

Peculiarities of the Principles of Criminal and Administrative Law During the Provision of the Right to Education in the Conditions of the Introduction of Martial Law: Legal Regulation and International Standards*

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 [10.15408/jch.v11i2.32140](https://doi.org/10.15408/jch.v11i2.32140)

Abstract.

The purpose of the research is to consider the essence of principles of criminal law and the particularities of their implementation under conditions of war. It has been substantiated that the main idea of criminal law principles consists of their systematic, balanced, comprehensive performance in relation to subjects of criminal legal concerns. The mentioned principles apply to law-making and law enforcement, both in peacetime and wartime. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, interpretation method, hermeneutic method, and methods of analysis and synthesis. A conclusion has been made about the necessity to observe human rights standards in prosecuting persons who have committed crimes against humanity and have been involved in such crimes. The civilized world must meet civilized standards and ensure security through civilized means.

Keywords: Principles of Criminal Law; Fair Punishment; European Values; War Crimes; Law Enforcement

* Received: April 25, 2023, Revised: May 20, 2023, Accepted: June 23, 2023, Published: August 30, 2023.

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**Keunikan Prinsip-Prinsip Hukum Pidana dan Administrasi Selama Pemberian Hak Atas Pendidikan Dalam Kondisi Pengenalan Darurat Militer:
Peraturan Hukum dan Standar Internasional**

Abstrak

Tujuan dari penelitian ini adalah untuk mempertimbangkan esensi asas-asas hukum pidana dan kekhususan penerapannya dalam kondisi perang. Telah dibuktikan bahwa gagasan pokok adanya asas-asas hukum pidana terletak pada pelaksanaannya yang sistematis, berimbang, dan menyeluruh dalam hubungannya dengan pokok-pokok hubungan hukum pidana. Prinsip-prinsip tersebut berlaku pada tataran pembuatan hukum dan penegakan hukum, baik pada masa damai maupun masa perang. Metodologi: Landasan metodologi penelitian ini disajikan sebagai analisis komparatif-hukum dan sistematis, metode formal-hukum, metode interpretasi, metode hermeneutika serta metode analisis dan sintesis. Kesimpulan. Kesimpulan telah dibuat tentang perlunya memperhatikan standar standar hak asasi manusia dalam penuntutan pidana terhadap orang-orang yang telah melakukan kejahatan terhadap kemanusiaan dan telah terlibat dalam kejahatan tersebut. Dunia beradab harus memenuhi standar beradab dan memastikan keamanan melalui sarana beradab.

Kata Kunci: Asas Hukum Pidana; Pidana Yang Adil; Nilai-Nilai Eropa; Kejahatan Perang; Penegakan Hukum

**Особенности Принципов Уголовного И Административного Права
При Обеспечении Права На Образование В Условиях Военного Положения:
Правовое Регулирование И Международные Стандарты**

Абстрактный

Цель исследования - рассмотреть сущность принципов уголовного права и особенности их реализации в условиях войны. Основное содержание. Обосновано, что основная идея существования уголовно-правовых принципов состоит в их системной, взвешенной, комплексной реализации по отношению к субъектам уголовно-правовых отношений. Указанные принципы распространяются на уровень правотворчества и правоприменения как в мирное, так и в военное время. Методология: Методологическую основу исследования составляют сравнительно-правовой и систематический анализ, формально-юридический метод, метод интерпретации, герменевтический метод, а также методы анализа и синтеза. Выводы. Сделан вывод о необходимости соблюдения норм стандартов прав человека при уголовном преследовании лиц, совершивших преступления против человечности и причастных к таким преступлениям. Цивилизованный мир должен соответствовать цивилизованным стандартам и обеспечивать безопасность цивилизованными средствами.

