**National Aviation University**

Educational and Research Institute of Law

**Department of Criminal Law and Process**

**SUPPORTED LECTURING CONCEPT**

**" Problems of Criminal and Legal Protection of Human and Citizen Rights "**

**081 "law"**

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

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(scientific degree, academic rank, teacher's name)

Considered and approved

at the meeting of the criminal department

rights and process

                    Minutes No. from "\_\_\_" \_\_\_\_\_ 20\_\_.

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**Lecture 1 General principles of criminal law protection of human rights and citizen**

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. According to 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.

A child born of a legal union ipso jure is part of this relationship; It follows from this that since the birth of a child and on the basis of the fact itself, there is a connection between her and her parents, which is a "family life", even if the parents do not live together. Of course, further events can break this link, but this did not happen in this case, when the applicant was constantly visiting his daughter.

The court ruled that the deportation was an interference with the exercise of the right enjoyed by Article 8 § 1, and although the immigration policy in question had the legitimate aim of being the guardian of the country's "economic well-being", these measures were not "necessary" a democratic society ". In making that conclusion, the Court took into account the importance of the deportation of Burrheb to the State and the serious damage to his family life. The circumstances of the applicant's long relationship with his daughter were examined by the Court primarily in the light of this finding, and not primarily to determine whether there was interference with family life.

The results of Marx, Johnston and Barkhrabe's case lead to the conclusion that actual family relationships enjoy protection even if they are not legally secured, while formal, legal family relationships enjoy protection even if they are not actually filled. Both of these points contributed to the Kigan v. Ireland judgment that the adoption of the infant without the knowledge or consent of the biological father is a violation of Article 8. This was the case even if the mother and father were not married and when the father did not establish personal relationship with the child. Kiggan's case concerned a child born after her parents lived together for two years, and then departed, and was given to future named parents at the age of seven weeks. The applicant's father saw the child the next day after birth, but then he was not allowed to see her. Referring to Johnston's case, the European Court observed that de facto relationships, as well as siblings, can be regarded as family life within the meaning of Article 8. He concluded that relations between parents before the birth of the child had all the signs the family "A child born outside of such a relationship ipso iure is part of a" family "cell from the moment of its birth and by this very fact" (cited in the Berrehab judgment). The fact that family relations collapsed shortly before the birth of a child "does not change this conclusion more than in the case of a legally married couple under the same circumstances."

The Supreme Court of the United States has ruled that the biological father of an illegitimate child who has established a parental relationship with her, in accordance with the provisions of the Fourteenth Amendment on the due process, has the right to be informed and heard before his or her child is transferred under state care. However, the unmarried father who has not established such a relationship and has neglected registration in the state "register of alleged parents" does not enjoy the right to be informed and listened to in connection with the adoption procedure.

The House of Lords ruled that current laws denied the non-parent children of children the right to report and, in fact, had the right to appeal against acts of local authorities aimed at transferring their children to upbringing and adoption. Such procedural rights apply only to parents, carers and persons on whom the care of the child relies. But according to the relevant law, the parents' rights to an extra-marital child are fully owned by the mother. In a speech by Lord Brandon (made before the Kiggan ruling by the Strasbourg Court), it was suggested that such a result might be contrary to Articles 6 and 8 of the Convention, but concluded that "although English courts would seek to interpret laws when it is possible as being consistent with the United Kingdom's obligations under the Convention, however, they are required to ensure the implementation of bimodal laws in accordance with the conditions provided for by these laws, even if they contradict the ventsiyi. "

**Lecture 2. The legal system of Ukraine and the European legal tradition in the field of protection of human and civil rights and freedoms**

Human security is a condition in which the dangers 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 in the legal norms are fixed and special guarantees that apply 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.

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.

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, .

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.

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.

Attacks on the safety of life and health of a person are divided into two groups:

1. Personal security;

2. Social (collective, collective) security, which means: environmental safety, public safety, production safety, safety of products and services, and human security.

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.

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.

As V.V. Velocity, this process is facilitated by a number of factors, among which the following are the main ones:

 awareness of the need to take into account the experience gained in this field;

 development of systems of universal, regional and local international organizations with their own legislation;

 the process of approaching the right systems of different countries in the framework of modern integration processes in the world;

 the need for harmonization and unification of national legislation in this regard;

 Availability of the problem of "model legal acts" and laws of international organizations.

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 .

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?

  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.

2. 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!

The level of institutional comparison refers to the comparison of individual institutes of law and concepts that are based on them: for example, the institute of guilt, the institution of unfinished criminal activity, the institute of punishment, etc.

Macroequity covers specific areas of law or even entire legal systems. Marchenko wrote that the allocation of different levels of comparative legal research is relatively relative in nature.

The boundary between the macro and the micro levels is not tight enough. Sometimes one passes to another. But all the same, you should not forget what exactly you compare for the sake of what purpose! Not to turn your comparative study into a simple statement of facts.

2. The main conceptual methods of comparative legal study include diachronic and synchronous comparison. Diachronic comparison is a historical analysis of those legal systems that existed before. Synchronous comparison is a comparison of modern legal systems.

3. Comparative legal method of research, in addition to these provisions, understands a certain stage in the knowledge of legal phenomena. In this case, the first stage is the study of the actual foreign law without the attempt to hold comparative legal analogies, comparisons, which in themselves form the second stage in comparative studies. At the first stage, you use such techniques (some of them are called methods) - historical-legal, systemic, and linguistic.

The first phase of your comparative study is descriptive; this phase (this stage) consists in studying the reaction of a number of legal systems to an individual legal problem. The second stage (phase, stage) is to use the results obtained in the first stage.

If the first stage is unitary, passive, then the following, a purely comparative study is pluralistic and active.

