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CRIMINAL LAW OF UKRAINE: GENERAL PART

Study guide

Edited by V. V. Pakhomov

Recommended by the Academic Council of Sumy State University

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Crime in Ukraine is combated by political, economic, organizational, legislative, and other measures. However, only the Criminal Code creates the necessary legal basis (base) for the fight against crime. In order to meet these complex challenges, it is important not only that this legislation is perfect, but also that it is thoroughly and thoroughly studied by those who will apply it and put it into practice.

The study guide covers the most important topics of the discipline "Fundamentals of Criminal Law", particularly the General and Special Part of the Criminal Code of Ukraine. Special attention is paid to the novelties of the legislation caused by the introduction of the concept of "criminal offense".

Will be useful for persons authorized to carry out official qualifications of offenses, as well as for scientific, scientific-pedagogical, pedagogical workers and persons who are recipients of all levels of higher legal education and learn Criminal Law and the Fundamentals of Criminal Law in English.

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CONTENTS

INTRODUCTION

Criminal law – one of the fundamental (basic) normative disciplines studied at the Institute of Education and Research of Law of Sumy State University. Thorough knowledge of criminal law is a mandatory requirement for a qualified lawyer, and in this regard, a necessary prerequisite for his successful practical work. It is preceded by the study of the General and Special Parts of Criminal Law. Despite their unity and interrelation, they are studied separately. The system of the course (the order and sequence of the questions) is mainly determined by the system of the current criminal and criminal procedure legislation.

The course aims:

- To master the legal definitions, basic concepts of criminal law, general and special provisions of the Criminal Code of Ukraine.
- To acquire the skills of independent analysis of the structure of criminal offenses.
- To master the basic provisions of the current criminal procedural legislation of Ukraine, which regulate social relations in the sphere of administration of justice in criminal cases.
- To acquire skills of application of relevant regulations, drafting of criminal procedural documents, solving of specific practical problems connected with application of rules of criminal procedural law.

Upon completion of this course, students should be able to:

- Effectively use the provisions of legal documents and master the basic techniques of a complete objective, comprehensive analysis of a criminal offense;
- Use knowledge in the field of regulation of criminal legal and procedural relations to solve practical issues;
- Orient in the legislation, to identify problems of legal regulation and to use legal sources in concrete law enforcement practice;
- Familiarize with the principles of law and to teach how to use their content in solving specific legal issues;
- Use knowledge of the role of law, the duties and specific activities of different subjects of criminal proceedings, of the requirements imposed on them from both legal and moral points of view.

TOPIC 1
Concept, Subject, Tasks and System of Criminal Law Science of Criminal Law

1.1 The Concept and Tasks of Criminal Law of Ukraine. The Constitution of Ukraine as the Conceptual Source of Criminal Law
1.2 Functions of Criminal Law, Subject and Method of Criminal Law Regulation
1.3 The Criminal Justice System of Ukraine
1.4 Principles of Criminal Law of Ukraine

1.1 The Concept and Tasks of Criminal Law of Ukraine. The Constitution of Ukraine as the Conceptual Source of Criminal Law

The concept of "criminal law" is considered in four ways:

1 Criminal law as a branch of legislation manifested in a single legislative act - the Criminal Code of Ukraine;
2 Criminal law as a branch of jurisprudence;
3 Criminal law as a branch of law;
4 Criminal law as a pedagogical discipline.

Criminal law as a branch of legislation is a set of criminal laws, formulated and adopted, usually by the Parliament of Ukraine, as laws defining the grounds and principles of criminal liability, as well as those which socially dangerous acts are criminal and what punishments should be applied to persons, who have committed them. The main features of criminal law as a branch of law are as follows:

- Its norms are established only by the supreme legislative body - the Parliament of Ukraine;
- It is manifested in laws;
- The method of implementation of a criminal law is specific, inherent only in this law - it is punishment of a person for violation of a criminal prohibition.

The **subject** of criminal law as a branch of law - relations arising as a result of the commission of a criminal offense and the use of appropriate punishment for its commission.

The task of criminal law as a branch of legislation is defined in Article 1 of the Criminal Code: it is legal protection of the rights and freedoms of man and citizen, property, public order and safety, environment, constitutional order of Ukraine from criminal encroachments, ensuring peace and security of mankind, as well as prevention of criminal offenses.

It follows from the content of part 1 of article 1 of the Criminal Code that the two main objectives of the Criminal Code are

- Legal protection of certain social relations and social services;
- Prevention of crimes.

Criminal law as a science is a certain system of views, ideas, concepts on the theory of criminal law, the practice of its application and ways of reform, the genesis of criminal law.

The science of criminal law is a fundamental science. It is a scientific basis for other sciences of criminal law cycle - criminology, forensic psychology, forensic psychiatry, forensic medicine, statistics, criminology and others. At the same time it uses data of these applied sciences. So, criminology is a legal science which studies causes of criminal encroachment, criminal, develops special measures on prevention of criminal encroachment. Criminology widely uses concepts developed in the science of criminal law (crime, forms of guilt, age of responsibility for certain types of crimes, etc.). Criminal law borrows criminological data on the dynamics, structure, condition, coefficients of criminal encroachment, etc.

The main goals of criminal law are

1 Development of fundamental problems of the theory of criminal law;

2 Development of recommendations for the improvement of the criminal law and the practice of its application;

3 Further study of all institutions of criminal law in order to determine their effectiveness;

4 Strengthening close ties with legislative and practical bodies;

5 Further improvement of all scientific and pedagogical activities for training highly qualified lawyers;

6 Study of criminal legislation and practice of its application in the countries of near and far abroad.

Today, an important task of the science of criminal law is the preparation of meaningful commentary on the Criminal Code.

The science of criminal law and the corresponding legal discipline (criminal law course) have their own system. The system of the course of the General Part is determined by the system of the General Part of the Criminal Code. This system of the course (science) of the General Part of the Criminal Law covers a wider range of issues. It includes an introductory section of the course, which deals with the concept of criminal law, the subject of its regulation, clarifies its tasks, and its place in the system of law. The course also deals with the history of criminal law in Ukraine and its individual institutions.

Criminal law as a branch of law is a totality of criminal law norms that determine the corpus delicti of a criminal offense and the punishability of an act. Criminal law as a branch of law (M. Korzhansky) is a totality of social relations that allow and ensure to a person the social opportunity to live, to possess, to use the most valuable goods of social life, and prohibit the other members of society to harm and destroy these opportunities.

Consequently, criminal law as a set of legal norms establishes

- Which violations of the law are recognized as criminal offenses;
- What types of punishment are imposed for their commission;
- What is the basis of criminal liability;
- The conditions, grounds, and procedure for the imposition of punishment;
- The conditions, grounds, and procedure for exemption from punishment.

Criminal law as a discipline is a body of knowledge about the theoretical foundations of criminal law and its historical sources, about the current Criminal Code of Ukraine and the investigative and judicial practice of its application, about foreign criminal law in a certain order (by subjects, modules).

1.2 Functions of Criminal Law, Subject and Method of Criminal Law Regulation

Social values created by long-term activities of people, criminal law (together with other social-legal regulators) protects against potential (possible) criminals and criminal encroachments. This is the protective function of criminal law.

The protective function of criminal law is performed by regulating the criminal-legal relations arising from the commission of a criminal offense and by applying appropriate punishment to a person who has committed a criminal offense. Here the regulatory action of the criminal law as a form of manifestation of its security task. At the same time, the criminal law manifests itself both in the prohibition of committing a criminal act (preventive function) and in the threat of punishment to those who can commit such an act (general prevention) and in the application of punishment to a person who has committed a criminal act (special prevention).

Thus, the protective function of criminal law is carried out through the regulation of criminal law and with the help of general and special preventive measures (prevention of crime).

It should be noted that some norms of criminal law perform regulatory functions. These are the norms of necessary defense (Article 36), the task of harming the offender during his detention (Article 38), urgency (Article 39), and others.

The law of criminal responsibility also has an educational function. For example, the release of a juvenile from punishment with the use of coercive measures of an educational nature on the basis of Part 1 of Article 105 of the Criminal Code is possible in the case of committing a minor or medium crime, provided that his sincere repentance and further irreproachable conduct at the time of sentencing show that he does not require the application of punishment.

At the same time, the criminal law is manifested both in the prohibition of committing a criminal act (preventive function) and in the threat of punishment to those who can commit such an act (general prevention) and in the application of punishment to a person who has committed a criminal act (special prevention).

The subject of legal regulation of criminal law as a branch of law is the relations arising from the commission of a criminal offense and the application of appropriate punishment for its commission.

Revealing the essence of the subject of criminal law regulation, it is possible to distinguish two main spheres of human existence, in which the rules of criminal law are actively applied:

- The sphere of legitimate behavior of citizens in causing damage in the presence of circumstances that exclude the criminal nature of the act (necessary defense, extreme necessity, detention of the person who committed the criminal offense, etc.);
- Criminal behavior;
- Method of research.

The method of legal regulation is a set of certain means by which relations between people, between citizens and organizations, between citizens and the state are regulated and protected.

The method of regulation of criminal-legal relations is obligatory and, as a rule, is applied only to a person who has committed a criminal offense. The method of criminal law is applied only if:

- The committed act is socially dangerous and includes a specific crime according to the law;
- The person who committed the act was in a state of mental responsibility at the time of its commission, having reached the legal age of criminal responsibility.

In some cases, provided by the law (Articles 75, 47). the court may postpone the execution of the designated criminal punishment or not apply such punishment at all.

Methods of research - these are the methods, techniques through which they recognize the phenomena of objective reality, which make up the subject of a specific science. There are various methods of criminal science. Among them there are basic and auxiliary. However, all of them are closely connected, complement each other.

The basic methods of the science of criminal law (as perhaps of all jurisprudence) include: a philosophical or dialectical method of knowledge; legal or dogmatic method; sociological method; method of system analysis; the method of comparative law or comparative; historical (genetic) method of research.

1.3 The Criminal Justice System of Ukraune

The general part includes norms defining the functions, principles and basic institutions of criminal law. They establish the grounds for criminal liability; the validity of criminal law in space and time; the concept of criminal offense and its types; dignity and insanity; forms of guilt; complicity; punishment and its types; the procedure for the application of certain types of punishment, the rules for their appointment; regulate institutions related to the release from criminal responsibility and punishment, repayment and custody; determine the specifics of juvenile responsibility.

A special part of the Criminal Code determines the scope and content of criminal liability for each part of the criminal offense between the norms of both parts of the Criminal Code there is a close and inseparable connection, because it is practically impossible to apply the rules of the special part without the rules, established in the general pArticle Their continuity is determined by the unity of their content.

The norms of the General and Special Parts of the Criminal Code as certain subsystems of the Criminal Code of Ukraine are in close and inseparable unity.

The unity of the General and Special Parts of the Criminal Code ensures the internal consistency of the institutions and norms of the Code and, ultimately, the effectiveness of their application.

The legal institution is a set of norms based on the law, which should ensure the regulation within the subject of this branch of law of a certain, relatively independent social relation, as well as related derivative relations.

Substitutions consist of separate norms (usually articles of criminal law), which contain not only a hypothesis, disposition and sanction, but also in certain cases different types of syllables of criminal offenses (parts of articles of criminal law): simple, privileged, qualified and specially qualified.

1.4 Principles of Criminal Law of Ukraine

Principles of criminal law recognize the most general principles of criminal law, which are established by law or directly derived from it, and which have direct effect, direct regulatory function.

General principles are inherent not only in criminal law, but also in other branches of law. In particular: legality, equality of citizens before the law, inevitability of responsibility, principles of justice, humanism and democracy:

- The principle of legality derives from the provisions of the Universal Declaration of Human Rights - no one can be found guilty of a crime or punished except by a court order and in accordance with the law. In addition, the principle of legality is expressed in the fact that a person can be convicted only for the act committed by him, which contains the criminal offense, provided by the Criminal Code.
- The principle of equality of citizens before the law. A person who has committed a crime is subject to criminal liability regardless of sex, race, nationality, language, origin, property status and position, place of residence, attitude to religion - beliefs, membership in public associations and other circumstances.
- The principle of democracy, though not in its entirety, appears in criminal law in various forms of participation of representatives of public associations and individuals in the imposition of a punishment, its execution and, in particular, in exemption from criminal liability (transfer to bail), release from punishment.
- The principle of inevitability of criminal responsibility means that the person who has committed a crime is punishable by criminal law. Under the latter one should understand and timely bring the offender to responsibility, and the fact that no one should have privileges before the criminal law.
- The principle of justice means that the penalty or other measure of criminal law applicable to the offender must be commensurate with the degree of public danger posed by the offense, as well as with the person of the offender.

As a rule, special principles are inherent only in criminal law. Let us consider them:

- The principle of legal definition of a crime (there is no crime which is not defined by the law). This is one of the most important general principles of criminal law. It is defined in articles 1, 2, 3 and 11 of the Criminal Code of Ukraine. The implementation of this principle leaves no room for the analogy of criminal law, which, by the way, is expressly prohibited by Part 4 of Article 1 of the Criminal Code of Ukraine.
- The principle of personal responsibility - criminal responsibility is possible only for personal actions (inactivity). No one can be prosecuted for a crime committed by another person.
- The principle of guilt - criminal liability exists only in the presence of guilt, i.e. only when a person intentionally or recklessly commits a crime and its consequences (Article 23).
- The principle of subjectivity. Criminal responsibility is based only on subjective sanity. Objective sanity is rejected because it does not take into account, does not involve participation in actions of consciousness and will of the person.
- The principle of full responsibility. Completeness of dignity means the requirement to hold a person responsible for everything he has done, regardless of how much the criminal law provides for it. Such a requirement has no limitations, regardless of whether it creates the perfect real or perfect set of criminal offenses. In the decisions of the higher judicial authorities, any incompleteness of sanity is recognized as an unconditional reason for returning a criminal case to additional pre-trial investigation.
- The principle of the advantage of mitigating circumstances. In the competition of aggravating and mitigating circumstances, the advantage is to mitigate the circumstances of the crime.
- The principle of greater punishment for a group crime. With few exceptions, all or the overwhelming majority of legal rules on liability for intentional crimes contain qualifying attributes - committed by a group of individuals or an organized group. In addition, Article 67 of the Criminal Code recognizes the commission of a crime by a group of persons, under the previous agreement, a circumstance that aggravates the responsibility of the guilty person.
- The principle of full compensation for the damage caused by a criminal offense is a partial implementation of the new concept of criminal law - the concept of protection, the replacement of the punitive function of criminal law with the function of protection, the function of restoration of the violated rights and interests of the person.
- The principle of saving criminal reprisals is the practical definition of the optimal level of economic and cultural development of society, the limits for the separation of criminal offenses from non-criminal acts (actions, inactions), the limits between criminalization and decriminalization of criminal offenses.

Questions:

1 What is a criminal law?
2 What is the subject of criminal law?
3 What are the functions of criminal law?
4 What are the principles of criminal law?

TOPIC 2
Concept of Criminal Offense

Depending on the degree of severity, criminal offenses are divided into minor, moderate, grave and especially grave.

2.1 Concepts and Signs of a Crime

An offense, like any other offense, is a human act. That is why it has all those objective and subjective characteristics that characterize human behavior: physical characteristics - one or another movement or abstention from it, use of physical, chemical, biological and other laws of the surrounding world; psychological characteristics - manifestation of consciousness and will, certain motivation of behavior, its purposefulness.

However, unlike other human actions, a criminal offense in its social essence is an attack on the relations developed in society, reflecting its main interests, which are protected by the law on criminal liability. The concept of criminal offense depends on the socio-economic relations existing at a certain stage of development of society and, therefore, is historically variable;

The concept of criminal offense in criminal law is a universal and fundamental category: it is the basis of the content of all criminal law institutions. Therefore, the definition of this concept in criminal law was given and attached great importance.

The Criminal Code of Ukraine gives this very definition. Article 11 states: "A criminal offense is a socially dangerous guilty act (action or omission) provided for by this Code, committed by the subject of a criminal offense".

The first thing that is emphasized in this definition is the description of a criminal offense as an act: action (active behavior) or inaction (passive behavior). This is of fundamental importance. An offense, as a conscious volitional act of a person, must be expressed in concrete action or inaction. Thoughts, views, beliefs that are not expressed in action or inaction, even if they are contrary to the interests of society, cannot be recognized as a criminal offense. On the other hand, a concrete act or omission deprived of the psychological basis of the act - conscious and volitional elements (for example, reflexive, instinctive acts) - is not a criminal offense. This explains why Article 11 states that a crime is only an act committed by the subject of the crime, which, according to Part 1 of Article 18 of the Criminal Code, is a physical, convicted person who has committed a crime at an age from which criminal responsibility may arise, that is, a person acting with the knowledge and will sufficient for the commission of a guilty act. The analysis of Part 1 of Article 11 of the Criminal Code (CC) shows that it clearly defines three features of the corpus delicti: the public danger of the act, the guilty act and the foreseeable act in the law on criminal liability. The first two features, public danger and culpability, are material, revealing both the external and internal social and psychological nature of a crime. The third one, the foreseeability of the act of the CC, is formal and reflects the legal, normative nature of a crime, i.e. its unlawfulness.

However, the analysis of Part 2 of Article 1, which defines the functions of the Criminal Code, suggests that the possibility of foreseeing an act in the Criminal Code at the same time means the

obligatory punishment under this Code. Part 2 of Article 1 indicates that, in order to fulfill the task of protecting public relations from criminal encroachments, the Code "defines what socially dangerous acts are criminal offenses and what penalties are applicable to those who commit them". This norm clearly reflects the inseparable connection between criminal misconduct and criminal punishment in the characterization of a criminal offense.

Therefore, in the science of criminal law there is a belief that there are four obligatory characteristics of a criminal offense: social danger, guilt, wrongfulness, and punishment.

By these features it is possible to give a scientific definition of the concept of criminal offense: a criminal offense is recognized socially dangerous, guilty, unlawful and criminal punishment of an act (action or inaction), committed by the subject of the criminal offense. Each of these signs of a criminal offense reflects its various essential characteristics, has its own meaning.

Social danger as a material characteristic of a criminal offense consists in the fact that the act causes damage to a relationship protected by criminal law or contains a real possibility of causing such damage. This is an objective characteristic of a criminal offense, a real violation of the relations developed in society. The emergence, change, loss of social danger of the act due to objective laws of social development, inseparably connected with those socio-economic processes occurring in society. Part 1 of Article 11 of the Criminal Code only mentions public danger as an obligatory sign of the crime, its content does not reveal the law. Meanwhile, a comparative analysis of various types of offenses (administrative, disciplinary, etc.) shows that their social danger is not equal to the social danger of criminal offense: the social danger of criminal offense as a type of offense is much greater. Not identical in their danger and different crimes. It is enough to compare murder and theft.

The second obligatory characteristic of a crime, which expresses its internal psychological content, is guilt.

This feature reflects the most important principle of criminal law - the principle of subjective attitude, i.e. responsibility only if there is a fault, which follows from Article 62 of the Constitution of Ukraine.

Part 2 of Article 2 of the Criminal Code consolidates this principle by stating that a person is considered innocent of a crime and cannot be punished unless his guilt is proved in a lawful manner and established by a court judgment.

Thus, the law of criminal liability excludes an objective attitude, i.e. responsibility for the damage caused in the absence of guilt. According to Article 23 of the Criminal Code is the mental attitude of a person to a committed action or inaction and its consequences, expressed in the form of intent or negligence.

An obligatory characteristic of the crime is also its unlawfulness. Contradiction as a formal sign of a crime means that it is provided for in a criminal law. Criminal misconduct is closely connected with social danger: it is a subjective expression of objective, real danger of an act for public relations, its legal assessment. Therefore, criminal misconduct is a legal assessment of social danger, enshrined in the law. Social danger, its degree defines the objective limits of wrongdoing. Beyond that, the question of criminalization of an act cannot be raised. The exclusion of criminalization as an obligatory feature of a criminal act is a concrete expression of the principle of legality in criminal law: only a person who has committed such a socially dangerous act, which is provided by law as a criminal act, is subject to criminal liability and punishment. The Criminal Code contains an exhaustive list of crimes. Therefore, even if an act is dangerous to society but is not provided for in the law on criminal liability, it cannot be considered a criminal offense.

This follows from the most important point about the impossibility of applying a criminal law by analogy to an act that is not directly provided for in it. Part 4 of Article 3 of the Criminal Code expressly states that the application of the law on criminal liability by analogy is prohibited.

With a sign of wrongdoing, the fourth obligatory feature of the crime is its punishment. By punishment, they understand the threat of punishment for a criminal offense contained in criminal sanctions. The essence of punishment is the public danger and the wrongful act. Therefore, the act is a

criminal punishment because it is dangerous to the public and is foreseen by the criminal law as a criminal offense.

At the same time, an act for which the law provides criminal punishment does not lose the properties of a criminal act, unless in the specific case of its commission punishment is imposed on it (for example, after the expiration of the statute of limitations, by amnesty, etc.). As early as in 1961, V.V. Stashis rightly wrote that "it is completely incorrect to identify punishment as a sign of a criminal offense with the use of punishment in any case of its commission. Penalties should be understood as the establishment of a criminal sanction in the law for committing a certain act of criminal law, which makes it possible to apply punishments (and not always) in appropriate cases".

Taking into account the foregoing, emphasizing the unity of the signs of the criminal offense, we can conclude that only the presence of a combination of the four features - public danger, guilt, wrongdoing, punishment - characterizes the act committed by the subject of the criminal offense as a criminal offense.

2.2 The Law's Minority Concept: Objective and Subjective Components

Part 2 of Article 11 of the Criminal Code states: "The act or omission is not a criminal offense, although it is formally contains signs of any act provided for by this Code, but because of insignificance does not constitute a public danger, if did not cause and could not cause significant harm to a natural or legal person, a society or a state".

According to this definition, the first mandatory condition for the application of Part 2 of Article 11 is the presence in the deed of the formal signs of the act provided for by the Criminal Code, i.e. all those legal objective and subjective characteristics which in the relevant article of the Special Part of the Criminal Code characterize a certain criminal act. Thus, the criminal offense is reflected in the committed act as a formal sign of a criminal offense prescribed by law. If at least one of the signs provided for in the article of the Special Part is not present in the act, Part 2 of Article 11 cannot be applied. Thus, if the abuse of power or official position (Part 1, Article 364) does not significantly damage the rights, freedoms and interests of individual citizens, or public or public interests or interests of legal persons protected by law, and it was not aimed at causing such damage, then such abuse of office does not fall under Part 2 of Article 11: it does not have any of the mandatory characteristics of this crime. Such an act, due to its legal nature and unlawfulness, does not constitute a criminal offense, but a misdemeanor.

However, an act committed in accordance with Part 2 of Article 11 of the Criminal Code only formally contains the characteristics of the act provided for in the Criminal Code, i.e., due to all the specific circumstances, it does not correspond to the essential characteristic of the crime, i.e., its social danger. There is a discrepancy between the legislative assessment of the typical social danger of a particular type of criminal behavior and the danger of a particular case of such behavior. The act provided for in Part 2 of Article 11, does not contain the social danger that is typical for a criminal act, and therefore it is considered insignificant: it does not cause damage to the social relations protected by the law, or it causes them obviously, obviously minor damage. This expresses the second mandatory condition for the application of Part 2 of Article 11 - minority of the act.

The third legal condition for the application of this norm should be considered as a subjective characteristic of a minor act, which subjectively should not be aimed at causing significant, substantial damage.

Only a set of these conditions - a form of unlawfulness and insignificance - makes it possible to recognize the act as minor, i.e. not punishable. Thus, it was correctly recognized that the acquisition and keeping of three military cartridges for the Makarov pistol by a person was insignificant, although Article 263 formally assumes responsibility for such an offense as illegal storage, purchase of ammunition for firearms.

The value of Part 2 of Article 11 for the concept of the crime lies in the fact that it specifies such a sign of the concept of the crime as its social danger, thus emphasizing its material essence.

2.3 Criminal Offense and Other Offenses

Criminal offense is not the only type of offense. Therefore, there is a question about the place of criminal offense in the system of offenses, distinguishing it from other offenses: administrative, disciplinary, civil law. The question is not only theoretical: one or another type of offense entails a different responsibility for severity, different restrictions for the person who committed it. Therefore, the correct definition of the type of offense is of great practical importance not only for the protection of public relations, but also for the protection of the rights of those who committed them.

Analysis of the concept of criminal offense shows that it is his social danger, its degree reveals the essence of the criminal offense as a type of offense. Therefore, criminal law rightly recognizes that it is social danger that is the criterion that should be used as the basis for distinguishing criminal offense from other offenses. However, with regard to the question of how it performs this demarcation function, there is no unity among scholars.

There are two different approaches to solving this problem. Some jurists, distinguishing felonies from other crimes, think that only a felony has a social danger, that this specific social quality is only a felony. Other crimes are not socially dangerous: they only have a characteristic such as social harm. That is, according to this point of view, there is a qualitative difference in the social nature of the criminal offense and other offenses: the criminal offense by its nature - this is a socially dangerous act, and another offense, such a social property is not inherent, they are only socially harmful, that is, they can harm individual state, social, personal interests. Thus, according to this point of view, a criminal offense and other offenses are qualitatively independent types of offenses not only in the legal nature, but also in the sense of their social meaning - material.

Another point of view is based on the unity of the social nature of all offenses - their social danger. Therefore, the distinction between criminal offense and other offenses is determined by the degree of social danger. The specificity of a criminal offense is manifested precisely in an increased degree of social danger: it is always more dangerous than any other offense. That is why the difference in the criminal offense from other offenses is different in quantitative rather than qualitative characteristics.

This point of view is more reasonable, since any offense causes damage (or the threat of harm) to certain social relations, which defines its social and legal nature as an offense. But the degree of social danger of different types of offenses is different, and criminal offenses in the system of offenses - the most dangerous. This is due to the importance of the object, the attack on which is recognized as a criminal offense, and the nature and severity of harm, the way of committing the act, the form and degree of guilt, motives and purpose, as well as all other objective and subjective features. Such a conclusion is confirmed by a comparative analysis of criminal offenses and other offenses, in particular the most closely related to the criminal offenses of administrative delinquencies.

According to Article 9 of the Code of Ukraine on Administrative Offenses “an administrative offense (misdemeanor) shall be considered an unlawful, guilty (intentional or negligent) act or omission that violates public order, property, rights and freedoms of citizens, the established procedure of management and for which the law provides administrative liability”. Part 2 of Article 9 of the Code of Administrative Offences stipulates that “administrative liability for the offences provided for in this Code shall be incurred if these offences, by their nature, are not entrusted to them in accordance with the legislation in force on criminal liability”. On the basis of the above, it is possible to distinguish the following characteristics of an administrative offense: 1) unlawfulness - the offense is directly provided for in the Code of Ukraine on administrative offenses; 2) culpability - it must be committed intentionally or negligently; 3) the offense is committed against objects protected by law; and 4) administrative penalties - only such acts for which administrative penalties are provided for can be recognized as administrative offenses.

Measures of administrative punishment are: warning, fine, payment for the seizure of an object, which is a weapon or the direct object of an administrative offense, money received as a result of an administrative offense, deprivation of a special right granted to a given citizen (right to drive vehicles, right to hunt), correctional labor, administrative detention.

Comparison of the concepts of administrative offence and criminal offence allows identifying their common features. There is much in common in the nature of measures of impact (fines, deprivation of a special right, correctional works are provided for in Article 24 of the Criminal Code of Ukraine as measures of administrative punishment, and in Article 51 of the Criminal Code of Ukraine - as types of criminal punishment).

However, a comparison of the similar nature of acts of administrative offences and criminal offences clearly shows their difference in the degree of public danger and, accordingly, different degrees of severity of the same measures of impact.

2.4 Classification of Criminal Offenses (Article 12 of the Criminal Code)

By classification of criminal offenses is understood the division of them into groups depending on some criterion. So, depending on the form of guilt, criminal offenses can be divided into intentional and careless; depending on the degree of completeness of criminal activity - for finished and unfinished, and others like that. Each of these classifications can solve specific problems and therefore has both theoretical and practical value (for example, Article 13 of the Criminal Code, which defines completed and unfinished criminal offenses).

However, the development of criminal law in recent years is inseparable from the task of individualizing criminal responsibility and punishment according to the severity of the crime. The Criminal Codes of many states, adopted in recent years, in one way or another provide special rules for the classification of criminal offenses depending on their severity (degree of social danger). This is the case, for example, in the Criminal Codes of Russia, Latvia and Spain.

Such classification is contained in Part 1 Article 12 of the Criminal Code of Ukraine which states that depending on the severity, criminal offences are divided into minor, moderate, heavy and especially heavy. From the content of this norm one can draw an unambiguous conclusion that the legislator takes as a basis for such classification a material criterion, which reflects the internal social nature of a criminal offence - the degree of their severity, the danger to public relations protected by criminal law.

The degree of social danger, reflecting the gravity of the criminal offense, is expressed in the totality of its objective and subjective attributes: the importance of the object, the nature of the act, the ways of its commission, the severity of the consequences, the form and types of guilt, motives and purpose, etc. That is why the classification of criminal offenses by gravity is substantial, universal, that defines the content and structure of criminal law institutes.

