583/22 was similar. The court sentenced a man to a suspended sentence and to reading the works of Ukrainian writers about Soviet repressions for advocating the occupation of the south of Ukraine and the creation of "Novorossiya." Starting from 14 February 2022, the man was spreading pro-Russian propaganda on the Russian social network *Odnoklassniki*, which is blocked in Ukraine, publishing calls to fight against the "Kyiv Nazi government of drug addicts" and to unify the southern and eastern provinces into "Novorossiya." He was charged with publishing calls to violently overthrow the government of Ukraine and to encroach on its territorial integrity.

During the court hearings, the accused admitted his guilt, and had no prior criminal record. The court did not establish any aggravating circumstances. However, as noted by the court, shortly after the publication, in connection with the military aggression of the Russian Federation against Ukraine, the Decree of the President of Ukraine No. 64/2022 of 24 February 2022 imposed the martial law. Currently, the military aggression continues, and in the specified conditions, the imposition of

the least severe punishment cannot be appropriate for the committed act. The task of criminal proceedings is to protect the individual, society and the state. However, criminal proceedings cannot have the character of persecution. The Constitution of Ukraine guarantees the right of a person to freely choose his or her views, but their expression can take place only within the limits that are not prohibited by law. The court believes that the main purpose of imposing punishment for crimes against the state is the education of a person as a part of this society. Excessively severe punishment will not have the consequences that would lead to a decrease in the number of ideologically motivated crimes. Taking into account the above and the gravity of the crime, the court believes that the goal of punishment can be achieved by probation. As one of his main duties during the probation, the court obliged PERSON_1 to read the works of Ukrainian writers, namely *Tigrolovi* by Ivan Bagryany, *Yellow Prince* by Vasyl Barka and *Maria* by Ulas Samchuk. All of them are about the Soviet repressions against Ukrainians.

In the opinion of the court, this will bring the required educational effect, and will be necessary and sufficient for the correction and prevention of new crimes on the part of the accused. Considering the difficult financial situation of the accused and taking into account the requirements of Article 77 of the Criminal Code of Ukraine, the court decided against additional punishment in the form of confiscation of property.

These are not isolated examples of judicial practice regarding the imposition of obligation on the accused to read books under Article 76 of the Criminal Code of Ukraine. It seems that it might have a good remedial potential. But I would also like to see analytics on these issues: How successful such requirements were in the opinion of the probation authority? Did the accused really read the relevant books? Did they understand what they read? How did it affect them later and how did the probation authority check it?

Non bis in idem

Article 4 of Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms says: "No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of the State." According to Article 61 of the Constitution of Ukraine, "No one can be brought twice to criminal responsibility of the same type for the same offense." In accordance with Part 3 of Article 2 of the Criminal Code of Ukraine, this principle is enshrined in relation to criminal liability.

The principle of *non bis in idem* (*ne bis in idem*) should be considered in three aspects: as a prohibition of repeated criminal prosecution and punishment of a person on the territory of the same state; as a prohibition of criminal prosecution of a person on the territory of one state, if such a person was convicted or acquitted for the same act on the territory of another state; and as a prohibition of trial in a national court (and in some cases—in an international one), if such a person has been convicted or acquitted of the same act by an international criminal court or tribunal, and vice versa. In the first aspect, it will not be considered a violation of the principle of *non bis in idem*, if the facts upon which a person was convicted or acquitted indicate the presence of signs of another crime; if the person was not convicted or acquitted in criminal proceedings; if there is a reopening of a trial due to exceptional circumstances, such as the discovery of evidence that did not exist or was not known at the time of the acquittal.

The application of the international principle of *non bis in idem* is largely limited by the sovereignty of each state, when a certain state considers it necessary to apply its own criminal law as the best means of protecting its own interests. The principle of *non bis in idem* is applied in the International Tribunal for the former Yugoslavia and the International Criminal Court in relation to its own decisions (prohibition of retrial if a person is convicted or acquitted of the same acts by the ICTY or the ICC, respectively), and regarding decisions of national courts (prohibition of retrial if a person is convicted or acquitted of the same acts by a national court). It is similarly applied by national courts in the presence of a verdict of the ICTY or the ICC (Gutnic, 2009, p. 37).

The implementation of the principle *non bis in idem* is quite complex and is also related to other principles, for instance the principle of accuracy. One of the main requirements in implementation of the principle of ***accuracy*** is correctly choose the criminal law norm.

First, military and war crimes should be distinguished, as well as crimes committed under martial law. According to Article 401 of the Criminal Code of Ukraine, criminal offenses provided for by the Criminal Code of Ukraine against the procedure established by law for carrying out or completing military service, committed by military personnel, as well as conscripts and reservists during military service, are recognized as military criminal offenses.

The concept of war crimes, as mentioned before, is defined by international treaties, in particular the Rome Statute. Therefore, war crimes concern not only a separate state, but the entire international legal order.

The Rome Statute of the International Criminal Court of 17 July 1998 (the Rome Statute) contains provisions for crimes against humanity, war crimes, and crimes

against aggression. In particular, war crimes are provided for in Article 8 of the Rome Statute of 17 July 1998.

Chapter XX of the Criminal Code of Ukraine provides for liability for criminal offenses against peace, human security and international legal order (Articles 436-447 of the Criminal Code). Among them, in particular: propaganda for war (Article 436 of the Criminal Code), planning, preparation, initiation and waging of an aggressive war (Article 437 of the Criminal Code), violation of the laws and customs of war (Article 438), use of weapons of mass destruction (Article 439), genocide (Article 442), ecocide (Article 441), etc. The draft of the new Criminal Code of Ukraine (as of 18 May 2022), which has been developed by a group of experts since 2019, also provides for criminal liability for crimes against the foundations of international law and the international legal order, in Chapter XI. It is structured as follows: Section 11.1. Genocide, Section 11.2. Crimes Against Humanity, Section 11.3. Crime of Aggression, Section 11.4. War Crimes, Section 11.5. Crimes Against the International Legal Order (*Proyekt tekstu novoho KK Ukrayiny*, 2022). The draft Law on Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine No. 7290 of 15 April 2022 contains important provisions regarding the criminalization of certain war crimes, crimes against humanity, crimes of aggression, and criminal omissions by military commanders, however, the state has not accepted it (as of 29 June 2022) (Proyekt Zakonu pro vnesennyazmin do KK Ukrayiny No 7290, 2022).

According to Article 438 of the Criminal Code (Violations of the Laws and Customs of War), cruel treatment of prisoners of war or the civilian population, deportation of the civilian population for forced labor, looting of national assets in the occupied territory, use of means of warfare prohibited by international law, and other violations of the laws and customs of warprovided for by international treaties ratified by the Verkhovna Rada of Ukraine, as well as issuing the order to commit such actions, are punishable by a term of imprisonment of 8-12 years.

This article is quite complex and includes a number of general crimes, including rape, torture and robbery. Problems arise regarding the solution of the competition between these criminal law norms.

Rape. Although rape is one of the most common war crimes, it is rarely dealt with by international courts. Around 20,000 rapes of Kosovo women were carried out by Serbian soldiers and police during the conflict, but only one has been prosecuted to date and is currently on appeal (Karcic, Domi, 2022). Viewing rape in the context of wartime genocide has to do with reflecting on women's desire to reproduce in the future. However, only six men were found guilty of crimes committed during the Kosovo war by the International Criminal Tribunal for the former Yugoslavia (ICTY).

The first international treaty to explicitly prohibit sexual violence was the Hague Convention of 1907. The Statute of the International Criminal Tribunal for the former Yugoslavia (1993) included rape as a crime against humanity alongside other crimes such as torture and extermination when committed during armed conflict and directed against the civilian population. In 2001, the ICTY became the first international court to convict a person charged with rape as a crime against humanity. The International Criminal Tribunal for Rwanda (ICTR, 1994) also recognized rape as a war crime and a crime against humanity. The Rome Statute of the International Criminal Court, in force since July 2002, defines rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or "any other form of sexual violence of comparable gravity" as crimes against humanity when committed as a widespread or systematic attack.

It is encouraging that such a provision is included in Clause 6 of Article 11.4.5. of the draft of the new Criminal Code of Ukraine (as of 18 May 2022). In particular, a person who, in accordance with the policy of a party to an armed conflict that provided for a large-scale or systematic violation of the norms of international humanitarian law, seriously violated such norms that apply both in international armed conflicts and in armed conflicts of a non-international nature: 1) tortured a person or carried out other inhuman treatment of that person, 2) inflicted severe violence against a person, 6) raped, forced into sexual slavery, forced into prostitution, forced pregnancy, forced sterilization or other form of sexual violence, which constitutes a serious violation of Article 3 common to the four Geneva Conventions.

