NATIONAL AVIATION UNIVERSITY

Educational and Research Institute of Law

Department of Criminal Law and Process

**METHODOLOGICAL RECOMMENDATIONS**

**for the organization of independent work of students**

on the discipline " **Problems of Criminal and Legal Protection of Human and Citizen Rights** "

081 / 16bz "Jurisprudence"

(the code and the name of the direction (specialty) of training

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Considered and approved

at the meeting of the criminal department

rights and process

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                                                Head of Department \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**ntroduction**

Discipline "Problems of criminal legal protection of human rights and citizen" is assigned to a group of criminal-law disciplines studying offenses and measures to combat them. The training of a highly skilled specialist - a lawyer is impossible without the knowledge of theoretical and practical knowledge in the field of criminal law protection of human rights and citizen.

Discipline "Problems of criminal law protection of human rights and citizen" - a systematic course, designed to serve the expansion and consolidation of legal knowledge among students.

The purpose of teaching discipline is to familiarize students with the problematic aspects of criminal law protection of human rights and citizen, to strengthen the rule of law and law and order in society and the state, obtaining students basic knowledge and skills in their application.

The tasks of studying the discipline are:

- familiarization of students with the general principles of criminal law protection of human rights and citizen;

- disclosure of their values ​​for the protection of human rights and citizens in criminal law, to strengthen the rule of law and law and order in society and the state;

- Students get basic knowledge and skills in their application.

As a result of studying the discipline "Problems of criminal law protection of human rights and citizen" student must:

Know:

- basic concepts, tasks and values ​​of criminal law protection of human rights and citizen;

- sources of criminal law protection of human rights and citizen;

Be able:

- to correctly interpret and apply the rules of criminal law;

- Self-renew and deepen their knowledge;

- to substantiate and defend their position;

 - to protect the rights, freedoms, legitimate interests of citizens, legal entities, state and society.

The educational material of the discipline is structured on a modular basis and consists of one training module, which is a logically complete, relatively independent, integral part of the discipline, the assimilation of which involves modular control work and analysis of the results of its implementation.

The educational discipline "Problems of criminal law protection of human and civil rights" is based on the knowledge of such disciplines as: "Theory of state and law", "History of state and law of Ukraine", "Legal deontology", "Organization of judicial and law enforcement agencies" and are the basis for studying such disciplines as: "Criminal Law", "Criminal Procedure Law" and others.

Knowledge and skills received by a student during the study of this discipline are used further in the study of many of the following disciplines of vocational training of a specialist with basic and complete higher education.

**Module 1. "Problems of criminal law protection of human rights and citizen"**

**Topic 1.1. General principles of criminal law protection of human rights and citizen**

**Plan**

**1. The mechanism of criminal law protection of human rights and citizen.**

**2. Means of criminal law protection of human and civil rights and freedoms.**

**Guidelines**

Like the Convention as a whole, the provisions on the protection of private and family life in Article 8 are a reflection of the horrors of fascism experienced by Europe in the 30's and 40's. During the deliberations of the Consultative Assembly, it often spoke about the intervention of the fascist state in resolving the families of their internal affairs, in particular, the nazi laws that established racial restrictions on marriage, as well as the policy of totalitarian governments, according to which children were taken away from their parents for politico-ideological treatment.

However, the manner in which the provision on such protection in the Convention is unique. While Article 10 proclaims "the right to freedom of expression", and article 11 - "the right to freedom of peaceful assembly", Article 8 does not directly indicate any concrete actions to be protected. Rather, it refers to the right to "respect for ... private and family life." Respect, as witfully remarked by JE.S. Fosett, "belongs to the sphere of manners rather than rights". Such a selection of wording clearly indicates the intention to leave the contracting states considerable freedom of action in matters of regulation of private and family relations. This conclusion is backed up by the history of the drafting of draft article 8. The first draft proposed by the Consultative Assembly simply included Article 12 of the Final Declaration of Human Rights, which states that "no one can be subjected to arbitrary interference with his private and family life, the closeness of his home or the secret of correspondence. " In the following draft, this wording was replaced by the proclamation of "the right to non-interference in the family, the inviolability of housing and the secret of correspondence." Then this provision was softened and received the kind that was accepted. These changes indicate that, for example, interference with the family may be, which is not an infringement of the right to respect for family life and does not constitute a prima facie violation of the Convention.

The current text also indicates a narrowing of the issues raised in Article 12 of the Universal Declaration. In addition to proclaiming the right to legal protection of privacy, family, shelter and secrecy of the corresponndence, this provision provides for the same protection from "attacks on honor and reputation." Although the interest of the state in protecting reputation is now reflected in the European Convention among circumstances justifying the restriction of free expression of views in Article 10 § 2, it, unlike the Universal Declaration, does not provide for a positive State obligation.

Although the group of interests enshrined in Article 8 can be fully perceived as relating only to unjustified public disclosure of messages, the knowledge of which should only be an individual or a family collective, the further interpretation was carried out on a wider basis. It was noted that respect for "private life" requires non-interference in a person's decision on how to guide her own life. One of the first commentators in article 8 expressed this view particularly radically, saying that it should defend against "attacks on physical or mental impartiality or intellectual freedom." Although the European Court of Human Rights has never given such a broad definition (as will be seen below), his understanding of this right includes freedom to make a personal choice about his or her own life, and in particular regarding sexual behavior. Indeed, when it turned out, the Court noted that respect for private life may require very formal actions by the state. In the case of Gaskina, the Court ruled that article 8 had been violated by the refusal of a state institution to disclose to the applicant the content of confidential documents related to Yogi's childhood when he was under the custody of the state.

It is clear that the transformation of Article 8 into the general "charter" of personal autonomy raises a lot of difficulties. Any restriction of personal choice can be criticized as causing a possible violation of this right. Such an all-embracing right contrasts markedly with the obviously modest goals that were laid down in this provision during its preparation. The Convention itself can be considered as a list of specific ways to protect freedom of choice and action, and adding this list to such a broad presumption of freedom threatens to turn other rights into superfluous ones. One of the most controversial issues facing the Court is the search for ways (which can not be justified on the basis of clause 2 of Article 8) to develop certain special, narrowing characteristics of the right to respect for private life. Asshowing the materials proposed in this chapter, the claims made on the basis of Article 8 raise the question of the interpretation and definition of rights provided for by the Convention in their most acute form

The protection of "family life" from interference with legal regulation is a top priority. To a large extent, the "family" (as well as "marriage") is determined by the rules of law. How can such norms at the same time harm the institute, which they themselves determine? In a separate opinion that does not coincide with the majority position, in the case of Levi v. Louisiana and the case of Glon v. Americana Guarantor Co., which was considered at the same time (at the United States Supreme Court), Judge Harlan emphasized the legal definition family relations:

Because of the reasons that are somewhat incomprehensible to me today, the Court ruled that the state should base its conditional determination of the category of plaintiffs on the basis of biological rather than legal relations and biological relations, nor legal recognition, are indicators of love or economic dependence, which can exist between two persons ... The rights in question are based on the existence of family relations, and the state only has decided that it will not recognize family relationships until the formalities of marriage or the recognition of the child are met by the data kamy.

In Johnston, the Court came to the conclusion that Article 8 regulates state rules on family cells, consisting of a child and both unmarried parents. In so doing, he was guided by the "independent interpretation of the term" family "in Article 8. In Marx, the Court concluded that the mother and her illegitimate child constitute a family entitled to respect under Article 8.

The Supreme Court of Ireland, by contrast, limited the term "family", given in the Constitution of Ireland, by the relationship that corresponds to the positive rules of law. The court ruled that the provisions obliging the state to guarantee the protection of the family and fixing the rights of parents to control the upbringing of their children does not apply to those who became parents outside the marriage. Both cases, as decided by the Court, relate to the family created on the basis of the marriage institution, and in this context, marriage means marriage, valid from the point of view of the legislation currently in force in the state. Although it is clear that single people living together and children born of their union can speak of a family, and they can have if not all, many external attributes of the family, and from the point the view of this particular law may indeed be considered a family. However, from the point of view of these constitutional provisions in question, the guarantees contained therein apply only to marriage-based families.

The European Court has faced something opposite to this problem in the case of Burrheab v. The Netherlands. In the present case, the applicant complained that the Netherlands had violated Article 8, since they separated him from his daughter, who refused to extend the visa and deported him. Burrehab, a Moroccan citizen, living in the Netherlands, married a Dutchman. Almost two years later, a few days after the dissolution of a marriage, they had a baby. For four years, Berehhab helped keep a baby and saw her four times a week, every few hours. The government refused to extend its permission to remain in the Netherlands, which was provided "for the sole purpose of enabling him to live with his Dutch woman." After lengthy appeals and trials, he was deported. The court ruled that even a completely formal legal relationship could create a prima facie family-owned cell, which uses protection.

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In the Marx case, the Court found that Article 8 had also been violated in relation to a child of a child whose legal relationship was affected by the status of a child as illegitimate. However, it already raises another question about the definition of a "family" whose life is protected by Article 8. The court noted that close relatives, such as women, "can play an important role in family life" (paragraph 45). The decisions of the United States Supreme Court covered the scope of the autonomy of the family, which enjoys protection against interference in accordance with the provisions of Fifth and Fourteenth Amendments to the appropriate procedure. He also decided that protection applies to the relationship between grandparents, on the one hand, and their grandchildren, on the other. In the case of Moore v. East Cleveland, the Supreme Court ruled inapplicable an order for division into zones, according to which the grandchildren were not allowed to live in one family home with his grandmother. Most noted that the tradition according to which "uncles, aunts, cousins ​​and especially grandparents and parents live with their parents and children has roots that should be respected equally and deserves the same constitutional recognition."