Along with the substantive criterion of classification, the legislation in Article 12 provides for its formal criterion - a certain type and amount of punishment, typical, such that most fully reflects the gravity of a particular group (category) of criminal offenses.

Thus, depending on the severity of the criminal offence, criminal offences are divided into criminal offences of minor gravity, medium gravity, grave and especially grave.

A misdemeanour of minor gravity is a criminal offence punishable by imprisonment for a term not exceeding two years or by a less severe penalty, except for the principal penalty of a fine of more than three thousand untaxed minimum incomes.

A crime of medium gravity is a criminal offence for which the main penalty is a fine of not more than ten thousand untaxed minimum incomes of citizens or imprisonment of not more than five years.

A grave crime is a criminal offence for which the main penalty is a fine of not more than twenty-five thousand untaxed minimum incomes of citizens or imprisonment for not more than ten years.

An especially grave crime is a criminal offence for which the main penalty is a fine of more than twenty-five thousand untaxed minimum incomes of citizens or imprisonment for more than ten years or life imprisonment.

The severity of the criminal offence, for which the basic penalty of a fine and imprisonment is provided for, shall be determined on the basis of the imprisonment penalty provided for the criminal offence.

For criminal offenses of grave or especially grave, the law binds them with the most severe consequences, such as the possibility of appointment for a particularly grave criminal offense of life imprisonment (Article 64), or the imposition of such additional punishment as deprivation of military, special rank, or qualification class (Article 54). Confiscation of property can be applied only for grave and especially grave mischief (Article 59); The most long terms of limitation, repayment and removal of convictions are established for grave and especially grave criminal offenses (Articles 49, 80), and others like that.

2.5 The concept of Criminal Liability

The Criminal Code often refers to criminal liability (for example, Article 2 is referred to as "Grounds for Criminal Liability", Section II – "Law on Criminal Liability", Section IX – "Exemption from Criminal Liability"). In this case, the Criminal Code does not reveal the concept of "criminal responsibility" anywhere, although it distinguishes it from punishment (for example, sections X, XI and XII of the General Part of the Criminal Code, respectively, are "Penalties and their sorts", "Appointment of punishment", "Exemption from punishment and its serving")

In the science of criminal law, there is also no single understanding of criminal responsibility: some authors identify it with criminal punishment; others characterize the criminal responsibility as a kind of duty of the executor; others consider it as specific criminal-law relations; the fourth understand criminal liability as the implementation of penal sanctions; the fifth consider criminal responsibility as the conviction of a convicted person for a criminal offense, committed with or without punishment, etc.

In defining criminal liability, it is necessary to proceed from the fact that it is one of the types of legal responsibility. And although the latter is understood differently in law, but in the narrow, special legal sense, it is interpreted as the responsibility of the retrospective, that is, as the corresponding reaction of the state to the past in the past. From this point of view, legal liability can be defined as the type and extent of the person who committed the offense, certain restrictions of human rights and freedoms provided by law.

The concept of criminal responsibility corresponds to the generic attributes of legal responsibility and at the same time is characterized by its specific, unexpressed attributes. They are as follows: 1) criminal responsibility is a real interaction between special bodies of the state and the person convicted of a criminal offence, as a result of which certain restrictions are imposed on this person; 2) criminal responsibility is a form of state coercion, which finds its expression primarily in condemning the offender and his actions by court sentence, as well as in imposing additional deprivations and restrictions on the offender; 3) the type and amount of restrictions of personal (for example, deprivation of liberty), property (for example, a fine) or other nature (for example, deprivation of the right to hold certain positions) is defined only in the criminal law, primarily in the sanction of the article of the CC providing responsibility for the committed criminal offence; 4) the presence of such restrictions is always coercive, not voluntary, since their application is the obligation of specially authorized state

bodies; 5) criminal liability is possible only for the commission of a criminal offense that serves as the basis for such liability.

In view of the above, criminal responsibility is a mandatory trial of a person who has committed a criminal offense, state censure, as well as restrictions of a personal, property or other nature provided for in the Criminal Code, determined by a court verdict of conviction and imposed on the guilty by special agencies of the state.

From the moment a person committed a criminal offense, there arises certain legal relations between her and the state, as a result of which such person and state have mutual rights and obligations. The offender is obligated to be convicted of a criminal offense committed, as well as the deprivations and limitations provided for in the Criminal Code. However, he has the right to apply to him exactly the article of the Criminal Code, which provides for the offense committed by him; the punishment was imposed only within the scope of the sanction of this article; the relevant provisions of the General and Special Parts of the Criminal Code, etc., are taken into account. In turn, the state has the right to condemn the executor and the actions committed by him, as well as to limit his legal status within the limits of the limitation period for prosecution and the terms of repayment or cessation of convictions, but it is obliged to ensure the correct qualification of the deed, the imposition of punishment, respectively, to the requirements of the Criminal Code, taking into account the gravity of the criminal offense committed, the executor, as well as circumstances mitigating and aggravating the punishment, etc.

Mutual rights and obligations of the parties in the analyzed legal relationships are their legal content. They objectively arise from the moment the criminal offense was committed, regardless of whether the criminal offense was discovered by the state authorities or not (proof of this is at least the fact that the statute of limitations under Article 49 of the Criminal Code begins to run from the date of the commission of the offense). The procedural acts of initiation of a criminal case, the prosecution of a person as a defendant or the issuance of a conviction do not generate or create criminal-legal relations, but merely state them, since before the passage of these acts between the criminal and the state already there are real legal relations.

The subjects of such relations, on the one hand, is the person who committed the criminal offense, and on the other - the state in the person of primarily the bodies of inquiry, investigation and prosecutor's office. These relationships are dynamic, "all the time are developing, refining and changing as a result of the actions of the subjects in the realization of their mutual rights and obligations (for example, the guilty may appear with the guilt, actively contribute to the disclosure of the criminal offense, to compensate for the harm done, and t etc., which, in its turn, gives rise to the duty of the relevant authorities and officials to consider these circumstances in determining the extent of liability.) At a certain stage of development of legal relations, the body representing the state acts as a court. The conviction is ultimately a witness. The verdict is a form of expression of the state's condemnation of the executor and of the act committed by him and specifies the kind and extent of the restrictions that a convicted person should suffer.

The object of such legal relationship is the personal, property or other benefits of a person whose reduction is provided for in the sanctions of the article of the Special Part of the Criminal Code, according to which the person is found guilty of a criminal offense, and which are determined by the conviction of the court. In the future, when the sentenced person is serving, the bodies representing the state in criminal-law relations are the bodies that are in charge of the execution of the punishment imposed by the court. Along with the criminal law, criminal-legal relations arise here and there.

Criminal relations, as a general rule, exist throughout the time of serving prison sentences and some time after its departure - until the moment of repayment or removal of conviction (Article 89 of the Criminal Code). However, criminal law relations may be terminated at an earlier stage. The grounds for such a suspension may be different, for example, death of a person, length of limitation periods (Articles 49 and 80 of the Criminal Code), dismissal of a person from criminal responsibility (Articles 45-48), and publication of an act of amnesty or pardon (Articles 85-87).

Criminal liability takes place within the framework of criminal-law relations, their time limits are different. Thus, criminal liability arises from the moment when the conviction of the court of legal effect enters into force and, according to the general rule, ends with the termination of serving a sentence. Such a view at the time of the emergence and termination of criminal liability is not universally recognized in the science of criminal law. Many authors believe that criminal responsibility arises at an earlier stage - from the time the criminal offense was committed, the criminal case was initiated, the suspect (accused) arrested or arrested, etc. However, according to the decision of the Constitutional Court of Ukraine of October 27, 1999, which is officially interpreted in Part 3 of Article 80 of the Constitution of Ukraine (the case on parliamentary immunity), the criminal responsibility starts from the moment when the court decision with legal effect is issued.

In different ways, the termination of criminal liability is also determined: the moment of termination of a criminal-legal relationship, the execution of a sentence, the payment or cancellation of conviction. However, if under criminal liability is meant to condemn the restrictions of his rights and freedoms entrusted to him by the special bodies of the state, then it is obvious that criminal liability takes place only during the time of serving the sentence prescribed by the court. Consequently, the termination of such a sentence and determines the final moment of criminal responsibility. After this, the person, in general, is still in the status of a convicted person, which entails certain general civil and criminal consequences (Article 88 of the Criminal Code).

Consideration of the relationship of criminal law relations and criminal responsibility allows us to conclude that criminal liability can be implemented in the following three forms.

The first form is the conviction of the executor, expressed in the conviction of the court, not related to the imposition of a criminal punishment. Thus, according to Part 4 of Article 74 of the Criminal Code, a person who committed a criminal offense of a minor or moderate nature may be released from punishment by a court judgment if it is recognized that taking into account faultless behavior and good attitude towards work, this person cannot be considered socially dangerous at the time of the trial.

The second form of the implementation of criminal responsibility is the conviction of a person, combined with the appointment of a specific penalty for her, from the actual serving of which it is released. Thus, according to Part 1 of Article 75 of the Criminal Code, if the court, when imposing a punishment in the form of corrective labor, service restrictions for servicemen, restraint of liberty, as well as imprisonment for a term of not more than five years, taking into account the severity of the criminal offense, the person guilt and other circumstances of the case, will conclude that the possibility of correction sentenced to death without a sentence, he may decide to release a probationary detention.

The third, most typical form of criminal responsibility implementation is the serving of punishment imposed by the criminal court (for example, serving a sentence in the form of deprivation of liberty for a certain period).

The last two forms of the implementation of criminal responsibility create a person's conviction as a legal consequence of her conviction to some degree of punishment. However, the conviction has its limits, specified in Articles 89 and 90 of the Criminal Code, which define the boundaries of criminal-legal relations. Therefore, the moment of repayment or withdrawal of conviction indicates the cessation of criminal law relations.

2.6 Grounds of Criminal Liability

In determining the grounds for criminal liability, it is necessary to answer three questions:

1 How can the criminal responsibility of the person who committed the crime be justified?
2 What is the person subject to criminal liability?
3 On what legal basis is it subject to such liability?

As for the first question, it is a question of the philological and ethical justification of criminal liability, that is, why society and the state have the right to rebuke a person who has instituted a criminal prohibition, and on what ground such a reproach. The answers to the second and third questions suggest that the legal basis for the criminal liability of the person who committed the criminal offense.

Society and the state proceed from the fact that the executor as a person is endowed with consciousness and will, able to correlate his behavior with criminal-legal prohibitions and only therefore may be held criminally liable for their violation. However, in order to substantiate the ethical reproach of such a person, it must be ensured that she had a real opportunity not to institute a criminal prohibition. In this regard, it is necessary to find out to what extent, in general, a person is free to choose his behavior, in particular, to refrain from committing or committing a criminal offense.

Sometimes (mechanistic determinism, fatalism) is believed that a person is like a car that only adequately responds to external and internal stimuls. Therefore, every human act, including criminal offense, is inevitable, since it is already determined by all previous events that took place in the life of this person. In such a race, a man is a slave of circumstances; he is deprived of the possibility of free expression of will, and hence of the free choice of his behavior, which is fatefully already determined in advance. Therefore, the manifestation of criminal will in the criminal offense is only the appearance of freedom, imaginary freedom, and if so, then the negative moral assessment of the accomplice is impossible. Thus, the justification of criminal responsibility fatalists see not so much in the condemnation of criminal will, but in the objective harm of criminal offense for society.

The opposite view (indeterminism) is reduced to the fact that the only reason for committing a criminal offense is its absolute, unrestricted freedom of will. The criminal behavior of a person is determined by his evil will, which exists irrespective of any circumstances, including from his mind and conscience. Free will, and only she, chooses how to make a person in this situation. Therefore, the justification for the conviction of a person for a criminal offense committed is the viciousness of this malicious free will of the executor.

More correct is the view (dialectical determinism), according to which a person, faced with the choice - to commit a criminal offense or refrain from it, depends both on external circumstances and on his own mind, conscience, beliefs, aptitudes, needs, interests, etc. It is hardly true to assert that only external circumstances or only the internal state of a person fatally determine its behavior. An offense committed by a person is causally related both to its consciousness and to the objective reality. External circumstances really affect the behavior of a person, but only refracted through its internal mental settings, consciousness. It is mind, conscience, persuasion, etc., that tell a person how to do it in a particular situation. However, the grounds for the ethical and legal condemnation of a criminal offense and the person who committed it are only if this person had an objective opportunity to choose from (from at least two) non-criminal ways of attaining the set goal. Thus, the existence of a relative freedom to choose a measure (a measure of freedom) and is an ethical justification of the criminal responsibility of a particular person for the criminal behavior he chooses. In such a case, criminal responsibility can act as a means of influencing people's consciousness and will and thereby determine their behavior in the future. Consequently, if a person deliberately chooses a criminal behavior, having the opportunity to do otherwise, it justifies the possibility and necessity of the state to apply to it a punishment which is aimed at punishment, as well as prevention of the commission of criminal offenses as this person, and others.

In accordance with Part 1 of Article 2 of the Criminal Code the basis of criminal liability is the commission of a public dangerous act, which contains the criminal offense, provided by this Code. This provision of the law contains the answer to the question of why and on what basis the person is subject to criminal liability. It is obvious that it is subject to criminal liability for the commission of such a social dangerous act that contains signs of a certain criminal offense, provided by the Criminal Code. Therefore, they say that the only ground of criminal responsibility is the composition of the criminal offense.

Within the limits of the sole basis of criminal liability, it can be distinguished from its actual and legal parties. The actual side is the commission of a socially dangerous act in reality, and the legal one is the predictability of such an act in the Criminal Code. The basis of criminal liability is the court establishing full compliance of the actual and legal parties committed. The absence of such conformity also testifies to the lack of grounds for criminal liability, that is, the criminal offense.

Part 3 of Article 2 of the Criminal Code provide that no one may be held criminally liable for the same criminal offense more than once. This provision corresponds to Part 1 of Article 61 of the Constitution of Ukraine, according to which no one can be twice brought to legal liability of one type for the same offense.

As noted, criminal responsibility is a reaction of the state to a criminal offense committed by a person. Such a reaction finds its expression in a certain law enforcement act of a state body - a conviction of a court. In this regard, distinguish the material and procedural grounds of criminal liability. The material basis is recognized as a criminal offense, and procedural - the conviction of a court. In accordance with Part 2 of Article 2 A person is considered to be not guilty of committing a criminal offense and can not be subjected to criminal punishment until her guilt is proved in a lawful manner and established by a court conviction.

Questions:

1 What is a criminal offense?

2 What is the definition of a criminal offense in the Criminal Code of Ukraine?

3 What are the obligatory characteristics of a criminal offense established by law?

4 What is the meaning of social danger as a material sign of a criminal offense?

5 What is the meaning of wrongfulness as a formal sign of a criminal offense?

6 What is the criterion for distinguishing a criminal offense from other offenses?

7 What classification of criminal offenses involves Article 12 of the Criminal Code of Ukraine?

8 What is the criterion for such a classification?

TOPIC 3
Elements of the Criminal Offence

3.1 Concept and Meaning of the Criminal Offense

The current Criminal Code of Ukraine does not contain the general concept of a crime. Such a definition is given by the theory of criminal law. Composition of the criminal offense is a set of established in criminal law legal features (objective and subjective), identifying the committing of a socially dangerous act as a criminal.

Often, in a particular criminal norm, the most complete legal defenses are fixed signs of an objective side. This is due to the fact that they are in most cases individual and inherent only in these criminal offenses.

It should also be borne in mind that the criminal law establishes the indicated signs taking into account the actions of the executor in the completed criminal offense. However, it is not necessary to express the specifics of these criminal offenses in the specific norm taking into account the stages of the commission of the criminal offense and the different role in it of all accomplices, because these features, in turn, have a general, typical for all criminal offenses character and therefore enshrined in the General Part of the Criminal Code in Articles 13-6, 26-28.

The corpus delicti must be distinguished from the criminal offense itself, because it does not coincide, but only correlates as a phenomenon (a paricular criminal offense) and the legal notion of it (the corpus delicti of a particular type of criminal offense). An offense is a specific socially dangerous act (for example, the theft, committed on January 17, 2001, from the store of the village K.) committed in certain circumstances, at a certain time and in a certain place, characterized by a multitude of features from all other criminal offenses of this type (for example, theft, committed for the first time, by deception, protection was removed, locks destroyed, etc.). Therefore, this criminal offense is characterized by a multitude of inherent features of it from all other thefts.

The Corpus delicti is the legal concept of the criminal offenses of a certain type (theft, murder, rape, robbery, etc.), which combines the most significant, most typical and universal features of them. Therefore, for example, thefts committed by different persons always differ in one or another way from each other by their peculiarities, but the composition of the criminal offenses committed by them is identical and identical.

On this basis, we can conclude that the amount of signs of the criminal offense and the criminal offense is different On the one hand, the scope of features of a criminal offence is broader than the scope of the elements of a criminal offence, since the latter contains only the most common, typical, that is, inherent in all criminal offences of a given type. On the other hand, the corpus delicti of a criminal offence is broader than each specific criminal offence, since it contains signs not of one specific criminal offence, but signs of all criminal offences of a given type. Along with the corpus delicti of a particular criminal offence, the theory of criminal law distinguishes a general concept of criminal offence. The doctrine of the general concept of criminal offence is based on the theoretical

generalization of the typical features inherent in the whole set of syllables of specific criminal offences. Thus, it is not a legislative, but a theoretical concept. It summarizes the characteristics that characterize the objective and subjective features of all the criminal offenses provided by the current criminal law.

The practical purpose of general and specific corpus delicti of criminal offenses is different. The general concept of criminal offence, as a scientific abstraction, is a means of cognition of specific compositions, contains recommendations for their construction and allows for their scientific classification.

All of the above allows us to draw the following important conclusions:

1 Composition of a crime is a certain totality of objective and subjective signs that define a specific socially dangerous act as criminal;

2 The totality of these features is established only by the criminal law;

3 The list of criminal offences stipulated by law is exhaustive;

4 Only the corpus delicti has the degree of responsibility for the criminal offence committed and determines the part of the corpus delicti of the criminal offence.

The corpus delicti performs the following functions:

- Fundamental;
- Procedural;
- Delimiting;
- Guarantee.

The fundamental function of the corpus delicti is that it is the sole and sufficient basis for criminal responsibility. The establishment of its characteristics in a specific socially dangerous act of a person means the presence of everything necessary for criminal responsibility.

The procedural function of the criminal offense is that it is the establishment of the corpus delicti of the criminal offense that determines the scope of the investigation, since the main objective of the investigation is precisely the establishment of the objective and subjective signs of the criminal offense.

The delimiting function of a criminal offense is that it allows to make a clear distinction between criminal offense and guilt, non-criminal socially dangerous acts, to distinguish one criminal offense from any other (for example, theft from robbery, abuse of power or official position from abuse of power or official authority).

The guarantee function of a criminal offense is that the precise definition of a criminal offense is a guarantee of legality and respect for human rights. A person who has committed a socially dangerous act must bear responsibility for the crime he or she has committed.

3.2 Elements and Attributes of the Corpus Delicti

The concept of the corpus delicti forms four groups of signs, which are called elements of the crime. The element of the crime is a homogeneous group of legal features characterizing the crime from one side. It is the object, the objective side, the subject and the subjective aspect of the crime. It is in the content of the features forming these elements and in general in the composition that one criminal offense can be distinguished from another (theft from robbery, murder from hooliganism, etc.).

By the signs of the criminal offense we understand the generalized legally significant property (quality), inherent in all criminal offenses of this type.

There are more than 30 signs of a criminal offence, which are divided into two groups. The signs characterizing the object and objective side are called objective, and the signs characterizing the subject and subjective side are called subjective signs of a criminal offence.

The object of a criminal offense is always perpetrated by a criminal offense and that is why it always causes certain damage. Under the object are those interests (good) that cause or may be harmed

as a result of a criminal assault and are protected by criminal law against these attacks. Other scholars understand the object of the crime to be certain social relations protected by the criminal law, and there are other views on the object of the crime. Each of these positions has many advantages and disadvantages and until now has not been completely denied. The object, as a rule, is not indicated by the legislator in the provision of the criminal norm. It is determined either by the place of this norm in the system of other criminal norms, or by logical analysis of the content of the norm itself, or by the title of the article of the Special Part of the Criminal Code, which establishes this norm.

The objective side of the criminal offense is the external aspect of the criminal offense (or external act of behavior) which is characterized by socially dangerous acts (actions or omissions), socially dangerous consequences, causal relationship between the act and socially dangerous consequences, place, time, situation, way, as well as means of committing a criminal offense. The name of the act of conduct causes or threatens to cause damage to the object of the criminal offense.

The subject of a criminal offense is a physical, convicted person who committed a criminal offense at the age from which, according to the Criminal Code of Ukraine, criminal liability may arise (Article 18 of the Criminal Code).

The subjective aspect of the criminal offense is the internal aspect of the criminal offense, that is, the psychical activity of the individual, reflecting the attitude of his consciousness and will to the socially dangerous act that he is committing, and to its consequences. The subjective side is an internal (unlike the objective side) characteristic of the content of the criminal offense. It contains internal mental processes that characterize the consciousness and will of the person at the time of the criminal offense. The subjective aspect of the criminal offense is characterized by such signs as the fault, which manifests itself in the particular mental relation of the subject to the criminal act prohibited by the criminal law and its consequences in the form of intent or negligence, as well as the motive and purpose of the criminal offense.

Each of these elements is a complex system of attributes, so in this section only the general characteristics of their essence have been stated.

The corpus delicti is necessarily a set of all the features that constitute the elements of the crime; it exists only in the unity of these signs. All the signs of the crime are divided into two groups: obligatory and optional.

Mandatory are the signs inherent in the composition of all criminal offenses without exception. They are studied by the theory of criminal law in the study of the general concept of the criminal offense. The doctrine of the general concept of the criminal offense is based on a theoretical generalization of all typed features belonging to the whole set of syllables of specific criminal offenses. The practical purpose of the overall criminal offense is to know, construct and classify specific syllables

Mandatory features of the overall composition of the criminal offense include the following:

- For the object of a criminal offense - social interests or goods (social relations) protected by criminal law;
- For the objective side - an act (action or omission);
- For the subject - an individual, sense of responsibility, age;
- For the subjective side – guilt.

These attributes are mandatory for all without excluding the syllables of the criminal offense. The specific nature of the criminal offense, as a rule, contains other features, other than those mentioned, for which it is mandatory, but in relation to the general notion of the criminal offense, they will be considered optional.

Optional ones are those that are mandatory for some compositions and optional for others. These attributes include time, place, situation and way of committing a criminal offense, motive and purpose, signs characterizing a special subject of a criminal offense, etc. For example, for a robbery, such a sign of this composition as a goal (possession of someone else's property) is mandatory, and for intentional damage to someone else’s property, the purpose does not affect the presence or absence of

this composition of the criminal offense, and therefore is an optional feature. Thus, optional features - in cases where they are provided by the legislator as part of a specific part of the criminal offense - are considered obligatory signs of this composition. In all other cases, the optional features are outside the specific composition of the crime and are taken into account by the court when sentencing a victim as circumstances aggravating or mitigating responsibility.

3.2.1 The Object of the Criminal Offense

One of the most controversial issues in the domestic criminal-law doctrine is the doctrine of the object of the criminal offense. In the science of criminal law, there is no doubt that the object of the criminal offense is what the offender perpetrates and why the damage is or may be caused. However, the question of what is included in the content of the object of the criminal offense causes a lot of disputes.

Legislative list of objects of the criminal offense is given in Part 1 of Article 1 of the Criminal Code of Ukraine, i.e. rights and freedoms of man and citizen, property, public order and safety, environment, constitutional structure of Ukraine, peace and security of mankind. In addition, the list of objects of criminal offenses is contained in the names of all chapters of the Special Part of the Criminal Code, as well as dispositions of certain norms, for example, Part 1 of Article 11 of the Criminal Code of Ukraine (State treason).

Criminal law is not protected by the whole set of these relations, but only some of them, set by the legislator under the protection of criminal law. Therefore, the object of all criminal offenses is not the entire system of social relations, but only those that are put under the protection of criminal law. In turn, the overall object of the criminal offense - not a permanent system of social relations, and the system is variable, depending on the criminal law.

Classification of objects of a criminal offense: Domestic criminal law classifies the objects of the criminal offense, “conventionally”, “vertically” and “horizontally”.

The first classification traditionally highlights **the general, generic and immediate objects** of the criminal offense. They relate to each other similarly to the philosophical categories “general”, “special”, and “individual” (“separate”).

The general object is a set of all social relations, protected by criminal law from criminal encroachments. The general object of the criminal offense, as noted, is summarized in Article 1 of the Criminal Code of Ukraine - rights and freedoms of man and citizen, property, public order and public security, environment, constitutional structure of Ukraine, peace and security of mankind. A common object is an integral part of which every criminal offense is committed. The general object of the criminal offense provides a holistic view of the good, interests, values that modern society and the state consider to be so socially significant, which imply criminal liability in the event of causing or causing them significant harm.

The generic object is an object that covers a certain circle of identical or homogeneous in its socio-political or economic essence of social relations, which by virtue of this should be protected by a single complex of interdependent criminal law. Representation of generic objects of criminal offenses gives the heading of the Special Part of the Criminal Code in sections, since it is the generic object of the criminal offense that is the basis of the codification and classification of the rules of the Special PArticle This in the first place determines its fundamental importance. For generic objects of criminal offense, for example, life, health, property, public safety, national security, interests of justice, interests and procedure of military service, etc. The generic object of the crime is also important for the qualification of crimes: it allows to determine which group, the sphere of homogeneous interests, is or can be harmed as a result of a criminal act (for example, an explosion can be accompanied by sabotage, and terrorism, and murder in a generally dangerous way, as well as robbery). It is necessary to determine what, in essence, what sphere of social interests is aimed at encroachment.

The direct object of a criminal offense is the most important for lawmaking and law enforcement. Under it it is necessary to understand those concrete social relations, which are placed by the legislator under the protection of a certain criminal law and which are caused by a criminal offense. The direct object of a criminal offense is as well as general, and generic is social relations, and not any good, values, including the person himself. The direct object of a criminal offense is of great practical importance for the qualification of an act. Its correct determination is sometimes a decisive factor in distinguishing one criminal offense from another (as, for example, in the previously illustrated case law, in distinguishing a criminal offense against health - causing damage to health - from a criminal offense against public order - hooliganism).

In the theory of criminal law there is also a classification of direct objects "horizontally". As a rule, each criminal offense has one direct object. However, there are such criminal offenses that can simultaneously encroach upon two direct objects - so-called double-faced criminal offenses (for example, when robbery with the use of violence, an attack is carried out simultaneously both on property and on the person, in case of excess of authority or official authority, if it accompanied by violence against a person, an attack on the life of a representative of a foreign state). In such cases, usually the main, or the main, and additional objects of a criminal offense are distinguished. The distinction is made not by the degree of importance (importance) of the object, but by its connection with the generic object of the criminal offenses of this group. Thus, in the above example, robbery with the use of violence is a criminal offense against property, this also determines its location in the system of a special part of the Criminal Code of Ukraine, and therefore the property itself will be the main object here, and health would be an additional one. In the absence of encroachment on the main direct object is not present and the composition of the criminal offense. It should also be noted that the main direct object is those social relations, which primarily and primarily sought to be protected by lawmakers. Therefore, the main direct object reflects the main content of a criminal offense, its anti-social orientation. An additional immediate object is social relations, which, along with the main object of the criminal offense, always cause or threaten to cause harm, or damage to the given social relations may not be inflicted (they may not be threatened with harm). Thus, an additional direct object can be of two types: compulsory (required) and optional (optional).

An additional compulsory object is an object that in this part of the criminal offense is always, to Him, along with the main object, is always harmed or threatened to cause harm as a result of the commission of a criminal offense. Thus, in the part of the robbery, the main direct object is the property, and the additional mandatory - the person.

An additional mandatory object is important for determining the socio-political nature of the criminal offense, the severity of the consequences of the consequences or possible consequences. The legislator often uses an additional object to select qualified syllables (for example, excess of authority or official authority if it was accompanied by violence, the use of weapons or painful or violating the personal dignity of the victim by actions) or for the formation of independent deprivations of the criminal offense (for example, robbery).

An additional optional object is such an object that, in committing a particular criminal offense, may exist alongside the main one, and may be absent (such, property and health relationships with hooliganism).

An optional object has no such meaning as a mandatory one. However, the establishment of the fact that along with the main object of damage is caused and additional optional object is evidence of a higher social danger of the offense and should be taken into account in determining the extent of punishment. In addition, if in a criminal law the legislator puts on the protection of social relations, which, along with the main object, is possible causing harm and therefore it is an additional optional object, then when committing a particular criminal offense, where it is harmed, it becomes an additional obligation of the object and affects the qualification of the criminal offense.

The item of criminal offense should be considered as anything of the material world, with the determined properties of which the criminal law relates the presence in the actions of the person characteristics of the specific composition of the criminal offense.