Since the beginning of Russia's armed aggression against Ukraine, the hotline of the Commissioner for Human Rights has received information about violent crimes committed by the Russian Federation, including those against sexual freedom and sexual integrity of a person (Mazurenko, 2022). In February 2022, the ICC announced that it would begin an investigation into alleged war crimes, including rape, committed in Ukraine since 2013.

Secretary General of the Council of Europe Marija Pejčinović Burić emphasized the need to protect women and girls during the war in Ukraine. She stressed that trying to escape conflicts, women and girls become even more vulnerable and at risk of violence, sexual violence and rape. The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) complements the 1951 Geneva Convention relating to the Status of Refugees and requires its 35 member states to develop gender-sensitive reception and support services for asylum seekers (*Newsroom*, 2022). This situation calls for viable humanitarian corridors, which are essential for the safe passage of thousands of displaced persons fleeing death and destruction. These are mainly women and

children. Also, the government should focus its attention on the implementation of international standards in this area.

In the context of this principle, the ECtHR decided in the case Tsonyo Tsonev v. Bulgaria (application no. 35623/11). In November 1999, a fight broke out between Tsonyo Ivanov Tsonev and G.I. in the latter's house. Administrative proceedings were immediately opened and ultimately a fine of 50 Bulgarian levs was imposed. But criminal proceedings were also opened against Tsonev, and only in December 2010 he was sentenced by a court to 18 months of imprisonment. The prosecution assumed that the criminal proceedings were conducted in relation to the physical injuries the man inflicted on the victim, while the administrative proceedings were opened in connection with the fact that he entered the victim's house and physically assaulted him. The prosecutor believed that this was not duplication, but rather a double proceeding in connection with the combination of the two crimes. Mr. Tsonev contested such decisions and appealed to the ECtHR. Referring to Article 4 of Protocol No. 7 (right not to be tried and punished twice), he complained that he had been tried and punished twice for the same crime.

The ECtHR drew attention to the fact that the administrative and criminal proceedings essentially pursued the same goal, namely, punishment for the applicant's socially unacceptable behavior in the context of the dispute. The facts established as part of the administrative offense proceedings were not taken into account in the criminal proceedings. Only evidence gathered during the criminal investigation was used there. The administrative fine was also not taken into account by the criminal courts when sentencing. Therefore, the ECtHR found that there was not a sufficiently close connection between the administrative and criminal proceedings. Therefore, they cannot be considered as part of an integrated scheme of sanctions in domestic legislation to punish the socially unacceptable behavior of the applicant. Thus, Mr. Tsonev was brought to court and punished twice for the same offense in violation of his right in accordance with the principle of *ne bis in idem* and the authorities did not admit their inability to protect this right. Thus, Article 4 of Protocol No. 7 of the Convention on the Protection of Human Rights and Fundamental Freedoms was violated.

The classification of an act simultaneously as a general and a war crime may also result in similar problems. Therefore, it is necessary to determine the qualifications and jurisdictional powers of the relevant institution.

Article 20(1) of the Statute of the ICC prohibits a new trial by the ICC against a person for an act for which such a person was found guilty or acquitted by the ICC (a similar article of the Statute of the Tribunal (Article 10) does not prohibit the Tribunal from re-prosecuting a person who was convicted or acquitted. Thus, the Statute of the Court, in comparison with the Statute of the Tribunal, relates another

component to the principle of *ne bis in idem*: the prohibition of retrial by the Court of a case against a person who was convicted or acquitted by the Court for the same act). Such re-examination is allowed only in the case of appeal and revision of the decisions of the International Court of Justice on the grounds and in the manner provided for in Part 8 of the Statute of the International Court of Justice. In the event that a person was found guilty of committing a crime or was acquitted by the ICC for the crime provided for in Article 5 of the Statute of the ICC (this article provides for a list of crimes that fall under the jurisdiction of the Court; such crimes include: a) the crime of genocide; b) crimes against humanity; c) war crimes; and d) a crime of aggression), then the case against such a person cannot be further considered by another court. It should be emphasized that, unlike the Statute of the ICTY, which provides for the prohibition of repeated criminal prosecution by a "national court" (Article 10(1)), the Statute of the ICC (Article 20(2)) establishes the prohibition of repeated criminal prosecution "by another court." The latter category, in addition to national courts, should also include international criminal courts and tribunals. Clause 3 of Article 20 of the Statute of the International Court of Justice provides for the application of the principle of *ne bis in idem* of the International Court of Justice in the event that a person has been convicted or acquitted by "another court." According to Article 20(3) of the Statute of the International Criminal Court, if a person was convicted or acquitted by another court for an act that is also prohibited by the content of Article 6 (genocide), Article 7 (crimes against humanity) and Article 8 (war crimes) of the Statute of the ICC, then the case against such a person cannot be considered by the ICC for the same act. An exception to this norm is provided for those cases where the proceedings in another court: a) were intended to insulate the relevant person from criminal liability for crimes falling under the jurisdiction of the ICC or b) for other reasons, were not conducted independently and impartially, in accordance with norms of due process of law, recognized by international law, and were conducted in such a way that, under the existing circumstances, did not meet the purpose of bringing the person in question to justice (Gutnik, 2009, p. 37).

O.I. Moiseev claimed that the repeated prosecution of a person under the Criminal Code of Ukraine for crimes committed outside its borders does not contradict national and international law. At the same time, the expediency of this is indicated only in those cases where such crimes encroach on the interests of Ukraine or legal entities registered in Ukraine, or the rights and freedoms of citizens of Ukraine and stateless persons permanently residing in Ukraine, and if the final decision, which was adopted in relation to these persons by the competent body of a foreign state, clearly does not correspond to the severity of the committed act (Moiseev, 2007, p. 11).

It also does not correspond to the principle of individualization of criminal responsibility. It is necessary to be careful with implementation of the principle of qualification accuracy. Legal qualification directly affects the issue of bringing the perpetrators to justice, and the use of incentives and post-criminal measures. It is necessary to distinguish between theft in the conditions of martial law and looting. Rape during war must be seen in the context of genocide of a nation in connection with the purpose of denying women the desire to give birth in the future, with the intention of terrorizing the population, destroying communities and changing the ethnic composition of the next generation. Forced sexual intercourse during war is also used to deliberately infect women with life-threatening diseases. It is also a tactical measure during war aimed at achieving the goals of the aggressor. It is not only about direct sexual violence, but also about the psychological violence of children, in front of whom their mothers were raped. Therefore, such acts should not be classified as crimes against sexual freedom and integrity, but as crimes against humanity (Timofieieva, 2022).

Non-observance of the principle of accuracy of criminal-legal qualifications and the legal nature of the act are the factors that affect the implementation of a number of other provisions.

In particular, such articles have different sanctions, different conditions for compensating victims, different conditions for the use of post-criminal means, in particular incentives (terms of conviction, use of parole, etc.). In particular, according to part 5 of Article 49 of the Criminal Code, the statute of limitations does not apply in the case of criminal offenses against the foundations of national security, peace and security of mankind.

There are also different guarantees for protection. In particular, the protection of sexual freedom is not a reason for applying Part 5 of Article 36 of the Criminal Code of Ukraine.

4. Interpretation of the Principles in the Practice of the ECtHR

The practice of the ECtHR includes both general-law and special-branch principles. In particular, the practice of the ECtHR reflects the principles of subsidiarity (the cases of Siredzuk v. Ukraine, Volovik v. Ukraine, Mala v. Ukraine, Menshakova v. Ukraine), legality and legal certainty (the cases of *lex certa*), non-retroactivity and *lex mitior* (the cases of Maktouf and Damjanović v. Bosnia and Herzegovina), *nulla poena sine lege parlamentaria* (Article 7 of the Convention), *non bis in idem* (Article 4 Protocol 7, the cases of Melnyk v. Ukraine, Serkov v. Ukraine, Koretsky and

Others v. Ukraine), the principle of proportionality and necessity, the principle of presumption of innocence (Part 2, Article 8 of the Convention, the cases of Garnaga v. Ukraine, Kotiy v. Ukraine), the principle of dynamic interpretation of the Convention and the principle of autonomy of interpretation (Petrova and Chornobryvets v. Ukraine, Zubko and others v. Ukraine, Zamula and Others v. Ukraine, Suk v. Ukraine, Luchaninova v. Ukraine) and others.