The specific circumstances, the case in which the applicant, who slipped away Jeffrey Dudzhen, raises the question of the meaning of the term "private life". The court found that, "for some time, Dujen and others had campaigned to bring the Northern Irish law in line with the law in force in England and Wales." Although he did not make any conclusions about the sexual orientation of Dujena himself, in one of the following cases, which concerned The Irish law on sodomy, the applicant, a member of the Irish Senate, was described as "an active homosexual and a fighter for the rights of homosexuals." Thus, the interference with private life referred to herein could not have consisted of State actions aimed at public disclosure of facts which the applicants wished to keep secret. Rather, according to the Court, respect for private life includes respect for the applicant's sexual life, under which the Court, of course, must understand the sexual life chosen by the applicant himself. Therefore, the word "private" should not be perceived as relating to the issues of disclosure or non-disclosure, but the right to choose certain intimate aspects of their own lives, without the regulation of the government.

Such a definition, of course, implies some idea of ​​the limits in which autonomy of an individual is protected. The court did not consider this issue exhaustively. However, in a slightly different context, he proposed a rather broad concept of "private life." The court ruled that Article 8 ensures control not only of the search of the "home" of a person, as specifically mentioned in the article in Article 8, but also of premises in which business is conducted. The latter category is included here because such searches constitute an interference with the right to respect for "private life":

 The court does not consider it possible or necessary to try to give an exhaustive definition of the concept of "private life". However, it would be an excessive restriction to reduce this concept to "inside the circle" in which an individual could live his own life at his own choice and completely exclude from him the external world not covered by this circle. Respect for private life should also include, to a certain extent, the right to establish and develop relationships with other people.

In addition, there seems to be no fundamental reason to perceive this understanding of the concept of "privacy" as such. That excludes activities of a professional and business nature, since in the end, during the course of his working life, most people have a significant, if not the greatest opportunity to develop relations with the outside world. This view is supported by the fact that, as the Commission rightly pointed out, it is not always possible to clearly distinguish which of the activities of a person is part of his professional or business life, but which is not. Therefore, especially in the case when a person has a free profession, her work in this context may form an integral part of her life to such an extent that it becomes impossible to determine exactly how it operates at one particular or another moment.

In a more private context, the interpretation of the concepts of "private life" and "housing" as including certain types of professional and business activity or premises where business is conducted would be consistent with the main object and purpose of Article 8, namely: protection of an individual from arbitrary interference by public authorities. Such an interpretation does not create a proper bar for the contracting States, since they will retain their right to "intervene" within the limits permitted by paragraph 2 of Article 8; this right may be wider when it comes to professional or business activities or premises than in other cases.

The most famous case of the use of modern American doctrine to protect the right to privacy was the woman's right to abortion. In the case of Ro v. Wade it was decided that the state can not prohibit abortion in the first three months of pregnancy and that during the next three months it may regulate abortion only to the extent that it is reasonably related to the state of health mother In subsequent cases, such a criterion was applied to the assessment of different states of the states, where some were recognized as valid, while others were canceled.

In the last case about abortion, the Supreme Court reformulated the limit criterion for determining the validity of restrictions on abortion. Three judges, whose votes were decisive for the adoption of a decision, rejected the need for an analysis of this issue in terms of three-month periods. For the entire period of pregnancy, one criterion should apply: "Only when state regulation imposes an excessive burden on the woman's ability to make that decision (on abortion), the state authority is concerned with the essence of that freedom." These judges identified the "excessive burden" as one whose purpose or consequence appears to be "to create a significant obstacle to choosing a woman." The state's interest in health care and potential life should be valued in this framework. Four judges joined a dissenting opinion that could cancel Ro. These judges condemned the verdict from the point of view of the "excessive burden", as one that "inherent in the possibility of manipulation, and which would prove hopelessly inapplicable in practice."

In 1988, the Supreme Court of Canada declared ineffective Article 251 of the Canadian Criminal Code, which restricted abortion to only those held in hospitals that received permission, and if the hospital commission had shown that such an abortion was necessary for the termination of pregnancy, which is likely to pose a threat to the life or health of a pregnant woman. The Court concluded that this provision violated Article 7 of the Canadian Charter of Rights and Freedoms, which prohibits the deprivation of "privacy, liberty or security ... except in cases which are consistent with the principles of fundamental justice". First, the Court concluded that the prohibition of abortion could constitute a significant threat to "personal security." He further argued that the law does not comply with the "principles of fundamental justice", since the procedures provided by him lead to the prevention of abortions even among those women who, according to the definition of the Parliament, have sufficient grounds for abortion according to established standards. The majority did not consider it necessary to decide whether the main grounds for the Parliament to impose restrictions on abortions were in accordance with "fundamental justice".

Although the European Commission on Human Rights has indicated that the regulation of abortion may be an interference with private life, the Court has not yet considered a case that would be related to an application for abortion. However, the Court clearly stated that Article 8 provides protection of the "physical and moral integrity" of a person. In the case of Oupen Dore and Dublin Valley Houston v. Ireland, the Court ruled that the issuance by the Irish courts of a court ban on communication of information on abortion opportunities in the United Kingdom was unjustified to interference with the right to free expression in accordance with Article 10 In that case, the Court carefully avoids expressing the view as to whether "the right to abortion is guaranteed by the Convention or whether the right to life enshrined in Article 2 applies to the germ". Similarly, he declined to decide whether the protection of the rights of "other people" referred to in paragraph 2 of Article 10 applies to still unborn. However, he argued that, according to this provision, the Irish prohibition of abortion had the legitimate aim of "protecting morality, one of the implications of which in Ireland being the protection of the right to life of an unborn child." This conclusion was based on "deep moral values ​​that affect the nature of life and which are reflected in the views of the majority of the Irish people.

The term "private" in the most obvious sense means the ability of a person to keep certain information secret. The state, exercising its broad regulatory powers, has a constant need to receive, monitor and evaluate information. The most acute collision of these conflicting areas occurs during the investigation and prosecution of criminal offenses. It goes without saying that Article 8, which insists on respect for privacy, privacy and confidentiality of correspondence, limits the investigative powers of government bodies. Of course, in § 2 the legitimate necessity of such measures is recognized "in the interests of national security, public peace or for the protection of order and prevention of crimes".

In its decisions, the Court tried to reconcile the real pogreby state officials and the private nature of the lives of individuals, insisting that the conduct of searches be controlled by a certain procedure of independent prior approval and supervision. In the case of Funke v. France, the Court recognized the legal rules governing the production of customs searches by the imperfections:

First of all, in the absence of any requirement for a court order, the restrictions and conditions provided by the law are too soft and full of possibilities to interfere with the applicant's legal rights and they can not strictly meet the legitimate aim pursued. It should be noted that although Article 8 mentions only one place of residence, the Court interpreted the term broadly, also understanding the place of work of the person under it, noting, in particular, that the French text uses the word "domicile", which has "wide value". In any case, given the wide-ranging understanding by the Court of the term "private life", the place of work of an individual is also protected from searches.

The fourth amendment to the United States Constitution affirms the "right of the people to invite persons, homes, papers and property" from "unjustified searches and arrests." The notion of what is considered to be a search according to the modern judicial interpretation depends on whether the victim could reasonably expect to be inadvertently "the place where the search was conducted. In this way, simple observation or listening out of the home is not subject to the Amendment, but penetration into someone's occupied housing usually falls under its influence. Moreover, the United States Supreme Court, like the European Court of Justice, has recognized that a person may reasonably expect to be protected outside the home, including premises used for commercial purposes. According to the Corrigendum, a search or arrest is not "groundless" if it is sanctioned by a warrant after a "neutral and impartial judge" has established the existence of "sufficient grounds" for believing that smuggling or proof of a crime will be detected . However, there are many exceptions regarding the requirement for a warrant related to the requirements of the situation. So, the police may search the car without an ordealer, which would otherwise be quickly moved. However, in this case it is also necessary to prove that the employees had reasonable grounds for the search. The Supreme Court ruled that evidence obtained during an unconstitutional search could not be filed during the criminal proceedings, although there may again be many exceptions. The most important exception is that evidence obtained during a search conducted in good faith on the basis of a warrant issued by the competent authority may be used, even if it turns out that the order was issued without sufficient grounds.

**Topic 1.2. The legal system of Ukraine and the European legal tradition in the field of the protection of human and civil rights and freedoms**

**Plan**

**1. Sources of Fundamental Principles of the Legal Status of a Person in the EU.**

**2. The mechanism of criminal law protection of human rights and freedoms under the legislation of the EU member states.**

**Guidelines**

Human security is a condition in which the danger and conditions that lead to physical, mental and material damage are controlled for the sake of preserving the health and well-being of individuals and society as a whole. Security is a dynamic state that is created by human interaction with its physical, social, cultural, technological, political, economic and organizational environment.

Security is the main and main objective of the legal regulation mechanism. In practice, all the norms of all branches of legislation of any state are aimed at providing a person with such a existence, when his personal rights, interests, values, as well as material goods will not endanger the danger. In accordance with the Constitution of Ukraine, human security is recognized as one of the highest social values, and the establishment of a guarantee of realization by a person of his rights and freedoms, both natural and acquired, is the main duty of the state. Everyone has the right, in any way not prohibited by law, to protect his or her rights against violations and unlawful encroachments. The establishment and safeguarding of human rights and freedoms and the construction of its security, decent and safe conditions for its existence.

The concept of "human security" is used in the narrow sense. The Constitution of Ukraine enshrines the human right to safety of life and health, safety in the process of using products and the use of all types of works and services, safe working conditions, etc.

Given the integration processes that are currently extremely active in Europe, the processes of harmonization of the legal systems of European states, which concern not only those countries that have joined the European Union, but also those countries that are striving for this, the European globalization, we can not turn to to European norms and standards in the field of human security guarantees. Human rights and freedoms have real value only when there are real guarantees of their protection and implementation.

In order for the rights and freedoms of a person to be real and respected in life, it is necessary not only to proclaim them, but also to provide real and effective guarantees, that is, means of protecting the right from violations, or if it has already been violated, to establish means of its restoration and compensation of the harm.

In the European Union, as well as in some states, the system of guarantees of human rights and freedoms, its safe existence includes three main components:

Firstly, institutional guarantees related to the functioning of bodies whose activities are aimed at protecting and protecting violated rights;

Secondly, procedural safeguards that are implemented in the administration of justice, all this concerns the criminal process;

Thirdly, material guarantees in the form of substantive law, which are aimed at compensation for damages and other damage caused by a violation of law.