3.2.2 The Objective Side of the Criminal Offense

The concept, signs and criminal-law significance of the objective side of the corpus delicti: The objective side of the criminal offense is a combination of the criminal liability stipulated by the law, which characterize the external aspect (external expression) of the criminal offense.

The objective side is the obligatory element of each specific composition of the criminal offense. It is a characteristic of external signs of a criminal act. The objective side characterizes the peculiarity of the criminal offense as an external act of social behavior of the executor and the conditions under which this criminal offense is committed, that is, place, time, method, circumstances with which the criminal offense is connected.

The objective side is to find out how and under what conditions a criminal offense was committed. For example, theft from the objective side consists in the secret theft of someone else's property (Article 185 of the Criminal Code), robbery in the open theft of someone else's property (Article 186 of the Criminal Code), rape - in sexual intercourse with the use of physical violence, the threat of its use or or taking advantage of the helpless state of the victim (Article 152 of the Criminal Code), the objective side of the criminal offense provided for in Article 379 of the Criminal Code, consists in the murder or attempted murder of a judge, a people's assessor or a juror or their close relatives in connection with their activities related to the administration of justice.

The criminal law of Ukraine provides for liability only for the commission of a socially dangerous act, that is, actions or without actions that infringe on the rights and freedoms of man and citizen, property, public order and public security, the environment, the constitutional system of Ukraine. From the contents of Articles 1, 2 and 11 of the Criminal Code of Ukraine it implies that criminal responsibility for the course of thoughts, mood, that is, naked intent does not occur.

All signs of the objective side of the criminal offense in terms of their description in the disposition of articles of the Special part of the Criminal Code can be divided into two groups: mandatory (required) and optional.

Obligatory signs include acts in the form of action or omission. Socially dangerous action or inactivity is the most important, basic and obligatory indication of the objective side of any criminal offense. The absence of this feature excludes the composition of the criminal offense.

The facultative signs of the objective side of the criminal offense include: socially dangerous consequences, causal link between the act and socially dangerous consequences, place, time, situation, way and means of committing a criminal offense. However, if socially dangerous consequences, place, time, method, environment, tools and means of committing a criminal offense are explicitly indicated in the disposition of the article of the Special Part of the Criminal Code or unambiguously derived from its content, then they become mandatory signs of the objective side of the criminal offense and their Installation in this case is mandatory.

Socially dangerous act (action or omission): Action in the sense of criminal law is an active, willful, conscious act of external behavior of the subject, which is reflected in the commission of a socially dangerous encroachment determined by criminal law. Such an action, of course, is not only socially dangerous, but also unlawful, since its implementation is punishable by a criminal law, that is, a specific article of the Special Part of the Criminal Code of Ukraine.

Omission in the criminal legal sense is a socially dangerous passive behavior of a person (subject), that is, non-fulfillment of actions that a person should have and could do, or did not warn the onset of socially dangerous consequences, which was obliged and could warn.

In criminal law, inactivity can be criminal only when the person is obligated to act in a certain way in a certain situation. So the mother should feed her newborn child, the doctor is obliged to treat the patient, police officers – to stop the criminal acts. Inactivity in all these cases, if a person has a real opportunity to act in accordance with his duties forms the form of human criminal behavior.

Action or omission is an act that expresses the will of a person. It is the volitional action (omission) of a person that always indicates the presence of certain goals in her consciousness, which determine the direction of her will, which is embodied in one or another action. That is, it can be argued that criminal behavior, like all human activities, is always a unity of the mental and the physical. For this reason, the reflexive and impulsive movements of a person that are not conscious, that are not directed by his will, are not considered to be manifestations of criminal behavior, even if these movements are harmful.

The criminal act, as mentioned above, is a volitional behavior performed under the control of the consciousness, therefore the act of a person who is incapable of realizing the social danger of the executor and showing his will is not a criminal offense. For this reason, the act of an insane person or a minor is not considered a criminal offense, even if such acts have caused significant damage.

A person is not subject to criminal liability if he acts against his own will, under the influence of force majeure or physical coercion, since under such circumstances there is no volitional act.

Under the force of inertia must be understood such an action of the forces of nature, mechanisms, equipment, people, animals, other objective factors through which a person is deprived of the opportunity to act as it belongs according to his will and consciousness (illness, natural disaster, etc.). For example, there is no deviation from the call for a regular military service, if the conscript has not appeared at the specified time on the conscription point due to a serious illness or due to a violation of the normal movement of transport.

Physical coercion is one of the varieties of invincible power. Physical coercion is a physical action against a person. It may be: beating, tying up, torture, imprisonment, and similar actions, the purpose of which is to force a person to commit a criminal offense.

There is no criminal offense involving liability for breach of duty to protect property if the guard was beaten and tied up by criminals and therefore did not resist them. In the actions of the person who was intentionally pushed, fell, damaged the property of another, there is no damage to the property of another. In each specific case of physical coercion, it must be established that such coercion was in fact irresistible under certain specific circumstances.

Socially dangerous consequences: The criminal consequence is a material or non-pecuniary damage caused by criminal acts of an object protected by law determined by the criminal law. An offense for this is a socially dangerous act that inevitably causes one or another harmful consequence. But, as noted, during the design of the syllables of the criminal offense the consequences are not given to one and the same place. In some cases, the consequences are included in the necessary elements of the composition, in others they find themselves outside.

The consequences of the criminal offense can be divided into two large groups: the consequences of the material nature and the consequences of immaterial nature.

The material consequences include two types of consequences. First of all, this is a physical consequence. Intangible consequences are the negative changes in the object of encroachment, which, combined with the violation of the interests of participants in public relations, and are immaterial in nature.

Depending on the specification of the criminal consequences in the disposition of the article of the Special Part of the Criminal Code, it is possible to identify specifically defined consequences, for example, the death of the victim in case of intentional murder (Article 115), and the consequences for which evaluation terms and concepts, the clarification of which scope and content are used, are used and requires clarification and specification in each case (for example, an indication of “grave consequences”, “especially grave consequences”, “big damage”, etc.).

Depending on the impact on the qualification of the criminal offense, there are consequences that serve as a necessary feature of the basic (simple) composition of the completed criminal offense, for example, the damage to a large extent with the deliberate destruction or damage to someone else's property (Part 1, Article 194), and the effects that qualify , for example, property damage in especially large sizes, death of people or other grave consequences with the same deliberate destruction or damage to someone else's property (Part 2 of Article 194).

In addition, some norms of the criminal law may indicate the consequences of the obligatory indication of the objective side of the Corpus delicti, criminal offense and punishment of the act necessarily associated with the onset of socially dangerous consequences (Part 1 of Article 364). In other norms, the objective side of the criminal offense may envisage both the actual occurrence of the consequences and the possibility of their onset (Part 1, Article 274).

Depending on whether socially dangerous consequences are included in the disposition of the Article of the Special Part of the Criminal Code as a compulsory indication of the criminal offense or not, all criminal offenses are divided into two groups: criminal offenses with material composition and criminal offenses with formal composition.

Causal link between the act and socially dangerous consequences: In the material composition of criminal offenses, the mandatory sign of the objective side is not only the act itself and the criminal consequences specified in the law, but also the causal connection between them. However, the current criminal law does not contain any norms that would directly address the issue of causation. These issues are solved by the science of criminal law and judicial practice.

Thus, under the causal link in criminal law should be understood as an objectively existing link between an act - action or inactivity (the cause) – and socially dangerous consequences (the consequences), when an action or inaction causes (generates) a socially dangerous consequence.

In the theory of criminal law, the following varieties of necessary causation are distinguished:

- Direct (immediate) causation (for example, death due to a knife wound);
- Indispensable causal connection, when the subject of the crime, in order to cause socially dangerous consequences, uses various mechanisms, adaptations, animal behavior, other means for committing the crime, or uses the behavior of other persons, who act as a kind of "means" for committing the crime, for example, insane persons, who have not reached the age of criminal responsibility, were in a state of extreme necessity, carried out an order or a command, or acted on the basis of an actual mistake;
- Necessary causal connection with complicity, if the actions of accomplices (organizers, instigators, instructors) are in a causal connection with the crime committed by the executor;
- Necessary causal connection in the presence of special conditions on the part of the victim.

Establishing a causal link between a socially dangerous act and a socially dangerous consequence is not yet sufficient grounds for bringing a person to criminal responsibility. It is imperative to establish that the person envisioned or could foresee the development of this causal relationship, that is, it is necessary to prove the subjective aspect of the criminal offense - guilty of a person in the form of intent or negligence as to the consequence that has come.

Optional signs of the objective side of the criminal offense: In addition to the socially dangerous consequences and causation, the features of which were discussed above, the place, time, situation, way, tools and means of committing a criminal offense belong to the optional features of the objective side of the criminal offense. As already noted, these features are called optional because of the fact that not all criminal offenses are included. Indeed, there are many syllables of criminal offenses, when these circumstances do not affect the legal qualification of the offense. But if such features are directly indicated in the disposition of the article of the Special Part of the CC or unambiguously derived from its content, then they become mandatory signs of the objective part of the criminal offense and their establishment in this case is mandatory.

The place of commission of a criminal offense is a certain territory or another place where a socially dangerous act is committed and its socially dangerous consequences occur. Yes, Article 392 of the Criminal Code establishes liability for acts that disrupt the work of correctional institutions, the place of the criminal offense is the place of imprisonment. Part 1 of Article 1248 of the Criminal Code provides criminal punishment for illegal hunting in reserves or in other territories and objects of the nature reserve fund. In some cases, the place of committing a criminal offense acts as a qualifying attribute. This is, for example, a robbery committed against the population in the area of hostilities (Part 2 of Article 433 of the Criminal Code).

The time of committing a criminal offense is a certain period of time during which a socially dangerous act is committed and socially dangerous consequences occur. For example, such criminal offenses as interference with the exercise of the right to vote (Article 157), the unlawful use of ballot papers, the sex of election documents, or incorrect counting of votes or the incorrect announcement of election results (Article 158), violations of the secrecy of voting (Article 159) may be committed during the elections, as well as during the submission of their results.

The situation of the commission of a criminal offense is the concrete objective conditions in which the criminal offense is committed. Yes, Article 342 establishes liability for resistance to a representative of the government, an employee of a law enforcement agency, a member of a public formation for the protection of public order and the state border or a serviceman during the performance of their official duties, Part 3 of Article 411 - for deliberate destruction or damage to military property. The situation of committing a criminal offense sometimes significantly increases the degree of social danger of the offense and acts as a qualifying attribute (for example, a war criminal offense in a combat environment). In other cases, it creates a privileged criminal offense. This is the murder or the infliction of grave bodily harm in excess of the limits of the necessary defense (Articles 118, 124), where the situation is an attack on the part of the offender, defines the need for protection against a socially dangerous attack.

The greatest legal significance among the facultative signs of the objective side is the **way of committing a criminal offense.** Under the method of committing a criminal offense is understood those techniques and methods used by the executor to commit a criminal offense. The method of committing a criminal offense as a sign of the objective side of the criminal offense must differ from the point of view of criminologists and the concept of the method of criminal offense, because it is important for her to fix the traces of the criminal offense and the offender, and for this purpose it is necessary to investigate not only how the executor committed the criminal offense, but also how he concealed it or tried to hide it.

Means of committing a criminal offense are objects of the material world that are used by a criminal in the course of committing a socially dangerous act. The means of committing a criminal offense can be divided into tools and other means.

Tools are objects that person use to physically affect material objects (fire and cold weapons, explosive devices, tools, vehicles).

3.2.3 The Subject of a Criminal Offense

According to Article 18 of the Criminal Code of Ukraine, the subject of a criminal offense is a sane person who has committed a criminal offense at the age when criminal liability may rise under Criminal Code.

The subject of a criminal offense is a physical, convicted person who has attained the criminal offense of the age of criminal responsibility at the time of committing a criminal offense.

Signs of the subject of the criminal offense:

1 **Physical person** – the Criminal Code of Ukraine, entities is not provided liability of legal authorities, although in some countries it exists.;

2 **Jurisdiction** – the ability of a person to realize their actions, their social significance and to manage them, as well as the ability to be responsible for the committed actions;

3 **Age** – a person must reach the age stipulated by law (Article 22 of the Criminal Code of Ukraine).

The Criminal Code of Ukraine, Part 1 of Article 19 define the notion of sanity, so, a person who is aware of his actions (omission) and to manage them, while in Part 2 of Article 19 concept of insanity: "A person who, when committing a socially dangerous act provided for by this Code, was in a state of insanity, that is, could not understand his actions (omission) or manage them as a result of chronic mental illness, temporary disorder of mental activity, dementia or other painful condition of psychic. Such a person may be subject to coercive measures of a medical nature by a court order". Thus, in connection with the commission of a criminal offense, there is a question about the person's sanity, when it is necessary to find out, the person could correctly assess the socially dangerous nature of the action, its socially dangerous consequences and manage its actions (omission).

Medical (biological) criterion of insanity means the presence of a person with all possible mental illnesses that significantly affect the consciousness and will of man. In Part 2 of Article 19 of the Criminal code of Ukraine four types of mental illnesses are defined:

1 Chronic mental illness;
2 Temporary disorder of mental activity;
3 Dementia;
4 Another painful state of the psyche.

Chronic mental illness - a fairly common type of mental illness. These diseases include: schizophrenia, epilepsy, paranoid, progressive paralysis, manic-depressive psychosis, and others. According to T. P. Pechernikov, "chronic mental illness" should be attributed those diseases that have a tendency to progression, including those that occur osteoporous, but during the weakening retain signs of a slow flow or a process of defect of mental functions..

Temporary disorder of mental activity is recognized as acute, short-lived mental illness that occurs in the form of attacks. This disease suddenly occurs (often as a consequence of severe mental trauma) and, in favorable circumstances, suddenly disappears. Such diseases include various pathological affects, pathological intoxication, alcoholic psychoses, white fever, and others.

Dementia (oligophrenia) is a severe mental illness (mental trauma). It is a permanent, congenital type of mental disorder that affects a person's mental abilities. There are three forms of dementia: idiocy (the deepest degree of mental disorientation), imbecility (less profound), and retardation (the mildest form). Thus, these diseases differ from one another in the varying degrees of severity of the diseaseUnder another painful condition of the psyche they understand the painful disorder of the psyche that they do not cover previously mentioned three types of mental illness. These include severe forms of psychosis, the phenomenon of abstinence during drug addiction (drug starvation), and others. It is not a mental illness in its pure form, but in its psychopathic disorders, they can be equated with them.

The legal criterion of insanity includes the lack of the person's ability to realize their actions (intellectual property) or to manage them (the will sign).

Age and its impact on criminal liability: The sign of the subject of a criminal offense, which determines the adequacy of his behavior, is the age of the person. For example, the criminal responsibility of minors who do not understand what might happen from their actions would be meaningless cruelty. Therefore, the establishment of age limits of responsibility for their behavior suggests that when they reach a certain age minors already understand that it is good and bad what cannot be done, in which cases their actions can cause harm.

At the heart of age determination, as a rule, is the level of consciousness of a minor, that is, the ability of this person to be practically aware of what is happening in the objective world, and accordingly, it is meaningful and purposeful to do those or other actions, as well as deeds, in purpose.

Age calculation is carried out in the following way: if a person on the day of his birth commits an offense, and she, for example, was born at 14 o'clock and committed a criminal offense at 23

o'clock, then it would not be possible to bring him to criminal liability, since legally 14 years come only about 0:01 the next day. This is due to the fact that the birth certificate does not indicate the birth date. A year is added only from the day after birth, here one of the principles of criminal law appears – all doubts are interpreted in favor of the accused.

The same is the situation with the day, month, and year, unless the exact date of birth is known. Approximate year of birth and month are determined by forensic examination.

Speaking about the upper limit of the age of criminal responsibility, it should be noted that life imprisonment is not intended for persons under the age of 18 years and who have reached the age of 65 at the time of sentencing. Corrective work and restraint of liberty are not intended for women and men who have reached retirement age.

The special subject of a criminal offense is a physical criminal person who committed at the age from which criminal liability can occur, a criminal offense the subject of which can be only a certain person (Part 2 of Article 18 of the Criminal Code of Ukraine).

Special subject of a criminal offense is a person who, along with general features of the subject, has additional, specified in the law, signs, only in the presence of which a criminal offense may occur in a specified article or part of the article of the Criminal Code. This person may perform such actions as ordinary people do not have access to. Ordinary people who do not possess special qualities (signs) cannot be the subject of a criminal offense. For example, a subject of state betrayal cannot be a foreigner.

3.2.4 The Subjective Side

The subjective side is the inside of the criminal offense. In other words, it is the psychic activity of a person at the time of committing a socially dangerous act (action or omission) provided by the acting Criminal Code, which expresses its relation to the criminal offense and its consequences.

The value of the subjective side:

- It affects the qualification of a criminal offense;
- It makes it possible to distinguish one offense from another;
- It makes it possible to distinguish between criminal and non-criminals;
- It affects the appointment of a punishment;
- It affects the decision on the issue of release from criminal liability and punishment.

Signs of the subjective part of the criminal offense: The subjective side is characterized by such features as **the guilt, the motive and purpose** of the criminal offense.

Guilt: From article 23 of the Criminal Code it follows that the law understands guilty a mental attitude of a person with regard to the performed act or omission under this Code and the consequences thereof, expressed in the form of intent or recklessness. The content of guilt - it is reflected in the psyche (consciousness) of the person of the objective signs of the committed act, i.e. the actual characteristics describing the object and the objective side. Thus, the content of guilt is determined by the content of objective evidence of a certain composition. There are no crimes that have the same content as guilt.

The essence of guilt determines the social nature of guilt, since wine manifests itself in a criminal act. Consequently, the social essence of guilt lies in the negative relationship of the person to social relations, to those values, to those benefits that are protected by the rules of law. In negligence, the essence of guilt is in the disreputable respect for these benefits..

Forms of guilt – intent and carelessness: If the content is determined by the specific circumstances of each criminal offense, then forms are generalized concepts that in general characterize a person's relation to a criminal offense (without regard to a particular act). Because of this, forms of guilt are studied in the General Part of Criminal Law.

Intention and its kinds (Article 24 of the Criminal Code): In the current law on criminal liability are directly called types of intent. They are defined in Part 1 of Article 24 of Criminal Code of Ukraine.

An offense is committed intentionally if the person who committed it was aware of the socially dangerous nature of the act (action or inactivity) committed by him, envisaged socially dangerous consequences and wished or deliberately allowed the onset of these consequences.

From this wording it is clear that the law knows two types of intentions: the intent is direct and indirect (inventive).

Direct intent takes place where the person is aware of the socially dangerous nature of the act committed by him, involves the possibility or inevitability of the onset of the socially dangerous consequences of this act and wants the onset of these consequences.

Indirect intentions take place where the person is aware of the socially dangerous nature of the act committed by him, foreseeing only the possibility of the onset of the socially dangerous consequences of this act, does not want these consequences, although it deliberately permits their onset.

Negligence and its kinds (Article 25 of the Criminal Code): An offense is considered to be committed by negligence, if the person who committed it foresees the possibility of an onset of the socially dangerous consequences of the act committed by him, but lightly counted on their distraction, or although it did not foresee the possibility of an offensive of the socially dangerous consequences of his deed, he should have been able to and could foresee them.

No less serious criminal offenses are committed, but they occupy a large proportion in a field where human activity is coupled with various technical means and mechanisms. In principle, they are less dangerous compared with intentional criminal offenses.

Types of negligence:

1 Criminal presumption (Part 2 of Article 25 of the Criminal Code);

2 The criminal negligence (Part 3 of Article 25 of the Criminal Code).

Criminal presumption takes place where the person assumes the possibility of an onset of socially dangerous consequences of an act committed by him, but lightly counts on their distraction.

Criminal negligence takes place where the person does not anticipate the possibility of a socially dangerous consequence of the act committed by him, although he should have been able to foresee them.

The difference between criminal presumption and indirect intent:

- Difference in the nature of prediction (on the intellectual moment) – with indirect intent, prediction is always concrete, and with arrogance – abstract (not to be confused with a specific calculation with confidence in the non-occurrence of consequences);
- With an indirect intention through a concrete foresight, the person deliberately permits an onset of an effect, and in case of arrogance, the person relies relentlessly on the avoidance of consequences.

Double (complex) or mixed form of guilt: In the current law there are warehouses of criminal offenses qualified in consequence. These are the warehouses where, as a qualifying attribute, there is a consequence that aggravates the responsibility (qualification). Examples may be, in particular, Part 2 of Article 121 of the Criminal Code, Part 3 of Article 133 of the Criminal Code, and Part 2 of Article 134 of the Criminal Code.

In these warehouses of criminal offenses a certain complexity has an objective side, and after it and the party is subjective. If the basic criminal offense is committed intentionally, then carelessness is imposed on the aggravating consequences. Thus, with a “mixed” form of guilt, a deliberate grave bodily injury occurs, which resulted in the death of the victim from negligence.

Optional features of the subjective side: The motive and purpose are optional elements of the subjective aspect of the criminal offense. Far not all warehouses contain certain motives and goals (for example, for intentional average gravity of bodily injuries (Part 1 of Article 122 of the Criminal Code) do not matter the motive and purpose of their implementation). However, their establishment in the

commission of a willful criminal offense makes it possible to determine the full picture of the criminal offense.

The motive for a criminal offense is those internal motives, which are guided by the subject in committing a criminal offense. The motive is the driving force behind the criminal offense, which is the internal reason for its implementation. The motive is determined by the needs of a person, his interests, and in the commission of a criminal offense he acquires an illegal character and is defined as the motives of a criminal offense.

The purpose of a criminal offense is the final (intermediate) result contained in the consciousness of the executor, to which he aspires, committing a criminal offense.

The purpose, in relation to the general structure of the criminal offense, is also an optional feature of the subjective aspect of the criminal offense. The aim is only in the criminal offenses committed with direct intent.

In some cases, the purpose of the Criminal Code is marked as the main, obligatory feature of the subjective aspect of a particular criminal offense, in others, as a qualifying attribute; in all other cases, it is taken into account by the court only when sentencing.

Motive is an internal motivation that made a person stands on the road to committing a criminal offense.

3.3 Types of Corpus Delicti

Classification of criminal offenses is of great importance for the knowledge of certain elements of the criminal offense and for the proper qualification of criminal offenses. Most often, the categories of criminal offense are classified: by the degree of social danger, by way of describing the characteristics of the composition in the law and the peculiarities of legislative design.

Four types of offenses are distinguished according to the degree of public danger:

- Basic (simple);
- Qualified (with aggravating, qualifying attributes);
- Composition with especially aggravating (especially qualifying) features;
- Composition with softening features (so-called privileged warehouse).

The basic (simple) is the corpus delicti, which contains a set of objective and subjective features that always take place in the commission of this type of criminal offense, but does not provide additional signs that increase or decrease the level of social danger of the accomplished, that is, does not contain any aggravating , no softening signs. Thus, Part 1 of Article 186 of the Criminal Code provides the definition of robbery as an outright theft of someone else's property and there are no circumstances that aggravate or mitigate liability.

A qualified Corpus delicti recognizes the criminal offense, which contains aggravating circumstances (qualifying attributes), the presence of which leads to increased punishment compared with the criminal offense that forms the main composition. Thus, in Part 2 of Article 186 of the Criminal Code provides for increased liability for skilled robbery (combined with violence that is not dangerous to the victim's life and health or committed repeatedly or by prior conspiracy by a group of persons, etc.). In this case, such signs as violence, repetition, preliminary conspiracy of a group of persons act qualifying circumstances.

Sometimes the legislator, taking into account the special gravity of the offense, allocates varieties of qualified members in the form of criminal offenses with particularly aggravating (qualifying) circumstances, that is, those that make a criminal offense of special social danger (for example, Parts 3, 4 and 5 of Article 186 of Criminal Code of Ukraine: robbery, combined with penetration into the home, committed in large measure, committed by an organized group).

Privileged (with mitigating circumstances) is the corpus delicti, which, in addition to the characteristics of the main body, also contains the characteristics that serve as a basis for a significant

reduction in the amount of punishment in comparison with the punishment established for the criminal offense that forms the basic composition, which contains the mitigating circumstances. Thus, in the case of premeditated murder which exceeds the limits of the necessary defense (Article 118 of the Criminal Code), the aggravating circumstance will be privileged in relation to premeditated murder (Article 115 of the Criminal Code).

By describing their characteristics or, in other words, the structure, the law distinguishes: simple and complex composition of criminal offenses.

The simple composition of the criminal offense is characterized by a form of guilt, contains a description of an act that violates an object.

The complex composition of a criminal offense is considered complex with several objects or which provides for two or more actions or two different forms of guilt. For example, the intentional serious bodily injury that caused the victim's death (Part 2 of Article 121 of the Criminal Code) - a composition with two forms of guilt, robbery (Part 1 of Article 187 of the Criminal Code) - a warehouse with two objects, hooliganism, connected with resistance to a representative of the government or a representative of the public (Part 3 of Article 296 of the Criminal Code) - a composition with two actions, etc.

This complex also includes the alternatives of the criminal offense, the objective side of which describes more than one criminal act or mode of action, or more than one criminal consequence, and several variants, the existence of at least one of which is the basis for resolving the issue of criminal responsibility. For example, the deception of buyers and clients (Article 225 of the Criminal Code) provides for the following actions: measuring, weighting, checking or other deception, trafficking in persons or other illegal transactions for the transfer of human beings (Article 149 of the Criminal Code) - several types of acts and several types of purposes, from which actions are taken.

According to the characteristics of the design of the objective side of the composition of criminal offenses are divided into: material, formal and truncated, or criminal offenses with material, formal or truncated composition.

In the case of a material corpus delicti, the legislator connects the moment when the criminal offense ends with the beginning of criminal consequences (a criminal result). Therefore, an obligatory sign of the objective side in such warehouses of the criminal offense are socially dangerous consequences. In cases where an act aimed at achieving a criminal result, obligatory for this composition, did not lead to its offense, there is no completed criminal offense. In this case, the guilty person is held responsible for the attempt to commit the crime in question, for example, intentional moderate bodily injury (Article 122 of the Criminal Code), intentional murder (Article 115 of the Criminal Code), theft (Article 185 of the Criminal Code of Ukraine), and many others.

Formal corpus delicti is where for the existence of a complete criminal offense only need to commit an act specified in the law. The occurrence of certain consequences that may be caused by this act does not affect the qualification.

For example, extortion (art. 189 of the Criminal Code) is considered to be completed from the moment the demand is made, regardless of whether the victim has caused the pecuniary damage of this crime or not.

Corpus delicti is the moment when the legislator transfers the criminal offense to the stage of preparation or execution. In order to recognize such a crime as complete, it is necessary not only to cause the criminal consequences, but also to terminate the actions that can cause these consequences: for example, the threat of murder (Article 129 of the Criminal Code of Ukraine), robbery (Article 187 of the Criminal Code of Ukraine), banditry (Article 257 of the Criminal Code of Ukraine).

3.4 Qualification of Criminal Offenses

In order to bring the executor to criminal responsibility and to apply measures of punishment, it is necessary to specify precisely which law is violated, which criminal offense has been committed. This task is accomplished by qualifying a criminal offense.

Under the qualification of a criminal offense it is understood that the establishment and legal consolidation of the exact correspondence between the features of the offense and the elements of the criminal offense, provided for by the criminal law.

The concept of qualification of a criminal offense is also considered as the process of identifying the features of a criminal offense in the actions of the individual, and as a result of this activity of the investigating and judicial authorities - the official attachment in the relevant legal act (indictment, court verdict) of the revealed conformity of the signs of the committed act to the criminal law. The literature emphasizes the inalienable connection and unity of these aspects.

Simplified qualifications of a criminal offense can be described as follows. For example, a criminal case is being considered in court on charges of Mr. Ivanov committed theft. The testimony of witnesses and other materials of the case detail the place, time, method of committing the criminal offense, the offender's attributes, and the person of the accused and many other features of the act committed by the individual. From the inexhaustible number of these features of a particular act for qualification, only those legally significant objective and subjective attributes that characterize a particular criminal offense as provided by the Criminal Code (for example, the execution of Mr. Ivanov's theft, combined with the penetration into the house, provided by Part 3 of Article 185 of the Criminal Code). Part of the evidence necessary for the qualification of the executor is covered by the concept of the crime. In addition, the composition is only the whole set of legal characteristics. Therefore, the absence of at least one of the necessary indications indicates the absence of the actions of a person of a particular criminal offense. Other of the examples listed in the example will have probative value, be taken into account when imposing a punishment or otherwise affect the resolution of a criminal case or not used by the court at all.

Since any criminal offense is manifested in the unity of the objective and subjective, the process of qualification consists in the consistent establishment of the exact correspondence of the object, the objective party, the subject and the subjective parties of the actual committed act of the criminal offense, enshrined in the criminal law.