Criminal law has been repeatedly called a negative constitution (V.O. Navrotskyi, V.O. Tulyakov). It is fair enough, because constitutions, conventions and international documents provide for fundamental rights that require protection. In particular, this refers to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. Criminal law provides such protection, provides criminal liability for violations of fundamental rights.

The Principle of Necessity and Expediency

One of the components of ensuring the right to privacy is the degree of informing the population about the real state of combating terrorism and its risks and dangers for the population. In accordance with Part 4 of Article 3 of the Council of Europe Convention On the Prevention of Terrorism of 16 May 2005, each part seeks to promote the development of public awareness of the existence, causes, and seriousness of terrorist crimes, the threat they—as well as other crimes set forth in the Convention—pose, and to take into account the encouragement of the public to the provision of actual, specific assistance to its competent authorities, which may contribute to the prevention of terrorist crimes.

At the same time, in matters of combating terrorism, transnational crimes, and especially war crimes, international crimes, crimes against humanity ora crime of aggression, it is necessary to pay attention to ensuring a balance between security and freedom.

As noted by V.O. Tulyakov, the pathological fear of crime and terrorism is expressed in panic, obsessive phobias of becoming a victim, in the perception of any environment as socially dangerous, in aggressive reactions, in the privatization of the security industry, in the formation of a shadow arms market. Cultivation of pathological reactions of this kind is quite important both for certain circles of the political elite and for criminality, since this is what determinesthe adoption of any laws that limit the rights and freedoms of citizens in favor of public security, diverts the eyes of the people from the real state of affairs, allows manipulation of public consciousness. Vague and inconsistent views, readiness to agree with any extreme measures of the government to protect personal integrity, forming an image of the enemy—

this is far from a complete list of typical situations promoted by fear of terrorism (Tulyakov, 2000, pp. 205-209). The question is: what are we willing to agree to in order to ensure security from terrorism and other crimes of an international nature?

In particular, in the appalling conditions of the war in which Ukraine has found itself, almost any mistake of the law enforcement system, abuse or negligence can be attributed to the war. This is unacceptable in a legal state. In particular, there are a number of cases where the court gives permission to search a person if he or she has made calls to Russian phone numbers. Crimea AR is not under Ukrainian control since 2014, the territories of the so-called DPR and LPR and the city of Kherson also remain outside of its control. The networks of Russian mobile operators are used in these territories. But Ukraine has not given up these territories. They are Ukrainian and Ukrainians live on them. This means that the search is carried out on the basis of calls to Ukrainian relatives who are unable to leave the said territories. Even if no confirmation of terrorist activity is found, the person does not receive any compensation, not to mention the issues of reputation, particularly in the eyes of neighbors, colleagues, etc.

The category "security" is relative. Potential victims may subjectively feel safe, but this only means that they, consciously or no, simply set an acceptable level of danger or threat for themselves. When the threat seems acceptable to them, they simply feel safe.

As noted by V.S. Kantsir, determining the specific limit of the terrorist threat to people is a rather complex and vitally important task, and it is solved by each specific subject—a person, society or state, primarily based on accumulated previous experience, forecasting the development of a particular real situation, available resources and means to deal with a specific threat, the possibility or absence of outside help. A special role in this situation is played by the risk perception developed in people. An error in the assessment of the terrorist threat (overestimation or underestimation) is the main prelude to catastrophic errors in decision-making (Kantsir, 2011, p. 268).

The state is even now ready to give up the fundamental human rights, freedom and security of its citizens, and morality for the sake of safety from certain crimes, in particular, from especially serious crimes of a cross-border dimension. They include, for example, terrorism, human trafficking, sexual exploitation of women and children, illegal drug and weapons trafficking, money laundering and counterfeiting, corruption, computer and organized crime.

In order to prevent crime, the state, at the level of the law, allows to deviate from the absolute prohibitions of encroachments on property, health and even human life, as well as privacy. The state justifies such steps by the lack of other means to counter crime. At the same time, it is necessary to remember that such concessions are al-

lowed for the purpose of ensuring human rights and freedoms, and not the other way around.

When applying repressive measures, it is necessary to maintain an appropriate balance between the need to take protective measures and the preservation of human rights and freedoms. There is no democracy without them. Democracy, if it is worth anything, has no right to use unacceptable methods in the fight against its opponents (Skomorokha, 2002, p. 38).

At the same time, I.M. Gromovchuk believes that states, for anti-terrorist purposes, often ignore or even violate human rights' standards stipulated by international law regarding the limitation and deviation of human rights provisions from human rights standards, and there is also a violation of the principle of proportionality. According to Gromovchuk, if anti-terrorist measures can violate the human rights for the protection of which they are used, their effectiveness and expediency are reduced. In addition, the fight against terrorism organized in this way increases the criminal motivation of the organizers and perpetrators of terrorist acts (Gromovchuk, 2014, pp. 10-11). And one can fully agree with this view.

The European Convention has developed its jurisprudence to meet the requirements of the fight against terrorism. The Court clearly expressed the view that it is the duty of governments to fight terrorism because it is a fundamental attack on democracy and the rule of law. States must have the capability to effectively defend themselves against terrorism, and human rights law must respond to this need. The European Convention must be applied in such a way as to allow states to take reasonable and proportionate measures to protect democracy and the rule of law. The role of the European Court of Human Rights strikes the right balance between the need to take all appropriate safeguards and the duty of all to avoid undermining the rights and freedoms that underlie and are a "prerequisite" for democracy. The Court showed that it is possible to successfully fight terrorism while at the same time protecting those rights that characterize states as democratic (Hedigan, 2004, pp. 431-432).

In particular, in the case of Maskhadov and others v. Russia, application No. 18071/05 of 6 June 2013, the European Court of Human Rights recognized a violation by the Russian Federation, which refused to hand over the body of Aslan Maskhadov, one of the leaders of the Chechen separatists, to his relatives in the unrecognized Chechen Republic of Ichkeria (ChRI). The widow Maskhadova and her two children filed a complaint with the ECtHR. According to the applicants, the anti-terrorist legislation, on the basis of which Moscow refused to hand over the body of the deceased Aslan Maskhadov, is discriminatory, as it is applied exclusively to Chechens and other Muslims.

The authorities refused to hand over the terrorist's body because it could cause riots. The state chose security with such actions. At the same time, such actions had a punitive nature and shifted the burden of responsibility of the deceased to the relatives. This violates the principle of proportionality.

The ECtHR supported the applicants, recognizing that the Russian Federation violated several articles of the European Convention on Human Rights—right to respect for private and family life (Article 8), freedom of religion (Article 9), and prohibition of discrimination (Article 13 and Article 14).

In countering any crime, including terrorism, the values of a legal democratic state must be preserved. It seems that the decision regarding the unhindered removal of the bodies of Russian soldiers from the territory of Ukraine, giving the relatives of these soldiers the opportunity to know about their death or that they are prisoners of war, etc., is absolutely correct.

According to the decision of the ECtHR in the case of Del Río Prada v. Spain No. 42750/09 of 21 October 2013, the sentence for sixteen persons convicted of terrorism was reduced due to the work performed by them in prison, although they were sentenced to a total of over one hundred years in prison. The interpretation of the law to the detriment of the convicted was based on a policy of full execution, not inherent in the Criminal Code of 1973. Some judges recognized that the reasons of criminal policy could not in any case justify a departure from the principle of legality, even in the case of a terrorist and an unrepentant murderer (*Del Río Prada v. Spain*, 2013). No matter what serious crime a person commits, the law should provide for a procedure for reducing the term on the basis of the person's post-criminal behavior. Long terms of imprisonment, including life imprisonment, without a legal procedure for reducing the term are not humane and contradict fundamental human rights as provided for in the ECHR. In addition, they do not encourage correction. A person who received a life sentence and cannot count on early release seems to be given permission to commit other crimes. There will be no more lifetimes after all.

The main means of achieving security should be the care for the integrity and stability of society, and therefore the fight against any manifestations of discrimination and injustice. Without the unity of society, there can be no effective fight against terrorism (Skomoroha, 2002, p. 42).

The Right to Life (Article 2 of the Convention)

Article 2 of the Convention enshrines the right to life and most vividly reflects the principle of respect for human rights, the principle of humanism that perceives human life as a value. But this right is not absolute. It has certain exceptions.