As is known, the most socially dangerous manifestations of encroachment on human security by violating its rights and freedoms and causing socially dangerous consequences - material and moral damage, provided for in criminal law. It is criminal legislation designed to protect human security from the most socially dangerous encroachment.

These guarantees are general, that is, they are distributed, as a rule, to all rights and freedoms, including those which in the international normative acts have not acquired the status of "basic" or "fundamental". Along with the general legal norms, special guarantees are provided that relate to individual rights and can be of the most diverse nature (for example, the prohibition of the death penalty, as a guarantee of the right to life, the prohibition of cloning of people as a guarantee of the right to integrity of a person, etc.).

This scientific study is designed for specialists who are well aware of domestic criminal law. We consider its norms as the establishment of material guarantees of human security. Therefore, we do not give a criminal law description of crimes against human security, and we analyze the norms of the criminal legislation of the member states of the European Union.

Comparison of the criminal legislation of the EU member states regarding the protection of human rights makes it possible to see both the originality of the legislation of each country and to conclude that it conforms to its basic standards for the protection of human rights.

1. . The first group of EU member states should include the states that were formerly part of the USSR and thus developed, like Ukraine, under the influence of the socialist legal tradition - Lithuania, Latvia, Estonia.
2. The second group includes the states-members of the EU that were not part of the USSR, the so-called post-socialist countries, but which, due to historical and political circumstances, were affected by the socialist right - Poland, .
3. The third group includes the states that essentially form the EU and whose right has developed beyond the influence of the socialist system of law - the Federal Republic of Germany, Italy, France, the United Kingdom, the Netherlands, Belgium, Greece, Portugal, Austria, Sweden, Denmark, Ireland, Finland, Cyprus, Luxembourg, Malta. During the comparative analysis, we used only the sources that were officially published and translated into Russian by specialists in the field of criminal law, in order to avoid doubts about the authenticity of translations and to allow verification of the reliability of information.
4. In this case, human security is considered by us in the narrow sense, and the criminal-legal characterization of encroachments on the safety of life and health of a person is given.
5. Attacks on the safety of life and health of a person are divided into two groups:
6. 1. Personal security;
7. 2. Social (collective, collective) security, which means: environmental safety, public safety, production safety, safety of products and services, and human security.
8. We tried to reveal the specifics of the legislation of individual EU member states, paying particular attention to those crimes against the security of mankind, whose composition does not exist in domestic legislation.
9. The need for a comparative study of laws and the effectiveness of their application at the present stage of society's development is outlined by the process of globalization, which today affects not only economic and political processes, but also the process of lawmaking. This requires the cooperation of lawyers from different countries to work together to develop the theoretical foundations of lawmaking, which ultimately should formulate in the aggregate knowledge about the effect of laws based on world legal traditions and experience of individual states.
10. As V.V. Velocity, this process is facilitated by a number of factors, among which the following are the main ones:
11.  awareness of the need to take into account the experience gained in this field;
12.  development of systems of universal, regional and local international organizations with their own legislation;
13.  the process of approaching the right systems of different countries in the framework of modern integration processes in the world;
14.  the need for harmonization and unification of national legislation in this regard;
15.  Availability of the problem of "model legal acts" and laws of international organizations.
16. Ukraine is a party to virtually all international human rights treaties. The participation of our state in the Council of Europe and its aspiration to become a member of the European Union, the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, which in turn is part of the Lisbon Treaty (the Constitution for Europe), puts our country in an obligation to adhere to European norms in the field of human security, since practically in the constitutions of all countries of the European Union and in international normative acts, man, his life, freedom, and health are proclaimed the highest social values. But proclaiming does not mean protecting, therefore, as N. Shuklin points out, the process of a constant increase in human needs moves fast enough. Against this background, taking into account all social, political, economic, environmental and other changes in the world, it is necessary to work continuously towards the development of new international legal acts protecting human rights and freedoms, which, based on existing international instruments, would introduce new guarantees and principles .
17. Comparative Law as a method of legal science is a collection of methods of knowledge of legal phenomena. We use this method to study the rule of law in different countries of the world by comparing them. For what purpose do we do this?
18. 1. To simply enrich their knowledge, become more literate and erudite. But this goal does not meet our scientific needs. So, we are on a "contemplative level". We look, sometimes we are surprised, we say (if we know that we do not have this), but do not analyze and do not make scientific conclusions, and even more suggestions.

20. The purpose - to identify the possible inherent in these laws and order common features and common laws of historical development. - It is closer to science, because we can make certain general conclusions and take from them something useful for their own legislation.

The basic conceptual methods of comparative legal research should include the following:

1. Microcompatibility, institutional comparison and macroequivalence. These methods depend on the volume of the material that we compare (you can distinguish and other levels, all these scientific approaches, rather conditionally)

Microequivalence is an analysis of how a particular national law-enforcement system responds to a specific social problem. Then you need to compare the results and draw conclusions.

Our legislator simply does not see this social problem, and, accordingly, does not react to it.

For example, at the level of microequivalence the question of the responsibility of the accomplices for the actions of the immediate performer, which went beyond the scope of the common intent, is being studied. Acccessory theory - we have an excess of performer!

**Theme1.3 Criminal law protection of the right to protect human life and health**

Plan

1. Subjective features of crimes against human life and health.

2. Punishment for crimes against human life and health.

Guidelines

The Criminal Code of the Republic of Lithuania provides for a separate chapter XIX "Crimes related to danger to human health and life". This chapter consists of four articles. In Art. 142 of the Criminal Code of the Republic of Lithuania "Illegal Abortion" provides for the responsibility of an abortion physician who was entitled to this and who did so at the request of the patient, but provided that the abortion was contraindicated or that the operation was not conducted in a medical institution. This crime is punishable by public works or deprivation of the right to perform certain work or to engage in a particular activity, or restraint of liberty, or imprisonment for a term up to two years.

Part 2 of this article provides for the responsibility of a health specialist who, at the request of the patient, conducted this operation at a medical institution. The punishment for this act is public works or the deprivation of the right to perform certain work or to engage in a particular activity, or restraint of liberty, or imprisonment for a term up to three years.

Part 3 of this article establishes the criminal liability of a person who was not entitled to carry out an abortion operation, but aborted the pregnancy at the request of the woman himself. The punishment for this crime is arrest or imprisonment for up to four years.

In Art. 143 of the Criminal Code of the Republic of Lithuania "Forced to abortion" provides for criminal liability of a person who by force of physical or mental violence forced a woman to abortion. This crime is punishable by public works or restraint of liberty, by arrest or by imprisonment for a term up to two years.

Comparison of the relevant norms of the Lithuanian criminal law with the norm contained in Art. 134 of the Criminal Code of Ukraine "Illegal abortion" allows to establish both common features and differences. The Criminal Code of the Republic of Lithuania criminalizes a wider range of people and contains a crime that does not exist in the Criminal Code of Ukraine, and namely "Forced to abortion". The Criminal Code of the Republic of Lithuania does not provide for criminal liability for the illegal abortion if the act has caused such consequences as a long-term health disorder, infertility or death of the victim. Obviously, the Lithuanian legislator believes that such consequences show not so much that the person is in a dangerous position, but about the real harm to the life or health of a woman. If we compare the sanctions, one should conclude that despite the fact that in the Criminal Code of the Republic of Lithuania, liability is established for a less socially dangerous act, it is punishable more severely. In the Criminal Code of Ukraine only in Part 2 of Art. 134 provides for a sentence of imprisonment.

The Criminal Law of the Republic of Latvia also provides for liability for the illegal abortion (Article 135), but it contains more varieties of this crime than the criminal legislation of Ukraine and the Criminal Code of the Republic of Lithuania. In Part 1 of Art. 135 provides for the responsibility for the abortion by a person who has the right to do so, but is abortion outside a hospital or other health care establishment or health facility, but without legal grounds. This offense is punishable by arrest or a fine with a deprivation of the right to engage in medical practice for a term up to five years or without such.

Part 2 of this article provides for criminal liability for abortion by a special subject - a person who does not have this right, or in an unsanitary way. It is obvious that in this case the harm to the health of a woman becomes more real and therefore for the commission of this act provides for a more severe punishment - imprisonment for up to three years or arrest, or a fine with the deprivation of the right to engage in medical practice for a term up to years or less.

Part 3 of this article provides for a qualified criminal offense - illegal abortion, committed repeatedly. This act is punishable by imprisonment for up to five years with the deprivation of the right to practice medicine for a term up to five years.

Illegal abortion despite the will of the pregnant woman or the one that caused the death of a pregnant woman or other grave consequences (Part 4, Article 135) imposes a sentence of imprisonment for a term of five to fifteen years with the deprivation of the right to practice a medical practice for a term up to five years or less.

It is obvious that the legislator of the Republic of Latvia, regardless of the severity of the crime and its consequences, provides an optional additional punishment for the same term - up to five years.

If we compare the legislation of the Republic of Latvia and the Criminal Code of Ukraine, one should conclude that in Latvia an abortion that caused death or other grave consequences is considered a more socially dangerous act. Neither in the Criminal Code of Ukraine nor in the Criminal Code of the Republic of Lithuania there is no liability for abortion in spite of the will of the pregnant woman.

As in the Criminal Code of the Republic of Lithuania, the Criminal Law of the Republic of Latvia provides for criminal liability for coercion to abortion. But according to the Criminal Law of the Republic of Latvia, criminal liability occurs in the presence of the consequence - an abortion (Article 136 of the Criminal Law of the Republic of Latvia). This offense is punishable by imprisonment for up to two years, either by arrest, or by compulsory labor, or by a fine. As already indicated, both in Lithuania and in Latvia criminal liability is forcing a woman to abortion, while domestic criminal law does not provide for liability for such acts.

It should be noted that in the Criminal Law of the Republic of Latvia, offenses that infringe on personal safety of a person are not allocated to a separate chapter, but are contained in Chapter 13 of the Special Part of the Law "Criminal acts against the health of a person".