Comparative law in its strict sense distances itself from the study of foreign law and considers it as an independent section of legal science. This is due to the history of comparative studies, which in the era of its birth was seen as a prerequisite for the creation of "universal law", as declared at the International Congress on Comparative Law in 1900. But now it became clear that creating such a "universal right" is still impossible. Therefore, the study of foreign law should be regarded as an unconditional prerequisite for comparative research. Such study is an integral part of the subject of comparative law, especially since the boundary between these two stages is very vague, uncertain, and it is never possible to say that there is one or another scientific activity strictly comparative, or simply a study of criminal law.

Previously, to know the language, to translate, it is not enough, to know when in what conditions the Criminal Code was adopted, why in Germany such a strict struggle with abortion, etc. Now - everything is ready, the other studied, you only describe and compare.

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

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. In the Criminal Code of the Republic of Lithuania, the criminal responsibility lies with a wider range of people, and it contains a crime that is not in the Criminal Code of Ukraine, 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 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

it is more strict. 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 according to this article there is a criminal responsibility 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 punishable crime, the composition of which is stipulated 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.

In essence, both the Criminal Code of the Republic of Lithuania and the Criminal Law of the Republic of Latvia provide for criminal liability for similar acts that endanger the life and health of a person. In the sanctions of Part 2 of Art. 141 of the Criminal Law of the Republic of Latvia provides for such penalties as deprivation of liberty for a term up to two years or arrest, or compulsory labor, or a fine. But the disposition of Art. 141 of the Criminal Law of the Republic of Latvia is more descriptive, and in Art. 144 of the Criminal Code of the Republic of Lithuania the features of the crime are set out more concisely. The degree of social danger of these crimes in the codes of both countries is practically the same. It should be noted that the legislation of these countries does not criminalize the failure to report that the person is in a dangerous condition, and, in practice, does not allocate certain categories of victims, as does the domestic legislator.

With regard to the personal security of such a category of victims as children, it should be noted that in the Criminal Code of the Republic of Lithuania in the Special Section provides a special chapter XXII "Crimes and criminal misconduct against the child and family". Among the crimes that endanger the safety of the child's life and health, we should consider two crimes. This act, the responsibility for which is stipulated in Art. 158 and 163 of the Criminal Code of the Republic of Lithuania. These offenses correspond to Art. 137 of the Criminal Code of Ukraine "Inappropriate performance of duties related to the protection of children's life and health". In accordance with the norm stipulated in Art. 158 of the Criminal Code of the Republic of Lithuania, "Removal of the child", the father, mother or guardian or other legal representative of the child who has left without necessary care an inability to take care of a minor child in order to get rid of it is punishable by public works or restraint of liberty, by arrest or by deprivation of liberty for a term up to two years.

 In the disposition of Art. 163 of the Criminal Code of the Republic of Lithuania provides for the offense "Abuse of parental, guardian or rights and duties of a trustee, or rights and duties of other legal representatives of a minor". The subjects of this crime are parents, mothers, caretakers, guardians and other lawful representatives of minors. The objective side is expressed in the use of physical or psychological violence against minors, in the cruel way of dealing with them, in leaving them for a long time without supervision. Penalties or penalties, or arrest, or imprisonment for a term up to five years are foreseen in the sanctions of this article.

As far as the Criminal Law of the Republic of Latvia is concerned, the special part of the criminal law also provides for a separate chapter XVII "Criminal acts against the family and minors". Among crimes that impinge on the safety of the life and health of a minor, one should indicate the acts for which liability is provided for in art. 174 "Violence and violence against a minor". In the disposition of the article, there are indications of this form of crime - the brutal or violent treatment of minors, which is materially or otherwise dependent on the perpetrator, which caused him physical or mental suffering. This offense is punishable by imprisonment for a term up to three years, either by arrest or by compulsory labor.

Chapter XII of the Criminal Law of the Republic of Latvia provides for crimes that pose a danger to life and health of a person and which are associated with human immunodeficiency virus infections (Article 133) and sexually transmitted infections (Art. 134). Infection with a human immunodeficiency virus is punishable by imprisonment for a term up to eight years.

Art. 134 "Infection with venereal disease" contains two parts. A deliberate infection of a person with a sexually transmitted disease is punishable by imprisonment for a term up to two years, either by arrest or a fine (Part 1, Article 134), and intentional infection with a sexually transmitted disease of a minor leads to a more severe punishment - imprisonment for a term up to four years. As we see, the disposition of the relevant articles in the Criminal Law of the Republic of Latvia is formulated extremely laconically. In the Criminal Code of Ukraine, the disposition of articles containing the contents of the relevant crimes are formulated more deeply. Criminal liability for infecting or consciously placing a person at risk of infection with an incurable infectious disease in the Criminal Law of the Republic of Latvia is not provided at all.

As for other crimes that pose a danger to the life and health of a person, it should be noted that the Criminal Law of the Republic of Latvia provides for liability for "Illegal Treatment" (Article 137). Criminal liability comes on condition of violation of the victim's health. Sanctions of Part 1 of Art. 137 provides for punishment in the form of deprivation of liberty for a term up to two years or arrest, or a fine with the deprivation of the right to practice medicine for a term up to three years or without such.

In Part 2 of Art. 137 contains the crime of illicit treatment, which resulted in the carelessness of the guilty death of the victim or causing him severe bodily harm. The degree of social danger of this crime is much higher and therefore in the sanctions of Part 2 of Art. 137 provides for a more severe punishment - imprisonment for up to ten years or arrest with the deprivation of the right to practice medicine for a term up to five years or without such.

The Criminal Law of the Republic of Latvia contains two articles that provide for the criminal liability of health workers (according to the Criminal Code of Ukraine, liability is foreseen for pharmaceutical workers) who encroach on their personal security with their actions. Art. 138 "Improper performance of medical professionals by professional duties" consists of two parts.