Ключевые Слова: Принципы Уголовного Права; Справедливое Наказание; Европейские Ценности; Военные Преступления; Правоприменение

A. INTRODUCTION

Despite international documents aimed at protecting human rights, norms of national legislation, diplomatic relations and agreements, the Russian Federation has begun active hostilities on the territory of Ukraine. Any senses in a person's life must be implemented in compliance with the principle of humanity. It is so since humanity is a person's feature that distinguishes humans from animals. According to V. Frankl when implementing a sense, a person realizes himself/herself. Also, realizing a sense contained in suffering makes us realize the very human in a person. It is where we are helpless and hopeless, unable to change the situation, where we are called to change ourselves and feel the need to change. A person always decides whether he/she wants to realize a certain sense. Implementation of a sense always involves making a decision ([Frankl, 1946](#)). At the same time, V. Frankl notes that a person is a being who can always say "no" to his/her passions and who should not always say "yes" to such passions. When a person says "yes" to his/her passions, it is always performed only by means of identifying himself/herself with these passions. ([Frankl, 1946](#))

Currently, the practicality of legislation and international treaties arises more than ever. That is the value of such documents, the value of scientific research in this sphere, the value and purpose of criminal law, and the value of its principles.

Many scientists have studied the issue of criminal law principles. In particular, V. O. Gatselyuk carried out comprehensive research concerning implementing the principle of legality of the criminal law of Ukraine; in her research, N.A.Orlovska covered the problems concerning the construction principles of criminal sanctions; P. Pogrebnyak considered the issue relating to meaningful characteristics of the fundamental principles of law ([Tuliakov, 2020](#)). V. O. Tulyakov investigated peculiarities of the principle of legality in the practice of the ECHR M.I. Khavroniuk investigates principles of criminal law in the context of its reformation ([Khavroniuk, 2020](#)). In addition, specific issues of theoretical understanding and development of humanism in the sphere of criminal law were researched by modern Ukrainian researchers Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna investigated ([Halaburda et al., 2021](#)). However, the scientists have not covered the procedure of understanding principles of criminal law and particularities of their implementation under conditions of war.

B. METHODS

This research is based on works of foreign and Ukrainian researchers regarding methodological approaches to understanding principles of criminal law and their specific implementation under conditions of war, etc. With the help of the epistemological method, ways of protecting the rights of individuals in administrative proceedings, etc., have been clarified; thanks to the logical-semantic process, the conceptual apparatus has been deepened, principles of criminal law have been defined alongside the peculiarities of their implementation under conditions of war etc. Thanks to the existing methods of law, we have managed to analyze the essence of criminal law principles and the peculiarities of their implementation under conditions of war, etc.

C. RESULT AND DISCUSSION

Assessment of the quality of law in terms of fairness allows rethinking and modifying the law so that this requirement is met. The principle of justice is even more important at the ideological level of the legal system. It is so because it is with the help of legal consciousness and legal ideology that we evaluate conformity of jurisprudential significant actions with the requirements of justice. And, as it has already been mentioned, the understanding of justice within the legal system is developing alongside it. Thus, the “principle of talion”, or ordeal, as a means of ensuring justice, is replaced by new, more complex mechanisms of ensuring justice. At the same time, it is worth noting that violation of the principle of justice by the state (as well as, to varying degrees, other fundamental principles, such as freedom or equality) leads to revolutions, uprisings, riots and other social cataclysms, interrupting the evolutionary path of the society development. This, in turn, simplifies the legal system, its degradation or, in other words, legal regress. ([Leheza, 2022](#))

As for law enforcement, implementation of justice in specific legal relationships remains one of the most challenging issues of modern jurisprudence, given that the concept of justice for each party in a relevant legal case largely depends on the legal position it occupies and the requirements of this party. The judge must find a solution that is as close as possible to ensuring the principle of justice. Thus, the legal progress of the legal system at the level of law enforcement depends on the ability of the judicial system to implement justice as accurately as possible in as many cases as possible. In this situation, “due” is given to a person by an irrelevant public entity designated explicitly for this purpose, providing for establishing justice as a basis for improving the legal system. ([Leheza et al., 2018](#))

Freedom is not only the basis for the growth of civilization. But freedom also, to a certain extent, coincides with the law, in particular when the law appears in the form of rules thanks to which people are freed." In this context, legal progress is determined by the extent to which human arbitrariness towards others is replaced by the limitation of arbitrary encroachment upon another person's freedom. In this trend of the legal system, dependence of legal progress on the degree of freedom in society reaches its maximum. ([Leheza et al, 2021](#))