With regard to such a crime as a threat of murder, it is contained in the disposition of Art. 132 of the Criminal Law of the Republic of Latvia, but under this article criminal liability comes not only for the threat of murder, but also for the threat of causing severe bodily harm. As in the Criminal Code of Ukraine (Article 129), responsibility arises, provided that there were real grounds to fear the implementation of this threat. The punishment for this crime is provided in the form of imprisonment for up to one year or arrest, or compulsory labor, or a fine. The qualifying signs of this crime are not provided by legislation. Almost in the same way formulated the disposition of Art. 145 of the Criminal Code of the Republic of Lithuania, but, unlike the laws of Latvia and Ukraine, it has its own peculiarities.

In Part 1 of Art. 145 of the Criminal Code of the Republic of Lithuania provides for liability for the threat of murder or serious harm to health if there were real grounds to fear the implementation of this threat. Punishment for this offense is public works, fines, or restraint of liberty, or arrest or imprisonment for up to two years.

But in the disposition of Part 2 of this article, there is a crime that is absent both in the Criminal Code of Ukraine and in the Criminal Law of the Republic of Latvia: "Anyone who has terrorized a person by threatening an explosion, arson, or other act that endangers life, health or property, or systematically intimidated a person, while using mental violence - punishable by imprisonment for up to four years. "

And although the punishment for this crime is quite strict, in Part 3 of Art. 145 of the Criminal Code of the Republic of Lithuania contains a provision according to which the person is held liable only in the case of a victim's complaint or statement of his legal representative, or the prosecutor's request, for the acts provided for in paragraphs 1 and 2 of this article.

To the crimes which pose a threat to the personal safety of a person, the legislator of Ukraine attributes and acts, the composition of which is provided in the dispositions of Art. 135 and art. 136. similar crimes are provided for in the Criminal Law of Lithuania and Latvia.

In Art. 144 of the Criminal Code of the Republic of Lithuania "Leaving without help at the threat of life-threatening person" established the responsibility of the person who had the duty to take care of the victim, had the opportunity to provide first aid in case of a threat to human life, but did not provide such assistance or created such a threat. This article, unlike domestic legislation, does not contain the types of crimes with aggravating circumstances, consists of one part and punishment for such a crime is a fine or restriction of freedom, or arrest or imprisonment for a term up to two years.

If the Criminal Code of Ukraine provides for criminal liability both for leaving in danger and for not providing assistance, the criminal law of the Republic of Lithuania establishes liability for leaving in danger, whereas in Art. 141 of the Criminal Law of the Republic of Latvia "Failure to provide assistance" provides for the liability for not providing assistance to a person in a dangerous life situation. This assistance should be necessary and urgent, in addition, the person should be able to provide such assistance without grave danger to himself or herself and others and if the failure to provide assistance caused a person's death or other grave consequences. The subject of this crime may be any person and punish the crime, the composition of which is provided in Part 1 of Art. 141 of the Criminal Law of the Republic of Latvia by compulsory labor or a fine. Part 2 of this article provides for the crime with a special subject. Part 1 provides for liability for the alleged failure to provide assistance to a person in a danger to life and health and is deprived of the opportunity to apply measures for self-preservation due to juvenile, old age, illness or helplessness if the perpetrator was able to provide the victim with assistance and was obliged to take care of the victim or herself put him in a life-threatening situation.

**Theme 1.4 Criminal protection of citizen's electoral rights**

**Plan**

1. Subjective features of crimes against the electoral rights of a citizen.

2. Penalties for crimes against the electoral rights of a citizen.

Guidelines

The public danger of obstruction of the exercise of the electoral law is that it violates the constitutional right of citizens of Ukraine to elect or be elected to state authorities and local self-government bodies. This act violates the electoral process regulated by law, which is carried out on the basis of: universal, equal and direct suffrage; secrecy of voting; Voluntary Participation of Citizens in Elections; free and equal nomination of candidates; equality of opportunity for all candidates in conducting an election campaign; impartiality of candidates from the state authorities, local self-government bodies and officials and officers of these bodies; freedom of agitation; publicity and openness of the election campaign. As a result of these encroachment on these authorities, there may be persons who were not actually elected to them, and vice versa, not getting candidates who received or (subject to observance of the law during the election) could receive the support of the majority of voters. As a result, individual bodies of state power or bodies of local self-government may actually be illegitimate.

 The object of the crime is the electoral right (the right to elect and be elected) of the citizens of Ukraine, as well as their right to conduct pre-election campaigning.

 Victims of this crime may be voters, candidates for elective positions in state authorities and local self-government bodies, persons whose activities, in accordance with the legislation, are aimed at ensuring the realization of the subjective right of a citizen to be elected to the said authorities (trustees of candidates, their official representatives and official observers), members of election commissions. Applicants for elective posts whose elections are not regulated by electoral law (for example, candidates for the position of judges of the Constitutional Court of Ukraine, members of the High Council of Justice, Speaker of the Verkhovna Rada of Ukraine, his deputies and chairmen of parliamentary committees, etc.) can not be recognized as victims of this crime, as well as persons who have already been elected deputies, the President of Ukraine or village, town, city mayors.

The objective side of the crime may be expressed in the form of: 1) the obstruction of the free exercise by a citizen of Ukraine of the right to elect and be elected by the President of Ukraine, a people's deputy of Ukraine, a deputy of the Supreme Council of the Autonomous Republic of Crimea, a deputy of the local council or village, settlement, city mayor; 2) Prevention of election campaigning.

Interference with the free exercise by a citizen of his electoral rights may be expressed, in particular, in; groundless refusal to register a candidate; the non-inclusion of a citizen in the lists of voters in the presence of the grounds for the exclusion or expulsion of a citizen from the list of voters in the absence of the grounds; unlawful refusal of the voter to accept and consider his application for inclusion in the voter list; forcing the voter to sign the signature in support of a certain candidate for the candidate or, conversely, to refuse to sign such a letter; Informing or falsely reporting him about the place and time of voting; in forcing the candidate to withdraw his candidacy from the ballot, or to register as a candidate, etc.

This feature also covers the obstruction of the activities of the trustees of the candidates for the President of Ukraine, candidates for deputies and candidates for the position of village, town, city mayor, their official observers, the representative of the presidential candidate in the Central Election Commission, who help to realize the subjectivity of these citizens. the right to be elected to bodies of state power and bodies of local self-government.

At the same time, obstruction of, for example, the activities of official observers from parties (blocs), voters' meetings, foreign states and international organizations, as well as the activities of other persons who are in some way involved in an election campaign, does not form a crime envisaged by art. 157, since it does not directly affect its object. Such actions, if available for that reason, should be considered as an appropriate crime against the life and health of a person, against the authority of public authorities, local authorities and associations of citizens, a crime in the field of official activity or another crime.

This form of crime also covers cases of obstruction of the normal activities of the election commission (district, territorial, district, central) or its individual member, or any unlawful interference in the resolution of issues assigned by law to their competence in organizing and holding elections, if such actions were aimed at preventing the citizen from exercising his electoral rights. For example, this can be manifested in the organization of the disruption of a meeting of the commission in order to prevent the registration of a certain person as a candidate for deputy or another elected office. In the absence of such a direction, the actions of the guilty person in the presence of the grounds may be considered as another corresponding offense, including against the life or health of a person, against the authority of public authorities, bodies of local self-government and associations of citizens (Articles 341, 356), against public order (Article 296), or an administrative offense stipulated in part . 186-2 KAP.

Prevention of election campaigning involves the creation of any obstacle to the citizens of Ukraine, political parties, other associations of citizens, groups of enterprises, institutions and organizations, regardless of their form of ownership, to freely and comprehensively discuss candidates' election programs, their political, business and personal qualities, to freely conduct campaigning against or against one or another candidate, electoral lists of candidates from political parties or election blocs. It may be manifested in the disruption of meetings, rallies or meetings with candidates (their direct prohibition, the inadmissibility of voters, candidates or other persons to their venue, lack of premises, deliberate decommissioning of technical equipment necessary for such measures, power outage, untimely notification of the place and time of such measures, etc.), the provision of unwarranted advantages or imposing unreasonable restrictions on the election campaign of candidates, their agents in the appropriate mass media unjustified refusal in the production of election campaign materials, their illegal extraction or destruction, violations of the rules of broadcasting by mass media of propaganda television and radio programs, etc. Does not constitute a constituent part of this crime restriction in conducting election campaigning, defined by electoral law.

Interference with the free exercise of a citizen's electoral rights or conduct of election campaigning may be committed in any way. The most widespread methods of such interference are the law of violence, deception, threats and bribery.

"Violence" means the use of physical force that may be expressed in beatings, beatings, deprivation or restraint of liberty, causing bodily harm, forcibly removing a victim's passport or other document required for the registration of a candidate or opening an account for the financing of an election campaign, receipt of an election ballot, etc. . If the violence used contains signs of a more serious crime than impeding the exercise of the electoral law, it requires an independent qualification, in particular under art. Art. 115, 121, part 2 of Art. 122 or other article of the Criminal Code.

A deception is a misleading person's perception of actual phenomena and facts that are directly related to the exercise by a citizen of his or her electoral rights or conduct of election campaigning. A deceit may be expressed in the message to such person of false information (about the time and place of the meeting with the candidate, the time and place of voting, the procedure for filling the ballot papers, the identity of the candidate, etc.), and in the deliberate silencing of the actual circumstances that the guilty party was obliged to notify, for example, as a chairman or a member of an election commission (failure to inform voters about the withdrawal of a particular candidate for his or her candidacy, or to organize a meeting with candidates, etc.).

The threat lies in the psychological impact on the victim in order to hinder the exercise of his electoral law. The content of such a threat as part of the crime provided for in Art. 157 covers the threat of the use of physical violence (deprivation of life, causing bodily injury, abduction, etc.), damage or destruction of property, other acts that are dangerous to the victim, incl. threat of murder, which additional qualification under Art. 129 does not need An exception is a threat committed by a member of an organized group, which should be independently evaluated in accordance with Part 2 of Art. 129. The threat should be real and, by its nature and intensity, be able to prevent a citizen from exercising his right to vote or campaigning.