The literature distinguishes the following requirements for proper qualification:

1 Accurate and complete determination of the actual circumstances of the case;

2 Deep professionalism in their study;

3 Determination of the approximate range of rules that can be subject to a committed act;

4 Comparison of the signs of criminal offenses, named in the regulations assigned for the analysis of articles of the Criminal Code, with signs of committed act;

5 Differentiation of adjacent crimes;

6 Construction of conclusion and consolidation in the procedural document of final qualification, consisting in

- Indication of the relevant article or item, part of the article of the Special Part of the Criminal Code, which provides for criminal liability for this type of criminal offense;
- In the indication (if necessary) of the article of the General Part of the Criminal Code, which establishes liability for incomplete criminal activity, complicity, plurality of criminal acts, etc.

The wrong qualification of the criminal offense leads to a whole series of violations of the rights and legitimate interests of citizens, hinders the normal administration of justice, and undermines the authority of specially authorized bodies and the state as a whole.

3.5 Stages of the Criminal Offense

A guilty person may not always be able to finish and start offense for reasons that are independent of his will. For example, the killer only purchased weapons for committing an offense and was detained or, having shot a victim, missed or only wounded him. In these and similar cases, there is a question of responsibility for criminal acts at certain stages of the criminal offense.

Stages of a criminal offense are certain stages of its implementation, which significantly differ between the degree of implementation of the intention, that is, the nature of the act (action or omission), and the moment of its termination.

The stages of committing a criminal offense are types of purposeful activities, stages of realization of criminal intent, achievement of a certain goal, and therefore can be contained only in criminal offenses committed with direct intent.

The degree of realization of the intention is reflected in various acts, which characterize each stage with the objectively existing between them with sufficiently clear boundaries.

Types of stages of committing a criminal offense. The CC recognizes the criminal and penal stages of the crime:

1 Preparing for a criminal offense;

2 Attempt to commit a criminal offense, which together with the preparation of a criminal offense, constitutes an unfinished criminal offense;

3 The completed criminal offense.

Fulfilled criminal offense is an act that contains all the features of the criminal offense,

An infinished criminal offense is a deliberate, socially dangerous act (action or omission) which does not contain all the features of a criminal offense provided for by the relevant article of the Special Part of the Criminal Code in connection with the fact that the criminal offense was not brought to an end for reasons beyond the control of the executor.

An unfinished criminal offense is the preparation of a criminal offense and the attempt to commit a criminal offense (Part 2, Article 13).

An unreturned criminal offense (preparation for a criminal offense and an attempt to commit a criminal offense) is not an opportunity to cause damage to the object of an attack. The criminal activity is terminated in connection with circumstances that arose contrary to the will and desire of the subject.

Part 1 of Article 14 stipulates that preparation for criminal offense shall mean the looking out or adapting means and tools, or looking for accomplices to, or conspiring for, an offense, removing of obstacles to an offense, or otherwise intended conditioning of an offense. Also preparation to commit a minor criminal offense does not give rise to criminal liability.

When preparing for a criminal offense the guilty party is not directly directed to the object and does not put it in immediate danger. The subject is not yet performing the act, which is a necessary sign of the objective side of the criminal offense.

From the objective side (on the outside) preparation for a criminal offense may be manifested in various actions, but common to them is that they all consist only of creating conditions for committing a criminal offense, which, however, does not come to an end for reasons that are not depend on the will of the executor (for example, the detainees have been detained by the authorities).

From the subjective side (on the inner side) preparation for a criminal offense is possible only with direct intent, that is, the individual realizes that it creates conditions for committing a certain criminal offense and wants to create such conditions. At the same time, the executor has the intention not only to prepare for a criminal offense, but to commit such actions which will lead to the end of the criminal offense.

Types of preparation for a criminal offense: In accordance with Part 1 of Article 14, preparation for a crime is manifested by

- Searching for means or instruments for committing a crime;
- Adapting means or instruments for committing a crime;
- Seeking accomplices;
- Conspiracy to commit a crime;
- Removing obstacles;
- Other deliberate creation of conditions for committing a crime.

The concept of an attempt on a criminal offense, its objective and subjective features: In accordance with Article 15, an attempt to commit a crime is a directly intended act (action or omission) of a person, which is directly aimed at committing a crime prescribed by the relevant article of the Special Part of this Code, if this crime has not been committed for reasons beyond the control of this person.

An attempt to commit a criminal offense is consummated when a person has completed all the actions that he/she considered necessary for consummation of a criminal offense, but the criminal offense was not consummated due to reasons beyond the control of that person.

A criminal attempt is not completed when a person has not completed all such actions as he/she deemed necessary for the consummation of an offense for reasons beyond that person's control..

Questions:

1 What elements of the criminal offense composition are mandatory?

2 What are the optional features of a criminal offense?

3 What is the qualification of a criminal offense?

4 What is the object of a criminal offense?

5 What is the subject of a criminal offense?

6 What is the classification of objects in criminal law?

7 What is the objective side of the criminal offense? Its value.

8 What are the compulsory and optional features characterizing the objective side of the criminal offense?

9 Who can be the subject of a criminal offense?

10 What are the mandatory signs of the subject of the criminal offense?

11 From what age a person can be recognized as the subject of a criminal offense?

12 What is the criminal significance of the motive and purpose of the criminal offense?

TOPIC 4
The Concept of Complicity

4.1 Concepts and Symbols of Complicity

For the correct application of the rules of the CC on complicity should, first of all, assimilate its concept. Article 26 states that complicity in a criminal offense is recognized deliberate joint participation of several subjects of the criminal offense in committing a willful criminal offense. This formulation is made as a result of long-term theoretical research and is the development of the concept of complicity contained in Article 19 of the Criminal Code of 1960. Thus, complicity is an association where several persons commit a criminal offense jointly and intentionally.

It should be borne in mind that complicity does not form any special, other grounds of liability – the basis of responsibility is the same composition of the criminal offense, but committed in complicity. The fact that the rate of participation contained in the General Part of the Criminal Code, means only one thing - it (the rule) shall apply to any case of an offense referred to in the Special Part of the Criminal Code, but committed in complicity. Yes, the provisions of Article 26 apply to murders, robberies, robberies, rape, drug abduction, as well as any other criminal offense.

When disclosing the content of complicity should be set its objective and subjective parties, in other words, the objective and subjective features of this form of criminal offense.

Objective signs of complicity are expressed in the law by words - a criminal offense committed by several (two or more) actors of a criminal offense together.

Subjective features – indicating that complicity is intentional joint participation in the commission of an intentional criminal offense.

Thus, when outlining the objective and subjective signs of complicity there is an indication of community. Indeed, community characterizes both the objective and the subjective side of complicity. If objective evidence of complicity is a joint action of participants, then the subjective attributes are the commonality of their intent.

Objective signs of complicity:

1 Participation is only where several persons (at least two persons) are involved in the criminal offense; the legislator calls the minimum number of participants in the criminal offense, although they may be more. Moreover, each of these persons must have the features of the subject of the criminal offense - that is, to be an individual condemned and to reach the age of criminal responsibility;

2 Participation is a joint activity. Community as an objective sign of complicity contains the following three points:

- The criminal offense is committed by the joint efforts of all accomplices. The role, functions of each participant may vary, but the criminal offense is a result of the general, joint activities of all accomplices, each of them committed a criminal offense to

contribute. Sometimes complicity is figuratively comparable with the game in the orchestra, where each instrument, each musician conducts his own party, and in general, a single melody comes out.

- Generality also means that the consequence of a criminal offense is one, indivisible, common to all accomplices. For this consequence, all accomplices are responsible, regardless of the role each of them performed in the criminal offense. If three persons committed a murder, then each of them should be responsible for the murder, not for 1/3 of the murder, even though he himself did not directly kill the victim. Therefore, the person who bribed the murderer, as well as the person who gave the weapon for this, is responsible for the murder committed by the executor. The extent of responsibility of each partner and is determined in principle by the fact that the executor committed the criminal offense.
- Jointly with complicity means that there is a causal relationship between the actions of the accomplices and the offense committed by the executor. Moreover, indirect causation is mediated, because the general result is achieved only through the conscious activity of the performer. The activities of each partner must, in time, precede the criminal offense committed by the performer; it creates a real opportunity for the executor to commit the criminal offense. The executor turns this opportunity into reality, causing the necessary consequence. Indeed, those who led the person to kill the victim and who gave it the weapon thereby created a real opportunity for the killer to realize the conceived. However, the transformation of this ability into reality depends on the act of the performer. That is why the causal connection here is mediated. If the causal connection is absent, then there is no such objective sign of complicity as commonality, and hence there is no complicity.

From the subjective side, complicity is characterized by an intentional form of guilt, which implies

1 The existence of the intent of each of the accomplices with respect to their own actions (inaction);

2 The presence of intent with respect to the actions of other accomplices, including the executor and co-executor;

3 Unity of intent of all accomplices to commit the same criminal offense;

4 Unity of criminal interest of all accomplices, that is, the direction of their intention to achieve a common criminal result.

In aggregate, these attributes form the commonality of the mental activities of accomplices.

Each accomplice must be informed about the criminal intentions, the criminal actions of the executor. The requirement for such awareness is the most important sign of complicity. So if the person who decided to kill the victim asks a neighbor for a shotgun for hunting, and the neighbor gives the shotgun, and as a result a murder takes place, then there is no complicity, because the person who gave the shotgun was not informed, did not know about the real intention of the murderer. If such a shotgun is given to a future executor for murder, then there is complicity, because the one who gave the shotgun acts in concert with the performer who is aware of his criminal intentions.

The intellectual moment of complicity is that the intention is to comprehend each of the participants:

- The socially dangerous nature of a personally committed act;
- The fact of committing all the accomplices of the same criminal offense;
- The nature of the actions of other accomplices;
- Opportunities to work with them;
- The intent in their actions;
- The direction of their actions (inaction) to achieve a general criminal result, etc.

That awareness of the circumstances that apply to all elements of the criminal offense, such awareness should be reciprocal.

The volitional moment of the intention with complicity is first of all in the desire for an aftermath when all the accomplices want to have the consequences, which the executor seeks to achieve by direct actions. In criminal offenses with a formal composition, accomplices want the performer to commit a criminal act they have conceived.

Speaking of intent with complicity, one should bear in mind that all experts recognize the possibility of direct intent with complicity, but not all agree that it is possible here and the intention is indirect. This last point of view calls into question, because it subjugates the notion of complicity.

First of all, it should be noted that the very law (Article 26), speaking of intent with complicity, does not indicate the types of such intent, thus admitting that it can be both direct and indirect.

Further, if you come to a criticized position, then in some cases the actions of co-executors will not be considered complicity in the criminal offense. For example, three men fell to the land of the victim, causing him to strike his legs, his hands in different parts of the body, not wanting to cause death, but knowingly allowing such a consequence of beatings. As a result of beatings, the victim died. Obviously, those who committed criminal offense, being executors (co-executors), act with an indirect intention, not wishing for the death of the victim, but deliberately admitting it, in full accordance with Article 27 should be recognized as accomplices. A few years ago there was such a case in the Kyiv region. The ambulance arrived on call and took the patient in an unconscious state. On the way, due to the end of the change (and delivery of the patient to the hospital took a lot of time), the doctor, the sanitary and the driver who accompanied him, decided to unload the patient in the forest plantation, which they did. A citizen, who was nearby, tried to shame them, on which they replied: “Nothing, somehow, is tolerated”, and left the scene. The other ambulance has been called by this citizen to find the victim dead. It is obvious that they are guilty, and they are all co-executors of the criminal offense, predicted that as a result of their actions, the patient may die, this, of course, did not want, but deliberately allowed, that is, and acted with an indirect intention.

Indirect intentions are also possible in the behavior of the accomplice. So, in the case that took place in one of the cities, the investigator-woman, having fallen under the influence of the investigator, handed over to the last gun to perform his escape from prison, but asked not to use it. The guilty, committing an escape, killed the guard. Giving a pistol, a woman knew that weapons could be used and, although not willing to do so, but deliberately allowed a consequence of the deaths of those who tried to prevent escapes. In this case, there is aiding in murder with indirect intent.

Thus, complicity in the criminal offense is possible not only with the direct but also with the indirect intention. The latter may take place in the behavior of a co-executor or accomplice.

With regard to the motives of the accomplices, they can be both the same, and different. For example, when committing a killing, all accomplices may have one motive – vengeance on the victim. But there may be situations when some of the accomplices act on vengeance, while others may be from mercenary motives. Thus, when the “ordered” murder of a killer, bribed by the abettor, operates on mercenary motives, and the abettor himself can be guided by the motive of revenge, enmity, envy for the victim. The incompatibility of motives does not exclude complicity in a criminal offense. It can influence in some cases the qualification of the criminal offense, which will be discussed later, and be taken into account in the appointment of a partner’s sentence.

Already from the examples given, it is evident that accomplices can perform different roles in a criminal offense.

4.2 Types of Accomplices

Participants in a criminal offense may perform different roles - homogeneous or heterogeneous functions. In Part 1 of Article 27 indicates the types of accomplices, which, besides the performer, are recognized as organizer, abettor and accomplice. Sometimes, a figure is identified as the initiator of a criminal offense. However, the initiator of a criminal offense is, in fact, an abettor or organizer.

Therefore, the legislator did not follow the path of the selection of such an accomplice, as the initiator of the criminal offense.

Let’s consider in detail the types of accomplices.

4.2.1 The Executor (Co-Executor) of the Crime

The executor (co-executor) under Part 2 of Article 27 is a person who, in co-perpetration with other subjects of a criminal offence, directly or with the use of other persons who are not subjects of a criminal offence, committed a specific criminal offence. From this follows that the principal (or co-principal) is an accomplice that by his actions directly performed completely or at least in part (in some part) the objective aspect of the criminal offense. Therefore, for example, when an organizer is raped, the organizer is not only the one who seizes the property of the victim, but also the one who at the time of the seizure applies violence to the victim. An accomplice in this criminal offense is the one who, for example, keeps the victim by the hand, depriving him of the ability to resist, closes the victim's mouth, so that he does not call for help. All these persons are executors of robbery, because each of them performs some part of the objective part of the criminal offense (robbery). The main thing is that the person by his direct actions performed the act described in the law (in the disposition of the article of the Special Part of the Criminal Code), or its part as a sign of the objective side of the specific composition of the criminal offense.

Without an executor there is no complicity, because only he makes a conceived, he implements, completes the intent of accomplices. And in this sense the performer is a decisive, central figure in complicity.

Further, it is clear from the law that an executor also recognizes a person who uses persons who are not the subject of a criminal offense to commit a criminal offense. In these cases, there is a mediocrity (otherwise it is called mediocre or mediocre execution). It occurs where, as an actual (so to speak, physical) executor of a criminal offense is a person who is not a subject of criminal liability as a result of insanity or failure to reach the age of criminal responsibility (for example, an adult engages in the theft of property of minors).

In such situations, the person who actually commits the criminal offense is not held responsible because of her insanity or lack of age. A person using the insane person or a person who has not reached the age of criminal responsibility is considered to be the executor of the criminal offense. Here, a person who actually committed a criminal offense (that is, insane or underage), acts as a kind of instrument or means of committing a criminal offense. Moderate guilt in accordance with Paragraph 9 of Article 67 is regarded as a circumstance that aggravates the punishment.

4.2.2 The Organizer of the Crime

The organizer (Part 3 of Article 27) is the person who organized the commission of the criminal offense or directed the criminal offense. The organizer has a special place in complicity, as if he is above all the accomplices, regulating and directing all their activities.

The person who organized the criminal offense is an accomplice that unites other accomplices, distributes the roles between them, outlining the plan of the criminal offense, defining the future victim or objects of the criminal offense.

The organizer is also the person who directed the preparation or commission of a criminal offense: here the main role is involved in committing a specific criminal offense (the person is preparing to commit a specific criminal offense, disposes of the place of his commission, assigns a task, focuses on any concrete actions, distributes responsibilities etc).

In addition, the organizer recognizes the person who created or managed the organized group or criminal organization. Moreover, she can head one criminal group or even manage an association of two or more groups.

Creation and leadership of the group may be expressed in developing the very strategy of future criminal activity (as a rule, in the presence of large organized criminal groups, when there is a peculiar ideological justification for organized criminal offense), as well as in establishing contact with other criminal groups.

An organizer is also a person who provides financing for a criminal activity of an organized group or a criminal organization (for example, it finances the services of guards, technical personnel, and also finances the production or transportation of prohibited articles - drugs, counterfeit liquors, etc.).

Finally, the organizer recognizes the person who organized the concealment of the criminal activity of an organized group or criminal organization (this is, for example, the case of the so-called "shelter" of such a group by a law enforcement officer, the organization of "caches" of weapons of criminal groups, etc.).

On an objective side, organizational activities must meet the requirements of community, that is, the actions of the organizer are always causally related to the criminal offense or criminal offenses committed by the executor (co-executor).

From the subjective side of the organizer's intention is the criminal offense that must be performed by the performer (performers). The organizer wishes to commit this criminal offense and directs its activities to organize its commission. In large organized groups characterized by a hierarchy and various connections, the organizer may not even know the specific executor (co-executor), but his intention is to commit certain criminal offenses included in the plan of the respective criminal group. He not only assumes that, as a result of his organizational actions, he will commit or commit the criminal offenses in question, but he will also.

4.2.3 Abettor

Abettor (Part 4 of Article 27). An abettor is a person who inclined other accomplice to commit a criminal offense. What does the phrase "induced to commit a criminal offense" mean? This means that the abettor is a person who caused the resolve or desire to commit a criminal offense, that is, the intention to commit a criminal offense, from the performer or other participants in the crime.

Objectively, because the abettor is willing to commit a crime, he also puts his actions in a causal relationship with the crime that will be committed by the executor. This expresses the commonality of the abettor's actions with other accomplices.

From the subjective side, the abettor has a direct intention to commit an executor of a definite, specific crime. Incitement is possible only to commit a specific crime. No incitement at all, but incitement to commit a specific crime (theft, murder, rape).

What are the methods of incitement? The law gives an indicative list of them. It can be expressed in various forms. This can be extortion, bribery, threats, coercion or other similar actions - for example, instructions, order, etc. These are the ways in which the abettor generates the desire, determination to commit a criminal offense from other accomplices (often the performer). It is important that these ways give rise to the accomplices of desire, determination to commit a criminal offense, but do not completely suppress the will of the incitement. The final decision to commit a criminal offense remains for those who are incited, although the desire to commit a criminal offense generates in it the very abettor.

4.2.4 Accessory

Accessory (Part 5 of Article 27). An accessory recognizes a person who, through advice, guidance, provision of means or equipment, or elimination of obstacles, facilitated the commission of the criminal offense by other accessory, as well as a person who had previously promised to hide a criminal organizer, an instrument or means of committing a criminal offense, traces of a criminal offense or objects obtained by criminal means, to purchase or to sell such objects, or otherwise facilitate the concealment of a criminal offense.

What does the law mean by saying that a person contributed to the criminal offense? These words of the law mean that the accessory strengthens the desire, determination of the executor or other accessory to commit an offense by his actions or inaction. The accessory does not cause his actions such determination (as opposed to the abettor), it (this determination) already takes place regardless of the accessory only strengthens such determination.

From the objective side of the community in the behavior of the accessory manifests itself in the fact that, by reinforcing by their actions or inaction the resolve to commit a criminal offense, he places his activity in a causal connection with the criminal offense committed by the executor.

From the subjective side, the accessory must be informed about the criminal intent of the accessory (in any case, about the criminal intentions of the executor). Thus, he predicts that a criminal offense, a particular criminal offense, will be committed and willing or knowingly implies his commission.

These signs determine the responsibility of the accessory. And again, we emphasize that aiding and abetting is also possible only in relation to a specific criminal offense (theft, rape, murder).

In Part 5 of Article 27, the legislator not only gives a general characterization of aiding and abetting, but also lists types of aiding and abetting. From this point of view, all assistance is divided into two types:

- Physical assistance, described in the law in words: providing means or equipment or removing obstacles or otherwise expressing assistance in concealing a criminal offense;
- Aiding and abetting is the provision of advice, guidance, as well as the promise to conceal the executor, means or instruments for committing a criminal offense, traces of a crime or objects obtained by criminal means, or the purchase or sale of such items.

Physical Aid:

1 The provision of tools or instruments is manifested in the fact that the accessory transfers to the executor or other accessory the various objects of the material world, which ensure achievement of the accessory of their criminal intentions. Yes, an accessory can provide a weapon of hacking, juggling, weapons, transport, money, etc., and thus contributes to the commission of a criminal offense.

2 Removal of obstacles to the commission of a criminal offense is to eliminate obstacles that interfere with the implementation of the criminal intent of accessory. Thus, an accessory can, for the sake of facilitating theft, poison or tame the dog that protects the warehouse; he can stand on guard, guarding the place where the criminal offense is committed, where the principal (or co-principal)guides; cut telephone calls, thus depriving the victim of the opportunity to call for help; call the owner of the house and turn away his attention so that his accessory at that time committed theft; to leave the open door of the repository or to disable it in advance or, conversely, not to include the alarm system, thus facilitating theft, etc. Removing obstacles - the concept is complex, it covers and search foraccessorys, which facilitates the further commission of a criminal offense, for example, anaccessory involves involvement in the criminal offense of other persons.

3 In addition, physical assistance may consist of facilitating the concealment of a criminal offense. In this regard, we will point out cases of execution in the criminal group of the functions of the guard, as well as those who hold the proceeds of criminal offense (so-called “obschak”). When the guard, for example, accessory who go to commit a criminal offense, he, protecting them, thereby eliminates the obstacles to committing a conceived, promotes criminal offense. If he carries out the

protection of accessory during the period between the committed criminal offenses, he contributes to the concealment of the executors.

The same should be said about the people holding the “obschak”. If such an owner, for example, gives money to commit a criminal offense, for example, to pay bribes, to acquire weapons or vehicles, he performs the functions of a physical assistant. In all other cases, just by holding the “obschak”, he performs the same functions, but only in a different way - by concealing the criminal proceeding.

In organized groups there are technical staffs that serve the participants of these groups. If the members of the technical staff did not directly participate in the preparation or execution of the crime by an organized group, they cannot be recognized as accomplices in the criminal offense. Cooks, prayers, hairdressers and other persons, if they did not contribute to the commission of the crime, are not responsible according to Article 27. This does not mean that they are generally immune from liability. But they can be held accountable for the previously unprotected concealment of crimes, which will be discussed below.

Intelligent Aid:

1 The provision of advice, guidance is expressed in the fact that the accessory can explain, for example, how it is best to penetrate into the premises for committing theft, or to recommend how it is possible to engage in the commission of a criminal offense of other persons, which way to follow after committing a criminal offense, in order to avoid detention, how to deal with the least damage the victim's resistance, etc.

2 Promise to conceal the executor in advance, means and tools for committing a criminal offense, traces of a criminal offense or objects obtained by criminal means. All these types of concealment in theory and practice are covered by one concept - the promise of hiding criminal offense in advance. Aiding and abetting in the promise of concealment of a criminal offense occurs from the moment the promise of concealment of a criminal offense is made to the concealed person, regardless of whether there is a subsequent concealment after the criminal offense is committed. In advance, by promising such concealment, the accessory puts his actions in a causal relationship with the actions that will then be performed by the principal.

It should be assumed that in the case of instigation by giving advice, instructions to the performer, there is a determination to commit a crime, and in the case of intellectual assistance, this determination already exists, it is only strengthened by those hints, instructions given by the accessory.

Finally, completing the analysis of the types of accessory, it should also be noted that in real life, in judicial practice, a possible association, coincidence in the activities of an accessory at once several roles. For example, a person can be both the executor and the organizer of a criminal offense; it can be abettor an accessory, etc. The combination of several roles in the behavior of one accessory is taken into account by the court when sentencing.

4.3 Forms of Complicity

Forms of complicity - this is an association of accomplices, which differ in the nature of the roles performed and the stability of subjective relations between them.

First of all, in Part 1 of Article 27 it is stated that accomplices are executors, organizers, abettors and accomplices, and Part 2 of this article is about collaborators. Consequently, it is possible complicity when all accomplices of the criminal offense will be its executors, but it is possible and complicity with the distribution of roles when accomplices perform different functions in a criminal offense: one - the executor, the second - the accomplice, the third - the abettor, etc. Thus, Article 27 establishes complicity in the form of cooperation and complicity in the form of role sharing. This division of complicity into two forms is based on the role played by the accomplices in the crime, that is, on objective grounds.

In this case, one speaks of simple and complicated complicity:

1 Simple complicity (co-enforcement, co-consistency) occurs when all the accomplices are the executors of the crime and, consequently, they all play a similar role. Of course, their actions may be different in nature. For example, one of the actors threatens the victim with a knife, the other beats her, and the third cleans her pockets. But in terms of the form of complicity their roles are homogeneous - all of them directly perform the actions described in the disposition of the article of the Special Part of the Criminal Code of Ukraine as signs of the objective side of a particular criminal offense, in this case – robbery.

2 Complex complicity (participation with the distribution of roles) means that the accomplices perform heterogeneous roles; here there is a distribution of roles - one or more of them - executors, others - abettors, accomplices, etc. In other words, in this form of complicity, not all accomplices are the executors of the criminal offense.

According to the subjective characteristics, stability of subjective ties, stability of intention, Article 28 distinguishes the commission of a crime by different criminal groups:

- Committing a criminal offense by a group of persons;
- Committing a criminal offense by a group of persons under a preliminary agreement;
- Committing a criminal offense by an organized group;
- Committing a criminal offense as a criminal organization.

Consider these forms of complicity:

1 A criminal offense is recognized as **committed by a group of persons** if it is jointly made by several (two or more) performers without prior conspiracy. In these cases, the activity of one performer joins the activities of another (other) executor already in the process of committing a criminal offense (when it has already begun), but before its completion. A conspiracy to commit a criminal offense (to bring it to an end) takes place not before the beginning, but even during the criminal offense, when at least one of the executors began to commit it. This form of complicity is provided for in some articles of the Criminal Code as a qualifying attribute of a criminal offense (for example, in the case of rape - Article 152, hooliganism – Article 296, in such a war criminal offense as disobedience - Article 402, etc.). If a person who commits hooliganism joins other persons and continues with hooliganism with them, this form of complicity takes place and the executors are liable for Part 2 of Article 296.

2 A criminal offense is considered to be **committed by a group of persons in a prior conspiracy if it was committed jointly by several persons (two or more) who agreed in advance**, that is, before the beginning of the criminal offense, to commit it jointly. This form of complicity requires a prior conspiracy of accomplices to commit a joint crime. The conspiracy must take place before the offense begins. This conspiracy may take place long before the offense is committed, or it may take place immediately before the offense, but in an attempt to commit the offense. The law does not require any stability for this form of complicity, only conspiracy. The commission of a criminal offense by prior conspiracy by a group of persons is provided as a qualifying sign in many articles of the Criminal Code (for example, all selfish criminal offenses against property, criminal offenses in the sphere of narcotic drugs circulation, etc.). It should be noted that the commission of an offense under a previous conspiracy by a group of persons, if it is not explicitly provided for in the article of the Special Part of the Criminal Code, is considered an aggravating circumstance in the imposition of a punishment (Article 67).

3 A criminal offense is recognized as **committed by an organized group** if several persons (three or more) who were previously organized in a stable association for the purpose of committing this and other (other) criminal offenses united by a single plan with the distribution of the functions of participants took part in its preparation or assigned groups aimed at achieving this plan, which was known to all members of the group.

Thus, first of all, for an organized group, at least three persons are required, while for the group acting under the previous conspiracy, there are just two participants.

Next, it is necessary for the participants of such a group to be organized into a stable association. Group stability - the concept is evaluative and is determined each time, based on the specific

circumstances of the case. However, the law (Article 28) contains more specific indications that there is a closer interaction between the accomplices compared to the way it occurs in the commission of a criminal offense by a group of persons under the previous conspiracy, on its stability. This is the number of criminal offenses committed by an organized group (as a rule, there are several criminal offenses, although there are cases when an organized group is created for the commission of one criminal offense), and, for example, cases of attacks on particularly important objects (bank, military warehouse, etc.).

Moreover, such a group involves some organizational activity, which can be diverse: the distribution of functions among participants, the presence of one or more organizers, the involvement of a larger number of participants, the development of a plan of action, and so on.

It is the creation of an organized group that constitutes the preparation of the criminal offense that the participants planned to commit. Only in one case, which is stipulated in article 392 (actions that disrupt the work of correctional institutions), the creation of an organized group (and active participation in such a group) formed for the purpose of terrorizing the convicts or an attack on the administration is considered to be the end of the criminal offense.

4 A criminal offense is recognized as **committed by a criminal organization** if it is committed by a stable hierarchical association of several persons (three or more), the members or structural elements of which have been organized by prior agreement for joint activities for the purpose of directly directing serious or particularly serious criminal offenses by the participants of this organization, or directing or coordinating criminal activities of other persons, or ensuring the functioning of both the criminal organization and other criminal groups (Part 4, Article 28).

As can be seen from the text of this article, a criminal organization is an organized group of a special kind, which is endowed by law with a greater degree of stability, cohesion and a number of other characteristics.

This is primarily a hierarchical association of participants, which implies a hierarchy of its members or structural units. The hierarchy may also consist in the subordination of the members of the organization to its leaders, the subordination of separate structural units of the criminal organization to a single center, the binding decisions made by the organizers, for all other members of the criminal organization.