The principle of equality, on the one hand, acts as a basis for formal equality of all before the law and the Court, and on the other hand, it is a mechanism of protection against discrimination. ([Leheza et al., 2020](#))

V.Nersesiants noted that the idea of law unfolds through the embodiment of the progressive evolution of the content, scope, scale and measure of formal (legal) equality when this principle is considered a general law principle. He noted that different stages of the historical development of the law are characterized by their content of formal (legal) equality. In other words, its content evolves ([Nersiants, 2002](#)). Thus, we observe the situation when society is granting equal rights to an increasing number of people. Suppose in the early stages of historical development a state was based on distinguishing one person or a group of persons and granting them special rights in contrast to other members of the society. In that case, forming a democratic state requires equalizing fellow citizens in their rights and duties. At the same time, society can provide appropriate support to those who need such support (so-called "positive measures") to eliminate some injustice. The role of equality in legal progress is of particular importance ([Leheza et al., 2020](#)). Historically, there were attempts to ensure equality of results, which opposed formal equality (the USSR, North Korea). However, this approach does not sufficiently consider that people are different. As a result, the law as a means of ensuring an equal scale is destroyed, and the legal system regresses. The presence of a lawful means of ensuring formal equality is replaced by the authorization of relevant officials to ensure equality of results through the mechanism of redistribution of material goods. In practice, over time, this leads to the emergence of privileged groups of the population that receive these results contrary to the principle of equality of results. ([Leheza ect, 2022](#))

Humanism as a fundamental principle of law is revealed, in particular, through the concept of human dignity. For humanism, a human acts as the highest value, although negative features of this human are also considered. Humanism, as a social movement, has set the task of guaranteeing a better life of a person through his/her development. Even though humanism acts as a

“profound and constantly acting factor of pan-European civilization”, its significance began to be fully revealed only after World War II, when the need to protect human dignity was enshrined in international legal documents and later in national constitutions and laws ([Leheza et al., 2022](#)). The development of humanism involves both respect for a person in himself/herself and respect for a person in another person. The introduction of the concept of human rights has become an effective mechanism that has made it possible to transform humanism from the “main trend in the history of mankind” into a phenomenon of legal reality, of course, never cancelling the first point. The principle of humanism, embodied in specific legal norms, ensures the progress of the legal system, as it aims to improve both a person and human society in the direction of respect for human dignity. ([Leheza et al., 2022](#))

The principle of presumed knowledge of the law provides that every person must know what criminal liability is. This is one of the requirements of the “social contract” (J. J. Rousseau). Violation of “agreements” must inevitably lead to liability. For this purpose, international treaties and conventions on the protection of fundamental human rights have been adopted. ([Kobrusieva et al., 2021](#))

The concepts of crime and punishment are conditional. They change over time. The main idea is that the list of crimes and respective punishments for these crimes should be clearly and unambiguously formulated in the legislation. Everyone should be able to know what criminal liability is provided for in the state, to understand the essence of what criminal liability is provided for. The presumption of innocence principle is not that a person should guess what the legislator was thinking when adopting this or that norm, what he had in mind, and why the model was not properly communicated to the citizens through the relevant official sources. The legislator must establish the norm clearly and comprehensibly. ([Leheza et al., 2020](#))

The approach of the classical school of criminal law “punishment for crime” is also related to this. It is based on the fact that the state reacts with criminal legal means precisely to the committed act, which is provided as a crime in the current criminal law. No one can be punished for thoughts, feelings, or thinking. Goethe noted in “Faust” that thought cannot create and act, hence the beginning of existence and objective reality is in action.

Only a person who has committed a criminal act (defined as a crime in the state's criminal law) can be held criminally liable. She must clearly and unambiguously know about such liability. And if a person has already committed a crime, then he/she should be held liable following the law. In

modern criminal law *the principle of certainty* is one of its main principles. Part 2 of Art. 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 provides that this article is not an obstacle to the judicial punishment of any person for any act or inaction, which at the time of their commission constituted a criminal offense under *the general principles of law, recognized by civilized countries*.