Deprivation of life shall not be considered as committed in violation of this article if it results from the use of force strictly necessary: a) to protect any person from unlawful violence; b) to make a lawful arrest or to prevent the escape of a person lawfully detained; c) when taking lawful actions to suppress a riot or insurrection.

Certain aspects of these exclusions in the context of paragraph a), in particular, the right to necessary defense (Part 5 of Article 36 of the Criminal Code), as well as the right to protect the homeland, are considered in the context of the implementation of the principle of encouraging lawful behavior. At the same time, there are still enough questions regarding the compliance with such provisions of Article 2 of the Convention.

I.V. Hloviuk has already published her opinion regarding this questions (Hloviuk, Zavtur, 2022). For instance, harming a civilian who received a weapon could present difficulties in terms of qualification. Would the person still be a civilian and an attack on him or her would be considered as a war crime under Article 8 of the Rome Statute or (since the person was armed) were these acts compliant with the customs of war? In accordance with Article 2 of the Law of Ukraine On Ensuring the Participation of Civilians in the Defense of Ukraine No. 2114-IX of 3 March 2022, the use of firearms obtained in accordance with this Law by civilians is carried out similarly to the use of weapons by military personnel during their performance of tasks in repelling armed aggression against Ukraine in accordance with the procedure approved by the Cabinet of Ministers of Ukraine. According to Article 4 of the Law, during the martial law, citizens of Ukraine may participate in repelling and deterring the armed aggression of the Russian Federation and/or other states, using their own weapons, sports weapons (pistols, revolvers, rifles, smoothbore firearms), hunting rifles, and ammunition for them.

At the same time, in such circumstances, they lose their civilian status and are perceived by the aggressor as a legitimate target. Of course, in the situation that has developed in Ukraine, any means should be used to repel aggression and bring our victory closer. But this does not relieve the state of responsibility for involving untrained civilians in military operations, exposing them to even greater danger.

Also, in this context, attention should be paid to the involvement of actually untrained people in military service and territorial defense, and the lack of possibility to be discharged from the Armed Forces of Ukraine on the basis of a serious combat wound.

In particular, 2 March 2022 was one of the most appallingdays in Kharkiv. Throughout the day, the city was subjected to rocket attacks. An enemy plane dropped two bombs over one of the locations of military personnel in the city. As a result, several soldiers died and many were wounded. One of the injured is a young man (29 years old). He lost a critical amount of blood and was operated on. As a re-

sult, he lost an eye and suffered many other injuries classified as causing disability. After the operation, he was granted a one-month leave. After the short reabilitation, the man continued to serve in unsanitary conditions. He was transferred to another unit, then to the front line. The commanders did not explain anything.

According to the current legislation, namely in accordance with Decree No. 402 on Approval of the Regulation on Military Medical Examination in the Armed Forces of Ukraine of 14 August 2008, servicemen who were injured or suffered injuries that led to disability, for example, the loss of one of the limbs (Article 63b) or the loss of an eye (Article 31b), cannot be released from military service during martial law. Instead, such servicemen receive the status of limited suitability for military service and remain in the ranks of the Armed Forces of Ukraine.

On the basis of this case, petition No. 22/148470-ep was written with a request to provide an opportunity for servicemen who became disabled during hostilities and during the service related to the defense of the homeland to be discharged from military service upon their request. People cannot continue to serve in such a situation. This is certain death, if not from bullets, then from health complications. Moreover, it constitutes a violation of Article 2, as well as a manifestation of inhuman treatment in the context of Article 3 of the Convention.

In addition, according to the Prosecutor General's Office, on 2 March, as a result of shelling, the building of the State Gymnasium providing enhanced physical training "Cadet Corps" and three cars were damaged. During the airstrike, two people were killed and nine injured. A three-story residential building was also damaged, and five damaged cars were found near it.

Also on 2 March, four policemen were killed and dozens injured when a Russian rocket hit the police headquarters. According to data collected by a Kharkiv human rights group, 10 civilians were killed, 39 civilians were injured, and more than 20 houses were damaged (*Kharkiv human rights group*, 2022).

Ensuring the Inadmissibility of the Death Penalty and Preventing Inhumane Treatment of Prisoners of War

The European Court of Human Rights decided on provisional measures in the case of Saadoun v. Russia and Ukraine (application no. 28944/22) concerning a citizen of Morocco and a serviceman of the Armed Forces of Ukraine who surrendered to Russian forces during the recent hostilities and have since been sentenced to death in the so called "Donetsk People's Republic" (DPR). The court, in particular, indicated to the Government of the Russian Federation in accordance with Rule 39 of

the Rules of Court that they must ensure that the death penalty imposed on the applicant is not carried out; to ensure proper conditions of his detention; and provide him with the necessary medical care and medication. The court also instructed the Government of Ukraine to ensure, as far as possible, respect for the applicant's Convention rights.

According to Rule 39 of the Court's Rules of Procedure, the Court may order provisional measures against any state party to the European Convention on Human Rights. The court grants such requests only on exceptional grounds where the applicants otherwise face a real risk of irreparable harm. The applicant, Brahim Saadoun, is a citizen of Morocco who was born in 2000 and moved to Ukraine in 2019 to study in Kyiv. In November 2021, he left Kyiv to undergo military training, and later was assigned to military service in the 36th separate marine brigade of the Armed Forces of Ukraine in Mariupol, Donetsk Province. Against the backdrop of the war in Ukraine, the Russian authorities announced on 13 April 2022 that 1,026 Ukrainian servicemen from the applicant's brigade had voluntarily laid down their weapons and surrendered to Russian forces in Mariupol.

Since then, the applicant has been charged with crimes under Article 323 (forcible removal of government or retention of power), Article 430 (participation in armed conflict or hostilities as mercenaries) and Article 232 (facilitating the training in terrorist activities) of the Criminal Code of the DPR. On 9 June 2022, a "court" of the DPR sentenced him to death. Two more individuals, British citizens, were also sentenced to death by the same "court," on the same day.

On 14 June 2022, the applicant's representative applied to the Court under Rule 39 with a request to ensure his Convention rights. Hearing the application for interim measures on 16 June 2022, the European Court decided to instruct the Russian government that they must: "(a) ensure that the death sentence imposed on the applicant is not carried out; (b) ensure respect for the Convention rights of Mr. Brahim Saadun, in particular compliance with Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment and punishment) of the Convention, ensure proper conditions of his detention and provide him with necessary medical care and medication." The Court emphasized that the question of jurisdiction in the area where the applicant is detained is under active consideration by the Grand Chamber of the Court in the case of Ukraine and the Netherlands v. Russia (applications Nos. 8019/16, 43800/14 and 28525/20).

The court asked the Russian government to provide information within two weeks to show what actions and measures their authorities have taken to ensure respect for Mr. Brahim Saadun's Convention rights. In this context, it reminded the Russian government that the provisional measure granted on 1 March 2022 in

the case of Ukraine v. Russia (X) (No. 11055/22) remained in force (*European Court grants urgent measures…* Press Release, 2022).

The issue of implementation of national legislation and provisions of the Convention in *non-controlled territories* is also interesting. According to the Resolution of the Grand Chamber of the Supreme Court of 12 May 2022 in the case No. 635/6172/17 (proceedings No. 14-167ts20), the state does not bear property liability to the victims for all crimes that remained unsolved. In order to satisfy a claim for compensation by Ukraine for damage (property, moral) caused by terrorist acts, the court should establish a violation by Ukraine of its specific obligation under the Convention. And to this end, the court should find out: a) the grounds of the claim (circumstances that justify the claim); b) whether Ukraine had, within the meaning of Article 1 of the Convention, jurisdiction over the guarantee of rights and freedoms in the territory where, according to the claimant, the violation occurred; c) in the case it had the jurisdiction, whether it fulfilled its contractual obligations from such a guarantee in the relevant territory (if non-fulfillment or improper fulfillment of a specific obligation occurred, what it was, what the consequences of this were and whether the cause-and-effect relationship between them and non-performance or improper performance of the corresponding duty occurred); d) whether there is a confirmation of all these facts (proper, admissible, reliable and sufficient evidence). In this case, a woman died in the temporarily occupied territory of Ukraine in Donetsk Province in 2015. The cause of her death was identified as multiple blast injuries to the body as a result of the hostilities. In 2017, the son of the deceased filed a lawsuit against Ukraine for compensation for moral damage caused by the death of his mother as a result of a terrorist act. The key issues of the case were to establish whether the plaintiff's mother was under the jurisdiction of Ukraine in the sense of Article 1 of the Convention on the Protection of Human Rights and Fundamental Freedoms and whether the state has violated some of its obligations arising from the right to life. Courts of the first and appellate instances considered that it was Ukraine that was responsible for causing moral damage to the plaintiff. Therefore, the lawsuit was partially satisfied. The Supreme Court observed that Ukraine did not control this part of its territory to the extent to prevent the death of the applicant's mother, even if it could and should have done so.