Bribing as a method of preventing a citizen from freely exercising his or her election rights or campaigning involves inclining a person by providing or promising a remuneration to the material nature (money, material assets or services) to commit certain actions related to the citizen's exercise of his electoral right, conduct pre-election campaign (before voting for or against a particular candidate, withdrawal of his candidate for election, refusal of a member of an election commission to participate in the election campaign omissions, falsifications of election documents, etc.). Bribing may be directed against a voter, a member of an election commission, a candidate for an elected office in the body. government or local self-government body, as well as its trustee, official representative or any other person involved in the election process. Such bribery, committed in relation to an official, should, in the presence of the grounds, be regarded as giving a bribe and additionally qualifying under art. 369

Public appeals or agitation for boycotting the election of the President of Ukraine or people's deputy, the publication or dissemination by other means of false information about a candidate for the presidency of Ukraine or deputies, as well as agitation for or against the candidate on election day form the composition of the administrative offense provided for in Part 1 of Art. 186-2 KAP.

An offense is deemed to be terminated from the moment when the actual obstruction of the exercise by a citizen of his electoral right has occurred as a result of violence, deceit, threats, bribery or other actions. If such actions have influenced the results of elections, they should be qualified for h. From Art. 157

From the subjective side, this crime can only be committed with direct or indirect intent. The motive of an act for qualification does not matter.

 The subject of the crime is general.

 Qualifying signs of a crime law provides for the commission of it; 1) by a preliminary conspiracy by a group of persons; 2) a member of the election commission; 3) another official using authority or official position (Part 2 Article 157), and especially qualifying sign - influence on the results of voting or elections (Part 1 of Article 157).

A person who, according to the electoral law, is included in the polling station, territorial, district or Central Election Commission is recognized as a member of the election commission. Another official must be understood as any other person, other than a member of an election commission. On the notion of official, see Notes 1 and 2 to Art. 364 and the General Provisions to Section XVII of the Special Part of the Criminal Code.

A mandatory condition for the qualification of this crime on the basis of the commission by its member of an election commission or other official is the obstruction of such persons by the citizen of exercising his or her electoral right or preventing election campaigning using authority or official position. Such actions may be expressed in: a groundless refusal by members of an election commission to a citizen in the registration of his / her candidate; interfere with the release of a subordinate who, in accordance with the established procedure, has been registered as a candidate for an elective office in state authorities or local self-government bodies, from performing production or service duties for meetings with voters or other election measures; non-assignment of a candidate to premises by an official to carry out activities provided for by election law; giving an official benefits to one candidate or limiting one's ability to speak in the media; forcing a servant of the subordinates (for example, regular servicemen, cadets) to vote for a particular candidate, etc.

If such actions entailed grave consequences, committed by an employee of a law enforcement agency or associated with exceeding the authority or official position, committed under qualifying circumstances, they need additional qualifications in articles that provide for responsibility for the relevant offenses in the field of official activity (Part-time 2 or 3 articles 364, 365, 423, 424). In the event that the obstruction by an official of a public authority or local self-government of the exercise of electoral rights simultaneously created obstacles to the legitimate activities of citizens' associations, including political parties or their bodies (for example, by providing privileges and facilitating certain political parties participating in the election the process, and infringement of the rights of others), if, in the presence of the grounds, it should be additionally qualified for art. 170

The influence on the results of the vote or the election should be understood as hindering the free exercise by the citizen of his or her electoral rights or obstruction of election campaigning, which in particular affected the number of voters who took part in the vote, the number of votes cast for each candidate, the recognition of the candidate elected (unelected), etc. For on. the clarity of this qualifying attribute is not necessarily that the effect of the impediment was to declare the elections void or to have not taken place.

**Theme 1.5 Criminal law protection of human rights in the field of family and guardian legal relations**

**Plan**

1. Subjective features of crimes against family and guardian legal relationships.

2. Penalties for crimes against family and guardianship.

Guidelines

The laws of Ukraine oblige parents to keep their minor children and disabled full-age children in need of material assistance. The protection of the rights and interests of minors is based on their parents, who are acting without much authority. Every child has the right to reside in the family with his or her parents or in the family of one of them and in the care of parents.

The object of the crime of evasion of alimony for the maintenance of minors is the right of minors to full-fledged life and comprehensive (physical, mental and social) development. Those who have suffered from this crime may be children whose custody, under the court's decision, is payable by their father or mother, as well as minors or disabled children who are dependent on their parents. Under-age children are defined as persons under the age of 18 if, under the law, they do not acquire minors' rights before (for example, because of marriage). Disabled adults are children who due to physical or mental defects are deprived of the opportunity to work continuously or temporarily (this is, in particular, children with disabilities of groups I and II).

 The subject of the crime is the funds that, according to a court decision, children are to be paid for maintenance, as well as funds, various items (clothes, foodstuffs, etc.) that parents must provide for the maintenance of minors and adults, but disabled children.

On an objective side, this crime may be committed in the form of: 1) malicious evasion from the payment of child support (child support) established by a court decision; 2) malicious evasion of parents from the maintenance of minors or incapacitated children who are detained.

a treasure of crime, stipulated by art. 164 of the CCU, in the form of evasion of payment of alimony, may take place only in the presence of a court decision according to which the mother or father or another person under the law is required to pay alimony. At the same time, the existence of a court decision is not a prerequisite for bringing the perpetrator to justice under this article in case of committing this crime in the form of evading parents from the maintenance of minors or disabled children.

The payment of alimony is understood as the actions or omissions of the guilty person, aimed at non-enforcement of the court's decision to recover from it the benefit of the child (children) of the specified amount of alimony. They may be expressed as a direct refusal to pay alimony established by the court, and in other actions (inaction) that actually make it impossible to fulfill the specified obligation (concealment of earnings (income), which is subject to registration when alimony is deducted, change of place of employment or place of residence with the failure to submit the relevant statement on the need to pay alimony, etc.).

Avoiding the maintenance of minors, as well as adults, but incapacitated children who are dependent on their parents, may consist of insecurity of such children by food, clothing, other things (first of all, necessity), provision of the necessary funds for their treatment, rest, etc.

Evading alimony and avoiding the maintenance of minors or disabled children form this crime only if it is malicious. The notion of malice belongs to the evaluation categories and should be defined in each case. The admission by the court of evasion by the victim should be adequately motivated in the sentence. The malicious nature of the evasion can be evidenced by the duration of evasion, the continuation of the evasion after the warning of the need to discharge his duty and the possibility of criminal liability on the part of the judge or the public servant, repeated appeals of the victim or other persons to the guilty person on this occasion, etc.

It can not be recognized as a malicious evasion of alimony or ill-treatment of child abandonment, which, although it lasted for a significant period of time or was not systematic, was forced on the part of the person to whom such a duty was entrusted by law or a court decision. Such cases should include the non-payment of alimony by the person due to the inability to find a job, because of illness, non-allocation from the family budget of funds necessary for the purchase of clothes for a minor child or for the treatment of a disabled child in | connection with their absence, etc.

An offense is deemed to have ended since the evasion referred to in this article has become malicious in nature.

The subject of a crime is special. For malicious evasion of child support for children under Art. 164 KKUs can be held responsible by parents and adoptive parents. Subjects of the commission of this crime in the second form (malicious evasion of the maintenance of minors or disabled children) can only be blood parents or adoptive parents.

**Theme 1.6 Criminal law protection of human rights to freedom of religion**

**Plan**

**1. Subjective features of crimes against religious freedom.**

**2. Penalties for crimes against religious freedom.**

**Guidelines**

Article 181. Attack on the health of people under the pretext of preaching religious beliefs or performing religious rites

1. The organization or management of a group whose activities are carried out on the pretext of preaching religious beliefs or performing religious rites and combined with causing harm to people's health or sexual mischief -

shall be punishable by restraint of liberty for a term up to three years or imprisonment for the same term.

2. The same actions, combined with the involvement of the juvenile group, -

shall be punishable by imprisonment for a term of three to five years.

1. The main direct object of a crime is the religious activity of a person in relation to two manifestations of freedom of religion: preaching of beliefs and the exercise of religious rites.

An additional mandatory object is the health or life of a person or public morality; an additional optional object may also be the activity of a religious organization.

2. The objective side of the crime is to take active steps in organizing and directing a religious group whose activities are carried out as preaching of beliefs or performing religious rites, and combined with causing harm to a person's life or sexual harassment.

The definition of "under the pretext of preaching clergy or performing religious rites" should be understood as the actual or imaginary observance by a group of the canons of a particular doctrine or its religious activity as the basis of its unlawful conduct.

The use of the article in the disposition of the set of beliefs or ordinances should be understood as the prohibition of any of the rites of any doctrine if they (encroachment or rite) violate the protected rights and interests of the person.

The fact of legalization in Ukraine or outside the group as a religious community, another religious or civil organization, party, etc. does not affect the composition of the crime.

The organization of the group means recruiting a group, seeking funds for its activities, that is, any actions aimed at creating a guilty party of association of two or more persons into a religious organization.

The management of the group is, as a rule, the sole person, sometimes - the collective management of the created association.

Composition of the crime is truncated: the crime is considered to be terminated from the moment the organizational actions for creating a group or actions from the leadership of the already created group are committed.

Active participants in the creation or operation of such a group should be liable as accomplices of the organizer or the head of the group.

By causing damage to health in the disposition of the article under consideration, it should be understood as causing bodily injuries, mental disorder, and the like.

Sexual laziness refers to the participation of members of the group in disorderly sexual intercourse or other forms of corruption.

Actual injury to a person is not covered by the composition of the crime and needs additional qualification in the articles of the Criminal Code, which establish responsibility for crimes against the life and health of a person.

Subjective side - direct intent: the person is aware that organizes a group whose activities will be carried out as a preaching of beliefs or performing religious rites and will be combined with causing harm to people's health or sexual mischief, or who manages such a previously created group and so wishes act.

The motive of the crime may be different (mercenary, sexual, as well as religious) and does not affect qualifications.