The principle of humanism is expressed in the fact that a person who commits a crime, including a war crime, or a crime against humanity, is still a person with his/her rights and freedoms ([Timofieieva, 2020](#)). A person who broke the law. The state must respond to human actions. But such “response” should not turn into a crime. We also hope to correct the law breaker by the means provided for by the criminal law. This is the purpose of punishment according to Art—50 of the Criminal Code. No person shall be subjected to torture, inhuman treatment or treatment degrading human dignity (part 3 Art. 50 of the Criminal Code). Torture and inhumane treatment are expressly prohibited by Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

The same principle has also become the basis for provisions of Art. 3 of the Geneva Convention relative to the Treatment of Prisoners of War dated August 12, 1949. According to it persons who do not actively participate in military activities, in particular those from the Armed Forces who have ceased hostilities, as well as those who have stopped participating in military actions in connection with illness, injury, detention or for any other reason should be treated humanely in any circumstances, without any discrimination on grounds of race, color of skin, religion or believes, sex, origin or property status or any other similar criteria. ([Geneva Convention on the Treatment of Prisoners of War, 1949](#))

Participants in armed hostilities in Ukraine must strictly adhere to current norms of international humanitarian law. Although it is difficult to discuss justice and expediency of war and bloodshed, the observance of preliminarily known rules and agreements puts the parties within relatively explicit norms. No person has the right to commit crimes within the jurisdiction of the International Criminal Court, including Ukraine (where these horrific events are taking place) and citizens of that country. Ukrainians often show dissatisfaction with the humane attitude toward prisoners, their feeding, maintaining hygienic norms, and providing necessary clothes and medicines. But if Ukrainians oppress them, Ukraine will also violate international standards, particularly the Geneva Convention ratified by Ukraine. Also, many

problems emerge if the requirements of the Geneva Convention are followed because the budget is insufficient for this. However, the prohibition of torture cannot be deviated from under any circumstances. In the context of inhuman treatment, with its interpretation expanded from time to time and considering the dynamic nature of the Convention, it is necessary to ensure the provision of essential medical care, nutrition, and hygiene items. It should also be considered that servicemen of the Russian Federation commit a criminal offense provided for in Article 332-2 of the Criminal Code, "Illegal crossing of the state border of Ukraine". That is, they can be brought to criminal liability under this article, and this will not violate any of the principles of the criminal law, and this will ensure the implementation of criminal legal response inevitability. In addition, it is necessary to approach such liability individually in compliance with the principle of fault-based individual responsibility and guarantees of protection.

The principle of certainty of criminal liability. The whole world is horrified by the atrocities in Bucha, rapes in plain view of children, rapes of children. Some eyewitnesses and victims of these atrocities have survived. And Putin and the Russian leadership insist that this did not happen. The whole world is horrified by the destruction of Kharkiv, Kherson and Mariupol as well as by brutal crimes committed in Bucha, rapes and tortures of citizens. Kharkiv its architectural and cultural heritage have been irreparably destroyed. The people who remained in the city were forced to live in the subway.

On April 11 2022, information regarding the use of chemical weapons in Mariupol was confirmed. On April 23, 2022, on the eve of Easter, missile attacks were made at Odesa, one of the missiles hit a residential building. As a result, 9 civilians died, including a three-month-old baby, and citizens' apartments were destroyed. On April 24 (Easter Day), Donetsk and Luhansk regions and churches were shelled. On May 09, a missile hit a shopping centre in Odesa. Due to the curfew, there were security guards on the territory who were injured, the blast wave in residential buildings near the shopping center blew out windows. The aggressor has recognized none of the attacks.

International institutions and the state must adequately respond to all these crimes. On February 28 2022, the Prosecutor's Office of the International Criminal Court began an investigation into the situation in Ukraine. On April 13 2022, the prosecutor of the International Criminal Court visited "Bucha" in the Kyiv region as a place where war crimes had been committed. However, the Russian Federation government continues to insist that the United States staged all these corpses in "Bucha".