Due to a number of factors, the view and level of tolerance regarding violations of the right to life has changed, as well as the understanding of the right to life not only as a possibility of certain human behavior enshrined in domestic legislation and international legal acts, aimed at ensuring the inviolability of one's life, but also as the freedom of a person to directly realize the opportunities connected with belonging to the species Homo Sapiens, and to satisfy the necessary biological, social, spiritual, economic and other needs inseparable of a person, objectively determined by the

achievement of the level of development of humanity (broad understanding) (Yagunov, 2010, p. 10). In this context, the standard of living in the country, the quality of water, air, medicine, etc., should also be taken into account.

In particular, in the case Sufi and Elmi v. the United Kingdom applications No. 8319/07 and 11449/07 of 28 June 2011, when deciding on the issue of the impossibility of expulsion to Somalia, the ECtHR also took into account the standard of living in relatively peaceful territories.

Prohibition of Torture and Inhuman treatment (Article 3 of the Convention).

According to Article 3 of the Convention (Prohibition of Torture), no one *shall be subjected to torture or to inhuman or degrading treatment or punishment*.

This article enshrines an absolute right, that is, the state cannot under any circumstances deviate from the provisions of Article 3 of the Convention. This means that torture cannot be committed for the purpose of investigating other criminal offenses or preventing new criminal offenses, etc. Torture or inhumane treatment is unacceptable in a democratic state under any circumstances. According to this article, derogation is not possible in time of emergency (Article 15 of the Convention).

At the same time, there are certain differences in the understanding of torture by the Ukrainian legislator and in the practice of the ECtHR.

Criminal liability for torture is provided for in Article 127 of the Criminal Code of Ukraine. G.N. Telesnytskyi notes that according to the Criminal Code of Ukraine, torture can be committed only by action, while the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 10 December 1984 uses the phrase "or with the consent or acquiescence of a public official or other person acting in an official capacity," that is, it points to the fact that the analyzed offense can also be committed by inaction (Telesnytskyi, 2013, 241). Torture can also be committed through inaction because torture (for example, deprivation of food, drink, etc.) is one of the signs of the objective side of this act and is reflected in the practice of the ECtHR. These provisions are not taken into account by the Ukrainian legislator despite numerous changes to Article 127 of the Criminal Code of Ukraine and bringing it into line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment of December 10, 1984.

Threats to citizens. The state must respond not only to direct torture, but also to threats to citizens. The mere threat of torture already constitutes inhuman treatment. A threat by the police to torture a detained person violates Article 3 of the ECtHR and can be considered as inhuman treatment. In addition, when establishing

a violation of Article 3 of the ECHR in the form of degrading treatment, the presence of an intention to offend or humiliate the victim is also taken into account.

In the practice of the ECtHR, one can find a reflection of various manifestations of violation of Article 3 of the Convention. The model case Ireland v. United Kingdom of 1978 established techniques that could be considered torture or inhuman treatment in the context of Article 3 of the Convention.

The case Cyprus v. Turkey, Application No. 25781/94 of 10 May 2001: the military operations resulted in significant casualties, widespread arrests and detentions, and the separation of families. The atrocities of those days still live in the memory of the relatives of the victims. The Court considers that the silence of the respondent government, taking into account the real concern of the relatives of the missing persons, is rather cruel, which can be qualified as inhuman treatment under Article 3 (paragraph 157 of the decision). The court also reminds that the essence of the violation lies not so much in the fact of the disappearance of a family member, but in the reaction of the authorities and their attitude to the situation that arose when they were informed of this fact (see the decision of the Grand Chamber of the ECtHR in the case of Çakici v. Turkey, application No. 23657/94, § 98, 1999-IV, p. 156 of the decision). That is, in some cases, silence is a citizen's right. In the case of the state's obligation to inform citizens about certain events, silence and failure to provide information incertain conditions is a violation of the provisions of the Convention (Timofeyeva, 2020, pp. 136-153).

Effective investigation of violations. The positive obligations of the state consist not only in the legislative provision of the protection of human rights, but also in the effective investigation of violations of such rights. That is, the procedural and the material contexts of the Convention are closely interrelated. The ECtHR derived the obligation to effectively investigate torture from Articles 3 and 13.

The state's obligation to investigate is not so much about the result as the procedure and means used by the state to investigate (*EdEra course*, 2018). In this case, compliance with the legal procedure is a component and integral part of the principle of legality.

If the torture was carried out under the supervision of the state, the state must investigate, identify and prosecute the perpetrators, as well as compensate the victim.

The situation of limiting the investigation in the cases of allegations of ill-treatment, failure to conduct an investigation, termination, and delay is unacceptable. The investigation must be swift and independent. In addition, there should be public scrutiny of such an investigation. The victim must have a real opportunity to participate in the investigation of the criminal offense.

This issue also concerns the treatment of convicts in prisons and prisoners of war. This is one of the most controversial issues in connection with the lack of funds for their maintenance, in particular with prisoners of war.

The problems of observing the rights of convicts, ensuring proper treatment and Standard Minimum Rules for the treatment of prisoners have always existed. This is confirmed by the extensive practice of the ECtHR regarding violations of Article 3 in the context of inhumane treatment (the cases of Beketov v. Ukraine, 2019, Petukhov (2) v. Ukraine, 2019, Matushevsky and Matushevska v. Ukraine, 2011 etc.). There are also many reasons for this, from objective ones related to the limited state budget to subjective ones related to personal attitudes, prejudiced attitudes of the administration and employees of correctional facilities and pre-trial detention centers. In my opinion, more problems arise with subjective reasons.

These issues have become more acute in connection with quarantine restrictions, since it is objectively impossible to ensure appropriate conditions of isolation, hygienic conditions, etc. Moreover, this issue has become more acute in connection with the war.

Many problems arise, in particular with prisoners of war, if the requirements of the Geneva Convention are met. However, we cannot deviate from the prohibition of torture in any case. In the context of inhumane treatment, we must ensure the provision of necessary medical care, food, and hygiene products. It should also be taken into account that, in fact, military personnel of the Russian Federation commit the criminal offense provided for in Article 332-2 of the Criminal Code, "illegal crossing of the state border of Ukraine." Therefore, they can be brought to justice under this article and this will not violate any of the principles of criminal law, as well as ensure the implementation of the inevitability of criminal law responsibility. In addition, it is necessary to approach such responsibility on an individual basis, in compliance with the principle of personal *culpable responsibility and guarantees of protection*.

The Right to a Fair Trial (Article 6 of the European Convention on Human Rights)

The general requirements of fairness contained in Article 6 of the **European Convention on Human Rights** apply to all criminal proceedings regardless of the type of offense being considered. However, in determining whether the proceedings as a whole were fair, it is possible to take into account the importance of the public interest in the investigation and punishment of a particular criminal offence. In addition, Article 6 of the **European Convention on Human Rights** should not be applied in such a way as to create disproportionate difficulties for police authori-

ties in the application of effective measures to combat terrorism or other serious crimes in the performance of their duties in accordance with Articles 2, 3 and 5 § 1 of the **European Convention on Human Rights.** In the case of Engel and others against the Netherlands (§§ 82-83), the criteria for the possibility of applying the criminal law aspect of Article 6 of the **European Convention on Human Rights** were taken into account, in particular, the following: 1. domestic legal qualification, 2. nature of the offense, 3. severity of the punishment.

The first criterion is related to the possibility of qualifying offense as criminal under national law. For the examination of the second criterion (Jusilla v. Finland [GC], § 38), the following factors may be taken into account: whether a given legal provision applies exclusively to a certain group of persons, or by its nature applies to all (Bandenun v. France, § 47); whether the proceedings are brought by a representative of a public authority in accordance with his or her legal authority (Benham v. the United Kingdom, § 56); whether the legal norm has a repressive or deterrent function (Ozturk v. Germany, § 53; Bandenun v. France, § 47); whether the established legal rule attempts to protect the general interests of society, which are usually protected by criminal law (Produkcija Plus Stivtvenopodjetje d.o.o. v. Slovenia); whether sentencing to any punishment depends on proof of guilt (Benham v. the United Kingdom, § 56); how similar proceedings are qualified in other member states of the Council of Europe (Ozturk v. Germany, § 53).