The subject of a special crime - the organizer or a formal or informal leader of the group - an individual who has reached the age of 16.

 An additional mandatory object of the offense provided for in Part 2 of Art. 181 of the Criminal Code, there is health (life) or sexual integrity of minors.

The victim of this crime is an underage person.

 Objective party - the involvement of the organizer or leader of a group of a person under the age of 18 into a group whose activities are carried out as preaching of beliefs or performing religious rites and combined with causing harm to human health or sexual mischief.

The involvement of minors in the activities of the group should be recognized by any act (action or omission) of the organizer or manager in involving minors in the activities of the group created or created. For example, encouraging parents to participate in minors' activities in the group is one of the typical ways of involving minors. Involvement should be considered as the tacit consent of the leader or organizer of the group to participate in a group of minors.

The method of retraction - fraud, bribery, intimidation, etc. - does not affect qualifications, but sometimes requires independent qualifications. For example, physical or mental violence against the victim requires additional qualifications in the articles of the Criminal Code, which provide for responsibility for crimes against a person.

The crime is terminated from the moment the juvenile is drawn into the group, that is, since the beginning of the formation of the victim's desire to participate in the group's activities. At the same time, a possible cooking and attempt to draw a minor through the preparation of a certain literature or the persuasion of parents for the participation of the child in the group.

Subjective side - direct intent: the person is aware that he involves the activities of a group of minors, and wants to do so.

The subject of a special crime - the organizer or leader of a group - an individual who has reached the age of 16.

Topic 1.7. Criminal law protection of human rights to property

Plan

1. Subjective features of crimes against property.

2. Penalties for property crimes.

Guidelines

Article 1881. Abduction of electric or thermal energy by its unauthorized use

1. Abduction of electric or thermal energy by its unauthorized use without accounting devices (if the use of accounting devices is mandatory) or due to deliberate damage to accounting devices or in any other way, if such actions have caused significant damage, -

shall be punishable by a fine of one hundred to two hundred tax-free minimum incomes, or correctional labor for a term up to two years, or restraint of liberty for a term up to three years.

2. The same actions committed repeatedly or by a prior conspiracy by a group of persons, or if they caused damage in large quantities, -

shall be punishable by imprisonment for a term up to three years.

P rm i tk a. The damage provided for by this article is considered to be significant if it exceeds the non-taxable minimum income of citizens 100 times more, and in large quantities - if it is two hundred and fifty times higher than the non-taxable minimum of citizens' incomes.

(The Code was supplemented by Article 1881 in accordance with the Law of Ukraine No. 2598-IV of May 31, 2005)

1. The direct object of this crime is property relations in the field of the use of electric or thermal energy. An additional direct object is the relations related to the provision of electricity and thermal energy of consumers.

2. The subject of a crime is electric or thermal energy, which are used unlawfully by the subject of a crime. Electricity is a kind of energy associated with the use of electric current transmitted from a power source to a consumer in electrical networks. The purpose of electric energy is to convert it into thermal or mechanical energy by using heat-heating or other devices and instruments.

Thermal energy is hot water and steam produced by steam or atomic power plants, geothermal, solar thermal and other non-traditional sources, boiler houses, heat utilization establishments. Thermal energy is transmitted from the source to the consumer through the heat networks, that is, the system of heat pipelines (pipelines).

The common and inherent to all the specified types of energy is that they: 1) are related to the presence of certain energy sources that can be converted into other types of energy;

2) are connected with the presence of a certain source of energy and can not exist separately from it.

3. The objective side of this crime is characterized by the abduction of electric or thermal energy by: a) the unauthorized use of electric or thermal energy without accounting devices (if the use of accounting devices is mandatory); b) due to deliberate damage to accounting devices; c) in any other way; d) if, as a result of these actions, the owner caused significant damage.

Abduction of electric or thermal energy is the illegal extraction of another person who is the subject of a crime of electric or thermal energy and use it in the interests of his or others. Removing the specified energy may be secret and open, which does not affect the qualification, but is important for assessing the public danger of the crime. The rudeness of energy seizure is that the person does not have the energy that is abducted, neither the actual or the foreseen right, it is alien to her.

Abduction of electric and thermal energy by its unauthorized use without accounting devices (if the use of accounting devices is mandatory) consists in unlawfully connecting to the networks of electricity, heat, gas supply and the unauthorized use of energy received by these networks, wine or other persons.

And the use of energy is carried out bypassing the accounting devices, that is, uncontrollably and without counting the amount (volume) of unlawfully consumed energy. Abduction of electric or thermal energy due to deliberate damage to accounting devices is manifested in the fact that, because of damage to accounting devices (meters of electric current, gas meters, meters of consumer thermal energy - hot water, steam, etc.), the guilty person evade accounting for the energy that he consume, drops accordingly and from the payment of the actual energy consumed.

In cases where the damage to the meters of energy consumption, includes the composition of the crime provided for in Art. 194 of the Criminal Code, all in perfect qualification for the totality of crimes.

Abduction of electric or thermal energy in any way is characterized by the fact that the guilty person uses other, not specified in Art. 1881 CC techniques, for example, fraud, abuse of trust, etc. They do not matter to determine the composition of the crime as the basis for criminal liability and the correct qualification of the crime under review, but it affects the assessment of its social danger. However, in this case it should be established that the person unlawfully, unwittingly consumes the energy of someone else for it and therefore causes the owner of this energy to cause material damage.

Composition of the crime, stipulated by Art. 1881 of the Criminal Code, may only occur if the owner of such actions has caused significant damage as a result of the abduction of electric or thermal energy, that is, one hundred times more than the value of the damage. m. d. g.

In calculating the amount of damage caused to the owner of energy, should be guided by subordinate legal acts. For example, when deciding on the calculation of the amount of damages caused to an electricity supplier due to consumer violations of the rules for the use of electric energy for the population, it is necessary to use the relevant "Methods" approved by the decision of the National Electricity Regulatory Commission of Ukraine of November 22, 1999, No. 1416 (OVU. - 1999 - No. 52. - Article 2603), while in calculating the amount of electrical energy not reclaimed as a result of a violation by the consumer - legal the person of the rules of the use of electrical energy, - "Methodologies", approved by the Resolution of the National Electricity Regulatory Commission of Ukraine of December 5, 2001, No. 1197 (NERC Newsletter - January 2002 - January 23, No. 1).

4. The subjective aspect of the crime is characterized by direct intent, combined with selfish motive and purpose.

5. The subject of a crime is any person who is not an official. The same actions of an official should qualify under Art. 364 CC - abuse of power or official position.

6. Part 2 of Art. 1881 of the Criminal Code provides for responsibility for the same acts committed repeatedly, or by a prior conspiracy by a group of persons, or if they caused damage in large amounts, that is, that which is two hundred and fifty times or more than n.m.d. (see note to Article 1881 of the Criminal Code).

7. The disposition of articles 1881 and 192 of the Criminal Code is related both to special and general norms. In cases where a committed act simultaneously falls under the signs of both norms, a special rule should apply, that is, Art. 1881 CC.

**Theme 1.8 Criminal law protection of human rights to judicial protection**

**Plan**

**1. Subjective features of crimes against justice.**

**2. Penalties for crimes against justice.**

Guidelines

Despite the external geographic location of the European part of the continent of Eurasia and the general, at first glance, characterization of its legal framework, there is a certain diversity of legal systems within the specific states of the Old World.

In general, these legal systems, in our opinion, should be outlined in three groups. This is, first of all, the countries of continental law, which, in turn, can be divided into two types, namely: those where the criminal law is codified only on the pages of the criminal code (this is, in the main, other socialist countries - Ukraine, the Russian Federation, the Republic of Belarus, Georgia, as well as the Republic of Bulgaria, etc.), and those in which certain criminal law is also included in separate laws and acts in parallel with the Criminal Code (as the rule is that the countries of the traditional Roman-Germanic legal family - Germany, Spain, Austria, etc.) and / or bylaws (for example, in France, the definition of the signs of specific violations as a variety of criminal acts and sanctions for their commission is given by the executive authority in regulations); and secondly, common law countries, which, along with criminal laws and regulations, are the legal precedents (United Kingdom of Great Britain and Northern Ireland) as a source of law; and, thirdly, the state with the so-called mixed legal system (we are talking about the Scandinavian countries: Denmark, Norway, Sweden, Finland and Iceland, the right of which is characterized by common features not only because of the similarity of historical development, that they (countries) closely cooperate in the field of legislation). The essence of this legal system is that the criminal law in the mentioned countries is also contained in the articles of the criminal codes, both in separate laws, and in the case law precedents. The latter play a significant role in the law-making process, making the leading place in court practice among sources of criminal law.

The affiliation of the legal systems of the countries of Europe to different legal families could not but impose its imprint on the regulation of issues related to the criminalization of trafficking in human beings, and therefore they are dealt with differently in the legislation of certain countries. Apparently, this is connected, first of all, with the process of joint historical evolution of a certain group of states, as well as the similarity of their ethno-culture, customs and traditions.

In the course of the study of the main issues of the regulation of the traffic in human beings under the criminal law of Europe, as well as the world as a whole, their comparative analysis is selectively carried out, which makes it possible to identify those specific features that distinguish the norms of different countries, including those belonging to the same legal family, from each other.

Each state is capable of contributing to counteracting such a shameful phenomenon as trafficking in human beings, which is mainly due to the displacement of people from one country to another. In the mechanism of counteraction, the institution of criminal responsibility plays an important role. The effectiveness of its use is associated with a number of factors, including the content and clarity of the wording of the relevant criminal law.

A general overview of the legislation of the twenty-six European countries (Austria, Azerbaijan, Bosnia and Herzegovina, Georgia, Denmark, Spain, Latvia, Lithuania, Netherlands, Norway, the United Kingdom of Great Britain and Northern Ireland, Republic of Albania, Republic of Belarus, Republic of Bulgaria, Republic of Malta, Republic of Moldova, Republic of Poland, Republic of San Marino, Republic of Slovenia, Russian Federation, Finland, Federal Republic of Germany, France, Switzerland Sweden) gives rise to a finding that in all countries there are special rules that provide for criminal penalties for human trafficking. For example, such norms do not exist in the Criminal Law of the Republic of Latvia in 1998.