The second most important feature of a criminal organization is the organization of actions for committing grave and especially grave criminal offenses, which are described in Article 12

A criminal organization can be set up to direct or coordinate the criminal activities of others (for example, the coordination of the activities of two or more organized groups) or to function both by the organization itself and other criminal groups.

Obviously, a criminal organization implies the existence of a group action plan, the division of functions between the members of the organization or separate criminal groups that are part of it, etc.

Another important feature is that it is the creation of a criminal organization and participation in it constitutes a complete criminal offense, which entails responsibility in cases directly foreseen in the Special Part of the Criminal Code.

4.4 Responsibilities of Accomplices

We will formulate some theses concerning qualification of accomplices and their punishment.

1 The responsibility of accomplices acting in an organized group or a criminal organization is defined as follows:

- The organizer of the criminal offense is liable for all criminal offenses committed by any accomplice of this group, provided that they (these criminal offenses) were covered by the intention of the organizer (Part 1, Article 30);

- Other accomplices (members of the group) are liable for the criminal acts committed or committed by them, regardless of the role they played in the criminal act of each of them (Part 2, Article 30);
- The actions of all these accomplices qualify under the article of the Special Part of the Criminal Code, which provides for responsibility for committing this criminal offense by a criminal organization or an organized group (for example, all participants of the gang, regardless of the role they performed in the criminal offense, are directly responsible for Article 257, all the members of the organized group who extorted - under Part 4 of Article 189).

2 At simple complicity, that is, co-perpetration, all the accomplices are responsible under the article of the Special Part of the CC, which provides for the criminal offence committed by them (Part 1 of Art. 29).

3 When participating in the distribution of roles, the question of liability is resolved as follows:

- The executor (co-executors) is liable in accordance with the article of the Special Part of the Criminal Code that provides for liability for the crime committed by him (Part 1, Article 29);
- All other accomplices (organizers, abettors, accomplices) are responsible for the crime committed by the executor (co-executor);
- The actions of all accomplices, except for the executor(s), are qualified under the article of the Special Part of the Criminal Code, under which the actions of the executor are qualified, but with the obligatory reference to the relevant part of Article 27. Yes, the executor of murder is liable under part 5 of article 27 and part 1 of article 115.

Consequently, the qualification of the actions of accomplices is in principle always determined by the actions of the executor, with the exception of certain cases, which will be discussed below.

When addressing the issue of responsibility of accomplices a problem arises concerning the interpretation of objective and subjective characteristics of the criminal offense imputed to them, which characterize the increased or, on the contrary, reduced responsibility of the executor. These issues are resolved in Part 3 of Article 29. Here we should proceed from the following:

1 Objective characteristics (circumstances characterizing the objective side of the composition and affecting the qualification of the criminal offense) committed by the executor of the criminal offense (for example, the method of committing the criminal offense) can be blamed on other accomplices only if they knew about these circumstances in advance and were informed about them. If the accomplices were not informed about the existence of these circumstances (they did not realize their existence), they are not responsible for them, and these circumstances cannot determine the qualification of the accomplices (for example, the executor committed a killing with a particular cruelty, and other accomplices did not know about it - the executor is responsible under point 4, Part 2, Article 115, and other accomplices - under Article 27 and Part 1, Article 115). In these cases, apparently, the actions of accomplices are qualified under different articles of the Criminal Code, although they committed one crime – murder.

2 Subjective characteristics that determine the qualification of an organizer committed by the executor (for example, a motive) can be blamed on other accomplices, provided that they knew about them in advance, were informed about their availability. If these signs were not known to them beforehand, the accomplices were not informed about them, these circumstances (subjective attributes) they could not be guilty. Thus, if the abettor persuaded the executor to kill the victim out of revenge, and the executor, with this consent, kills the victim with a mercenary purpose, then such an executor is responsible for Paragraph 6, Part 2 of Article 115 (killing for profit), and an abettor who was unaware of the mercenary motives to which the executor was led - according to part 4 of Article 27 and part 1 of Article 115. If the abettor was aware of such motives of the executioner, he would be liable under part 4 of Article 27 and part 2 of Article 115.

3 **Circumstances that increase or mitigate responsibility, but characterize only the person of an accomplice,** even if other accomplices knew about their presence, are guilty only to the accomplice on the side of which they have a place. In other words, "personal" circumstances (such as repetition, relapse) can not affect the responsibility of other accomplices. For example, if an accomplice assists a person previously convicted of murder in committing a new murder, regardless of whether the accomplice knew about it or not, this qualifying circumstance can in no way be blamed on his part, it only characterizes the person of the performer. In this situation, the performer is responsible for paragraph 13 part 2 of Article 115 (murder, committed again), and an accomplice is responcible under Part 5 of Article 27 and Part 1 of Article 115. Or, for example, if a mother kills her child during childbirth, her actions, taking into account the condition in which she was, qualify under Article 117 as a murder with mitigating circumstances, and any accomplice to this murder will be responsible for articles 27 and 115, that is, for a more serious murder, because personal attributes that mitigate the mother's responsibility of the infant cannot affect the responsibility of other accomplices.

4.5 Involvement in a Criminal Offense

Involvement in a criminal offense is an action or inaction which, although related to the commission of a criminal offense, does not constitute complicity in it.

On the basis of the provisions of Parts 6 and 7 of Article 27 of the Criminal Code, taking into account the theory and current practice, the following types of participation in a crime are distinguished:

1 Not previously promised (i.e., not promised to the end (completion) of the criminal offense) concealment of the criminal offense;

2 Pre-not promised acquisition or sale of property obtained by criminal means;

3 No pledging of a criminal offense in advance;

4 A pre-promised (i.e., promised before the end of the criminal offense) failure to report a criminal offense.

Moreover, the first three types of involvement are independent criminal offenses and therefore entail criminal liability. As for the failure to do so, the law generally does not consider it a criminal offense.

Let us consider these types of affiliation:

Concealment of a criminal offense is the active activity of a person to conceal the executor, the means and methods of committing a criminal offense, its traces or objects obtained by criminal means. Moreover, it is only about the promise of hiding in advance, that is, about concealing, not promised to the end (completion) of the criminal offense. This, for example, is the case when a murderer in bloody clothes after committing a criminal offense came to his acquaintance and, after telling him what had happened, asked him to give him other clothes, and to burn the bloody clothes-that he had learned and done. We are not in advance promised to conceal both the executor and the traces of the criminal offense. Such a concealer is liable under Article 396. This article establishes liability for the unintentional promise to conceal only grave or especially grave criminal offenses. Concealment of criminal offenses of medium or small gravity is not subject to criminal liability. In addition, by virtue of paragraph 2 of Article 396, family members of the guilty and their close relatives, the circle of whom is defined by law, are not subject to criminal liability for concealment of grave and especially grave criminal offenses. In accordance with Paragraph 11 of Article 32 of the KDN include parents, wife, children, brothers, sisters, grandparents, grandchildren.

Article 256 provides for responsibility for the most dangerous type of advance unpromised assistance to members of criminal organizations or the enclosure of their criminal activities. The law stipulates that the pre-promised assistance to the participants of a criminal organization and the enclosure of their criminal activity by providing premises, storage facilities, vehicles, information,

documents, technical devices, money, securities, as well as unpredictable advance of other actions to create conditions that contribute to their criminal activity, the executors are punished in the form of imprisonment for a term of up to five years. The penalty is increased from five to ten years' imprisonment with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years if such acts are committed by a public official or repeatedly.

If such concealment was promised before or during the commission of the criminal offense, but before its expiration, such concealment, as already mentioned, is considered as a complicity in the criminal offense in the form of aiding and abetting.

Acquisition or sale of the proceeds of a criminal offense is an active activity of a person, which is manifested in the purchase or other paid transfer of property acquired by criminal means, or the storage of such property. It concerns only actions that were not promised in advance. If such actions were promised in advance, they constitute aiding and abetting in accordance with Part 5 of Article 27. Acquisitions and sales that were not promised in advance before the end of the criminal offense entail responsibility for an independent criminal offense under Article 198 - as a form of involvement in a criminal offense (Part 6, Article 27). This criminal offense includes the knowledge of the subject of the fact that the property acquired by him was obtained by criminal means, that is, as a result of a specific criminal offense, theft, robbery, and the like.

Connivance: A person who was obligated and could have prevented the commission of a criminal offense does not prevent it: a criminal offense is committed. For example, a police officer, knowing that a criminal offense was being prepared, does not prevent it, although he was obligated to do so, therefore, a criminal offense is committed.

In the General Part of the Criminal Code there is no direct responsibility for conviction. The issue of liability for condoning is resolved as follows:

- If it was promised in advance, it becomes connivance, since such connivance is nothing else than the removal of obstacles to the commission of a criminal offence or assistance in concealing a criminal offence (Part 5 of Article 27);
- Unpromised forms of protest in cases envisaged by the Specific Part of the CC, an official criminal offence (Abuse of Office, Article 364, and official negligence, Aticle 367). Liability under the above articles - Article 256, as well as under Article 426 is also possible.

Thus, it follows from the law that the presence of this promise in advance or its absence allows different legal assessment of the concealment, acquisition or sale of the proceeds of a criminal offense and wealth. If these actions (inaction) were promised in advance it is aiding and abetting a criminal offence, if such promise was made post factum, i.e. after the end of the criminal offence, liability arises for an independent criminal offence in cases stipulated by the Criminal Code of Ukraine.

Failure to report is expressed in the failure to inform the authorities about a criminal offence that is being prepared or has already been committed. In contrast to concealment, failure to report is a passive act (pure inaction). Regardless of whether it was foreseen in advance, the current Criminal Code does not recognize it as a criminal offense. Only if the actions of such a person contain signs of another independent form of a criminal offense, he is subject to criminal liability for it.

Questions:

1 Define the concept of complicity.
2 Describe the types of complicity.
3 Define the responsibility of accomplices.
4 Give the criminal law characteristics of the forms of complicity.

TOPIC 5
Circumstances That Exclude the Offense of the Act

5.1 Concepts and Types of Circumstances Excluding Criminality of the Act

In some cases, citizens are forced to commit acts that, according to their external features, coincide with one or another criminal act (for example, with the murder, destruction of property, excess of power, etc.), which, however, are not socially dangerous and unlawful and, on the contrary, are recognized legitimate and, as a rule, socially useful (for example, deprivation of the life of the one who encroaches on protection from his attack; destruction of property to eliminate the danger caused by a fire, etc.). In the science of criminal law, the commission of these acts is referred to as circumstances that exclude public danger and wrongdoing, or, in other words, the criminal offense of the act.

The current Criminal Code of Ukraine for the first time assigned such circumstances to a separate Section VIII of the General Part "Circumstances excluding the criminality of an act". According to the Criminal Code of Ukraine, such circumstances include:

- Necessary defense (Article 36);
- Apprehension of an offender (Article 38);
- Extreme necessity (Article 39);
- Physical or mental coercion (Article 40);
- Obeying an order or command (Article 41);
- An act involving risk (Article 42);
- Undertaking a special mission to prevent or uncover criminal activities of an organized group or criminal organization (Article 43).

In the Criminal Code of 1960, only the first three of these circumstances were provided for.

It should be noted that in some cases such circumstances are provided by the norms of the special part of the Criminal Code. For example, Part 4 of Article 331 of the Criminal Code provides for circumstances that exclude the crime of crossing the state border of Ukraine by persons who have become victims of crimes related to human trafficking.

Circumstances that exclude the criminal offense of the act are those provided by the Criminal Code, as well as other legislative acts, are outwardly similar to criminal offenses socially useful (socially acceptable) and lawful acts committed in the presence of certain reasons and exclude the criminal offense of the act, and thus the criminal liability of the person for damage caused.

These circumstances are characterized by a number of common features:

- Firstly, it is a conscious voluntary action of a person in the form of an action or inaction, which is caused by exceptional circumstances, i.e. certain reasons, which determine the necessity of performing an action connected with damage (for example, when the necessity of a person's action is expressed in causing damage to various interests of law enforcers (for example, the property of another person) and the reason for it is the danger threatening them, which in this situation cannot be eliminated in any other way).
- Secondly, this act is outside the scope of the crime according to the relevant article or part of the article of the Special Part of the Criminal Code (for example, deprivation of life in the

necessary defense coincides with the external features of murder). If the committed act from the outside does not coincide with one or another criminal offense, one cannot even raise the question of the existence of these circumstances.

- Thirdly, all these acts are recognized as legal norms of criminal law (for example, Articles 36, 38, Part 4 of Article 331 of the Criminal Code of Ukraine). However, these circumstances have been consolidated not only in the Criminal Code, but also in other legislative acts (for example, the Laws of Ukraine "On Militia", "On Security Service of Ukraine", "On Operational and Search Activity", in administrative and other acts).
- Fourthly, these circumstances are socially useful and accordingly are characterized by legislation (i.e. they are in the interests of the individual, society and the state).
- Fifth, individuals are not subject to criminal liability for the damage caused in the presence of these circumstances.

5.2 Necessary Defense

The right of every person to the necessary defense, provided for in Article 36 of the Criminal Code, is an important guarantee of the implementation of the constitutional provision that "everyone has the right to protect his life and health, the life and health of other people from unlawful interference" (Part 3 of Article 27 of the Constitution of Ukraine).

In accordance with Part 1 Article 36 of the Criminal Code, the necessary measures shall be taken to protect the rights and interests protected by law of the protected person or another person, as well as the public interests and interests of the state from a socially dangerous encroachment by causing the offender the necessary and sufficient damage in the given situation to immediately discourage or stop the encroachment, if it was not allowed to exceed the limits of the necessary defense.

Necessary defense is the lawful protection of the lawful interests of a person, society or state from a socially dangerous encounter caused by the need to immediately prevent or interrupt it by causing the executor to damage the danger of an encroachment and the situation of protection.

The right to defense is absolute: everyone has the right to take protective measures against a socially dangerous attack, regardless of whether he is able to escape the attack (escape, barricade the door, etc.) or seek help from authorities or other persons.

On the other hand, the implementation of the necessary defense is a subjective right and not a responsibility of the citizen, therefore the refusal of the latter to use his right does not entail any liability. In addition, the citizen is not obliged to inform the state or other bodies or officials about the act of necessary defense committed by him, although he has the right to make such a notification in the interests of correct resolution of a criminal case, which is violated in connection with a socially dangerous encroachment.

Actions committed in a state of necessary defense, if they do not exceed their limits, are considered lawful and cannot be the basis for bringing a person not only to criminal, but also to civil or any other legal responsibility.

The right to the necessary defense arises only when there is an appropriate reason. According to Part 1 of Article 36 of the Criminal Code, such a reason is the commission of a socially dangerous attack, which causes the urgent need to prevent or stop the protected person by causing harm to the executor.

In other words, the basis for the necessary defense consists of two elements:

- Presence of a socially dangerous encroachment;
- The need for immediate rejection or termination.

At the same time, any action of a person, which is directly aimed at causing damage to the protected interests of the protected person or to the public or state interests of another person, should

be understood as a socially dangerous encounter. Thus, the necessary defense against lawful actions is impossible.

In addition, the necessary defense is possible in the case of socially dangerous assault of a person who has not reached the age of criminal responsibility, or in the case of assault of the insane person, as well as the person acting in a state of actual error, i.e. in the case of socially dangerous assaults that are not criminal offenses. Social dangerous assault can be expressed both in an assault and in other actions (attempt to steal, violation of public order, not connected with assault on a person, etc.).

The existence of a socially dangerous attack means that the attack must exist in reality and not in the imagination, in the psyche of the person. Otherwise, there is an imaginary defense (Article 37 of the Criminal Code).

It should be borne in mind that causing damage to the offender in the absence of these two elements, or at least in the presence of only one of them, indicates the unlawfulness of the actions of a citizen, because he is not in a state of necessary defense. Responsibility for causing such damage should be based on general grounds. And conversely, the presence of a legitimate basis means the emergence of the right of a citizen to necessary defense, which is characterized by a number of features.

It is worth defining these signs of the necessary defense. They are defined in Article 36 of the Criminal Code and characterize

- The purpose of the necessary defense;
- The purpose (object) of harm;
- The nature of the behaviour of the protected person;
- Timeliness;
- The coherence of the required defense.

1 **Necessary defence** is only action aimed at causing harm in order to protect law-abiding interests from socially dangerous attacks. This aim of necessary defence - the protection of law-abiding interests - is achieved by stopping or suppressing a socially dangerous attack and by causing damage to the offender. It is sufficient for the defender to be recognized as legitimate enough to ensure that the protected person pursues the above-mentioned aim, and it is not necessary that he actually achieves it (for example, the defendant has caused harm to the perpetrator but has not succeeded in stopping the encroachment that has begun). If the defendant was guided by another purpose (for example, the purpose of punishing the offender), then his actions become chartered, so that the responsibility for the damage should be on a general basis.

2 The defence must consist of active actions **aimed solely at harming the person violating the rights and interests of the protectee.** If there is more than one aggressor, the protected person may harm any or all of the aggressors. Causing harm to the rights and interests of others does not fall within the scope of the necessary defence and is considered, for example, under the rules of extreme necessity or entails liability on general grounds.

3 **The behaviour of the protected person** with the necessary defence can only be active, that is, it can only be expressed in actions, as it is explicitly stated in the Part 1 of Article 36 of the Criminal Code. Such actions can be such as physical efforts of the protected person (for example, hitting with the fist), and the use of various weapons, objects, mechanisms, devices, etc., not only those that are picked up, discovered or seized at the place of protection, but also those that were in the protected person, or even specially prepared for protection (for example, the use of a folding knife or firearm pre-assembled for defence, etc.). These actions should be subject to the characteristics of an act provided for in the Criminal Code, that is, to coincide with external, factual characteristics with the objective side of a criminal offence. These are actions that fall under the signs of murder, the infliction of bodily injuries of varying severity, blows and beatings, etc.

4 **The timeliness** of the necessary defence means that it is possible from an attack that has already begun and has not yet ended. In other words, protection is justified only for the duration of the

state of necessary defence, which is determined by the duration of a socially dangerous attack that requires its immediate rejection or termination. Therefore, causing damage to such a state is recognized as a so-called “premature” defence, the responsibility for which is generally assumed. However, in some cases such defence is possible before and after the end of the attack. The plenary session of the Supreme Court stated that "the state of necessary defense arises not only at the time of a socially dangerous attack, but also in the case of the creation of a real threat of causing damage. In determining the existence of such a threat, it is necessary to take into account the behavior of the aggressor, in particular the direction of his intentions, the intensity and nature of his actions, which give the protected person reasons to perceive the threat as real. Thus, the defense is possible and before the physical actions of the aggressor, from the moment when there was a real threat of attack. Defense against a clearly closed encounter is illegal. At the same time, the person being protected, being under the influence of the attack often continues the defense even after the attack has ended or stopped. In this case there is a so-called “belated” defense. The assessment of the damage caused to the offender in the state of “late” defense depends on whether the protected person knew or did not know that there was no need to use legal means. In the above-mentioned Resolution the Plenum of the Supreme Court of Ukraine recommends that when deciding this issue, taking into account the circumstances of the case, it should be assumed that it should be obvious to the protected person that there was no need to use legal remedies. Thus, if the protected person in good faith was mistaken about the final moment of the attack, he/she is considered to have acted in a state of necessary defense, and therefore the imposition of such a situation on the offender should be recognized in due time. At the same time, if the damage was already caused after the attack was reversed or ended, and it was obvious to the defendant that there was clearly no need for the use of remedies, the responsibility comes on the general grounds.

5 **The coherence of the required defense**. This feature characterises the limits of the necessary defence, which is not directly mentioned in the law, but the conclusion about it can be drawn by analysing Part 1 and Part 3 of Article 36.

Thus, according to Part 1 of Article 36 of the CC, the harm caused by the offender must be necessary and sufficient in this situation for immediate detection or termination of the encroachment, and from Part 3 it follows that the harm caused to the perpetrator (death or serious bodily harm) must correspond to two interrelated circumstances:

1) danger of encroachment;
2) protection environment.

Thus, the execution of death or serious bodily harm is considered comparable if such serious harm is commensurate with the risk of attack and the protection of the situation.

The risk of attack is determined by

- The value of the good protected by the law against which the offense is directed (life, health, property, physical integrity, public order, etc.);
- A real threat of damage to this good by the offender.

An attack on the life, health, freedom, honour and dignity of a person, the inviolability of his property and home is certainly a more serious social danger. Relatively less dangerous are attacks on civil order, the inviolability of state borders, etc.

What is decisive is the degree of danger of the attack, which determines the limits of permissible harm with the necessary defense. There is a direct dependence: the more dangerous an attack, the greater the limits of permissible harm. Obviously, causing serious harm to the executor is only proportional to encroachments of great social danger (for example, in protecting life, health, property, etc.).

The security situation is determined by the actual capabilities and means of the defendant, in order to prevent or terminate the encroachment. The nature of such an environment depends on the real balance of forces, capabilities and means of the person being protected, and the offending person. The Plenary Session of the Supreme Court of Ukraine recommends, in such cases, that account be taken not only of the conformity or discrepancy of remedies and attacks, but also the nature of the danger

threatening the protected person, and the circumstances that influenced the real balance between the forces of the attacker and the defendant, namely : the place and time, the unexpectedness of the attack, the unpreparedness to reflect it, the number of attackers and those who are protected, their physical data (age, sex, disability, state of health), other circumstances of the case. It is precisely these circumstances that may indicate a situation of protection, which in some cases is obviously in favor of the person who is protected (this situation can be called relatively favorable to the person being protected), and more often, on the contrary - in favor of the offender (this is so called unfavorable for the person being protected, protection situation).

It should be noted that the law does not require a mechanical equalence between the means and nature of the defense and the means and nature of the attack. It will be legitimate to use more serious means or cause more damage than those that were objectively sufficient to repel an attack, if the defender could not correctly assess the circumstances of the attack and choose absolutely adequate defensive means or to impose strictly necessary protection to repel an attack. However, the damage caused by the necessary defense is clearly excessive damage, if the defender knew that the attack could be stopped by causing less significant damage, under certain conditions may be recognized as exceeding the limits of the necessary defense.

Thus, for the dimensional dimension of defense it is necessary that the relative conformity (not equality and non-proportionality) of the injured to the executor, the serious harm (death or serious bodily harm) and the danger of an encroachment, as well as the situation unfavorable to the defendant, should take place protection At the same time, it is necessary to take into account the subjective state of the protected person at the time of protection. Obviously, the latter may not always be able to accurately correlate their actions with the danger of an imminent attack, due to excitement, agitation, fear, anxiety, etc. In this case, the assessment of the perpetrator’s lawfulness should be based on the victim’s subjective perception of the defendant's encroachment on his or her situation of danger and protection. Part 4 of Article 36 of the Criminal Code expressly states that a person is not criminally liable if, as a result of the strong emotional disturbance caused by a public dangerous encroachment, he could not assess the conformity of the damage caused to him by the danger of an encroachment or the protection of the situation.

Only in the presence of a combination of all the above considerations is there a state of necessary defence, the legal consequence of which is the release of a person from criminal responsibility.

5.3 Apprehension of an Offender

Part 1 of Article 38 states: “The criminal actions of the victim and other persons after the commission of an encroachment aimed at apprehending the executor of criminal offense and its delivery to the relevant authorities are not recognized without exceeding the measures necessary for the detention of such a person”. Part 1 of Article 33 also covers situations in which a detainee is detained during a detention, but this damage should not exceed the specified measures.

Part 2 of Article 38 defines the excessive use of measures necessary to apprehend a person who has committed a criminal offence as the intentional infliction of serious harm on a person who has committed a criminal offence, which is grossly disproportionate to the risk of attack or to the circumstances of the person who has committed the criminal offence.

When analysing the principles set out in Article 38 of the Criminal Code, the researchers come to the following conclusion: The lawful arrest of the perpetrator by the victim or other persons is a violent act aimed at the short-term arrest of the perpetrator in order to hand him over to the authorities, if these actions have caused the need for arrest and correspond to the danger of the committed offence and the circumstances of the arrest of the perpetrator..

Detention of a criminal is possible only if there is a reason for this, that is, a criminal offense. Usually, the basis for the detention is a criminal offense against the law-protecting interests (for example, robbery, theft, assault on life or health of a person, etc.) for victims or other persons. The detention of a person without such a basis may indicate the unlawfulness of the acts and give rise to liability under Article 146 of the Criminal Code as unlawful detention.

The detention of an executor and the harm done to him have the following characteristics:

- The purpose of the detention;
- The person detained;
- The nature of the detention;
- The timeliness of the detention;
- The necessity of the harm;
- The proportionality of the harm caused to the offender during his detention.

1 **The purpose of the detention**. In accordance with Part 1 of Article 38 of the Criminal Code, the actions of victims and other persons are considered lawful if they had the purpose of apprehending the offender and bringing it to the authorities. In this regard, there are two goals of the following actions: 1) the final delivery of the offender to the relevant authorities (the police department, the prosecutor's office, the executive committee of the local council, military authorities, etc.); and 2) the closest one – to detain the offender, that is, to deprive him of his personal freedom. If, however, the detention of the offender was committed for another purpose (for example, for a self-judge, revenge for a criminal offense committed), it is not considered lawful, and the person who committed such arrest is liable for the harm caused by criminal liability on general grounds. The relevant authorities should include law enforcement, inquiry, pre-trial investigation and court.

2 **The person detained**. The Criminal Code regulates the detention of only the offender, and not other offenders, that is, the detention of a person who commits or has already committed a criminal offense. The conviction that the executor, and not the other person, is delayed must be based on the awareness of the detainees of the evidence of the criminal offense. If the victim is conscientiously mistaken in relation to the criminal offense of the executor or the offender, the question of liability for unreasonable harm must be decided by the rules of detention of the so-called alleged criminal, which is analogous to the rules on imaginary defense. Similarly, it is not lawful to inflict harm in the detention of a person who has not attained the age from which the criminal liability comes and the insane person.

3 **The nature of the detention**. The detention of a criminal consists in the actions of victims or other persons connected with the deprivation of the offender's personal freedom (depriving him of the possibility of free movement and committing certain actions, primarily aimed at disappearing from the place of the criminal offense), as well as causing him (if necessary) harm. Such actions coincide with the actual signs of the objective side of some criminal offenses, such as unlawful imprisonment, murder, bodily harm and other violent acts, destruction or damage to property. Detention, further, may be recognized as lawful if it was carried out for a short period of time, that is, it was short-term. The detention time, which is necessary and sufficient for the transfer of the offender to the authorities, is determined by the specific circumstances of the detention. But in any case, the detained offender at the first real opportunity should be transferred to the authorities. The detention of a criminal for a long term in the absence of this need does not exclude the liability of a person under Article 146 of the Criminal Code.

4 **The timeliness of the detention.** In accordance with Part 1 of Article 38 of the Criminal Code, detention may be carried out only at the time of or immediately after the commission of a criminal offence. The first moment when the right to detain an offender arises is the beginning of an offence, when the object of the attack was directly threatened with immediate harm. The right to detain is maintained during the ongoing assault as well as directly, that is, immediately after the completion of the offence. However, the term “directly” used in the law should not be understood in the sense that the perpetrator of the offence may be arrested only at the place where the offence was committed,

immediately after it has been committed. The provisions of article 38 apply also to cases where such a person left the place of the criminal offense and the victim or other persons were forced to persecute him and detained him some time outside the place of commission of the criminal offense (that is, the detention of "hot" tracks, which according to some studies occurs in almost 90 % of cases). However, detention, made after a certain period of time, that is, not immediately after the commission of a criminal offense, may, in the presence of certain grounds, be considered unlawful.

5 **The necessity of the harm**. Detention of an executor, not related to causing harm to his life, health or property, is always more desirable. However, criminals often refuse to comply with the requirements of those who detain, attempt to disappear from the criminal offense scene, resist or even attack the detained persons. In such cases, a citizen is often compelled to inflict harm on the executor, as the victims or other persons lack the real opportunity without serious danger for themselves or others to commit a non-violent detention of the executor. In this case, the number of persons on both sides matters, age, physical strength, arsenal of the offender and the citizen, as well as all other conditions that in their aggregate indicate that there is no real possibility to detain the offender without causing harm to him. Also, when an offender is detained, acts that could damage the property of a person who committed a criminal offense (for example, damage to the car on which she tried to escape) can not be ruled out.

6 **The proportionality of the harm caused to the offender during his detention**. Forced (necessary) damage can not be infinite. In each case, the violent measures applied to the executor must have certain limits. These limits depend on the correspondence of the damage caused to two interrelated circumstances:

- Danger of encroachment;
- The circumstances of the detention of the offender.

The risk of an attack is determined by

- The value of the good to which the attack is directed;
- The nature and extent of the damage caused to this good or the real threat of causing this harm.

Therefore, the more dangerous the encroachment is, the wider the limits of injury to the detainee of the attacker. Thus, in avoiding detention, for example, a murderer, a racist, a participant in a robbery or bandit attack, etc., it is appropriate to cause him serious harm (death or severe bodily harm). And, on the contrary, in the case of an encroachment on a relatively small social danger, the ultimate aim is to inflict non-severe harm to the executor (in any case, such that it does not exceed the average gravity of bodily harm), since the more severe harm would be manifestly inappropriate to the small danger of the attack itself.