The third criterion is determined by reference to the maximum possible penalty provided for by the applicable law (Campbell and Fell v. the United Kingdom, § 72; Demicoli v. Malta, § 34).

The second and third criteria enumerated in Engel and Others v. the Netherlands are alternative and not necessarily complementary: in order to decide whether Article 6 should be applied, it is sufficient that the offense in question is "criminal" in nature from the point of view of the Convention, or that this offense resulted in a penalty which, by its nature and degree of severity, usually belonged to the "criminal" category (Lutz v. Germany, § 55; Öztürk v. Germany, § 54). The fact that the offense is not punishable by imprisonment is not in itself determinative, since the relative weakness of the sanction does not deprive the offense of its inherent criminal character (ibid., § 53; Nicoleta Gheorghe v. Romania, § 26). However, the cumulative approach can also be applied if a separate analysis of each criterion does not allow reaching a clear conclusion about the existence of a criminal charge (Bandenun v. France, § 47) (*Dovidnyk iz zastosuvannya statti 6 Konventsiyi*, 2019).

The duration of strict arrest of two days was recognized as too short to belong to the category of "criminal law."

Access to court. The state can limit access to court to a certain group of persons, or protect a certain group from lawsuits against them, so that no one can chal-

lenge their actions. So, for example, in the case Stanev v. Bulgaria, the applicant claimed that, contrary to Article 6 of the Convention, the Bulgarian legislation did not give him the opportunity to apply to the court for the renewal of his legal capacity. The court noted that the restriction of the procedural rights of a person who has limited legal capacity may be justified for the protection of the person, the protection of the interests of other persons and the proper administration of justice. However, such a restriction on all rights cannot be absolute.

A similar complaint was considered against Ukraine in the case Natalia Mykhaylenko v. Ukraine. The ECtHR noted that the absence of a judicial review of this issue, which seriously affected numerous aspects of the applicant's life, cannot be justified by the legitimate goals underlying the restriction of access to court for persons recognized as incompetent.

As for situations where it is impossible to challenge the actions or inaction of certain persons, this is called immunity from lawsuits.

For example, the issue of immunity of judges from lawsuits was considered by the European Court in the case Ernst and others v. Belgium. The Court concluded in it that such immunity had a legitimate purpose—to protect members of the judiciary from groundless prosecution and to enable them to perform their official duties independently and impartially. Since the applicants had exercised their right to bring a civil action against the Belgian State, the Court concluded that the requirement of reasonable proportionality had been met. However, the limitation may not be directly established by law, as in the above-mentioned cases. Such a limitation may be the result of the interpretation of laws in practice.

Court established by law. The analysis of the practice of the European Court regarding this aspect makes it possible to distinguish two conditions of compliance with the criterion "a court established by law": organizational (the organization of the judicial system must be regulated by laws) and jurisdictional (the court must act in the manner and in accordance with the powers provided for by law, within the limits of its competence).

Publicity of trial. The administration of justice and, in particular, the judicial process gain legitimacy thanks to publicity. By ensuring the transparency of the administration of justice, publicity thus contributes to the realization of the purpose of paragraph 1 of Article 6: a fair trial, whose provision is one of the fundamental principles of a democratic society within the meaning of the Convention (Belashev v. Russia, No. 2861703, decision of 4 December 2008) (*EdEra*, 2017).

Reasonable term of court proceedings. In its practice, the European Court defined the criteria that must be taken into account when assessing the compliance of the duration of the trial with the requirement of a reasonable period. Such criteria include the complexity of the case, the behavior of the applicant, the behavior of the

judiciary and public authorities, as well as the degree of importance of the case for the applicant (the case of Frydlender v. France, application no. 30979/96 of 27 June 2000).

It is also necessary to pay attention to guarantees of protection, in particular, for representatives of the aggressor's side brought to justice in Ukraine.

Moreover, it is necessary to pay attention to guarantees of protection for victims of war crimes. After all, when qualifying under Article 438 of the Criminal Code, in particular, relatives of the deceased are denied the status of a victim, as well as access to the materials of criminal proceedings, initiation of certain investigative actions, etc.

Property Rights (Protocol 1 of the Convention). Correlation with the principle of presumption of innocence.

According to Article 1 of Protocol No 1 to the Convention (Protection of Property), every natural or legal person is entitled to the peaceful enjoyment of his or her possessions. No one can be deprived of his or her property except in the interests of society and under conditions provided for by law and general principles of international law. However, the foregoing provisions shall in no way limit the right of the state to enact such laws as it deems necessary to control the use of property in accordance with the general interest or to enforce the payment of taxes or other charges or penalties (*Protocol No. 1 to the Convention*, 1952).

According to Article 17 of the Universal Declaration of Human Rights dated 10 December 1948, every person has the right to own property both individually and jointly with others. No one can be deprived of his or her property without reason. According to Article 13 of the Constitution of Ukraine, property should not be used to the detriment of people and society. According to Article 317 of the Civil Code of Ukraine, the owner has the right to possess, use and dispose of his or her property. The owner's place of residence and the location of the property do not affect the content of the property right.

According to Article 321 of the Civil Code of Ukraine, the right of ownership is inviolable. No one can be unlawfully deprived of this right or limited in its exercise. A person may be deprived of the right to property or limited in its exercise only in the cases and in the manner established by law. Forced expropriation of property rights may be applied only as an exception for reasons of public necessity on the basis and in the manner established by law, and on the condition of prior and full

compensation of their value, except for the cases established by Part 2 of Article 353 of the Civil Code.

Among other things, the EU sanctions were connected with freezing the assets of Russian banks, freezing the assets of high-ranking officials of the Russian Federation, diplomats, and oligarchs. In total, six packages of sanctions were adopted. Does this not contradict the principle of presumption of innocence? The legal mechanisms for ensuring the protection of European values are clear and provide specific response mechanisms in relevant decisions, directives and other documents.

The Right to Respect for Personal and Family Life (Article 8)

According to Article 8 of the Convention, everyone has the right to respect for his or her private and family life, home and correspondence. State authorities may not interfere with the exercise of this right, except when the interference is carried out legally and is necessary in a democratic society in the interests of national and public security or economic well-being of the country, to prevent riots or criminal offenses, to protect health or morality or to protect the rights and freedoms of others.

The Criminal Code of Ukraine provides for criminal liability for violation of the inviolability of the home (Article 162 of the Criminal Code of Ukraine), violation of the confidentiality of correspondence, telephone conversations, telegraphic or other correspondence transmitted by means of communication or through a computer (Article 163 of the Criminal Code of Ukraine).

There may be questions about the expediency of wiretapping telephone conversations, interception of these conversations by the SBU in the aspect of compliance with the provisions of Article 8. According to the security requirements in the situation that arose in connection with the war, this is absolutely justified. The issue of the work of Anonymus regarding the hacking of Russian sites, sending spam, etc., can become problematic.

The intervention does not violate Article 8, if it is carried out "in accordance with the law," pursues a legitimate goal in accordance with Paragraph 2 and is necessary in a democratic society to achieve this goal (Volokhi v. Ukraine, application No. 23543/02, decision of 2 November 2006, p. 44).

The purpose of Article 8 of the Convention is primarily to protect an individual from arbitrary interference by state authorities in his or her affairs. But here it is necessary to talk not only about negative obligations, that is, the duty of the state to refrain from such interference, but also about positive obligations. These obligations may include taking measures designed to ensure respect for private life even in the sphere of individuals' relationships with each other (Guide on Article 8, 2021).

Children and other vulnerable persons, in particular, have the right to effective protection (X and Y v. the Netherlands, §§ 23-24 and 27, Austria v. the United Kingdom (Dec.), M.C. v. Bulgaria). Furthermore, the State's positive obligation under Article 8 to protect the physical integrity of a person may extend to matters related to the effectiveness of criminal investigations (Osman v. the United Kingdom, § 128, M. C. v. Bulgaria, § 150). Thus, states have a positive obligation inherent in Articles 3 and 8 of the Convention to adopt criminal law provisions that effectively punish rape and to put them into practice through effective investigation and prosecution. The state is obliged to protect a minor from malicious mutilation (K.U. v. Finland, §§ 45-49).