Special rules on criminal liability for trafficking in human beings are in the criminal law of many European countries, namely: in the Austrian criminal codes of 1974, Switzerland in 1937, the Federal Republic of Germany in 1871, as amended on November 13, 1998, the Netherlands in 1881, the Republic Belarus 1999, Republic of Poland 1997, Republic of Moldova 2002, Republic of Lithuania 2000, Republic of San Marino, 1974, Bosnia and Herzegovina, which entered into force on 1 March 2003.

In the criminal law of most of these countries, other than the special rules on liability for trafficking in human beings, there are also other rules that can be used to combat this evil. Thus, the Criminal Code of the Republic of Poland stipulates not only the responsibility for trafficking in human beings (Article 253), but also for the propensity to engage in prostitution in order to obtain property benefits (Section 1, Article 204), obtaining the property gains from prostitution by another a person (§ 2, Article 204), in particular a minor (§ 3, Article 204), as well as for the inclination or removal of another person abroad for the purpose of taking prostitution (Article 4, Article 204) as a crime against sexual freedom and morality (chapter XXV). According to the Criminal Code of the Republic of Lithuania, not only human trafficking (Article 147) is punishable but also the purchase or sale of a child (Article 157, which is contained in Chapter XXIII "Crimes and Criminal Offenses Against the Child and Family"), as well as receiving income from engaging in prostitution by another person, including for organizing a prostitution activity or taking a pimping or transferring a person with his consent to the Republic of Lithuania or the Republic of Lithuania for the purpose of establishing a prostitution (Article 307, chapter XLIV, "Offenses and criminal offenses against morality "). The Criminal Code of the Republic of Belarus, in addition to trafficking in human beings (Article 181), provides for responsibility for recruiting people for exploitation (sexual or otherwise), in particular committed by a group of persons under a previous conspiracy or in relation to a known minor (Part 2 of Article 187), or committed by an organized group or in order to export the victim outside the state (part of Article 187) as crimes against personal freedom, honor and dignity (Chapter 22). According to the Criminal Code of the Republic of Moldova, trafficking in human beings (Article 165), slavery and conditions , like slavery (Article 167) as crimes against freedom, honor and dignity the faces of the person (Chapter III), and also the sale of children (Article 206) as a crime against the family and juveniles (Chapter VII).

In the Criminal Code of the Republic of San Marino Art. 168 is entitled "Trade in live commodities and the slave trade", and the related article. 167 - "Turning into slavery". Both regulations provide for responsibility for deliberate crimes against the will of the individual. The code specifically provides for liability for such a crime against social morals, such as "Trade in live goods for occupying prostitution" (Article 268).

Special norms about criminal liability for trafficking in human beings in the legislation of different countries can cover not the same range of acts. So, if the Criminal Code of Switzerland refers to the punishment of trafficking in human beings for aiding in another person's civic activities and the establishment of an institution for trafficking in human beings as a crime against sexual integrity (Article 196), then in the Criminal Code of Austria, Trafficking in persons associated with prostitution as a criminal offense against morality (§ 217). Concomitant criminal acts against morality are condemnation (§ 213), promotion of dissuasive actions of other persons committed for money (§ 214), promotion of professional prostitution (§ 215), pimping (§ 216), and also slave trade as a criminal act against will (§ 104).

The Criminal Code of Germany provides for liability for trafficking in persons associated with prostitution (§ 180b), in particular for a serious human trafficking case (§ 181) as a criminal offense against sexual self-determination. Accompanying acts of such an orientation are the assistance to the sexual acts of minors, in particular, carried out for remuneration (par. 2 § 180), promotion of prostitution, in particular provision of a person who has not attained the age of eighteen years, an apartment or provision in the form of fishing for a place or place for prostitution, as well as the retention of another person who is guilty of the apartment provided for the prostitution or exploitation of it in connection with the occupation of prostitution (para 2 § 180a), pimping (§ 181a), as well as the sale of children, which manifests itself in front of for a long time, a child under the age of 14, is associated with gross neglect of guardianship and upbringing duties, for reward or with the intention of enrichment, as a criminal offense against personal will (par. 1 § 236). Accompanying acts against personal will include the capture of a person in order to put her in a helpless state, slavery or serfdom, or to serve a foreign military or similar institution (§ 234), theft of minors, in particular the child, to send it for the border, as well as hiding abroad after the child has been taken there or herself went abroad (para 2 § 235).

The Criminal Code of the Netherlands has established the punishment of trafficking in human beings associated with prostitution as a crime against conspiratorial morality (art. 250ter), as well as the slave trade as a crime against the will of the person (art. 274).

In the Criminal Code of Bosnia and Herzegovina, chapter XVII, which provides for responsibility for crimes against humanity and values ​​protected by international law, contains not only Article 186 "Trafficking in persons", but also a number of adjacent norms, provisions of which can be used to counteract this evil, namely: Art. 185 "The introduction of slavery and transportation of slaves", Art. 187 "International condemnation in prostitution", art. 188 "Illegal picking up of identification documents", art. 189 "Smuggling of people".

According to Art. 387 of the Criminal Code of the Republic of Slovenia 1994 is punishable by slavery, which includes trafficking in persons as a criminal offense against humanity in international law (chapter 35).

In the legislation of some European countries, there are no special rules on criminal liability for trafficking in human beings, but there are articles about the punishment of certain forms of it or socially dangerous acts similar to them. For example, according to the Criminal Code of Georgia in 1999 as a crime against the family and minors - art. 172 - the sale of children is recognized; The Criminal Code of the Azerbaijan Republic of 1999 provides for the responsibility for the trafficking of minors - art. 173 as a crime against juvenile and family relations, as well as slavery and the slave trade, as crimes against the peace and security of mankind - art. 106

The Criminal Code of Spain of 1995 provides for the responsibility of a person who fails to fulfill his duties of protection and protection, the minor to another person for a fee to establish relations with him similar in kind, and also for the reception of a minor, even if the purchase was carried out abroad - Art. 222, which is contained in the chapter "Illegal adoption, infringement of parental rights, violation of the status of a minor"; for the transfer of a minor or incapacitated person to be educated or educated to a third person or a public institution without the permission of persons who are entitled to certain rights of a minor or incapacitated to the detriment of the latter (Article 232), as well as for the secret use or provision small children or incapacitated for begging, especially if these actions were accompanied by the trafficking of juvenile or incapacitated persons (Article 233) - as crimes against family rights and duties.

Peculiar norms include the Criminal Code of the Republic of Bulgaria in 1968: the criminal liability for accepting or giving a ransom for a daughter or relative during marriage (Articles 178, 192) as crimes against marriage, family and youth. The punishment is also the taking or detention (by using force, threat or deception) of a child under the age of 14 with the intention to use it for mercenary or amoral purposes (Article 2, paragraph 2), coercion of a minor or a minor, in particular before engaging in prostitution (Article 188). As a crime against a person, the abduction of a person is punishable, in particular for the purpose of moving him from the country (Article 7, paragraph 2, Article 142), and also the inclination or coercion of a woman to engage in prostitution or bondage for depravity or intercourse, in particular , organized by the group or through it (paragraph 1, paragraph 5, clause 155), the abduction of a person of the female sex with the purpose of giving it for perpetrating acts, in particular outside the country (subsection 2, paragraph 2, Article 156).

The criminal codes of a number of European countries contain provisions on the responsibility for acts that have a definite connection with such an anti-social phenomenon as trafficking in human beings, although this is not what they refer to.

For example, the Criminal Code of Norway in 1902 (corrected in 1961) contains in section 2 of the "Crimes" chapter 21 "Crimes against personal freedom" § 225, which provides for the responsibility for the enslavement of another person or assistance in this (para 1 ), the slave trade or the transportation of slaves or persons for sale in slavery (para 2), as well as for the purpose of execution or assistance in the commission of the said acts (para 3). § 224 of this Code provides for liability for the unlawful proving (by force, threat or culling behavior) of another person to a state of helplessness, recruitment to a foreign military service, taking into hostage-taking, or putting it in another state of dependence in a foreign country or transportation out of bounds countries for use in mischance or for involvement in it. The amendments which entered into force on 4 July 2003 provide for a more severe punishment, in particular, for the re-offending of this crime. Chapter 20, Crimes Related to Family Relations, contains provisions on the punishment for the illegal deprivation of juvenile parents or maintenance without parents or other persons (§ 216). If such an offense is committed against a child under the age of 16 with reprehensible intentions, the perpetrator is punishable more severely - imprisonment for a term of 6 months to 6 years, and even more strictly - imprisonment of at least 1 year if the child was not 14 years old (§ 217).

The Finnish Criminal Code, 1889, in Chapter 25, "On Offenses Against the Will," contains provisions on the responsibility for obtaining control (violence, threats or treachery) over others with the intent to transfer him to military service in another state, or slavery or serfdom , or in a different condition of restraint abroad, or in the unreliability of a morally dangerous place (par. 1 § 1), and also for the trade or transportation of slaves (par. 2 § 1).

In § 1a of this chapter we are talking about responsibility for the election of another from the comrades, even with his consent, with the measure to use for immoral purposes, in § 2 - for unauthorized control of a child under the age of 15 or separation of a child from his father, the mother or the person under whose care and authority this child is in, in § 7 - for obtaining control (by using violence, threats or other means) over a woman who is 15 years of age, and the inclusion or retention of her authority against her will for immoral purposes or for marriage with her. Chapter 18, "On crimes against family rights" states, in particular, the responsibility for deliberately "trampling" (deceiving) the child to another person or the exchange of one child to another in order to obtain benefits for himself or another person (par. 2 § 2 )

The Criminal Code of Sweden, 1962, in relation to the "Crimes" section, has Chapter 4 "Crimes against free will and public restraint", which contains, inter alia, the provisions on liability for the capture and abduction or imprisonment of a child or any other person from intention to be forced to work or to demand extortion (paragraph 1, Article 1), forcing (by unlawful coercion or deception) to enter military or labor service, or transfer to another similar condition of a restriction, or an incentive to send someone abroad or stay in me somewhere beyond the codon, where he or she may be in danger of being prosecuted, or forced to interrupt a sexual intercourse or otherwise get into a difficult position (Article 3).