However, not always causing harm to the executor, which even corresponds to the danger of an attack, indicates its interdependence. So, if a person had a real opportunity to detain the offender with more lenient means, but knowing this possibility would cause him serious harm, such a harm can not be considered proportional because it was more than sufficient for a successful detention. Therefore, the law stipulates that only damage which corresponds not only to the danger of an attack, but also to the circumstances of the detention of the offender, that is to say those conditions that characterize the real forces, possibilities and means of the victim or other persons for the successful detention of the offender, can be recognized as proportional. Such a situation may range from a relatively favorable to an adverse one for a detained person. Relatively favorable circumstances indicate that the victim or other person has a clear, for example, physical superiority over the offender, and realizes that there is a possibility to successfully carry out the detention without causing serious harm to the executor. Conversely, the unfavorable situation of detention means that the detainer is in a disadvantageous, losing position compared with the executor, and realizes that successful detention is possible only in case of causing the executor serious harm. At the same time, it should be borne in mind that due to anxiety, fright, unexpected assault, etc., a citizen may well be mistaken in assessing the danger of an

encroachment or the nature of the situation of detention, which naturally may extend the incitement of the executor and the more serious harm for which the detainer, not subject to liability.

Exceeding the limits of the harm caused to the executor during his detention is unlawful and means that the executor is caused by non-uniform damage (which is clearly not proportional to either the danger of the offense committed, or the circumstances of the detention of the offender). Exceeding these limits means to inflict excessive harm on the executor, that is, to violate the condition of its coherence.

According to Part 2 of Article 38 of the Criminal Code exceeds the limits of causing harm to a criminal during his detention is a deliberate infliction of a person who has committed a criminal offense with grave harm, which clearly does not correspond to the danger of encroachment or the circumstances of the detention of the offender.

Under the grave harm, in excess of the measures necessary for the apprehension of the offender, it should be understood as causing him death or serious bodily harm.

5.4 Extreme Necessity

Part 1 of Article 39 of the Criminal Code establishes that it is not a criminal offense to cause damage to law-protecting interests in a state of extreme necessity, that is to eliminate the danger directly threatening a person or a protected law with the rights of this person or other persons, and also the public interests or interests of the state, if this danger in the given situation could not be eliminated by other means and if it was not allowed to exceed the limits of extreme necessity.

Part 2 of Article 39 contains the notion of exceeding the limits of extreme necessity, previously unknown to domestic criminal law.

On this basis, we will give a scientific definition of extreme necessity.

The extreme need is forcibly inflicting damage to law-protecting interests in order to eliminate threatening danger if it could not be eliminated in other circumstances by other means and if the damage caused is equivalent or less significant than the damage is distorted.

The right to cause damage in a state of emergency is a subsidiary (additional) right. A citizen can use them only if, in this situation, the infliction of harm is a forced, extreme, last resort to the elimination of danger.

Such a right to cause damage in a state of extreme necessity arises in the presence of an appropriate ground consisting of two elements:

- The existence of a danger which directly threatens the law enforcement interests of a person, society or state;
- The impossibility of eliminating this danger by other means, except causing damage to these interests.

These elements are specified in Part 1 of Article 39 of the Criminal Code. It should be noted that the emergence of only one danger is not enough for the emergence of a state of extreme necessity. She therefore acknowledges the extreme that is caused by the situation in which a person is forced to resort to harm to law-protecting interests as the last, last resort of eliminating the danger that threatens.

The existence of a danger that directly threatens law enforcement interests of a person, society or state. This danger can be caused by various sources (e.g. careless handling of weapons, military equipment, explosives, radioactive, flammable, corrosive substances and other objects that have the internal objective ability to affect a person, cause death or bodily harm, destroy, damage or destroy property or other values). Natural forces (floods, landslides, mudslides, showers, etc.), animal attacks, etc. can also be dangerous. The danger of causing damage can also be caused by various processes: technological, industrial, pathological (for example, serious injury of the victim, which threatens death), physiological occurring in the human body (hunger or cold), and threatening death of people, etc. The source of danger may be the activity (criminal or non-criminal) of a person (for

example, a threat to a cashier to hand over money under threat of murder). Finally, the source of danger in an emergency may be any non-criminal act, misdemeanour (for example, violation of traffic rules by the driver, which caused an emergency), as well as innocent socially dangerous behaviour of a person (for example, behaviour in a state of insanity, actual mistakes, as a result of which other persons have to compromise law-protecting interests in order to eliminate the danger that has arisen).

In addition, this danger should threaten legal interests. These are, first and foremost, the interests of a person at risk (e.g. life, health, physical integrity, personal freedom, sexual freedom of women, property, housing, political and other rights and interests protected by law). The legally protected interests at risk include: safety of production, public order (for example, the citizen destroys the building in order to prevent the danger caused by the flood and threatening the normal operation of the company). Finally, the danger may endanger the interests of the State: external security, defence capability, governance, the interests of justice, the preservation of state secrets, property, etc. (for example, in order to eliminate the danger caused by a fire and endangering property, a person is forced to damage part of this property in order to save another).

The danger must be present, i.e. directly threatening to cause or already causing damage to the interests protected by the law. If such a danger has not yet arisen or, conversely, has already been realised in the damage caused, the state of extreme necessity is no longer present.

Also, the danger should be real, that is, it should exist in reality and not in the imagination of the person. However, if the person could not be aware of the absence of danger due to the circumstances of the case, the act committed by him/her is considered to have been committed in a state of extreme necessity. If the person did not realise the absence of danger, but was able to understand it, he/she is subject to criminal liability. For example, a person may mistakenly believe that there is an imminent danger when in fact there is none. In such cases, the damage to the interests protected by the law should be assessed according to the rules of apparent necessity, which are similar to the rules of imaginary defence.

The impossibility of eliminating the danger by other means shows that the person in the present situation is compelled to cause harm, as there are no other possibilities to eliminate the immediate danger. In other words, causing harm should be the only possible means of protection against that danger. Therefore, if a person has several means to eliminate the danger, including those not related to the possibility of causing harm, it means that he is not in a state of extreme necessity, and therefore the harm he causes cannot be considered lawful. Of course, this rule applies only in cases where the person was aware of the availability of several possibilities for eliminating the danger, but did not use one of them, which is not related to the damage to the legally protected interests. If a mistake has been made in this situation, the damage should be assessed according to the rules of the alleged emergency.

It is obvious that in a state of extreme necessity there is a clash of two legitimate interests: on the one hand, the interest protected by the law is threatened with immediate danger and, on the other hand, the person is in a situation where the only means of eliminating this danger is to harm the same interests of the law. This feature, in which there is a clash of "rights with the right", imposes its imprint on the signs of an act committed in a state of extreme necessity.

Actions to cause damage to legally protected interests in the presence of essential reasons must also satisfy the signs of legality, which characterise

- Purpose of extreme necessity;
- Direction (object) of causing damage;
- The nature of the action in case of extreme necessity;
- The timeliness of causing damage;
- The limits of damage.

1 **The purpose of extreme necessity.** Words in Article 39 of the Criminal Code that a state of extreme necessity is used "to eliminate danger" mean that the ultimate necessity is precisely the elimination of danger. This goal is achieved only by causing damage to law-protecting interests. Thus, the person imagines how the danger will be eliminated: by destroying or damaging the source of

danger, by transporting people to a safe place with the help of someone else's carriage taken without permission, etc.

2 **Direction (object) of causing damage.** In a state of extreme necessity, the harm is caused by the legitimate interests of a state, society or person. In the literature, it is assumed that damage in a state of extreme necessity can only be caused by the interests of "third parties", i.e. companies, institutions, organisations or individuals who have not caused the danger and who are not normally associated with the creation of this danger. A typical example of this is when a farmer's driver, on his way to the hospital with a load of cabbages and milk, is involved in an accident not caused by the driver, and the milk is stolen by unknown persons. In this case, the damage is caused to an agricultural enterprise which had nothing to do with the danger to which the victim was exposed. In some cases, however, a person is forced to cause damage to the source of the danger itself, to eliminate it, to locate it, to reduce the intensity of its influence, etc. (for example, a passer-by, seeing an uncontrolled car coming down from the mountain, directs it towards the ditch, thus preventing children from entering the ditch). Sometimes it is argued that the rules of extreme necessity should take into account the harm done to the aggressor when a person is clearly a sublime, a minor, or one who is acting in a state of actual error. But this is not the case. In this case, the necessary defence takes place, the sign of which is to cause harm to the attacker, regardless of his physical or mental characteristics.

3 **The nature of the action in case of extreme necessity.** According to the law, extreme necessity implies only active behaviour of the subject. Extreme necessity can be expressed by its external features, for example, in various acts of self-government related to seizure of property, its damage or destruction, theft of weapons or narcotics, theft of means of transport, concealment of criminal offences, disclosure of state or military secrets, violation of various security rules, causing damage to life or health of a person, deprivation of personal will, etc. Similar actions on the external signs may be subject to various types of criminal encroachment. Yes, the intentional destruction or damage of another person's property falls under the signs of Article 194 of the Criminal Code, and the disclosure of information constituting a state secret under threat of murder falls under the signs of an offence provided for in Article 328 of the Criminal Code, etc.

4 **The timeliness of causing damage** is that it can only be sustained over time while there is a state of extreme necessity. If such a situation has not yet arisen or, on the contrary, it has already passed, then causing damage in this case (so-called "premature" and "late" extreme necessity), may lead to liability on a general basis.

5 **The limits of damage.** The Criminal Code does not define the limits of causing damage in a state of extreme necessity, but the conclusion on these limits can be made based on the interpretation of Part 2 of Article 39 of the Criminal Code, which defines the exceeding of the limits of extreme necessity as the deliberate infliction of damage more significant than the damage is diverted. Consequently, the extreme and lawful in a state of extreme necessity must be recognized as harm if it is equivalent to harm is distracted or is less significant than a distorted harm. In other words, the law links the lawfulness of the damage to the coincidence of this damage with the threat of danger: the actual damage caused must be equivalent or less significant than the potential damage contained in the dangerous danger.

The determination of equal or lesser significance of the damage caused implies its comparison with the threatened damage. But the harm to the harm is always the potential harm contained in the threat of harm, and the harm caused - it is always an actual, real harm. In addition, these types of harm are often directed at benefits of different social significance, which can complicate the assessment of their interdependence (for example, the danger to people's health is eliminated by the destruction of private property). Therefore, the decision of the question of their comparative value characteristics in each case depends on the specific circumstances of the case. In the case of homogeneity of the distorted and harm caused, it is possible to compare them with the criteria specified in the law or developed by the judicial practice (for example, the degree of gravity of bodily injuries, the cost of destroyed or damaged property, etc.). In the case of a comparison of qualitatively heterogeneous types of harm, the

criteria are universally recognized human morality; the hierarchy of values, where the highest value is recognized by man and his rights and freedoms; legal consciousness and legal culture of the population, etc. In any case, the Criminal Code recognizes the lawful deprivation of human life in a state of extreme necessity for the salvation of one's own life, which was threatened with immediate danger, which in this situation could not be eliminated by other means.

5.5 Physical or Mental Coercion

Part 1 of Article 40 of the Criminal Code stipulates that the act or omission of a person causing damage to legally protected interests is not a criminal offence if it was not committed under the direct influence of physical coercion as a result of which the person was unable to control his or her actions.

Part 2 of Article 40 stipulates that the question of criminal liability of a person for damage to interests protected by law, if this person was subjected to physical coercion, as a result of which he or she retained the ability to control his or her actions, as well as mental coercion, shall be resolved in accordance with the provisions of Article 39 of this Code.

Since the first and second parts of Article 40 of the Criminal Code refer to physical coercion, it should be noted that physical coercion should be understood as unlawful physical influence on a person in order to force him/her to commit or not to commit certain unlawful acts against his/her will (i.e. to commit a criminal offence).

The provisions of Article 40 of the Criminal Code determine two separate, albeit similar circumstances:

1 Physical coercion, due to which a person could not manage his actions (actions) (irresistible physical coercion, Part 1 of Article 40 of the Criminal Code);

2 Physical coercion, due to which the person retained the ability to control his actions (overcoming physical coercion) and mental coercion (Part 2 of Article 40 of the Criminal Code).

Let’s analyze these circumstances in more detail:

The reason for the exclusion of an offense in the case analyzed is irresistible physical coercion, under the direct influence of which a person causes damage to law-protecting interests. The irresistible physical coercion is an unlawful physical influence on a person in which a person is completely deprived of the opportunity to control his actions (inaction). As a result of the use of such physical coercion, a person is deprived of the opportunity to choose the desired behavior (behavior) and is compelled to either make certain unlawful actions or not act in a situation when it was supposed to act. Such physical influence can be expressed in the strokes, beatings, bodily injuries, the introduction of various drugs into the body, the use of means of deterrence or isolation of the person, etc.

Signs characterizing the “act” of a person who has undergone irresistible physical coercion are

- Coincidence of acts with objective signs of a criminal offense;
- Lack of will of the person in such an act.

Acts or omissions committed by a person may, by virtue of their objective characteristics, be the same as, for example, disclosure of information constituting state secrets, espionage, misappropriation of another's property, abuse of office, etc., but they are not recognized as criminal acts because they lack such an essential feature of a criminal act as freedom (the person is unable to control his actions). However, these acts are not recognized as criminal because they lack an essential characteristic of a criminal act, namely freedom (the person is unable to control his or her actions). Consequently, there is no criminal liability for causing damage to the interests protected by the law.

The second situation occurs in the case of overcoming physical coercion as well as mental coercion.

Extreme physical coercion is an unlawful physical influence on a person, which only limits the person's will, in which he (the person) retains the ability to control his actions. As a result of the use of

such physical coercion, the person is limited only in the choice of the desired behaviour. Such physical effects may take the form of hitting, slapping, the use of minor deterrents, etc.

Mental coercion is the threat of physical abuse or physical or moral harm (for example, the threat of death, destruction or damage to property, dissemination of incriminating information, etc.) to induce a person to commit an offence. Mental coercion, although it limits the person's ability to control his actions, never completely paralyses his will, so that this person still has the possibility to choose one or another variant of behaviour, as well as physical coercion.

If such coercion created a state of extreme necessity (for example, a person under the influence of beatings or threatened with murder hands over foreign property), the question of criminal liability for causing damage to the interests protected by the law is decided in accordance with the provisions of Article 39 of the Criminal Code, that is, depending on whether the specified coercion caused the state of extreme necessity and, if so, whether or not it was permitted to exceed the limits of extreme necessity. Otherwise, the person is criminally liable for damage on general grounds, although the commission of an offence under the influence of physical or mental coercion should be taken into account as a mitigating circumstance (Article 6, paragraph 1 and Article 66 of the Criminal Code).

It should also be noted that some cases of physical or mental coercion are prescribed by law as independent offences (e.g. Article 377 “Threats or violence against a judge, a people's assessor or a juror”, Article 398 “Threats or violence against a lawyer or a person's representative”, Article 405 “Threats or violence against the boss”).

5.6 Obedience to an Order or Command

In accordance with Part 1, Article 41 of the Criminal Code of Ukraine, an act or omission of a person that has caused damage to the interests of the protection of the law is considered lawful if it was committed in order to comply with a lawful order or instruction.

A person who has received a lawful order is obliged to carry it out. By its legal nature, the execution of a lawful order is the fulfilment by a person of his legal obligation. Failure to comply with such an order, its non-execution or improper execution constitutes an offence, including a criminal offence (e.g. a soldier is criminally liable for disobedience (Article 402 of the Criminal Code) and failure to execute an order (Article 403 of the Criminal Code)).

Thus, non-execution of a lawful order is a circumstance that excludes the criminalisation of an act as a lawful violation of the lawful interests of an individual, society or the state by a person obliged to comply with that order.

The risk of harming the interests of law enforcement during the execution of an order is possible only if there is an appropriate reason. Such a ground is in accordance with Part 1 of Article 41 and there is a lawful order. This order is a necessary and sufficient reason for the corresponding action or inaction if the person has a real possibility of its execution.

The first element of the basis to be analysed is the existence of a lawful order or regulation. It is well known that the terms “order” and “regulation” are in fact synonymous. Moreover, it has already been recognized that the term "order" is generic in relation to other administrative acts (orders, indications, etc.). As for the circumstance that excludes the criminal offence of an act, an order is an administrative act issued by an authorised official who orders a certain person (group of persons) to perform an act or to refrain from performing an act related to causing damage to objects of criminal protection. However, it should be noted that an order differs from a decree in that it can be issued not only by an official, but also by an administrative body.

The content of the order must correspond to the authority of the person issuing it. In addition, it must attribute the commission of acts which, according to external (objective) characteristics, correspond to the actual characteristics of a criminal offence. The other order is not subject to the Criminal Code. In addition, the order should not contradict the current legislation and cannot be

connected with the violation of constitutional rights and freedoms of man and citizen (Part 2 of Article 41 of the Criminal Code). The legislation in force includes not only laws, but also subordinate legal acts. An order that does not comply with the law or these acts is considered illegal. The execution of such an order in connection with damage to the objects of criminal law does not exclude criminal liability for the damage.

Constitutional rights and freedoms of man and citizen, which they should not violate the order, are provided in Section II of the Constitution of Ukraine (Articles 21-64). An order violating these rights and freedoms is considered illegal. Its execution, causing damage to the lawful interests of a person and a citizen, does not exclude the criminal offence of the executor.

In order to meet the requirements of legality, the order must be issued in due course. This procedure may provide, for example, for the prior coordination of the provisions of the order with certain authorities and persons, the issuance of a written or oral warrant, the communication of the warrant to the executor through the use of certain means of communication, etc.

The second element characterising the basis for the execution of a lawful order is the presence of a person obliged to execute such an order, a real possibility to do so. If there was no such possibility, e.g. due to the executor's illness, lack of appropriate qualifications, experience, etc., and the person is not liable for the non-fulfilment of the mandatory order on his behalf.

Characteristics of the execution of the order provided for in Part 1 of Article 41 of the Criminal Code, defines it as an act of lawful causing of damage to the interests protected by law. These characteristics are characterised by: the subject of the execution of the order; its purpose; the object of causing damage; the nature of the action (inaction) of the executor of the order. In addition, two other features should be highlighted: the timeliness of the execution of the order and the limits of the damage caused by the execution of the order.

Subject of the execution of the order. According to Article 41, such a person must recognize a person who is obliged to comply with a lawful order. This can be either a subordinate person (e.g. a soldier, employee or worker of a company, institution or organisation) or a person who, although not in a subordinate relationship, is required by law to comply with a lawful order addressed to him (e.g. a person to whom a representative of the authority addresses a lawful order).

The purpose is defined in Part 1 of Article 41 of the Criminal Code and consists in the fact that the person's action or inaction must be subordinated to the purpose of carrying out the lawful order. For the damage to be considered legitimate, it is sufficient that it was subordinated to this purpose, and it is not necessary that this purpose was actually achieved (for example, the person tried to destroy the building in order to carry out the order, but it did not happen). If the person was guided by other objectives (e.g. causing damage in order to achieve personal objectives), he or she is subject to general criminal liability for damage.

The object of causing damage is the legitimate interests of an individual, society or the state: the life and health of an individual, his personal freedom, property, the inviolability of the home, public safety, public order, the environment, the inviolability of borders, the authority of state authorities, the interests of internal security, etc.

The nature of the action or inaction of the person who executed the order may be both active and passive, as directly indicated in Part 1 of Article 41 of the Criminal Code, and the action or inaction must in any case, from the external factual side, be subject to a sign of an act envisaged by the Criminal Code (for example, murder, causing bodily harm, imprisonment, destruction or damage to property, abuse of office, excess of authority, etc.).

Timely execution of the order. It is known that one of the obligatory signs of the content of a lawful order is an indication of the time within which it must be fulfilled. Therefore, the damage to the interests protected by the law should be recognized as lawful if the execution of the lawful order took place within the time specified in this order.

The limits of damage. The damage caused to the interests protected by the law in the execution of the order cannot be unlimited. Its limits are determined by the content of this order. Damage caused only within these limits is recognized as lawful.

Exceeding the limits of causing damage in the execution of a lawful order is called excessive execution of the order (for example, causing obviously more damage than prescribed by the order). If, for example, an excess was committed by a public official, then in the presence of all other signs of his action, it should be considered as an excess of power or official authority.

Parts 3 and 4 of Article 41 are the implementation in the Criminal Code of the provisions of Article 60 of the Constitution of Ukraine, which provides that no one is obliged to carry out obviously criminal orders or commands.

An obviously criminal order is an order, the criminal nature of which is obvious, understandable both for the one who gives it and for the person to whom it is addressed, as well as for other persons.

5.7 Risky Action

The appearance of Article 42 in the Criminal Code of Ukraine is conditioned by the need to give a status to lawful acts committed for the benefit of the public, but connected with the risk of causing damage to the interests protected by the law in case of their commission. The provision on the legality of risky acts is a factor that contributes in particular to the development of science and technology. However, Article 42 only recognizes risky acts or omissions committed in accordance with legal conditions.

Risky acts (omissions) can often be committed in production, medical, scientific activities, during the operation or testing of technical equipment. However, the possibility of risky behaviour in other situations is not excluded. The need for risky actions (inactivity) may arise in the course of a person’s professional or official duties or in other circumstances. The need to perform risky actions may arise in situations where the available knowledge and experience is not sufficient to completely eliminate and exclude the risk, or when the elimination of the risk is not possible for objective reasons. The commission of risky acts in extreme situations in order to prevent or eliminate danger should be judged by the rules of extreme necessity (Article 39 of the Criminal Code).

According to Article 42 of the Criminal Code, the risk as a circumstance excluding the criminal offense of an act - the commission of an act (action or inaction) associated with causing damage to the legitimate interests of a person, society or the state to achieve an important socially useful goal, if this goal in this situation could not be achieved by an undesirable action (inaction) and preventive measures taken by a person gave sufficient grounds to rely on the prevention of damage to the legally protected interests.

Committing a criminal offense in connection with a risk (risky action) is a subsidiary (additional) right. The subject can use it only in an environment in which it is impossible to achieve a significant socially useful purpose without a risky action.

Justifiable risk has its own reasons and signs.

Reasons for justifiable risk are

- The existence of an objective situation that indicates the need to achieve an important socially significant useful goal;
- The impossibility of achieving this goal by unwritten action;
- The taking of preventive measures by a person in order to prevent harm to lawful interests.

It is only as a whole that these reasons justify the commission of an act involving risk.

1 **An objective situation** that requires the achievement of a significant socially useful purpose may be in some cases the presence of danger (for example, the threat to the patient’s life in the case of medical risk, the danger of occupying the enemy's territory in the case of military risk, etc.),

and in others, if necessary, the acquisition of new knowledge (in the case of research risk) or the avoidance of great losses or the achievement of significant benefits (in the case of economic risk), etc.

2 For risk it is necessary to establish **the impossibility for a given person in the current situation to achieve the goal of an unfortunate act**. For example, if the situation requires saving a patient's life, preventing economic losses, obtaining property benefits, etc., then it is possible to resort to a risky act only in the absence of other, unrelieved means to achieve these goals. If it is established that the perpetrator of the act had a real opportunity (and was aware of it) to achieve his goal by hateful actions, but did not use this opportunity and damaged the interests of law enforcement, he is generally liable for this damage.

3 The performance of a risky act implies that **the person has taken necessary preventive measures** which gave him reasonable grounds to expect that damage to the interests of law and order would be prevented. Such measures depend on the nature of the risky action (inactivity), the extent of its diffusion, the actual capabilities of the subject, etc. (e.g. training and education of personnel in research risks, production or installation of necessary equipment, organization of protection, etc.). These measures should be sufficient (from the point of view of the subject) to prevent damage to legally protected interests.

Finally, the precautions taken must allow the person to rely reasonably and not frivolously (arrogantly) on the avoidance of harm. This means that only those risky actions that are not caused by the inevitability of harm can be recognized as justifiable. The peculiarity of risk lies in the fact that its execution always has the possibility of causing damage to the interests protected by law, but the degree of such possibility in the case of reasonable risk should in no case reach the inevitability of causing damage.

Risk justification is ruled out when it is obvious to the person that, despite the precautions taken, the risky action will inevitably lead to injury.

The attributes of a risky action are determined by:

- Purpose;
- The object of causing harm;
- The nature of the act;
- The timeliness of a risky act;
- The limits of damage.

1 **Purpose:** Part 1 of Article 42 of the Criminal Code stipulates that a risky act must be committed to achieve a significant socially beneficial purpose. Such an objective may be, for example, preventing an accident, obtaining new knowledge, saving a patient, etc. If a person, while harming law-protecting interests, seeks to attain a narrow self-centered, careerist, or other similar goal, deprived of a socially beneficial nature, such a risk is not considered justified. It is also of great significance that the socially useful purpose put at a justified risk should be significant. The notion of significance for such a purpose is evaluative. However, in any case, it must be so high that it is commensurate with the damage inflicted on the object of criminal law protection. Risky actions to achieve a small, at least a socially beneficial purpose, are not legitimate. The provocative nature of such an act is given by the very existence of the stated purpose, regardless of whether the person succeeded in achieving this goal.

2 **The object of causing harm** at a justified risk is the lawful interests of the person (for example, his life, health or property), public interests (for example, public safety, public order, and traffic safety) or the interests of the state (for example, the inviolability of state borders, preservation of state secrets, authority of power, management procedure).

3 **The nature of the act**: The justifiable risk from the outside is the same as the actual evidence of a criminal offense provided for in the Criminal Code (for example, murder, bodily injury, abandonment, etc.). In accordance with Part 1, Article 42, a risky act can be expressed in both active (action) and passive (inaction) behavior. Such an act should inflict damage on law-abiding interests. This damage can be of two types: 1) placing the object of criminal law in danger of causing harm, or 2) causing him actual damage.

4 **The timeliness of a risky act** is that it must be committed only during the time of its existence (the conditions of the justified risk). If this reason has not yet arisen or, conversely, it has already passed, the commission of a risky act that caused damage to law-protecting interests may lead to liability on a general basis.

5 **The limits of damage** in Article 42 of the Criminal Code are not directly defined. At the same time, the conclusion about such limits can be made on the basis of Part 3 of Article 42, which states that the risk is not recognized as justified, if it deliberately poses a threat to the life of others or the threat of an environmental disaster or other emergency. It follows that the putting at risk of other values or actual damage to them must be recognized as lawful if such damage meets the requirements stipulated in Part 1, Article 42 (for example, causing the health of several persons at risk of research to obtain highly effective drugs for treating a dangerous illness or causing significant material damage to the shareholders of an enterprise in the conditions of justified economic risk in order to receive a large profit, etc.).

The term "intentionally" used in Part 3 of Article 42 means that the person who performed a risky act knew in advance about the possibility of occurrence of the negative consequences foreseen in Part 3 of Article 42.

Exceeding the limits of causing damage (excess of a risky act) is possible only if there are grounds for committing a risky act, i.e. under conditions (in a state) of justified risk. The excess of a risky act is the infliction of a legitimate interest in harm, which is clearly not relevant to the importance of the socially useful goal, the achievement of which was sought by the person at risk. In any case, such an excess is recognized as a threat to the lives of other people or the threat of an ecological disaster or other extraordinary events (Part 3 of Article 42 of the Criminal Code).

Threatening the lives of others means threatening to cause the death of at least one other person. Thus, the law allows a situation in which a person's actions can clearly create a threat to his or her own life, but does not allow such a threat to the lives of other people. At the same time, the life and health of other persons may be subjected to risky actions only with their consent. This follows from Part 3 of Article 28 of the Constitution of Ukraine, according to which no person may be subjected to medical, scientific or other experiments without his free consent.

The threat of an ecological catastrophe recognizes the threat of persistent and irreversible negative changes in the environment that can lead to the impossibility of living the population and conducting economic activity in a certain territory.

The threat of an emergency is the threat of an accident, catastrophe, spread of the epidemic, epizootics, epiphytotic disease, major fires, means of destruction, etc., which can lead to human or material losses.

Excess of a risky act is subject to qualification under the articles of the Criminal Code, which stipulate responsibility for intentional or careless damage to various objects of criminal law protection.

Execution of a special task on the prevention or disclosure of criminal activities of an organized group or a criminal organization: According to Article 43 of the Criminal Code, the Criminal Code is recognized as lawful and, therefore, is not a criminal incitement of certain damage to the protected interests of a person who, in accordance with the law, performed a special task by participating in an organized group or a criminal organization for the purpose of prevention or disclosure of their criminal activity.

The specified damage is recognized as a circumstance excluding the criminal offense of the act, in the aggregate of certain attributes, and if it was committed in the presence of a specific ground.

The reason for causing harm is its compulsion. It occurs when a person who is part of a criminal group has a need to participate in a criminal offense (for example, through the coercion of the leader of a criminal organization), and there was no real possibility (without risking disclosure of his connection with law enforcement agencies and thereby endanger themselves) to refuse to participate in the preparation or commission of a criminal offense within that group. The commission by a person performing a special task, participating in an organized group or a criminal organization, a criminal act

that is not conditioned by the aforementioned necessity, is not subject to Article 43, and this person should be held criminally liable on a general basis.