In Part 1 of Art. 138 provides for liability for non-performance or negligence on the part of the medical officer's professional duties, which resulted in the carelessness of the guilty cause of the victim of grave or moderate bodily harm. This act is punishable by imprisonment for a term up to two years or a monetary fine with the deprivation of the right to practice a medical practice for a term up to three years or without such.\

In Part 2 of Art. 138 provides for the responsibility for the same act, but which caused the infection of the human immunodeficiency virus or his death. This crime is punishable by imprisonment for a term up to five years with the deprivation of the right to practice medicine for a term up to five years.

Another crime that impinges on the personal safety of a person can be considered an act whose composition is stipulated in the disposition of Art. 139 of the Criminal Law of the Republic of Latvia "Illegal Removal of Human tissues and organs". This article, in contrast to Art. 143 of the Criminal Code of Ukraine, consists of one part. The disposition of this article is formulated as follows: illegal extraction of tissues and organs of a living and dead person for the purpose of their use in medicine, committed by a medical worker.

This offense is punishable by imprisonment for a term up to five years, with the deprivation of the right to practice medicine for a term up to five years.

With regard to the wording contained in the disposition of this article, there are some doubts about their editorial, since the removal of tissues and organs from a dead person, obviously, can not endanger the life and health of man.

When comparing the criminal legislation of Ukraine and the Republic of Lithuania and the Republic of Latvia, it should be noted that personal safety is protected more thoroughly under domestic criminal law. This is also manifested in the fact that the Criminal Code of Ukraine provides for responsibility for a greater number of crimes that pose a danger to the life and health of the individual, as well as the fact that in the disposition of the relevant articles of the Criminal Code of Ukraine more precisely and in detail describe the features of the syllables of the corresponding crimes.

2. In the Criminal Code of the Republic of Poland, articles containing in their dispositions the offenses against collective (general) security are removed in a separate chapter 20 of the Special Part.

In § 1 of Art. 163 establishes the responsibility of the person causing an event that threatens the life or health of many people or property of a large size. The offense is committed in ways that are exhaustively listed in the disposition of the article: fire, destruction of buildings, flooding or landslides of land, rocks or snow, explosion of explosive or flammable substances or other rapid release of energy, the spread of poisonous, soothing substances, substances causing burns , the rapid release of nuclear energy or the release of ionizing radiation. Although, there are grounds to consider these features of the crime and how the consequences of an event that could pose a threat to collective security. This crime is punishable by imprisonment for a term of one to ten years. If these acts are committed unintentionally, the punishment is much lower - imprisonment for a term of three months to five years (Section 2, Article 163 of the Criminal Code of the Republic of Poland). It should be noted that the language in § 1 goes on the delict of creating danger. The very wording that the legislator uses in the disposition of the article and the structure already deserve a separate study. After all, we are talking about actions that can cause a fire, an explosion, and so on. That is, the fire itself is not an act. Obviously, this explains the wording "as the one who causes the event"

In Sections 3 and 4 of this article, qualified varieties of this crime are foreseen, but they are no longer formulated as cases of danger creation, but as crimes with material composition, in which qualifying attributes are provided for the death of a person or causing serious harm to the health of many people.

In Art. 164, which consists of two paragraphs, provides for the responsibility of the person who creates the conditions for such an event to occur, that is, for acts that make such an event possible. If such acts are intentional, then they are punishable by imprisonment for a term of six months to eight years, and if carelessness - by deprivation of liberty for a term up to three years.

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In this case, it is about the classification of human rights and freedoms and the definition of the place of voting rights in this system. The source of this problem is the question of determining the place of crime, which criminalizes the violation of the electoral rights in the system of current criminal law. The issue of the classification of constitutional rights for today in a special legal letter of the body has not been finalized. The more widely practiced lawyers in the field of human rights use the division of human rights for three generations: 1) civil or political rights proclaimed by bourgeois revolutions; 2) socio-economic rights, which are based on socialist doctrines; 3) collective or solidarist rights proclaimed, mainly by third world countries. Such a classification, of course, is of interest at the theoretical level, makes it possible to carry out a historical analysis of the development of this institute, although in practice the use of precision and some abstraction make it somewhat unsuitable. Classification can be carried out on different grounds, and as a result, the same freedoms or rights can simultaneously belong to two or more classification groups, and the grounds on which rights and freedoms are united into these groups can be very eclectic. Unfortunately, in the text of the Constitution of Ukraine, the classification of rights and freedoms is not given, and therefore grouping them according to the classification groups is somewhat problematic. At the same time, it is difficult to overestimate the significance of this classification. After all, the Criminal Code at the level of specific rules protects individual rights and freedoms, and at the level of the rolled object protects groups of constitutional rights and freedoms. Thus, the assignment of this or that constitutional right or freedom to one or another object in criminal law is decisive. In today's legal literature it is customary to use, in our opinion, a somewhat simplified classification of human rights and freedoms. It should be noted that this question, although of practical importance, is essentially of a somewhat abstract nature. It means that regardless of which classification structure does not include, for example, the right to life or the right to housing, the very fact of their consolidation in the Constitution shows the need to establish a system for their guarantee and protection. Constitutional rights are traditionally divided into civil rights and freedoms, political, economic, and cultural (dusky). For us, based on this research, it is interesting to note that the basic or some of the basic human rights that make up the basis of its public status are political rights. The peculiarity of political rights is that their carriers are only citizens of Ukraine, and not all persons living on its territory. These rights in relation to the Constitution of Ukraine include: the right to unite in political parties and political organizations, the right to elect and be elected, the right to participate in the management of state affairs, the right to peaceful assembly and demonstrations, the right to sue. In this particular case, the subject of our study is the electoral rights of citizens. Some authors do not attach an independent meaning to them, and, using the approach of division of rights to basic and additional, consider the right to manage state affairs as the main, and the right to vote - derived from it as one of its manifestations. According to some theorists in the field of comparative constitutional law, political laws and freedoms were legalized in the second half of the eighteenth century. The Declaration of Human Rights and Citizen of 1789, among the political rights, in the modern sense of the Institute of Rights and Freedoms, secured the right to participate in the procuratorial process, the right to occupy any office, freedom of thought, freedom of the press, the right to demand report of any officials. Outside this important historic document, such rights and freedoms as freedom of assembly, freedom of association and freedom of petition remained.