Of interest is the ruling on wearing garment that covers the face, particularly religious one (S.A.S. v. France). The ECtHR took into account the respondent state's argument that the face plays an important role in social interaction. People present in places open to the public probably do not wish to see the promotion of customs or approaches that, in fact, call into question the possibility of open interpersonal relations, which—based on an established consensus—is one of the essential conditions of cohabitation in the French society. The Court may agree that the barrier against others created by clothing concealing the face is perceived by the respondent state as a violation of the right of others to live in a space of socialization in which living together is easier. However, given the flexibility of the concept of "living together" and the associated risk of abuse, the Court must carefully examine the necessity of the contested restrictive measure (S.A.S. v. France [GC], § 122). At the same time, in connection with the coronavirus pandemic, covering the face with a mask is already considered a necessity for ensuring the safety of society, minimizing mass infections, etc. The need to identify a person has receded into the background. Although the impossibility of identification creates real terrorist and corruption threats, as well as—which is especially relevant in the reality of war in Ukraine—threats to national security.

Also, a number of problems arise in connection with the observance of environmental rights. For a long time, the violation of environmental rights was not considered within the framework of the Convention, but since 2000, relevant cases have appeared. This issue is especially relevant in connection with the damages caused by the war.

On the initiative of the "Tribunal for Putin," the partner of the Ukrainian Helsinki Union for Human Rights, the International Charitable Organization "Ecology-Law-Human" issued an analysis "Planning for the Restoration of the Environment" with the main guidelines and legislative foundations for the post-war reconstruction of Ukraine's economy, taking into account the need to preserve the environment (*Ekolohiya-Pravo-Lyudyna*, 2022). According to the authors of the analysis, the key

reforms include the reform of state environmental control and the reform of legal responsibility for environmental offenses.

The reform of state environmental control is designed to make control modern, effective and transparent with the highest possible reduction of corruption-related risks, and elimination of duplication of functions of central executive bodies in the field of environmental protection.

The reform of legal liability is designed to make such liability real, proportionate and adequate to the damage caused to the environment. The ultimate goal of legal responsibility is the preservation or restoration of the public good, for the protection of which the legal regulation is established, in this case—the environment.

An overview of the damage caused to the environment of Ukraine by the armed aggression of the Russian Federation is given, and attention is focused on the fundamental role of a healthy environment in ensuring the well-being of the population. The analysis addresses, in particular, the problem of the pollution of air (both as a result of hostilities and as a result of fires caused by them), water (surface and underground, as well as due to the destruction of water management infrastructure, from dams to treatment plants), soils (from contamination with heavy metals as a result of shelling and bombing to mechanical disruption of the soil structure), as well as the problem of the mined territories (the area of which can reach up to 15% of the territory of Ukraine, and removing the land mines, at a cost of 250 billion dollars, can last up to 70 years).

Attention is focused on the need to improve coordination between policy goals, so that biodiversity, climate change mitigation, and post-war economic recovery can be addressed simultaneously. This will increase the efficiency of the use of resources, contribute to the achievement of the goals of preserving biodiversity in compliance with the principles of sustainable development.

At the same time, in the realities of the war, when almost all countries of the world send humanitarian aid, Ukrainian supermarkets dispose of expired products. This seems to be unacceptable. There is a successful experience of using such products in other countries. In particular, one of the restaurants in Sweden, K-Märkt has launched an interesting startup. The restaurant uses products that are edible, but would spoil if not used. The restaurant does not have a menu, and the cooks use whatever is available.

Statehood andsovereignty are the values that requireone to care about the state. Not only about preserving borders, but also about preserving ecology, the quality of land, water, and air. Regarding the discussion of many such problems, an objection is often voiced that they are not urgent in the face of the war. However, it seems that environmental issues and the threat of ecological disaster are of the highest urgency now.

A ban on providing free plastic bags in stores certainly does not solve the problem, which is much more complex. At the same time, mass disposing of expired products by supermarkets across the country adds to the problem of waste disposal. A systematic solution to this issue is necessary. In particular, such measures can include: a significant reduction in the price of products as they approach their expiration date; benefits for networks that donate such products to charity or to animal shelters where they definitely need these products; processing them into fertilizers, etc.

This also primarily concerns criminal law, because it is connected with mass pollution of the sea, air, etc. One of the problems of bringing the perpetrators of such actions to justice is that Ukrainian legislation does not recognize collective responsibility.

The main principles on which the development of strategic recovery plans will be based are specified. Thus, the main principles of the post-war reconstruction of Ukraine should be as follows: 1) comprehensiveness of environmental policy and development of the country on the basis of the European Green Deal; 2) recovery that should serve the needs of Ukrainians and contribute to the sustainable development of Ukraine; 3) environmental standards at all levels of policy formation and implementation in the field of environmental protection; 4) compliance with European environmental planning tools in the development of Ukraine; 5) effective functioning and use of target/donor funds for post-war recovery and development of the green economy.

The document describes the essence of the necessary sectoral reforms in various branches of the economythat will pave the way for solving problems in the field of environmental protection during the planning of post-war reconstruction and during its implementation. The main tasks of sectoral reforms, which are an integral condition for restoring the environment to its natural state, are the changes in the field of subsoil water use. In particular, ensuring a transparent system of subsoil water use: distribution of special permits and carrying out an environmental impact assessment.

The problem of waste management is acute and is increasing every day, including due to the specific waste generated by military operations. In order to reduce the impact of this waste on the environment, it is necessary to first organize places for temporary storage of waste, divide this waste into categories, pay special attention to hazardous waste, ensure separate collection and storage, endeavor to ensure the collection of solid household waste by local self-governments, conduct an inventory of objects where waste is stored, update waste management plans in major economic regions, and to search for financing measures for safe waste management at the level of territorial communities. The main step in this direction should be the adoption of the framework law On Waste Management.

Thematic examples highlight the practice of environmental restoration and environmental preservation. Thus, the experience of Albania in the demining is described, in particular, the mechanisms of demining and the main principles of their implementation aimed at preserving the environment. The process of demining is long, so one of the quick solutions for settling the issue of mined, contaminated lands is their preserving.

In addition, the question of the feasibility of restoring infrastructure was raised using the example of a dam on the Oskil River. The expediency of rebuilding metallurgical enterprises with a focus on the introduction of decarbonization technologies, the competitive advantages of such rebuilding of enterprises as opposed to their reconstruction with previously used mechanisms, processes and technologies in the industry were noted. An example of an economically and ecologically more expedient method of restoration of war-affected landscapes is presented using the example of "approaching the natural state" of forest landscapes of Luhansk Province affected by fires.

The Right to Express Views (Article 10 of the Convention)

According to Article 10 of the Convention, everyone has the right to freedom of expression. This right includes freedom to hold opinions, receive and impart information and ideas without interference from public authorities and regardless of frontiers. This article does not prevent states from the licensing of radio broadcasting, television or cinematographic companies.

The exercise of these freedoms, as it is associated with duties and responsibilities, may be subject to such formalities, conditions, restrictions or sanctions as are prescribed by law and necessary in a democratic society in the interests of national security, territorial integrity or public safety, to prevent disturbances or crime, to protect health or morals, to protect the reputation or rights of others, to prevent the disclosure of confidential information, or to maintain the authority and impartiality of the court.

Features of the information age are related to the simplification of recording and transmission of information. Consequently, many bloggers began to post relevant photos and videos of troop movements, air defense operations, explosions, etc. Information war and information defense in the modern realities of criminal law of Ukraine has received a completely new dimension.

According to Law of Ukraine No. 2160-IX of 24 March 2022, the Criminal Code of Ukraine was supplemented by Article 114-2 Unauthorized Dissemination of Information about the Transfer of Weapons, Armaments and War Supplies to Ukraine,

the Movement, Deployment or Location of the Armed Forces of Ukraine or Other Military Formations Formed in Accordance with the Laws of Ukraine, Committed in Conditions of War or a State of Emergency.

Is it justified to limit posts on the Internet that show military equipment, air defense, and the consequences of missile attacks immediately after they have happened. It seems that this is completely justified and expedient, since in this situation the issue of security prevails over the issue of freedom of expression.

Such actions can be committed either carelessly, without fully realizing the danger of such actions and their possible consequences (Part 1 of Article 114-2 of the Criminal Code of Ukraine), or with a direct intent (Part 3 of Article 114-2 of the Criminal Code of Ukraine), which is connected with the commission of such actions as a result of conspiracy or for selfish motives, or with the purpose of providing such information to the state carrying out armed aggression against Ukraine, or to an illegal armed formation. If such actions caused serious consequences (Part 3 of Article 114-2 of the Criminal Code of Ukraine), then the actions themselves could be committed both intentionally and negligently.