Participation of a person in an organized group or a criminal organization can be considered as fulfillment of a special task, referred to in Article 43, and which gives the person the right to legitimate damage only if documentary execution of such a task and its reflection in the documents of the respective investigative case. Documentation of a special task is required in the case of a person's penetration into an organized group or criminal organization, and in the case of an agreement with a person who is already a member of such a group or organization.

The fulfillment of a special task by a person who, before the conclusion of an agreement on cooperation with an operational unit (intelligence agency), has already been a member of an organized group or criminal organization, does not release this person from criminal responsibility for criminal offenses committed by him prior to entering into an agreement and obtaining a special assignment. The same applies to the person who acted for the purpose of preventing or disclosing the criminal activity of an organized group or a criminal organization on its own initiative, without the special task of the relevant authorities.

Harming on the basis of Article 43 has the features that characterize:

- The subject of causing harm;
- The object of causing harm;
- The purpose of causing harm;
- The nature of the action (inaction);
- The limits of harm.

1 **The subject of causing harm**. These are only individuals who, in accordance with the law in force, perform a special task within an organized group or a criminal organization. These include: 1) clandestine employees of operational units or persons cooperating with them who have penetrated into a criminal group (Paragraph 8, of the Law of Ukraine “On Operational and Investigative Activity”); 2) full-time and freelance secret employees of special units for combating organized criminal offense, introduced under the legend of cover-up in an organized criminal group (Part 3 of Article 13 of the Law of Ukraine "On the Organizational and Legal Foundations of Combating Organized Criminal offense"); 3) participants of organized criminal groups, brought to cooperation by special units for combating organized criminal offense (Article 14 of this Law). It should be noted that the law prohibits the involvement of medical officers, clerics, and lawyers in the operational search activities of a person, if the person to whom they are required to carry out operational search activities is their patient or client. Therefore, the lawful exercise by health professionals, clerics, and attorneys of special tasks in organized groups or criminal organizations whose members are their patients or clients can not be recognized lawfully, and the commission of such persons in such circumstances should be considered in the light of the provisions of Article 43 of the Criminal Code of Ukraine.

2 **The object of causing harm** is the interests of a person, a society, a state protected by a criminal law (for example, the immunity of a citizen, his property, public security, the order of management, state secrets, etc.).

3 **The purpose of causing compulsory harm** is to prevent or disclose the criminal activity of an organized group or criminal organization;

4 By **the nature of the action (inaction)** of a person causing harm as part of an organized group or a criminal organization, must coincide with the signs of a criminal offense, except those provided for in Part 2 of Article 43 of the Criminal Code (for example, a person may commit theft , extortion, the victim beatings, etc.).

5 **The limits of harm** are determined by Part 2 of Article 43 of the Criminal Code. A person may, by participating in a criminal organization, commit any harm, that is, even committing a criminal offense (for example, causing injuries to a victim of moderate gravity or engaging in smuggling, theft of someone else's property, etc.). Exceptions are three types of criminal offenses, the commission of which is evidence of exceeding the permissible limits.

Exceeding the limits of causing harm is the commission of a person within an organized group or a criminal organization of one of three types of criminal offenses:

- intentional grave criminal offense combined with violence against the victim;
- intentional grave criminal offense connected with causing serious bodily harm to the victim;
- deliberate grave and grave criminal offense, connected with the onset of other serious or especially grave consequences.

In this case, violence against the victim should be understood as physical and mental violence (the use or threat of use of the victim of physical force, weapons and other tools that can harm the victim's life or health).

Under severe or especially grave consequences in Part 2 of Article 43 it is necessary to understand the consequences (death of a person, damage to health of people, property damage, etc.), which are recognized as serious or especially serious in accordance with the norms of the Criminal Code on the responsibility for the commission of this or that intentional a serious criminal offense (see Part 3 of Article 146, Part 3 of Article 204, Part 3 of Article 206, Part 3 of Article 355, etc.).

Responsibility for exceeding the limits of damage is specified in Part 3 of Article 43 of the Criminal Code. First of all, a person can not be sentenced in the form of life imprisonment under no circumstances. If such person is sentenced to imprisonment for a certain term, then his amount can not exceed half of the maximum penalty provided for the commission of the criminal offense (for example, if the sanction for intentional murder in accordance with Part 2 of Article 115 of the Criminal Code provides for imprisonment for a term of 10 to 15 years, then the court can not impose a term of imprisonment of more than 7 years and 6 months). But even in this case, the implementation of the special task is considered as a circumstance that mitigates the punishment (p.9 p.1 st.66 CC).

Questions:

1 Characterize concepts and types of circumstances that exclude the criminal offense of the act.

2 Give criminal description of a necessary defense.

3 Give criminal description of an apprehension of an offender.

4 Give criminal description of an extreme necessity.

5 Give criminal description of a physical or mental coercion.

6 Give criminal description of an obeying an order or command.

TOPIC 6
Exemption From Criminal Liability

6.1 Concept, Legal Nature and Significance of Exemption from Criminal Liability

The commission of a socially dangerous act, which contains the composition of the criminal offense, creates a protective criminal law, the logical conclusion of which is the criminal responsibility of the offender. At first glance, the person who committed the criminal offense must necessarily be subjected to criminal liability, is obliged to endure convictions and measures of state coercion in the form of deprivations of personal, property or other nature. However, criminal liability is not the only and inevitable consequence of the criminal offense. If the objectives of criminal liability can be achieved without, resorting to measures of criminal repression, in cases authorized by the State and provided for in the law, there may be exemption from criminal liability of the executor. From the criminal law point of view, this means that the criminal law relationship is discontinued at will of the state represented by the competent authority. In procedural terms, such a dismissal is implemented in the form of closing a criminal case up to a sentence thereon. With regard to the criminal liability exempted from measures of criminal procedural coercion (precautionary measures, the seizure of property), returned seized items, items, documents (of course, with the exception of means of committing a criminal offense, things withdrawn from circulation, and property acquired in a criminal way) are canceled. Exemption does not mean that the person is officially recognized as innocent. Therefore, the criminal procedure law allows a person who does not feel guilty to refuse exemption from criminal liability and demand ordinary court proceedings. There is no discharge and forgiveness of the offender (apparently with the exception of amnesty and pardon).

It should be noted that the question of exemption from criminal liability can be raised only if the socially dangerous act committed contains the criminal offense, i.e. there is a basis for criminal liability. This approach corresponds to the essence of the term "exemption from criminal liability" used in the Criminal Code of Ukraine. It follows that the exemption from criminal liability is fundamentally different from the cases where the commission of the crime does not constitute a criminal offense: from the circumstances excluding the criminal nature of the act (Part VIII of the General Part of the Criminal Code), from the voluntary denial (Article 17 of the Criminal Code), from the insignificance of the committed act (Part 2 Article 11 of the Criminal Code), from the implementation of the right to asylum in accordance with the Constitution of Ukraine (Part 4 Article 331 of the Criminal Code) and from other cases in which criminal responsibility does not come (and cannot come) because of the absence of a criminal offense that is committed.

In accordance with Part 4 of Article 32 of the Criminal Code, if a person who has been released from criminal responsibility commits a new criminal offense, the new criminal offense cannot be considered a repeat offense; in accordance with Part 1 of Article 33 of the Criminal Code, such a criminal offense cannot be taken into account in the aggregate of criminal offenses. As a result, an offense committed by a person after being released from criminal responsibility is legally considered to be the first (although in fact it is not the first and not the first).

The legislator has made a clear distinction between immunity from criminal liability and immunity from punishment (the rules of which are contained in Chapter XII of the General Part of the Criminal Code). Exemption from punishment is an independent institution with its own criminal law and will be considered later. Exemption from criminal liability is different from exemption from punishment:

1 In the case of exemption from criminal liability, no penalty is imposed, while exemption from punishment is granted only on the basis of a conviction by a court. Consequently, they are limited to the date on which the conviction takes effect.

2 A suspect or defendant may be discharged from criminal liability; only a convicted person is punished.

3 In case of discharge from criminal responsibility, the volume of criminal repressive influence on a criminal is actually limited to measures of procedural coercion, and exemption from punishment is a form of realization of criminal responsibility, therefore in this case the person and his actions are subjected to official state censure in the form of recognition of guilt in committing a criminal offense with a conviction of a court.

In accordance with Part 2 of Article 44 of the Criminal Code, the release from criminal liability is carried out exclusively by a court.

6.2 Types of Exemption from Criminal Liability and How They Are Classified

The Criminal Code of Ukraine provides for the following types of exemption from criminal liability:

1 In connection with the effective repentance (Article 45 of the Criminal Code);

2 In connection with the reconciliation of the executor and the victim (Article 46 of the Criminal Code);

3 In connection with the transfer of a person on bail (Article 47 of the Criminal Code);

4 Due to changes in the situation (Article 48 of the Criminal Code);

5 In connection with the expiration of the limitation period (Article 49 of the Criminal Code);

6 In connection with amnesty (Article 86 of the Criminal Code) or by amnesty (Article 87 of the Criminal Code);

7 Exemption from criminal liability with the use of compulsory measures of educational nature to a minor (Article 97 of the Criminal Code);

8 Exemption from criminal liability with the use of measures envisaged by the Disciplinary Statute of the Armed Forces of Ukraine (Part 4 of Article 401 of the Criminal Code);

9 special types of exemptions from criminal liability provided for by the Special Part of the Criminal Code (Part 2 of Article 111, Part 2 of Article 114, Part 3 of Article 175, Part 4 of Article 212, Part 2 of Article 255, h Article 5, Article 258, Part 6, Article 260, Part 3, Article 263, Part 4, Article 289, Part 4, Article 307, Part 4, Article 309, Part 4, Article 311, PArticle 3 articles 369 of the Criminal Code).

The list of cases of exemption from criminal liability, given in the Criminal Code, is exhaustive and cannot be extended by anyone other than the legislator.

Exemption from criminal liability may be conditional and unconditional. The conditional exemption from criminal liability in connection with the transfer of a person to bail (Article 47 of the Criminal Code) and exemption from criminal liability with the use of coercive measures of educational nature to a minor (Article 97 of the Criminal Code), to unconditional - all its other types. The conditional exemption is that the decision on it becomes final only if the person fulfills the conditions imposed by it by the court: according to Article 47 of the Criminal Code - during the year from the date of transfer on bail justifies the confidence of the team, does not deviate from educational activities,

does not violate public order, in accordance with Article 97 of the Criminal Code will not shirk from the use of coercive measures of an educational nature. In case of violation of these requirements, the decision on discharge from criminal liability is revoked and the criminal liability of such a person is implemented in the usual manner. Unconditional exoneration means that the decision on exoneration is taken immediately and definitively, and no demands are made in relation to the further conduct of the person.

Discharge can be general or special. General types are provided for by the general part of the Criminal Code and can be applied in the case of a rather large number of crimes (of course, if the conditions formulated by the legislator in these articles for exemption from criminal liability are present). For example, discharge in connection with effective repentance (Article 45 of the Criminal Code) can theoretically be carried out in the case of committing any crime of minor gravity. Special types are described in the articles of the Special Part of the Criminal Code and can be applied only in the case of a limited number of crimes specified in the respective articles of the Special Part of the Criminal Code. For example, Part 3 of Article 263 can be applied only to persons whose actions are qualified according to Part 1 or Part 2 of Article 263 of the Criminal Code as illegal handling of weapons, combat supplies or explosives.

Depending on whether it is the right or the duty of a court to release a person from criminal liability, there is a mandatory and an optional release. The optional release is provided for in Article 47, Article 48, Part 1 of Article 97, and Part 4 of Article 401 of the Criminal Code. According to these articles, the court has the right, but not the obligation, to discharge, even if all the circumstances specified in these articles are present. The optional nature of discharge is clearly indicated by the words "... may be discharged..." in the disposition of the articles. A refusal to discharge is possible in cases where, in the opinion of the court, even the availability of all those specified in the norm on discharge will not lead to the achievement of the objectives of criminal responsibility in the discharge of a person from her (for example, data that negatively characterize the offender). In all other cases, the dismissal is mandatory, that is, its implementation, in the presence of the circumstances specified in the relevant article, is mandatory for the court. This is evidenced by the text of the articles, which reads: "Discharge from criminal responsibility..." Certain difficulties in this regard arise from the discharge of criminal liability in connection with the expiration of the statute of limitations, since according to the general rule it is mandatory, but this rule has exceptions (this will be discussed when considering this type of discharge).

6.3 Exemption from Criminal Liability in Connection with Active Repentance

According to Article 45 Criminal Code a person who first committed a minor offense, is discharge from criminal liability, if he sincerely repented after committing a criminal offense, actively contributed to the disclosure of the criminal offense and fully compensated for the damage it caused or eliminated the damage.

Under active repentance should be understood as voluntary active post-criminal behavior of a person, whose motive is sincere repentance, aimed at eliminating the actual harmful effects of the criminal offense committed by her, as well as assisting law enforcement agencies in disclosing this criminal offense.

Article 45 The Criminal Code may only be applied to persons who committed a criminal offense for the first time and if committed by them is a criminal offense of minor gravity. Recall that according to Part 2 of Article 12, a crime of minor gravity is a criminal offense for which punishment is imposed in the form of imprisonment for a term of not exceeding two years or another, more lenient punishment. Thus, discharge from criminal responsibility must be preceded by a thorough qualification of the offender.

A criminal offense is considered to be committed for the first time in the following cases:

1 If a person has never committed a crime before;

2 If a person has previously committed a criminal offense, has been prosecuted for its commission, but the criminal consequences of this have already passed and, in accordance with the procedure established by law, is considered not to have been convicted (see Section XIII of the General Part of the Criminal Code and the subject "Sentencing");

3 If a person has previously committed a criminal offense, but has been legally acquitted of criminal liability for its commission. In the case of positive post-criminal behavior, specified in Article 45 of the Criminal Code, a person who has committed a serious criminal offense, or who has previously committed criminal offenses, and the criminal consequences of which for him have not yet passed, then his socially beneficial actions shall be taken into account as circumstances mitigating the punishment (Article 66 of the Criminal Code), but shall not be the reason for exoneration from criminal liability.

Objective and subjective signs of effective repentance are sincere repentance of the person, active assistance to her disclosure of the criminal offense and full compensation for the damage or elimination of the damage.

Active assistance in uncovering a crime is the action of the perpetrator of a crime aimed at helping the justice system to establish the truth in the case. It can be expressed in the form of informing the investigative authorities or the court of information unknown to them about the circumstances of the committed criminal offense and its participants, active assistance in searching for material evidence, witnesses, active assistance in carrying out investigative actions, operational investigations, examinations, etc.

Full compensation for the damage caused is the voluntary restoration of the property rights and benefits that the offender has deprived the victim of as a result of the crime committed by him. It may be the return of lost property, the transfer of property or its monetary equivalent, equal to the cost of the damage, etc. According to the content of the law, the losses suffered personally by the subject of exemption from criminal liability are subject to compensation. Therefore, it is necessary to determine the nature and extent of the damage caused by the criminal offense, the existence of a causal connection between the committed and inflicted damage, and if it is caused by the actions of several persons - the role and degree of participation of each of them in the cause. Full compensation is required.

Reparation of the damage caused is the restoration of the original condition of the crime (e.g. repair of damaged property, treatment and care of the victim, provision of medical and other assistance aimed at restoring health in case of bodily injury, and other measures aimed at reducing the harmful effects of the crime up to their complete elimination). As well as compensation, it should be voluntary and complete, take place after the commission of a criminal offense. Elimination of guilty consequences of a criminal offense can be carried out both independently and with the involvement of other persons (for example, specialists for repair of a damaged building, repair of a car, treatment of the victim, etc.).

The sign of effective repentance is called sincere repentance. It is a sincere, open and voluntary recognition of guilt and pity for the committed crime, understanding of the unacceptability and public danger of the perpetrator, readiness to bear the punishment, to take measures to repair the damage caused or to induce other persons to do so. The main content of this feature is the offender's recognition of his guilt, self-condemnation and willingness to perform certain socially beneficial actions. Sincere repentance is a subjective sign of effective repentance, its motive, the actual psychological basis of socially useful post-criminal behavior of the executor.

6.4 Exemption from Criminal Liability in Connection with Reconciliation of the Offender and the Victim

According to Article 46 of the Criminal Code, a person who has committed a minor offense for the first time is exempted from criminal liability if he or she reconciles with the victim and compensates for the damage he or she has caused or remedies the damage.

Under the current Criminal Code, reconciliation with victims was an independent form of exemption from criminal liability. Now, if the victim believes that justice will be restored if the guilty person apologizes to him, returns the stolen thing, restores the damaged property, etc., the state does not insist on obligatory criminal liability for committing a wide range of crimes.

In Article 46 of the Criminal Code (as in Article 45), the legislator established the formal criteria for determining the range of acts, after the commission of which it is allowed to dismiss in connection with reconciliation: the criminal offense must be legally the first and have a low degree of gravity. These criteria have already been analyzed. In addition to them, the necessary condition for discharge from criminal responsibility in connection with reconciliation of the executor with the victim is the commission of a criminal offense specified in Article 46 CC positive post-criminal acts: first, he must reconcile with the victim, and second, to compensate for the damage done or to eliminate the damage caused.

All these circumstances, as in the case of exemption from criminal liability in view of effective repentance, should be available only in the aggregate. Only in this case it can be recognized that there is a possibility of correction of a person without criminal prosecution and repressive interference of law enforcement authorities is inappropriate.

Reconciliation is the achievement of a conflict or a common agreement between the offender and the victim aimed at the elimination of a criminal offense, as a result of which the latter officially informs the law enforcement authorities (court, prosecutor, investigator, investigating authority) that he/she is satisfied with the offender's criminal conduct and agrees with his/her release from criminal liability. It must necessarily be completely voluntary and carried out in due form. Reconciliation with one victim in the presence of several cannot serve as a basis for exemption from criminal responsibility.

A victim of a crime is a person who has suffered moral, physical or material damage. Upon recognition of the person, the person conducting the investigation, the investigator or the judge shall issue a decision, and the court - a verdict (Parts 1 and 2 of Article 49 of the Criminal Code). Since Article 46 of the Criminal Code deals with the victim, it is obvious that the application of this legal basis for exemption from criminal liability is possible only in cases of criminal offenses that harm only the personal or private interests of a person, i.e. when he/she actually has the right to make a legally significant decision to forgive the guilty.

The concept of reparation and elimination of harm is similar to that considered earlier. It does not matter in which order the socially beneficial deeds specified by the law are performed: whether reconciliation was preceded by compensation or elimination of harm, or vice versa. It should be noted that, in contrast to effective repentance, the law does not require full reparation or elimination of harm in the case of reconciliation. This is due to the fact that the victim himself determines the sufficiency and acceptability of these measures.

Of course, the victim’s refusal of justice is often due to the expectation of material compensation from the executor, but Article 46 CC should not be considered as permission for the latter to “pay off”. It is worth agreeing with SG Kelin that in some cases the victim should decide: Does he believe that the restoration of justice can only be achieved by punishing the perpetrator, or does he believe that it is possible to restore such justice by himself and other means.

6.5 Exemption from Criminal Liability due to Bail

According to Part 1 of Article 47 of the Criminal Code the person who first committed a criminal offense of small or medium severity and sincerely repented may be discharge from criminal responsibility by transferring it to the bail of the collective of the enterprise, institution or organization on their request, provided that during the year from the day it is transferred to the bail will justify the trust of the team, will not deviate from educational activities and will not violate public order.

Exemption from criminal liability of this type is allowed only for persons who first committed a criminal offense of small or medium severity. The concept of a misdemeanorsand committing a criminal offense was first considered before. Recall that a criminal offense of moderate gravity, according to Part 3 of Article 12 of the Criminal Code, there is a criminal offense for which punishment is provided for in the form of imprisonment for a term not exceeding five years.

The type of exemption from criminal liability is optional (optional). This means that the issue of dismissal is decided by the court, taking into account the data characterizing the person and his actions: the object of the attack, the subject, the method of commission, the motives and objectives of the criminal offense, the behavior of the person before, during and after the criminal offense, the psychophysical features of the offender, his attitude to work, teaching, rules of cohabitation, characteristics in everyday life, confession of his fault, compensation of harm, etc. Adoption of the decision to discharge from criminal liability may hinder the data that characterizes the person on the negative: for example, recognition of it as a chronic alcoholic or drug addict, her conduct of an anti-social way of life, in particular, bringing to administrative or disciplinary responsibility, etc. It should also be taken into account whether the given person was discharge from criminal responsibility earlier and how effective was the discharge. The following list of objective and subjective factors to be taken into account is, of course, approximate: their number and nature depend on the specifics of a particular criminal case.

A compulsory condition for the transfer of a person on bail is her sincere repentance. This concept has already been considered in the previous paragraph.

In addition to all of the above conditions, a request is required for the collective of the enterprise, institution or organization to transfer the person to them on bail. This application is official, stated in writing, motivated by the request of the collective on the discharge of a specific person from criminal responsibility and the transfer of it to the bonds of this collective. In addition, the real possibility of exercising this collective of educational influence on a person transferred to him on bail must be established. For example, if it turns out that there is a formal attitude towards educational work, systematic violations of labor discipline, which remain without a proper response from management, the atmosphere of mutual guarantee and other negative phenomena, in the team that is concerned, then the transfer of a person to the bonds of such a team will be ineffective and inadmissible, because in this case it is obvious that the goal will not be achieved: to correct a person with the use of social measures themselves only, without realization of criminal responsibility.

Discharge from criminal liability under Article 47 CC is conditional. The person is given a peculiar trial period of one year, during which it must justify the trust of the team, not to avoid evasive measures and not to violate public order. In case of violation of the conditions for the transfer of bail, a person is prosecuted for a criminal offense committed by him (Part 2 of Article 47 of the Criminal Code). If, before the end of the annual period, the person transferred to the bail, committing a new criminal offense, then in this case there is a plurality of criminal offenses – repetition or set (Article 32, 33 of the Criminal Code).

The guarantor group is not legally responsible for the consequences of the guarantee, and it can at any time cancel it if it is satisfied that the person does not justify the trust she has found out: for example, she violates labor discipline, drinks, without good reason, is dismissed from work, so that avoid social measures, etc. In this case, the official decision of the collective about refusal of the

guarantee is sent to the court that carried out the transfer on bail, and the court considers it a violation of the conditions for the transfer of bail and cancels the decision on dismissal.

6.6 Exemption from Criminal Liability due to Changed Circumstances

Change of circumstances:

According to Article 48 of the Criminal Code, a person who has committed a minor or medium crime for the first time may be exonerated from criminal liability if, at the time of investigation or consideration of the case in court, it is recognized that, as a result of a change in the situation, the act committed by the person has lost public safety or the person is no longer socially dangerous.

Certain conditions are indispensable for committing any crime. These are the social, economic, political, organizational, economic and other objective living conditions in which a certain criminal act was committed and which were characteristic for its commission for the state as a whole or for a certain region, district, locality, enterprise, institution, etc.. If the comparison of the situation existing at the time when the person committed the act with the situation existing at the time of the investigation or consideration of the case in court reveals a significant change in it, as a result of which the assessment of the social danger of the act or the person of the offender testifies that the act can no longer be considered socially dangerous (or the person is socially dangerous), then the criminal liability and punishment of a person becomes inappropriate.

As it can be seen from the text of Article 48 of the Criminal Code, the legislator has provided in one criminal law for two types of exemption from criminal liability: in connection with the change of the situation that caused the loss of the social danger of the act, and in connection with the change of the circumstances that caused the loss of the public danger of the person who committed the act.

A change in circumstances is a significant, substantial change in objective social conditions, as a result of which the social danger of the act or the person who committed it disappears or becomes very insignificant. For example, in the 40's it was a transition from war to peace, the abolition of the food card system; in the 80's and 90's there are radical changes in the social, economic, political life of the country. In practice, there is a change in the situation that is not nationwide, large-scale, but local, local. Thus, it is enough to change the specific situation at the scale of a settlement, enterprise, institution, educational institution, or even a family. The main thing is that the changes leading to the loss of the socially dangerous character of the act or the loss of the social danger of the person are objective in nature, i.e. they do not depend on the will of the person who committed the crime.

In the case of the first type of dismissal, such changes should be made in which not only the specific act, but also all other similar acts lose their social dangerousness in the new conditions. For example, the list of taxes is narrowed. As a result, the social danger of previously committed acts related to non-payment of this type of tax is lost. An example of a change in the situation of a more local nature may be the case when a significant part of the forest burns out as a result of a fire, as a result of which the unlawful felling of a forest (article 264 of the Criminal Code) committed by a person in this place, loses public danger.

In the second case specified in the law, the change in the circumstances of an act does not lose its assessment as socially dangerous. The assessment of a person changes - in the new environment, it ceases to be socially dangerous. Changes may relate to external conditions of life, but only to a specific person, and not all persons who committed such criminal offenses, and relate exclusively to circumstances that characterize the identity of the executor and the degree of his danger in connection with the commission of the criminal offense. For example, a minor, got into a bad company, began to use alcoholic beverages and, under the influence of friends, committed hooliganism (Article 296 of the Criminal Code). During the trial, it is established that in connection with the transfer of parents to a new place of residence the offender was found outside the environment unfavorable in the criminal offense plan, was arranged for work or study, etc., therefore, ceased to be socially dangerous. The

change in objective conditions should be such that the law enforcers have no doubt that it will help the person to begin a new life and save from further criminal behavior.

As a rule, the mere change of circumstances cannot guarantee the loss of a person or an act of social danger. Therefore, exemption from criminal liability in connection with the change of situation is allowed only for those persons who first committed a crime of small or medium gravity. These conditions have already been considered.

The change of circumstances, which indicates the loss of the public danger of the act or the person who committed it, should not be confused with the change of criminal law, which results in the abolition of the criminal offense of the act (decriminalization of the act). In this case, there is no exoneration from criminal liability in connection with the change of the situation and the cessation of criminal liability in accordance with the rules on the retroactive effect of the law on criminal liability in time (Part 1, Article 5 of the Criminal Code).

The type of exemption from criminal liability is optional and its exercise is a right and not a responsibility of the court.

6.7 Exemption from Criminal Liability due to the Expiry of the Statute of Limitations

This type of exoneration from criminal liability is stipulated in Article 49 of the Criminal Code. Its meaning is that the guilty person is discharged from criminal liability if a certain period of time elapses from the moment of committing the criminal offense.

The time from the commission of the crime to the moment when the perpetrator is held accountable significantly influences the possibility of achieving the goals of criminal liability, since they are more effectively achieved the sooner and more promptly the offender is convicted and sentenced. There are cases when, for one reason or another, this time becomes very long and ranges from several to several decades. In such cases, holding a person criminally responsible for a crime committed once would not have a proper educational and general preventive effect; moreover, it may become generally inappropriate and even inhumane. After all, with the passage of time, the guilty can be corrected and cease to be socially dangerous. In addition, in the course of time, obstacles of a procedural nature arise: material evidence in the case is lost, witnesses and victims change their place of residence, die, forget the essential circumstances of the case, etc., which greatly complicates and sometimes makes impossible the successful investigation of such crimes and trial of cases about them. All these circumstances and conditions of existence in the Criminal Code of this type exemption from criminal liability. Prosecution after the expiration of the statute of limitations contradicts the basic principles of criminal law and criminal policy of the country.

The main condition for exemption from criminal liability in connection with the expiration of the statute of limitations is the expiration (termination) after the commission of the criminal offense for a certain period of time (the statute of limitations).

Part 1 49 of the Criminal Code provides for the following limitation periods

- Two years - for misdemeanors punishable by a penalty less severe than deprivation of liberty;
- Three years in the case of committing a misdemeanor for which the punishment is imposed in the form of restriction of liberty or imprisonment;
- Five years in the case of a misdemeanor of medium gravity;
- Ten years - for a grave felony;
- Fifteen years - for a particularly grave offense.

Regarding criminal offenses committed by minors, the statute of limitation is reduced by the law (Part 2 of Article 106 of the Criminal Code).

The initial moment of the limitation period is the day the person committed the criminal offense. This should be considered the day during which (before the 24th year.) The person committed an act

that is part of the objective part of the criminal offense. This rule applies to criminal offenses, both material and formal, and truncated. Thus, the commencement of the calculation of the limitation period does not depend on the onset of the consequences of the criminal offense. In case of an incomplete criminal offense (criminal preparation or assassination), the beginning of the limitation period is the day in which the preparatory actions were prevented or failed, or the criminal offense was not brought to an end for reasons that were not dependent on the will of the executor. For the accomplices of a criminal offense, the limitation period is calculated from the day the role accomplished by a particular accomplice was completed. A peculiar way is the question of starting the calculation of limitation periods for ongoing criminal offenses and ongoing criminal offenses. In the first case, the limitation period is calculated from the moment of the termination of the will or against the will of the offense or inaction (for example, from the date of appearance with confession or detention, the loss of illegally stored weapons, etc.). For continuing criminal offenses, the limitation period is calculated from the time when the last guilty criminal acts were committed, which were covered by a single intention and were aimed at achieving a single goal.