Freedom of assembly and petition were first legislated in the Bill on the Rights of the Constitution of Pennsylvania, adopted on September 28, 1776. Political rights, as well as personal rights, are often called negative in the sense that the state here, in contrast to the provision of socio-economic rights, is not obliged to take any positive action to ensure them, and should refrain from encroachment on political rights and freedoms. This is human freedom from the state, the human right to non-interference by the state. There are several typologies of political rights and freedoms. The most successful is the typology, according to which the system of political rights and freedoms is divided into two subsystems. The first of these includes the rights of citizens with authority to participate in the organization and activities of the government and its organs. This is the so-called "right to participate" (electoral right, right to a referendum, right of petition). The second subsystem consists of rights, the purpose of which is the active participation of the citizen in the life of society (freedom of speech and writing, freedom of unions and freedom of assembly).

According to some authors, the right to participate in the management of state and public affairs is rather a fundamental principle of the relationship between a democratic state and its citizens, and not a right that has independent significance, as each of the constituent parts of this principle - and are separate political rights and freedoms. If we allow a hypothetical situation in which citizens will be deprived of all rights and freedoms, with the exception of only the right to participate in state affairs, then this right will remain declarative and can not be realized due to the lack of specific rights in participation in management. An important component of the principle of citizen participation in the administration of state and community affairs is the right to vote, which includes the right to elect (active law) and the right to be elected (passive right). This should also include the right to request the registration of candidates for deputies and Presidents, the publication of information on the results of this registration, the production of placards and other materials with biographical data on the registered candidate, the right to request inclusion in the voters lists, receipt of a flying bulletin, taking into account his vote when counting votes and publishing the results of the election.

In this way, we consider to be reasonable and worth attention the position on which the right to vote is given independent meaning and there are every reason to consider it as an independent generic object of the corresponding group of crimes. Therefore, somewhat strange is the position of the authors under the Constitutional Law Manual, prepared by the author collective of the Kyiv National Taras Shevchenko University who completely ignored this approach when classifying political rights and freedoms. The second problem, which, as stated earlier, is closely connected with the problem of the definition and classification of political rights and freedoms, and in particular the electoral law in their system, is the problem of determining the generic object of the crimes envisaged by chapter IV of the Criminal Code Of Ukraine. Without going into the analysis of different approaches to the definition of the concept of the object of crime in general, to the classification of objects vertically and horizontally, we note that the most perfect of them, in our opinion, is the position of the authors of the textbook on criminal law, prepared by the author a collective of the Kyiv National University named after Taras Shevchenko.

**Lecture 5. Criminal law protection of human rights in the field of family and guardian legal relationships**

**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. As** showing 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.

A child born of a legal union ipso jure is part of this relationship; It follows from this that since the birth of a child and on the basis of the fact itself, there is a connection between her and her parents, which is a "family life", even if the parents do not live together. Of course, further events can break this link, but this did not happen in this case, when the applicant was constantly visiting his daughter.

The court ruled that the deportation was an interference with the exercise of the right enjoyed by Article 8 § 1, and although the immigration policy in question had the legitimate aim of being the guardian of the country's "economic well-being", these measures were not "necessary" a democratic society ". In making that conclusion, the Court took into account the importance of the deportation of Burrheb to the State and the serious damage to his family life. The circumstances of the applicant's long relationship with his daughter were examined by the Court primarily in the light of this finding, and not primarily to determine whether there was interference with family life.

The results of Marx, Johnston and Barkhrabe's case lead to the conclusion that actual family relationships enjoy protection even if they are not legally secured, while formal, legal family relationships enjoy protection even if they are not actually filled. Both of these points contributed to the Kigan v. Ireland judgment that the adoption of the infant without the knowledge or consent of the biological father is a violation of Article 8. This was the case even if the mother and father were not married and when the father did not establish personal relationship with the child. Kiggan's case concerned a child born after her parents lived together for two years, and then departed, and was given to future named parents at the age of seven weeks. The applicant's father saw the child the next day after birth, but then he was not allowed to see her. Referring to Johnston's case, the European Court observed that de facto relationships, as well as siblings, can be regarded as family life within the meaning of Article 8. He concluded that relations between parents before the birth of the child had all the signs the family "A child born outside of such a relationship ipso iure is part of a" family "cell from the moment of its birth and by this very fact" (cited in the Berrehab judgment). The fact that family relations collapsed shortly before the birth of a child "does not change this conclusion more than in the case of a legally married couple under the same circumstances."

The Supreme Court of the United States has ruled that the biological father of an illegitimate child who has established a parental relationship with her, in accordance with the provisions of the Fourteenth Amendment on the due process, has the right to be informed and heard before his or her child is transferred under state care. However, the unmarried father who has not established such a relationship and has neglected registration in the state "register of alleged parents" does not enjoy the right to be informed and listened to in connection with the adoption procedure.

The House of Lords ruled that current laws denied the non-parent children of children the right to report and, in fact, had the right to appeal against acts of local authorities aimed at transferring their children to upbringing and adoption. Such procedural rights apply only to parents, carers and persons on whom the care of the child relies. But according to the relevant law, the parents' rights to an extra-marital child are fully owned by the mother. In a speech by Lord Brandon (made before the Kiggan ruling by the Strasbourg Court), it was suggested that such a result might be contrary to Articles 6 and 8 of the Convention, but concluded that "although English courts would seek to interpret laws when it is possible as being consistent with the United Kingdom's obligations under the Convention, however, they are required to ensure the implementation of bimodal laws in accordance with the conditions provided for by these laws, even if they contradict the ventsiyi. "

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."