Each action and the actions of each person must be qualified separately. These are not the crimes of Putin alone, not only those of the commanders who gave the orders. Each act has its characteristics, so it must be evaluated individually and in compliance with *the principle of fault-based individual responsibility*. According to the current Criminal Code of Ukraine, no collective responsibility exists. A specific person commits each action. ([Zhukova et al., 2023](#))

Human behaviour depends on both external (for example, an order) and internal factors. Internal (subjective) factors include the presence of guilt, i.e., an ability to be aware of the criminal wrongfulness of an act, foresee the consequences and wish for them to occur; purpose, motive, and emotional state. ([Leheza et al., 2022](#))

Under Law No. 2108-IX dated March 03, 2022, criminalization of collaborative activities (Article 111-1 of the Criminal Code) also does not contradict this principle since a person must be aware that such activities contribute to the commission of war crimes initiated by the aggressor country. Criminal liability for collaborative action is provided for in the criminal legislation of other countries, in particular, the Criminal Code of Lithuania.

When determining the degree of punishment for a war crime, the Court must obligatorily consider that any punishment should “reflect the guilt of the convicted person”. At the same time, in addition to the guilt and gravity of the crime, the Court shall take into account the following: the degree of damage to the victims and their families, the nature of “illegal conduct” and the means used to commit the war crime; “degree of intention”; factors related to the method, time and place of the crime; age, level of education, social and economic status of the person found guilty; mitigating and aggravating circumstances. ([Tylchyk et al., 2022](#))

According to the Law “On Amendments to the Criminal and Criminal Procedural Codes of Ukraine on Ensuring Counteraction to the Unauthorized Dissemination of Information on the Dispatch, Transfer of Weapons, Arming, and Military Supplies to Ukraine, Movement, Transfer, or Placement of the Armed Forces of Ukraine or Other Military Formations Formed following the Laws of Ukraine, committed under conditions of martial law or a state of emergency” No. 2160-IX dated March 24, 2022. The Criminal Code was supplemented with Article 114-2 “Unauthorized dissemination of information about sending, transfer of weapons, armaments and war supplies to Ukraine, movement, transfer or placement of the Armed Forces of Ukraine or other military formations formed following the laws of Ukraine, committed under

conditions of war or a state of emergency.” Features of the information age are related to the simplification of recording and transmission of information. Therefore, many “bloggers” began to post relevant photos and videos of such movements, air defence operations, explosions, etc. Information war and information defence in Ukraine's modern realities of criminal law have received completely updated content. ([Matviichuk et al., 2022](#))

Persons who have specific cooperation with the Russian Federation have access to social networks and other communication channels which highlight relevant photos and videos. That is, such actions do not help the state and law enforcement agencies because they correct the enemy's actions. They provide the enemy with information about relevant locations, the situation in the city, etc. ([Villasmil Espinoza et al., 2022](#))

D. CONCLUSIONS

The existence of rights and law is valuable. When the law is codified, structured, understandable and clear, a person can compare his/her behaviour with this law. Suppose a person chooses to commit a crime. In that case, he/she does this considering the illegality of such an act and the presence of an appropriate punishment or measure of a criminal law nature determined for such an act. Therefore, in such a case, the government has all the moral and legal grounds to prosecute such a person.

The main idea, essence and value of criminal law is to protect fundamental rights and establish a fair punishment for violation of these rights. An appropriate sentence must comply with the principles of criminal law. The Sense of criminal law is expressed through its regulations. They include declarations of humanism, legality, proportionality, individualization and differentiation of criminal responsibility. The main idea of criminal law principles' existence consists of their complex and balanced implementation concerning subjects of criminal legal concerns. This requirement applies to the level of law-making and law enforcement, both in peacetime and in wartime. Determined is the necessity to observe human rights standards in the criminal prosecution of persons who have committed war crimes and other crimes against humanity and have been involved in such crimes. The civilized world must meet civilized standards and ensure security through civilized means.

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