On July 1, 2002, legislation introducing criminal liability for the trafficking of human beings for sexual purposes entered into force. In July 2004, new Swedish legislation was enacted that criminalises all types of trafficking in human beings, including trade for exploitation in other countries. for example, forced labor and slavery.

The Danish Code of Denmark of 1930, in the part entitled "Separate Offenses", contains Chapter 26 "Crime Against Personal Liberty", which deals with the punishment of someone who deprives another person of liberty for the purpose, in particular, of obtaining living quests (para 2 § 261), as well as chapter 24 "Sex crimes", which refers, in particular, to the responsibility of the person who is being taken with the carrier for the benefit (clause 1 par. 1 § 228) or inclines or assists the person , under the age of 21, engage in immoral sexual activities as a professional activity, or in relation to any person who induces some other person to leave the country for the purpose of engaging in immoral sexual activities abroad as a professional activity, or for the purpose of using this person for such immoral activity, if this person has not reached the age of 21 or was not aware of the stated purpose (para. 2 § 228). The amendments made in June 2002 included a separate provision on trafficking in human beings, expanded the possibility of committing seizure in connection with human trafficking cases.

In the French Criminal Code of 1992, in the second book "On crimes and misconduct against a person", section II "On encroachment on a human person" includes Chapter VI "On an encroachment on a person", section IV of which "On relations between parents and children "Contains, in particular, the provision on the punishment of incitement to parents or one of them, learned with a mercenary purpose, or with the use of gifts, promises, threats or abuse of power, to the abandonment of the child who was born or which should be born (par. 1 clause 227-12), mediation between a person who wants to strengthen to have a child and parents who wish to leave their child born or to be born is made with a voluntary purpose (paragraph 2 of Article 227-12), as well as mediation between a person or a couple who wishes to receive a child, and a woman The one who proposes to carry this child in order to transmit it. In the course of such actions, the punishment is doubled for a systematic or mercenary purpose (paragraph 227-12). In accordance with clause 4, par. 1 item 225-7 is punishable by ten years imprisonment and a fine of 10,000,000 French francs if committed in relation to a person who was forced into prostitution outside the territory of the Republic or after his arrival on the territory of the Republic.

In the presence of the above-mentioned provisions on liability for trafficking in human beings, trafficking in minors, trafficking in children, the slave trade and acts that are obviously similar to these crimes or, in fact, constitute a manifestation of the latter, the criminal law of the European countries also contains the traditional provisions about liability for involvement in prostitution, bondage, pimping, etc. (as is the case, for example, in the Criminal Code of France - Articles 225-5 - 225-12, Article 226-31). Similar traditional provisions can also be found in the criminal legislation of countries where the rules on liability for trafficking in human beings, trafficking in minors (minors), the slave trade are absent. For example, according to the Criminal Law of the Republic of Latvia, criminal acts against morality and sexual integrity are "Forced to engage in prostitution" (Article 164) and "Pimping" (Article 165).

Theme 1.9 Criminal law protection of human rights to the proper environment

Plan

1. Subjective features of crimes against the environment.

2. Penalties for environmental crimes.

Guidelines

1. The general danger of a crime of violation of the rules of environmental safety consists in encroachment on environmental safety, established procedure for conducting environmental assessments, causing damage to people's health, the animal and plant world, the environment. Environmental safety is the state of the environment, which prevents the deterioration of the environmental situation and the emergence of danger to human health.

Art. 236 of the CCU is general in nature and subject to application in the case when the committed act is not covered by the specific elements of the offense involving attacks on individual elements of the environment.

2. The main direct object of the crime is environmental safety as a condition of human life, flora and fauna in the part of the normative specified procedure for the execution of works related to the design, construction, operation of objects potentially harmful to the environment, and additional obov The tangible object is human life or other good.

3. The subject of a crime is enterprises, structures, movable facilities and other objects (for example, workshops, sites, installations, places of formation and storage of industrial waste), in connection with the design, exploitation of which there is a danger of negative impact on people and the environment .

4. The objective side of the crime is characterized by a combination of three features: 1) an act - violation of the procedure for conducting environmental expert examination, rules of environmental safety during the design, placement, construction, reconstruction, commissioning, operation and liquidation of enterprises, structures, mobile facilities and others objects; 2) consequences in the form of death of people, ecological

pollution of significant territories or other grave consequences; 3) at.

the actual relationship between the act and the consequences.

Disposition of Art. 236 has a blanket character and refers to ecological legislation for clarification of the content of the criminal prohibition. The sentence should specify which rules are violated and in which regulations they are enforced. Not legal rules converted scientific recommendations with. the issue of environmental protection during the conduct of economic activity can not be considered as rules of environmental safety.

The purpose of environmental expertise is to prevent the negative impact of human activities on the state of the environment and human health, as well as an assessment of the degree of environmental safety of economic activity and the environmental situation in certain territories and objects. Violations of the procedure for conducting environmental assessments provide a peculiar foundation for future accidents and disasters, significant environmental and economic losses. In Ukraine, state, public and other types of (for example, scientific, contractual, international) environmental examinations are carried out. Obligatory for the implementation of the conclusions are only state environmental expertise, so the violation of the procedure for conducting only this type of examination forms the composition of the crime.

The objects of state ecological expertise are:

a) state investment programs, schemes of development and allocation of productive forces, development of individual sectors of the national economy; b) projects of general plans of settlements, schemes of master plans of industrial units, other pre-planning and pre-project documentation; c) investment projects, feasibility studies, project construction of new and expansion, reconstruction of existing enterprises and other objects that can negatively influence the state of the environment;

d) draft regulatory acts regulating relations in the field of environmental safety; e) documentation on the introduction of new technology, technologies, materials and substances that may pose a potential threat to the environment and human health.

Violations of the procedure for carrying out environmental examinations may be committed by way of both action and inaction. This could be, for example: provision of knowingly false information about the environmental consequences of the object of environmental expertise; granting of permits for special use of nature, financing and implementation of projects and programs that can negatively influence the state of the environment and people's health, without a positive conclusion of environmental expertise; avoiding the provision of necessary information and materials in response to the legal requirement of state environmental expert bodies; concealing or falsifying information about the consequences of environmental expertise, ignoring its results; coercion or creation of such conditions for an expert that has the consequence of preparing false expert opinions.

This violation also means the failure to carry out a state environmental review in cases where its carrying out was mandatory, in particular regarding those activities and objects that are of increased environmental hazard and the list of which is approved by the CM (for example, nuclear power engineering and nuclear industry; oil refining, petrochemicals and oil refining, ferrous and nonferrous metallurgy, pulp and paper industry, construction of airports, railway stations, bus terminals, river and sea ports, railways and airports cell lines, subways).

Violation of the rules of environmental safety during the design, construction, commissioning and operation of facilities may be expressed in the following acts: the absence of facilities, equipment and devices for the treatment of emissions and discharges or their disposal, as well as devices for controlling the quantity and composition of pollutants and characteristics of harmful factors; use of natural resources, emissions and discharges of pollutants into the natural environment, waste management without appropriate permissions; failure to implement measures to prevent volley emissions and discharges that create high and extremely high levels of pollution of air and water basins and soils, endangers the lives of people, animals and flora.

According to Art. 236 should also qualify for non-implementation of scheduled and unscheduled debugging work on fuel utilization

equipment, that is, equipment that consumes natural gas and liquid fuels (steam and water heating boilers, furnaces, drying units, etc.). Criminal punishment for violation of the rules of environmental safety during the construction of residential and industrial premises should be recognized failure to protect human from the effects of radionuclides contained in building materials.

Signs of this part of the crime are also seen in the following cases: a) the acceptance into operation of radioactive waste storage facilities or facilities intended for radioactive waste management, without rehabilitation

measures to ensure the protection of personnel, the population, the environment or without the construction and commissioning of the entire complex

these objects provided by the project; b) conduct within the buffer zones established for the delimitation of radioactive waste from the adjoining land, agricultural production and other activities aimed at obtaining commodity produ-

without special permission, implementation without such permission in all zones of all types of water use, forest use and use of subsoil; c) carrying out work on a nuclear installation, sources

ionizing radiation, as well as the treatment of such sources and nuclear materials without permission. In its structure, the material composition of the crime. The crime is terminated from the moment of the onset of the public dangerous consequences provided for in Art. 236. Violation of rules of environmental safety, which was not accompanied by an actual injury to man or the environment, constitute the appropriate administrative offense (Art. Art. 79-1, 80, 91-1 CAP), and if for this reason - a crime under Part 1 item 253 of the Criminal Code.

The death of people means the death of one or more people. Other serious effects can be recognized, in particular, serious bodily injury, mass human disease, disabling permanently or for a long period of industrial enterprises or other important structures (dams, vodota of power supply, communication, etc.), mass death of animals the world, the destruction of forest masses in large areas, the

a great deal of material damage, including related to the restoration of the proper quality of the environment, the inability to inhabit the population in a certain area and the forced relocation of people.

To environmental contamination of large areas should be classified as contamination by various hazardous substances, materials and wastes of forest, water, marine environment, air, land. This may be, for example, a change in the area of ​​the radioactive background in a size that poses a danger to human life and health, the genetic fund of plants

and animals (see also commentary on Article 237).

5. The subject of a crime is special. This person entrusted with the duty to comply with the legal requirements of the legislation on the order of state environmental expertise, environmental safety regulations (eg environmental expert staff MENR departments and other experts of the state ecological expertise, designers of nuclear facilities and sources of ionizing radiation, officials enterprises, institutions, organizations responsible for designing, placing, exploitation of certain objects, members of the admissions commissions of such objects).

6. The subjective aspect of a crime is determined by the mental attitude of the person to the consequences and, in general, characterized by a careless form of guilt.