2. The particular 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":

29. 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".

Lecture 6. Criminal law protection of human rights to freedom of religion

The right of a person to freedom of religion is one of the most important personal rights of a person who plays a rather significant role in the socio-cultural sphere of the existence of a society and is implemented within the whole system of legal relations, which characterizes it as one of the fundamental rights of a person. And this is fully confirmed by the fact that it was consolidated at the level of the Constitution of Ukraine (Article 35), the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 9). This necessitates the development and implementation of a number of measures aimed at ensuring this person's right. And the solution of this issue is rather urgent given that the guarantee of the basic rights of a person in our country, in particular, stipulated in Article 35 of the Basic Law, depends not only on the recognition of its democratic and legal state, but also on the prospect accession to the European Union, which is one of the strategic directions of Ukraine's development. An analysis of recent research in the field of legal protection of the right of a person to freedom of religion shows that scientists do not overlook his attention. The studies are not only about disclosure of the essence and significance of this generally recognized right, but also aimed at highlighting the peculiarities of its legal provision, including the means of criminal law.

In examining the main question of the article, note that, in contrast to Article 35 of the Constitution of Ukraine, Article 50 of the Constitution of the Ukrainian SSR contained in 1978 a wording of somewhat different content. Comparing the text of the above articles gives grounds for concluding that in the modern law of Ukraine, taking into account the provisions of international legal acts, it is used as the basic notion of "freedom of confession of confession," instead of the concept of "freedom of conscience" that was used up to this time. And such chimneys are aimed at a more adequate reflection and characterization of the right that the person entrusts, in particular, by bringing domestic legislation in line with world standards in the field of human rights. Concerning the concept of "freedom of religion",

then agree with VM Malyshko, the fact that, on the constitutional level, the rights of people to freedom of thought and religion, in contrast to the right to freedom of conscience, should be understood as the ability of a person to have ideological beliefs, to profess any religion or not to profess any, the opportunity to send religious cults, rituals and to conduct religious activities in accordance with the Constitution and legislation of Ukraine. The notion of "freedom of religion" is broader in scope than religious rights, and points out that the value of the recognition of this freedom by the state is to establish a system of legal safeguards for its provision, where the criminal law protection of the legal relationship, the content of which is the right to freedom of religion - confession of man, is ensured by the norms provided for in the dispositions of Articles 178, 79, 180, 181 of the Criminal Code of Ukraine.

That is, we see that "freedom of religion" is characterized, firstly, as the possibility of certain behavior of a person guaranteed by the Constitution and legislation of Ukraine, and, secondly, as the subjective right of the person to whom he can dispose of his own choice. And the state ensures the criminal legal protection of this person's right by recognizing what socially dangerous acts are crimes and which punishments are applied to the perpetrators committed by bringing perpetrators of crimes against human rights to freedom of worship, to criminal liability. It is precisely because of this that it is possible to prevent such a violation and to protect the rights of a person in case of violation. And this is due to the fact that one of the main functions of criminal law is protective, preventive (preventive), regulatory functions.

It should be noted that the realization of the right provided for in Article 35 of the Constitution of Ukraine takes place outside the constant and steady control of the state within the limits of the relevant social relations, as evidenced by the very nature of this legal capacity of the individual - freedom. Therefore, in our opinion, the identification of the main content components of this person's right, since it is the subject of criminal law protection, can be realized through the discovery of those types of relations entered into by a person exercising his right to freedom of religion.

The right of a person to freedom of religion, which is enshrined in Article 35 of the Constitution of Ukraine, is in a certain part a generalizing concept, which includes a set of legal possibilities that, in their unity, form the said right, which is confirmed by the text of the said article, which provides. In other words, it specifies the appropriate legal possibilities, in particular, to practice religion, not to profess religion, to send religious ceremonies and ritual rituals, to conduct religious activities. And each of these points, having its own forms and methods of implementation, must in fact be secured by criminal law, as is the case in the criminal law. Therefore, as one of the ways to improve the criminal legal protection of the right of a person to freedom of religion is the discovery, through the analysis of the relevant relations in the religious sphere of all components of this right, which can be realized by a person. On this occasion, the literature explicitly states that "the domestic legislator is positively distinguished in this regard; however, certain aspects which, in our opinion, would have to be provided by criminal law are left out of his attention. For example, it would be necessary to consolidate criminal responsibility for the disclosure of confidentiality confession, a separate norm to allocate forcing the clergyman to give testimonies or testimonies, etc. Thus, we see that there are certain gaps in ensuring the person's normal exercise of his right to freedom of thought and religion. In particular, establishing responsibility for the disclosure of the confidentiality of confession will help to ensure that the person realizing his right to confession, which is part of religious relations, will not be disclosed to other persons, etc.

But certain features of the criminal law protection of this person's right should be noted. Yes, L.V. Yarmol, based on the analysis, will find that characterizing the relationship between freedom of religion and freedom of belief among themselves, as well as their relationship with human rights such as freedom of thought, freedom of belief, freedom of conscience, freedom of religion, concludes that freedom of thought, beliefs, consciences, beliefs, worldviews touch only on the internal, psychic spheres of the personality of life, and hence the right as a special-social (legal) phenomenon can only declare, recognize such possibilities, but it is not able to provide them to watch, to regulate. And it is quite possible to agree with this position, in terms of individuality, the right and autonomy of the person in choosing the ways of its realization, which can not really affect the right in full. But on the other hand, the consolidation in the law of this right obliges the state to take appropriate measures to ensure it. For this reason, one should keep in mind that the consolidation of the right of a person to freedom of religion only gives any person certain legal opportunities that it can realize in everyday life, but it can not and can not influence the nature and the very realization of such a person's right.