The attitude towards the consequences could also be intentional or negligent, depending on the person's intentions. However, taking into account the public danger of such acts for the entire country, the individual's lack of awareness and desire for such consequences or indifferent attitude towards them cannot be considered as the grounds for exemption from criminal liability or non-attribution of guilt under Part 3 of Article 114-2 of the Criminal Code of Ukraine.

According to the established practice of the Court, freedom of expression, guaranteed by clause 1 of Article 10 of the Convention, is one of the important foundations of a democratic society and one of the basic conditions of the progress of the society as a whole and the self-realization of each individual. According to Article 10(2) of the Convention, freedom of expression extends not only to "information" or "ideas" that are accepted with approval or regarded as inoffensive or irrelevant, but also to those that may offend, shock or disturb. Such are the requirements of pluralism, tolerance and broadmindedness, without which there is no "democratic society." In addition, Article 10 protects not only the content of ideas and information expressed, but also the form of their dissemination (Shydka v. Ukraine).

In the case Siryk v. Ukraine (Application No. 6428/07), the ECtHR noted (paragraph 34 of the decision) that the first and most important requirement of Article 10 of the Convention is that any interference by a state authority in the exercise of freedom of expression must be lawful: the first sentence of the second paragraph essentially provides that any restriction of expression must be "established by law." In order to comply with this requirement, the intervention must not simply be based on national legislation; the legislation itself must meet certain conditions of "qual-

ity." In particular, a norm cannot be considered a law until it is formulated with sufficient precision to give the citizen the opportunity to regulate his or her behavior: one must be able—if necessary, with appropriate consultation—to foresee to the extent that is reasonable for relevant circumstances, the consequences that his or her action may entail (see, for example, the decision in the case of Lindon, Otchakovsky-Laurens and July v. France [HR], application no. 21279/02 and 36448/02, § 41, ECHR 2007-XI).

The level of precision largely depends on the content of the norm in question, the scope of its regulation, and the number and status of those to whom it is addressed (see the decision of 28 March 1990 in the case of GropperaRadio AG and others v. Switzerland, p. 68, Series A, No. 173). The concept of foreseeability refers not only to actions whose consequences the applicant must be able to reasonably foresee, but also to the "formalities, conditions, restrictions or sanctions" that may apply to such conduct if it is found to be in breach of domestic law (see mutatis mutandis, decision in the case Kafkaris v. Cyprus, application No. 21906/04, paragraph 140).

Thus, all these criteria must also be taken into account during wartime.

According to the provisions of paragraph 1 of the Recommendation of the Parliamentary Assembly of the Council of Europe 1506 (2001) Freedom of Expression of Views and Information in the Mass Media in Europe, the right to freedom of expression of views and information is inextricably linked with the right of citizens to be informed and is a prerequisite for making decisions on the basis of reliable information. The ability to freely express ideas and opinions encourages public dialogue and, thus, stimulates the development of democratic processes in society.

Also, the right to express views, especially during wartime, is related to the issues of television and radio broadcasting, since the reliability of information in such conditions is extremely important. One of the requirements for Ukraine to obtain EU candidate status is "to overcome the influence of vested interests by adopting a law on mass media which harmonizes the legislation of Ukraine with Directive 2010/13/EU of the European Parliament and the Council of Europe of 10 March 2010 on the harmonization of certain provisions defined by laws, by-laws and administrative provisions in member states regarding the provision of audiovisual media services (*Directive on Audiovisual Media Services*) and empowers an independent media regulator."

TV channels and radio in Ukraine belong to oligarchs and cover events with their permission and according to their orders. In such conditions, it is difficult to talk about the realization of the right to information, the right to express views.

Legislative Activity. The draft of the new criminal legislation of Ukraine, which is being developed by the Working Group since 2019, should also take into account the peculiarities of European law, but also preserve national peculiarities. In particu-

lar, the developers of the new Criminal Code propose to enshrine in the Criminal Code a requirement for its mandatory compliance with the practice of the ECtHR in cases against Ukraine.

It should be noted that the approach to the development of the Criminal Code of Ukraine itself is European, democratic and in accordance with the spirit of the Convention. During the work on the new Criminal Code of Ukraine, the working group reports on social networks and on the official website of the working group, holds conferences and webinars on specific issues of the new Criminal Code of Ukraine, and takes into account the suggestions of experts. This is very revealing, since such a public discussion of the draft law, as well as the possibility of a genuine impacton the legislation (at least on the draft), has never happened before in Ukraine.

According to Article 1.2.8, the draft of the new Criminal Code of Ukraine takes into account the practice of the European Court of Human Rights. This is quite justified, because according to Article 2 of the Law of Ukraine On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights of 23 February 2006, the practice of the ECtHR is part of the legislation of Ukraine and is mandatory for application on the territory of Ukraine. The Convention and the practice of the ECtHR are an example of unification, of universal norms for all countries that have ratified it.

In addition, it is very appropriate in this context to criminalize failure to comply with a decision of the European Court of Human Rights or the International Criminal Court (Article 7.6.6). It is proposed to prosecute an official who has not complied with: a) a decision of the European Court of Human Rights, or b) a verdict, resolution or decision on a fundamental issue of the International Criminal Court (*Proyekt tekstu novoho Kryminal'noho kodeksu Ukrayiny*, 2022). There is no mention yet of legal responsibility for not taking into account EU regulations. But it is a matter of time.

International standards, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, were adopted in response to the experience of war. They are always a guide in deciding what is fair and what is not. At the same time, given the dynamic nature of the Convention, these rights acquire new meanings and new aspects of interpretation. Many of these aspects arise in connection with war.

Conclusions

After the aggressive military actions against Ukraine, the security of other countries is endangered if an effective countermeasure mechanism is not developed. It has been established that any armed invasion of the territory of another state in the 21st century is an encroachment not only on its territorial integrity but also on European values. These values have been developed over centuries as a response to the experience of war.

The law itself is a value. When the law is codified, structured, understandable and clear, a person can compare his or her behavior with this law. If a person chooses to commit a crime, he or she does it taking into account the awareness of the illegality of such an act and the inevitability of an appropriate punishment or measures for a criminal offence as provided for by the law. Therefore, the government in such a case has all the moral and legal grounds to prosecute such a person.

It is proposed to provide additional guarantees for the implementation of the decisions of international institutions against the aggressor state and to improve the mechanism of imposing sanctions against the state that has violated international agreements.

The necessity of observing human rights standards when bringing to justice persons who have committed crimes against humanity and were involved in it has been established. The civilized world must respond and provide security in civilized ways.

The concept of war crimes, genocide, murder, rape, theft is clearly provided for in international treaties and national legislations of both Ukraine and the Russian Federation. Therefore, every soldier who pulled the trigger, who used a weapon of mass destruction on residential buildings, and every commander who gave the corresponding order, should bear criminal responsibility.

It is necessary to observe the principles of criminal law. The principles of criminal law must be observed both at the level of law enforcement and law-making, as well as at the level of interpretation of normative legal acts. This is important both in peacetime and in war. However, there are certain features of this implementation. And this applies to both general legal and special branch principles.

The realization of the principle of humanism in criminal legislation is aimed at applying sufficient and necessary punishment, taking into account the principles, goals, tasks and functions of criminal law, as well as methods of criminal law regulation; as mild or severe a punishment as corresponds to the nature and behavior of the person at the time of the crime; the socio-demographic characteristics of a person; the nature of the damage caused to the victim, third parties and the state. Other circumstances of the case, including the nature and severity of the crime, as well

as pre-criminal and post-criminal behavior, are also taken into account. A balance must be observed in the implementation of the principle of humanism in relation to all subjects of criminal legal relations (the victim, the criminal, society as a whole and the state). No matter how difficult it is, it should also be implemented when qualifying and imposing punishment for crimes committed by the aggressor. This also applies to the human treatment of prisoners of war in accordance with international standards.

In the situation that has developed in Ukraine, any available methods should be used to repel aggression and bring victory closer. But this does not absolve the state of responsibility for enlisting virtually untrained military personnel in military service and territorial defense, involving untrained civilians in armed conflict, exposing them to even greater danger and depriving them of military guarantees. Also, in this context, attention should be paid to ensuring the real possibility of discharge from the Armed Forces of Ukraine on the basis of a serious combat wound suffered during the martial law.

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