Thus, it may be noted that the establishment of criminal responsibility for crimes against human rights to freedom of religion serves as a guarantee of its implementation. Since, without such a guarantee, it is possible to cause significant harm not only to a person who professes religion but also to public relations in the religious sphere in general. At the same time, it should be noted that, in fact, criminal law not only serves as a guarantee of this right, but also establishes the limits of conduct for both those who exercise this right and those who, in one form or another, enter into relations with these persons. As to which relations have become the subject of criminal law protection, you should pay attention to the next moment. Thus, in accordance with Section V of the Special Part of the Criminal Code of Ukraine "Crimes against Election, Labor and Other Personal and Civil Rights and Freedoms of People and Citizens", crimes in the sphere of religion are classified as: damage to religious buildings or religious buildings (Article 178 of the Criminal Code of Ukraine); illegal possession, desecration or destruction of religious shrines (Article 179); interference with the implementation of a religious rite (art.180); an attack on the health of people under the pretext of preaching religious beliefs or performing religious rites (st.181).

Lecture 7. Criminal law protection of human rights to property

In England, property is considered to be the main protected object, and property is the basis for the development of capitalism. In 1968, the law "On theft" was passed, an orderly code-law was adopted. And in 1971 - the law "On liability for the prosecution of property crimes", in 1990 - the Law "On Computer Abuse".

Theft, in accordance with article 1 of the 1968 law, will be considered an act in the event that a person illegally assigns property belonging to another person, with the intention of permanently depriving him of his property. Theft can be not only secret, but also open kidnapping. An offense under this article may be considered with the presentation of an accused act or in a simplified procedure (only at the request of the accused). In England there is no differentiated responsibility depending on the size of the damage. The maximum penalty for this type of crime may be a maximum of 10 years imprisonment. In this case Actus Reus will be the appropriation of the property of another person, and Mens Rea - an illegal act and intention to permanently deprive another person of this property. Not necessarily that the thing belongs to the owner, it can be in it both in storage and in use.

Property is considered not only material things, but also rights: the right to receive a home, copyright, trademark or trademark, that is understood very widely. Stolen may be not only mobile, but also real estate. The earth may be the subject of abduction, but only in a certain circle of persons. Information is not included in the concept of property, in accordance with the 1990 law "On Computer Abuse".

An act will not be considered theft if the person removing the thing believes that he has the right to do so and is confident that the thing belongs to it, that is, there is no unlawful assignment. This moment is governed by the precedent for the case of Izel, the woman was not found guilty, because there was no assignment, but only a check In England, unlike France, the criminal law of theft of one of the spouses in the family is prosecuted.

Robbery.

According to ST.8 of the Law "On theft", the person is guilty of robbery, if he steals anything and immediately before it, during this and for this uses physical force or threatens to use. The violence or violence that they are threatened can be dangerous or safe and this is a sign of robbery and robbery. There is also the concept of theft, combined (burdened with) violence. Violence can be applied either with the threat of its use, but that which can be realized real. Punishment for robbery - imprisonment for a term even for life.

If violence is used after the removal of a thing, then it will not be considered a robbery. Such a crime is widespread, and courts often raise punishment for it in order to knock down: ^ ilio of crime.

Berggleri (burglary).

There are several elements in this type of crime:

a) break;

b) entry;

c) in the living room of another person;

d) with the intention to commit a felony;

e) at night.

This is not always theft, but any felony (murder, rape, etc.), but kidnapping is something that is the most common motive. Breakage is considered to be penetration into any room, including any means of transport or part of the premises, as a violation of the right of possession with the intention of abducting anything, cause serious injury, commit rape or damage to anything. The method of penetration can be very different: through the window, not necessarily broken, - and possibly through an unclosed door.

Entry is considered if a person enters the premises or a part thereof, but not necessarily had a criminal intention to commit a felony. This type of crime is punishable by imprisonment for up to 14 years. Aggravating circumstances, in accordance with Article 6 of the 1968 law, will be considered as follows: if, in the course of a breakage or entry, the person was accompanied by firearms or imitation, any other weapons or explosives, or a device for committing a crime, in this case punishment may be and to life imprisonment.

Masters must know what other crimes against property (other than abduction) are foreseen in English criminal law?

Fraud is, according to the 1968 Act, the acquisition of someone else's property by deception. May have many varieties. For example, the purchase of cash benefits or any services by deception. Elements of the crime;

a) the deception may be clearly expressed or such that is on

mind;

b) fraud may be with respect to the fact or the right;

c) it should be intentional, but in practice it is recognized by negligence.

Punishment for this type of crime - up to 10 years in prison.

Extortion, blackmail - takes place if a person puts unsubstantiated claims that is accompanied by a threat in order to obtain any benefits for himself or herself or for the purpose of causing harm to another person. The threat may be in the form of using forces or causing any other harm (eg, reputation). Punishment for this kind of crime - up to 14 years imprisonment. It will not be a crime if a person is confident that he has a legitimate right to claim using a threat (in this case, it is considered appropriate to strengthen the claim).

 Computer Abuse. According to the 1990 law, there are 3 types of them:

1. Unauthorized access to the computer system (in the absence of special intention), even without causing any harm, is punishable by imprisonment for a term up to 6 months and (or) a fine of up to 5,000 pounds.

2. Unauthorized penetration into the computer system with the intent to commit one or more offenses punishable by a specified punishment prescribed by the law "On theft" and representing such types as deprivation of liberty for a term exceeding 5 years (for example, sex or fraud) . Punished by imprisonment for a term up to 5 years and (or) a fine.

3. A person performs any action that causes unauthorized changes in the computer system (removes information that affects a computer virus), in this case, is punished, as in the previous case.

Hiding the kidnapped. According to the 1968 Act, a person is guilty of, if knowing or guessing, being confident in their theft, the person takes things, arranges or assists in their receipt, stores them or moves them, uses them for themselves or sells them to another person, arranges for these actions and provides assistance in doing so. This can be anything but earth. One suspicion that things are stolen is not enough. But when it's difficult to establish a Mens Rea, the court will take into account whether a person has been convicted for the past 5 years for a similar offense. Judgment will be considered the basis of what the person knew. Punishment for this kind of crime - up to 14 years imprisonment.

The liability for property crimes is regulated in a similar manner, as in England. There is a diversity in the regulation of liability for these crimes by the laws of different states: in some states, as well as at the federation of regulation is obsolete. The primary responsibility for these crimes is governed by state law. However, there are certain rules in the federal law, but they are not systematized (fragmentary). The laws of some states contain the division of offenses into separate groups (New York, etc.). In other states, there is no such grouping.

According to the New York State Criminal Code these crimes are divided into 2 groups:

• encroachments related to injury and penetration into someone else's premises and

• Abuse-related abuses.

Let's first consider the second group.

Theft.

It is divided into 2 species: large and small. Minor theft is a misdemeanor of Class A, the amount stolen - up to $ 1,000. Punished with imprisonment for up to one year. Theft is divided into 4 stages.

Major theft of the 4th degree: the amount stolen over $ 1,000; stolen property must be a public document, a public record, a legal act; theft of property (regardless of the amount) by extortion. Such theft is a felony of class B. The punishment is imprisonment for up to 4 years.

Major theft of the third degree: the amount stolen more than $ 3,000. This is a felony of class D. Punishment - up to 7 years imprisonment.

Major theft of the second degree: the theft of property (regardless of value) by extortion from the intimidation of the victim to that caused to him or his property; theft for more than $ 50,000. This is a felony of class C. Punishment - up to 15 years imprisonment.

Major theft of the first degree: the amount stolen more than 1 million dollars. This is a felony of class B. The punishment - up to 25 years imprisonment.

Accordingly, the Ohio Criminal Code provides for a broad definition of theft: "Anybody who intends to deprive the owner or services of a person is not permitted to consciously establish or exercise control over property or services:

• without the consent of the owner;

• beyond the boundary: we are clearly expressed or implied by the consent of the owner;

• by deception;

• through threats and threats. "

Theft is subdivided into small (the amount stolen less than $ 300) - it is a misdemeanor of the first degree, and theft is large (the amount stolen from $ 300 to $ 5,000 or if the person was previously convicted for theft) - this is felony fourth degree. If the cost of the stolen property exceeds $ 5,000 or the subject has been convicted for stealing two or more times, then this is a large theft, a third-degree felony.

Accordingly, CA State of California. Theft is dedicated to the fifth chapter of the Criminal Code, which has many anachronisms (for example, responsibility for the theft of gold dust, amalgams, dogs).

There are small and large thefts, there are no degrees of theft. Big theft is the theft of money, services, movability or real estate worth more than $ 400. In all other cases it is petty theft. Punishment for large-scale theft (if she shaves a kidnapping of firearms) - holding a state prison for a term of 16 months, 2 or years; in other cases - imprisonment in a district prison for up to one year or, at the discretion of the court, in a state prison. Minor theft is punishable by a fine of up to $ 1,000 and (or) imprisonment in the county prison for up to 6 months.

Robbery. This is the most common crime. In most states, robbery is subdivided into degrees, but in some states there are no robbery (for example, Minnesota). Robbery is a complex crime with two objects of an attack: a person and property. In the Minnesota Criminal Code, robbery is in the section on crimes against a person.

Accordingly, the New York City Criminal Code is a looting theft if, in the course of theft, a person uses or threatens to immediately use physical force against another person in order to overcome the resistance during removal, possession or detention immediately after his removal, or in order not to indemnify the owner. or other person to give it, property or conduct another behavior that contributes to theft.

Robbery is divided into three stages. Third stage: a person is forcibly stealing property (a simple warehouse). This is a felony of class D. The punishment - up to seven years of imprisonment.

The second stage: the person acts with the help of another person located at the place of the crime or causing

First stage:

1. a person in the course of the commission of a crime and during an escape causes a grave bodily harm to a person who is not an accomplice to a crime;

2. A person is armed with deadly weapons and threatens to use them, demonstrates what can be a gun, an automatic weapon, a gun, etc. (firearms). The protection may be that the firearm was not charged (actions are qualified by another article).

This is a felony of class B. The punishment - up to 25 years imprisonment.

Accordingly, the Ohio Criminal Code robbery is a felony for aggravating circumstances. The following signs are inherent in heavy robbery: the presence of dangerous weapons, an attempt to inflict severe bodily harm on a person.

Now consider the first group - Burglary, Time of execution burglary according to the laws of many states is qualifying. In some states, this is the time between the east and the sunset, the time when it is difficult to distinguish the features of a person's face, from 23 o'clock to 9 o'clock in the morning.

Accordingly, the New York State Criminal Code has three violations of the right of possession and burglary of three degrees.

Burglary of the third degree, the person consciously penetrates into the premises and illegally remains there with the intention to commit a crime (simple warehouse). This is a felony of class D. The punishment - up to seven years of imprisonment.

Burglary of the second degree: a person to enter the premises or being there is armed or causing bodily harm to a person who is indoors. This is a felony class S. Punishment - up to 13 years imprisonment.

Burglary of the first degree: a person enters the premises (housing), armed with explosive or deadly weapons, causing bodily harm to a person who is not a party to the crime. This is a felony of class B. The punishment - up to 25 years.

Lecture 8. Criminal law protection of human rights to judicial defense

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 basically the same socialist countries as 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 operates in parallel with the Criminal Code (as a rule, these countries are traditional roman- German legal family - Germany, Spain, Austria I), and / or by subordinate legislation (for example, in France the definition of the characteristics of specific violations as a type of criminal acts and sanctions for their implementation is given by the executive authority in the 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 Criminal law prohibits trafficking in human beings, and therefore in the legislation of certain countries they are dealt with differently. 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 March 1, 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 or taking a pimp or transferring a person with his consent to the Republic of Lithuania or from

The Republic of Lithuania to engage in 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 Achi for a long time, a child under the age of 14, is associated with gross neglect of guardianship duties, for remuneration or with the intention of enrichment, as a criminal offense against personal freedom (para 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). n 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).

Lecture 9. Criminal law protection of human rights to the proper environment

The Criminal Code of Ukraine (Criminal Code of Ukraine) on criminal offenses against the environment and its individual elements is referred to in Section VIII of the Special Part, "Crimes against the Environment". The definition of the range of crimes against the environment that corresponds to the need for its protection is given and allows to systematize these norms, promotes the unity of approaches to criminalization and penalisation of encroachments in the environmental sphere. The right, including the qualitative environmental environment, is a common and necessary condition for the existence of the freedom of people, the basic principles on which the current state of criminal-legal protection of the environment should be formed is determined. These principles presuppose that: 1) a person (responsible for the other life with which he lives next), his living space is only part of the natural space, and not just a human space that needs to be protected, therefore, criminal law must protect the whole environment . The fulfillment of this task can be achieved using the philosophical approach to the problem, which will determine the belonging of man to nature and the significance of our life in nature in general. The world will be better when respecting the natural value of the environment. According to this approach, a person (society) is responsible, as already noted, for another life with which it is near; 2) compliance with the combination of biocentric and anthropocentric scientific viewpoint on the problem. The anthropocentric approach (applied aspect, which emphasizes the negative consequences that makes a person into the natural environment) to the criminal legal protection of the environment has concentrated efforts of a wide range of scientists, practitioners, state officials and the public on this problem in general. He is justified in the current conditions of the crisis state of the biosphere. But over time, the applied aspect of criminal law protection in this area has replaced the study of its fundamental problems to the background, so in our time there is a threat of "degeneration" of the provisions of criminal law and criminal legislation in this area into the system of environmental and sanitary measures. This is explained by the fact that the negative effects of the spontaneous development of industry, transport, agriculture and other human activities are of greater significance. This is a violation of the functioning of natural communities of living organisms (their ecosystems), the aggregate activity of which ensures the very possibility of life as a global phenomenon. Therefore, the influence of mankind on the whole interconnected set of living beings is the greatest danger from environmental problems. The legislator, using the environmental policy and the scientific concept of criminal law protection of the environment based on its environmental policy (must deviate from the false path, based on outdated approaches to the problem, where it is constantly engaged in refinement, refinement or processing of existing legislative acts , including criminal law related to this sphere), must adopt laws that will help eliminate the fundamental danger, since it does not stop even in conditions unennya direct forms of deterioration of the environment. To establish effective relations with natural processes and, therefore, effective criminal-law protection of the environment that ensures sustainable maintenance of life on our planet (including in Ukraine), it is possible only on the basis of knowledge of the laws of formation and maintenance of active functioning a biological system that provides a global cycle of substances. Such a biocentric approach will reflect the most fundamental aspect in the theory of criminal law in relation to criminal legal protection of the natural environment; 3) reorientation of measures of criminal-legal protection of the environment from separate components (objects of nature) to create an integral system of criminal-legal protection of this sphere (where the Verkhovna Rada of Ukraine should take advantage of the creation of a comprehensive system of such protection, based on the concept of criminal- legal protection of the indicated environment, where there would be no sum of disparate norms, which compel the legislator to constantly change or refine the criminal law). This indicates that it is necessary to develop a coherent environmental policy that would reliably promote the criminal legal protection of the environment.

The criminal protection of the natural environment is based on the provisions of the Constitution of Ukraine. According to Art. 13, the earth, its subsoil, atmospheric air, water and other natural resources that are located within the territory of Ukraine are used and protected in Ukraine as the basis of the people's life and activities. Art. 16 of the Constitution states that ensuring the ecological safety and maintaining ecological balance on the territory of Ukraine, overcoming the consequences of the Chernobyl catastrophe (disaster on a planetary scale), preservation of the gene pool of the Ukrainian people is the responsibility of the state. According to Art. 50 of the Constitution of Ukraine, the right of everyone to a safe environment for life and health and compensation for damage caused by violation of this right are guaranteed. Everyone is guaranteed the right to free access to information on the state of the environment, the quality of food and household goods, as well as the right to distribute it. These provisions are contained in the Law of Ukraine of June 25, 1991 "On Environmental Protection" (with amendments and supplements), the preamble of which reads: "Environmental protection, rational use of natural resources, provision of environmental safety of life Man is an indispensable condition for sustainable economic and social development of Ukraine.

The delimitation of criminal offenses against property from offenses against the environment should be based on an analysis of the subject of the crime as a component of the latter's object. Isolated analysis of an object does not allow to find out the relations that cause damage, and, as a result, leads to mistakes in the qualification of crimes. A generic object of crimes against the environment is recognition of such a state of the environment and its individual factors, in which there is no danger to people's lives and health, protection, rational use and reproduction of natural resources are ensured, and the proper ecological status of the biosphere is maintained. The subject of these crimes are the components of the environment, not separated by human labor from natural conditions, or those accumulating a certain amount of labor of previous and current generations of people, but remain in the natural environment or placed in it for the fulfillment of their biological and other functions.