The end date of the limitation period is 24 the last day of the statutory term, which is calculated in calendar years (and if the lapse of time has stopped, then also months and days). According to Part 1 of Article 49 CC term of prescription continues until the day of the enactment of a verdict of legal force.

The mere expiration of the statute of limitations is not sufficient to provide immunity from criminal liability. Article 49 requires two additional conditions:

1 A person should not commit a new crime before the expiration of the said periods;

2 A person should not evade investigation or trial. If the first condition is violated, the statute of limitations is suspended; if the second condition is violated, it is suspended.

According to Part 2 of Article 49 of the CC the limitation period stops if the person who committed the criminal offense evades the investigation or trial. Concealment from the investigation or court are deliberate actions specifically aimed at evasion from criminal liability: change of address, surname, appearance, violation of the non-exit subscription, sudden departure from the place of permanent residence in an unknown direction, residence on false documents, failure to appear on the investigator's calls or until the court and other acts, as a result of which law enforcement agencies are forced to seek out the executor. Stopping the prescription means that the part of the statute of limitations which has actually expired before evasion from the investigation or the court does not lose its meaning and after the renewal of the course it is taken into account in the calculation of the limitation period, and the period for which the person avoided is not to be taken into account. Thus, the time elapsed since the day the criminal offense was committed until the day the person departed from the investigation or trial is counted in the statute of limitations. The time passed from the day the person performed these actions and before his detention or appearance with confession is not counted in the statute of limitations. Thus, from the moment of evasion, the prescription, figuratively speaking, is "frozen", but restored and continues to continue from the day the person appeared with confession or apprehension.

Optional non-application of the statute of limitations provided for in Part 4 of Article 49 of the Criminal Code. The issue of the application of a limitation period for a person who has committed a particularly grave criminal offense for which life sentence may be imposed by law may be decided by the court. Thus, if the sanction of the article according to which the committed criminal offense is punishable in the form of life imprisonment, even if the maximum of the statutory deadlines has expired and it is not interrupted, then the offender can still not count on an "automatic" dismissal from criminal liability. This is due to the fact that life imprisonment is foreseen in relation to the most serious, most dangerous criminal offenses, the commission of which for a long time cannot be forgotten and testifies to the maximum increased social danger of a person. Therefore, the right to decide on the possibility or impossibility of applying a limitation on such criminal offenses law quite rightly gave the court, which in this case, proceeding from the features of each particular case, takes into account after the

criminal behavior of the executor. In accordance with the law, the court may take the following decisions: Either it recognizes the possibility of applying a limitation period and releasing a person from criminal responsibility for a particularly grave criminal offense committed in connection with the expiration of the limitation period or concluding that it is impossible to apply the limitation period and, therefore, will determine the indictment sentence and impose a guilty punishment. But in the latter case, he has no right to impose such a sentence on the defendant in the form of life imprisonment, and replaces him by deprivation of liberty for a certain period of time - within the scope of the sanction of the article of the Criminal Code, according to which a committed offense is committed. Due to the fact that life imprisonment cannot be applied to persons who committed criminal offenses under the age of 18 years and to persons over the age of 65 years, as well as to women who were pregnant during the commission of a criminal offense or at the time of the sentence (Part 2 of Article 64 of the Criminal Code), the exception considered does not apply to this category of persons.

Obligatory non-application of the statute of limitations is provided for in Part 5 of Article 49 of the Criminal Code. Presence does not apply in the case of committing criminal offenses against the peace and security of mankind provided for in Articles 437-439 and Part 1 of Article 442 of the Criminal Code of Ukraine.

Questions:

1 What are the concept, legal nature and significance of exemption from criminal liability?

2 Describe the types of exemption from criminal liability and their classification.

3 Describe the exemption from criminal liability in connection with active repentance.

4 Describe the exemption from criminal responsibility in connection with the reconciliation of the offender and the victim.

5 Describe the exemption from criminal liability due to the posting of bail.

6 Describe the exemption from criminal responsibility due to a change in circumstances.

7 Describe the release from criminal liability due to the expiry of the statute of limitations.

TOPIC 7
Punishment and Its Types

7.1 The Concept of Punishment

"Nullum criminal offensen sine lege" - there is no punishment without specifying in the criminal law this ancient truth, known also to the current Ukrainian legislation. Thus, according to Part 1 of Article 2 of the Criminal Code of Ukraine, the basis for criminal liability is the commission of a person of a socially dangerous act, which contains the criminal offense, provided for by this Code.

According to Part 1, Article 50 of the Criminal Code, punishment is a measure of coercion, which is used on behalf of the state by a court sentence to a person who has been guilty of a criminal offense, and consists in limiting the rights and freedoms of the convicted person provided for by law.

An analysis of this concept makes it possible to distinguish the main features of punishment:

1 The punishment is applied on behalf of the state, that is, it is a measure of state coercion. In practice, this means that the punishment is established by a criminal law, and the criminal law is passed by the highest state authorities. No other means of coercion than those provided for by criminal law may be used as criminal punishment.

2 The punishment is imposed only by the verdict of the court on behalf of the state, which gives it a public character. This feature of punishment essentially reproduces the principle enshrined in the Constitution of Ukraine (Article 144) and provides for the provision of justice only by a court, and no one can be found guilty of committing a criminal offense, as well as be prosecuted otherwise than by a court sentence in accordance with the law.

3 The punishment applies only to the person convicted of committing a criminal offense.

4 The punishment is the statutory losses and restrictions of the rights and freedoms of the convicted person - this is precisely the criminal nature of the punishment, which makes it the most severe measure of state coercion. The punishment is the property of any criminal punishment. It is determined by the type and duration of punishment, the presence of physical, property and moral deprivations and restrictions. In some punishments, their property is expressed more to a degree, for example, with life imprisonment, deprivation of liberty for a specified period, material or property deprivation, where it is expressed in such punishments as a fine and forfeiture of property; in others, there is a bridge to restrict other rights, for example, the right to engage in professional activities, to have a title, etc. Each punishment also causes moral suffering of various kinds – it is a shame, a shame for the committed to society and their loved ones. All these restrictions determine the punishment as a sign of punishment. The amount of punishment varies in each punishment depending on the nature and severity of the criminal offense. The penalty must always be consistent with the gravity of the criminal offense.

5 The punishment finds expression of condemnation, a negative assessment by the state as a criminal offense committed, and the executor himself. The punishment acts as an indicator of the negative assessment of the criminal offense and the person who committed it, from the point of view of criminal law and morality.

6 The punishment is personal. It follows from this that the purpose of the criminal punishment and its execution is possible only in relation to the executor. It cannot be assigned to other persons (close relatives, friends, etc.).

7 The punishment entails conviction. It is the conviction that distinguishes criminal punishment from other means of state coercion. A conviction is a specific state of a person who appears after a conviction for a criminal offense and a sentence entered into force. The essence of this institution is that a person who has a criminal record may be subjected to a number of legal restrictions, for example, in choosing a place of residence and work, and also that in the case of a new offense committed by a given person, the offense of the offender, which is determined by law, can be criminalized -legal consequences.

The above features distinguish punishment from other coercive measures.

7.2 Purpose of Punishment

The purpose of confinement is a symbiosis of several purposes. The purpose of correction is to eliminate the public danger of the individual, i.e. the effect of the punishment, which resulted in the convicted person not committing a new crime during and after his detention. Correction consists in active coercive influence on the consciousness of the convicted person, adjustment of his socio-psychological characteristics, neutralization of negative, criminal tendencies, compulsion to observe the provisions of criminal law. Achievement of such result is called legal correction.

The purpose of a special warning (special prevention) is the effect of punishment on the convicted person, which deprives him of the opportunity to commit a criminal offense again. The prevention of the commission of new criminal offenses on the part of the convicted person is achieved by the very fact of his condemnation and the more so by the execution of a punishment when a person is placed in conditions that significantly impede or completely deprive him of the possibility of committing a new criminal offense. Thus, when serving a sentence, the regime of execution of punishment, restriction of contacts with the outside world, constant control over the behavior of the convicted, etc., physically deprive him of the possibility of committing many criminal offenses.

The purpose of the general warning (general prevention) involves such an effect of punishment, which prevents the commission of criminal offense from other persons. A general warning is addressed to all citizens and aimed at deterring them from committing criminal offenses under threat (fear) of punishment and related measures of state and public condemnation and various restrictions of rights and freedoms. The question is how the general warning is perceived by citizens in practice, and how it is implemented. It turns out that a significant proportion of people commit criminal offenses not at all because of fear of punishment, but because of, for example, certain education, moral principles. However, there is another part of citizens who do not commit criminal offenses precisely because of the threat and fear of punishment. In addition, there is also a third group of citizens who commit criminal offenses, so to speak, all the same, regardless of anything: either for upbringing or for the current morality, nor for the existing norms of behavior in society, or, at last, for the threat punishment. Since the boundaries between these conditional strata of citizens are not stable and stable, and these strata are in constant motion, so the problem of general warning will never lose its significance and relevance.

Thus, we can conclude that any punishment, regardless of its type and size, should ensure the attainment of all the purposes of punishment.

7.3 The System and Types of Punishment

The Criminal Code of 2001 introduced a new system of punishment. It is provided for by Article 51 of the Criminal Code of Ukraine. Instead of a pre-existing sequence of explaining types of punishment in criminal law on the principle of "from harsher to less harsh punishments", which to some extent focused the court on the use of harsher punishments, the 2001 Criminal Code of Ukraine used a more humane and just principle of building a system of punishment - from the least harsh to the harshest. "Such a system is a guideline for which the court can apply a more severe (alternative) form of punishment only if the impossibility of applying a more lenient form of punishment provided by the sanction of the article of the Special Part of the Code for the committed criminal offense, taking into account the severity of the crime and the identity of the defendant.

Under the system of punishment is understood a criminal law established and mandatory for the court exhaustive list of punishments, arranged in a certain order by degree of severity.

Thus, it is possible to distinguish several signs of the system of punishment, namely:

1 The system of punishment shall be established only by law. No penalty may be determined arbitrarily; its nature, extent, order and grounds of application shall be specified only by the law;

2. The list of penalties forming a system shall be binding on the court.

3 The list of punishments. The system is exhaustive. This means that from the point of view of the law the system of punishments is now complete, finished.

4 The system of punishments provides for their placement in a certain order according to the degree of their severity. In Article 51 of the Criminal Code of Ukraine, they are located from the less severe to the more severe, which we have already paid attention to above.

All punishments included in the system can be classified according to certain features enshrined in the criminal law. Punishments are classified according to the order (method) of their appointment; on the subject to which the punishment is applied; with the possibility of determining the term of punishment, etc.

In accordance with the procedure for the imposition of punishment, Article 52 of the Criminal Code of Ukraine separates all punishments into three groups:

Basic penalties are sentences imposed in the sentence only as independent sentences. They cannot, in any circumstances, be appointed in addition to other punishments, cannot be attached to them.

Basic penalties include

- Community service;
- Correctional labor;
- Restricted service for military personnel;
- Forfeiture of property;
- Arrest;
- Restriction of liberty;
- detention of military personnel in a penal battalion;
- Imprisonment for a fixed term;
- Life imprisonment.

Additional penalties are punishable only in addition to basic punishments and cannot be applied independently. They include

- Forfeiture of property
- Deprivation of a military or special rank, title, class rank or qualification class.

Penalties that can be imposed both as basic and additional punishment - deprivation of the right to occupy certain positions or engage in certain activities and fines. By subject of punishment, they are classified into **general** and **special**. General punishments can be applied to any person. Special

punishments are imposed only on a certain class of convicted persons and cannot be applied to any person. Thus, being held in a disciplinary battalion is appointed only to servicemen of temporary service.

All penalties are divided into fixed-term and indeterminate punishments according to the possibility of determining the penalty.

Fixed-term punishments include

- Community service;
- Correctional labor;
- Restricted service for members of the armed forces;
- Arrest;
- Restriction of liberty;
- Detention in a military disciplinary battalion;
- Imprisonment for a specified period;
- Deprivation of the right to hold certain positions or engage in certain activities.

Indeterminate punishments include deprivation of military rank, special rank, rank or qualification class, and life imprisonment.

Types of punishment:

Let's consider in more detail the types of punishment provided for in Article 51 of the Criminal Code of Ukraine.

1 A fine (Article 53 of the Criminal Code) in accordance with the law is a monetary fine imposed by the court in the cases and within the limits established in the Special Part of the Criminal Code.

The fine is a collection of money imposed by a court in cases and in the amount established in the Special Part of this Code, taking into account the provisions of the second part of this article. The amount of the fine is determined by the court depending on the gravity of the criminal offense and taking into account the property status of the offender within the limits of 30 tax-free minimum incomes of citizens up to 50 thousand non-taxable minimum incomes of citizens if the articles of the Special Part of this Code do not provide for a higher fine. For the commission of a criminal offense for which basic punishment is imposed in the form of a fine of more than 3,000 non-taxable minimum incomes, the amount of the fine imposed by the court may not be less than the amount of property damage inflicted by the criminal offense or received as a result of a criminal offense of income, regardless of the limit amount a fine stipulated by the sanction of the article (a sanction of part of the article) of a special part of this Code. The court, having established that such a criminal offense has been committed in a spurious way and the role of the accomplice (co-executor), instigator or accomplice in his commission is insignificant, may impose such persons a fine in the form of a fine in the amount stipulated by the sanction of the article (the sanction of part of the article) of the Special Part of this Code, without tampering with the amount of property damage caused by a criminal offense, or received as a result of a criminal offense of income. A fine as additional punishment may be imposed only if it is specifically provided for in the sanctions of the article (sanctions of part of the article) of the Special Part of this Code. Taking into account the property status of a person, the court may impose a fine with a installment payment of certain parts for up to one year. In case of non-payment of a fine in the amount of not more than 3,000 non-taxable minimum incomes, and the absence of grounds for installment of his payment, the court replaces the unpaid amount of fine punishment in the form of community services for one established by law non-taxable minimum income of citizens or correctional labor at the expense of one month correctional labor for 20 established by law non-taxable minimum incomes of citizens, but for a term not exceeding 2 years. in case of non-payment of a tax of more than 3,000 tax-free minimum incomes, which is intended as the main punishment, and the absence of grounds for installment of its payment, the court replaces the unpaid amount of fine punishment in the form of deprivation of liberty, on the basis of one day of imprisonment for 8 non-taxable minimum incomes of citizens within such limits - from 1 to 5 years imprisonment - in cases where a fine is imposed for

committing a criminal offense of moderate gravity; from 5 to 10 years imprisonment - in cases where a fine is imposed for committing a criminal offense of a grave criminal offense; from 10 to 20 years imprisonment - in cases where a fine is imposed for committing an especially serious criminal offense. If during the calculation of the term of imprisonment this term exceeds the limits established by this part of the article, the court shall replace the sentence of deprivation of liberty for the maximum term provided for the criminal offense of the corresponding gravity of this part of the article.

2 Revocation of a military or special title, rank, grade or qualification class (Article 56 of the Criminal Code) is imposed only upon conviction of a person for a grave or particularly serious criminal offense. The commission of such criminal offenses denigrates the rank, rank, rank, qualification class. Therefore, the law gives the court the right to deprive the convicted of this status.

3 Community service (Article 56 of the Criminal Code) consist of the execution of free time from the work and study of free socially useful works, the type of which is determined by local self-government bodies (garbage collection, street landscaping, etc.). Community services are set up for a period of 60 to 240 hours and take place no more than 4 hours a day. This punishment does not apply to persons recognized as disabled by Group I or II, pregnant women, persons who have reached the retirement age, and also for servicemen of emergency service.

4 Correctional labor (Article 57 of the Criminal Code) shall apply to the person at the place of employment for a term determined by the court judgment, with the deduction in the income of the state of the corresponding percentage of its earnings. This percentage is set at 10 to 20 percent. Correctional work is for a period of from 6 months to 2 years. Corrective work does not apply to pregnant women and women who are on childcare leave, to the disabled, to persons under the age of 16 years and to those who have reached the retirement age, as well as to military personnel, law enforcement officers, notaries, judges, prosecutors, lawyers, civil servants, officials of local self-government bodies.

5 Service restrictions for military servants (Article 58 of the Criminal Code) are assigned to servicemen, except for servicemen of the emergency service, for a term from 6 months to 2 years, with deductions from the income of the state from 10 to 20 percent of the money received by the convicted person. Such punishment is imposed, if it is expressly provided for in the law (for example, Part 2 of Article 407).

6 Forfeiture of property (Article 59 of the Criminal Code) consists of the forcible graftless seizure of all or part of the property owned by the state, which is the personal property of the convicted person. Forfeiture of property is imposed for grave and especially grave mercy criminal offenses only as additional punishment, and only in cases directly foreseen by the sanction of the article, under which the qualified act of the convicted person. The list of property that is not subject to is determined by law. Forfeiture can be divided into full, partial or special (extracted items that are means or tools of a criminal offense).

7 The deprivation of the right to occupy certain positions or engage in certain activities (Article 55 of the Criminal Code) may be imposed for a term of 2 to 5 years as a basic one and for a term from 1 to 3 years - as an additional punishment. This punishment is applied in cases where according to the nature of the commission of guilty official offenses or when engaging in certain activities the court finds it impossible to preserve the right to occupy these positions or the right to engage in the corresponding activity. This punishment deprives the convicted subjective right to free choice of position, certain occupations within the time set by the court's verdict. The application of this punishment leads to the loss or limitation of certain privileges and benefits. The basic punishment for deprivation of the right to occupy certain positions or engage in certain activities is appointed in cases where it is provided for in the sanction of the relevant article of the Criminal Code, according to which a convicted offender is qualified, or as a transition to him as a milder punishment comparatively, for example, from imprisonment. As an additional fine, the deprivation of the right to occupy certain positions or engage in certain activities may be appointed as when it is expressly provided for in the sanction of the relevant article of the Criminal Code, according to which a convicted offender is

qualified (for example, Articles 91, 286), and when it is the sanctions are not directly foreseen. In these cases, the court is guided by Article 55 of the Criminal Code of Ukraine, which gives it the right to apply this punishment if it is found impossible to preserve the rights of the convicted to occupy certain positions or engage in certain activities. Appointing this sentence, the court in a sentence should clearly indicate which office is deprived of the right to hijack the convicted person. Deprivation of the right to occupy certain positions or engage in certain activities if it is intended as additional punishment for arrest, restraint of liberty, detention in a disciplinary battalion of servicemen, imprisonment for a certain period extends to the entire term of serving the basic punishment and, moreover, for the term established by sentence the court If this punishment is imposed as additional to another type of basic punishment (for example, to community services), then its term is calculated from the moment of entry into force of a verdict of legal force. Conviction to deprivation of the right to occupy certain positions or engage in certain activities entails a criminal conviction, which is waived after the expiration of the term of this sentence (Paragraph 3 of Article 89 of the Criminal Code).

8 The arrest (Article 60 of the Criminal Code) is expressed in the detention of a convicted person under conditions of isolation and is established for a term of 1 to 6 months. Servicemen serve this punishment on the guardianship. The arrest does not apply to persons under the age of 16, pregnant women and women who have children under the age of eight.

9 Restriction of liberty (Article 61 of the Criminal Code) consists in retaining persons in criminal executive institutions of an open type of isolation from society in the context of exercising supervision over it with the obligatory involvement of the convicted person. This punishment is for a term of 1 to 5 years. It can not be intended for minors, pregnant women and women who have children under the age of 14 years, for persons who have reached the retirement age, regular service men and persons with disabilities of groups I and II.

10 Custody of military servants in a penal battalion (Article 62 of the Criminal Code) is a special punishment and applies only to servicemen of the service. It consists of a forced firing for a specified period of from 6 months to 2 years into a special military unit - a disciplinary battalion. The time of stay and the disciplinary battalion during the term of service is not counted. They will return to their part for further service.

11 Imprisonment for a determinate term (Article 63 of the Criminal Code) is punishment, which consists in isolating the convict and placing him in a criminal executive for a certain period specified in the court's verdict. Imprisonment is imposed for a term of 1 year to 15 years. Deprivation of liberty is a basic punishment and is used for committing serious criminal offenses when, based on the nature and extent of their social danger, and taking into account the guilty person, his isolation from society is necessary.

12 Life imprisonment (Article 64 of the Criminal Code) may be applied for the commission of especially grave criminal offenses, as specifically provided for by the sanction of the Article of the Special Part of the Criminal Code, and provided that the court finds it impossible to impose the sentenced person's deprivation of liberty for a certain period of time. Life imprisonment is not applicable to persons who committed criminal offenses under the age of 18 years and to persons over the age of 65 years, as well as to women who were pregnant during the commission of a criminal offense or at the time of the sentence.

Thus, we have considered in detail each type of punishment separately, identifying their main features.

7.4 General Principles of Appointing Penalties

1 The court shall impose penalties within the limits established in the sanction of the article of the Special Part of the Criminal Code, which provides for responsibility for the committed criminal offense. This requirement means that the court may impose a punishment only within the

scope of the sanction of the article of the Special Part of the Criminal Code, under which the qualified actions of the guilty person. In a relatively specific sanction, where the minimum and maximum sentences are specified, the judge has the right to impose penalties within the specified limits. In a relatively specific sanction, which specifies only the largest amount of punishment, the judge follows the provisions of the General Part of the Criminal Code regarding the minimum and maximum amounts for this type of punishment (Part 1 of Article 185 of the Criminal Code provides for a term of imprisonment of up to 3 years, which means that the minimum term imprisonment in accordance with Article 63 of the Criminal Code may be 1 year). In alternative sanctions, the court should decide on the possibility of correction of the person who committed the criminal offense, without isolation from the society, and only if such correction is not possible, to impose a sentence of imprisonment.

2 The court shall impose penalties in accordance with the provisions of the General Part of the Criminal Code. These provisions should include

- Compliance with the requirements of the General Part of the Criminal Code on the purposes of punishment;
- Compliance with the requirements of the General Part of the Criminal Code about the system and types of punishment;
- Compliance with the requirements of the General Part of the Criminal Code on the stage of committing a criminal offense;
- Compliance with the requirements of the General Part of the Criminal Code on complicity in a criminal offense.

3 Purpose of punishment. According to Part 2 of Article 65 of the Criminal Code a person who has committed a criminal offense should be punished, necessary and sufficient for its correction and prevention of new criminal offenses. Thus, the judge must take into account such purposes of punishment as the correction of the person who committed the criminal offense and the prevention of new criminal offenses, both from this person and other persons.

4 System and types of punishment. The criminal law establishes a compulsory list of punishments, which are compulsory for the court, located in a certain order according to their degree of severity. The judge, when choosing the type of punishment, must be guided by the provisions of the General Part regarding the terms or the size of such punishment. A judge must come out of the system of criminal penalties in the event of the appointment of another, more lenient form of basic punishment, not specified in the article's sanction for this criminal offense (Article 69 of the Criminal Code). In this case, the judge appoints the punishment that is closest in the hierarchy to the punishment specified in the sanction of the article of the Special Part of the Criminal Code.

5 Stages of committing a criminal offense and complicity in a criminal offense. In imposing a punishment for a pending criminal offense, the court, guided by the provisions of Articles 65-67 of the Criminal Code, takes into account the degree of gravity of the commission committed by a person, the degree of the commission of the criminal intention and the reasons why the criminal offense was not brought to an end. When imposing punishment on accomplices of a criminal offense, the court, guided by the provisions of Articles 65-67 of the Criminal Code, takes into account the nature and extent of participation of each of them in the commission of a criminal offense. Legislation of other countries provides more precise guidance on sentencing. Thus, Article 68 of the Japan Criminal Code stipulates that in the case where one or more grounds for mitigating the sentence are present in the case, the term of imprisonment and the amount of the fine shall be reduced by half. According to Article 66 of the Criminal Code, the term or amount of punishment for preparation for a criminal offense cannot exceed half of the maximum term or the size of the most severe type of punishment provided for by the relevant article of the Special Part of the Criminal Code for the committed criminal offense. In Ukraine, a judge does not have such restrictions and can impose any punishment within the scope of the sanction of the article of the Special Part of the Criminal Code. The law only requires consideration of the provisions of the General Part, but does not disclose the criteria for such inclusion. Therefore,

the judge remains alone with his experience in assigning the type and amount of punishment for committing a particular criminal offense.

6 The degree of gravity of the criminal offense first of all depends on the provisions of Article 12 of the Criminal Code, which distinguishes criminal offenses of modest severity, moderate gravity, grave and especially grave criminal offenses. In this situation, the principle of humanism is reflected: the non-use of repression against the person who committed the misdemeanorsfor the first time, and the imposition of a more severe punishment on persons who committed several criminal offenses or a serious criminal offense. The degree of gravity of the criminal offense is characterized by the nature and degree of social danger of the deed. Thus, murder and theft vary in the nature of social danger, and theft is 100 UAH. and 1 million UAH vary in degree of social danger.

7 The person is guilty. In the criminal law of Ukraine, there is no single terminology regarding the executor. In addition to the notion of guilty person, there are such concepts as the subject of a criminal offense (Articles 18, 22 of the Criminal Code), a person who committed a criminal offense (Article 88 of the Criminal Code), convicted person (Article 87 of the Criminal Code). In the criminal process quite often speak about the accused. The science of criminal law divides the set of features of the person who committed the criminal offense into two groups. The first group consists of signs of the subject of the criminal offense (all signs of the subject of the criminal offense are taken into account in the structure of the criminal offense and reflected in the sanctions). The second group combines signs that characterize the identity of the offender. These signs may give rise to both to mitigate the punishment and to strengthen it. The guilty person acts as one of the necessary conditions for the Criminal offensean repentance: the characteristics that represent the person as the subject of the criminal offense are included by the legislator in the criminal offense as their constitutive features. These include, first of all, the general features that determine the subject of any criminal offense (age of criminal responsibility, sense of responsibility), certain features of a special subject (official position, the existence of family ties, etc.) and signs, characterizing its previous criminal activity. It is believed that there is a more or less stable set of special features that are characteristic of the executor and need to be clarified in each particular case: psychological and social characteristics of the person, physical and mental state of the person who committed the criminal offense, its social and legal status. Physical properties include gender, age, state of health, the presence of disability, etc. The person's mental qualities include temperament, character, direction of the offender and other circumstances. The legal status combines such circumstances as the achievement of the age from which criminal liability comes, the presence of criminal records, etc. Social status forces the judge to investigate and take into account when sentencing the punishment such data on the executor, such as position, profession, attitude to work, training, public and public duty, colleagues in work, and behavior in the workplace, in society, in everyday life, the implementation of the established in a society of order and discipline, moral principles. At the same time, according to the Supreme Court, the determination of the case and taking into account when imposing a sentence are subject to both data that positively characterize the person of the accused and negative factors, such as evasion from work, abuse of alcohol, bad attitude to work, violation of public system, etc. Circumstances that mitigate and aggravate punishment are various factors pertaining to the executor and the act committed by him and which respectively reduce or increase the social danger of the deed and the person who committed it. Circumstances that mitigate punishment are of great importance for the purpose of punishment.

The presence of several such circumstances gives the court the opportunity to release a person who committed a criminal offense from trial, to impose a milder punishment than the sanction of the article, to choose a more lenient form of punishment in alternative sanctions, and to impose a minimum term foreseen by the sanction articles.

Mitigating Circumstances:

1 For the purpose of imposing a penalty, the following circumstances shall be considered mitigating:

- Surrender, sincere repentance or actively assistance in detecting the offense;
- Voluntary compensation of losses or repairing of damages;
- Providing medical aid or other aid to the injured person after committing the offense;
- The commission of an offense by a minor;
- The commission of an offense by a pregnant woman;
- The commission of an offense in consequence of a concurrence of adverse personal, family or other circumstances;
- The commission of an offense under influence of threats, coercion or financial, official or other dependence;
- The commission of an offense under influence of strong excitement raised by improper or immoral actions of the victim;
- The commission of an offense in excess of necessary defense;
- The undertaking of a special mission to prevent or uncover criminal activities of an organized group or criminal organization, where this has involved committing an offense in any such case as provided for by this Code.

2 If one of the aggravating circumstances is specified in an article of the Special Part of the Criminal Code as an element of an offense that affects its treatment, the court may not take it into consideration again as an aggravating circumstance when imposing a sentence (Article 55, as amended by Act No. 270-VI (270-17) of 15.04.2008).

When imposing a sentence, the court may declare that it is a mitigating circumstance and other circumstances not specified in Article 66 of the Criminal Code.

If one of the circumstances mitigating the punishment is provided in the article of the Special Part of the Criminal Code as a sign of an offense that affects its qualification, the court cannot consider it again when imposing a sentence as such that it mitigates:

- The commission of a crime by a group of persons on the basis of a prior agreement (Article 28, Part. 2 or 3);
- The commission of a crime based on racial, national or religious enmity and hostility;
- The commission of a crime in connection with the performance of official or public duties by the victim;
- Serious consequences caused by the crime;
- The commission of a crime against a minor, elderly or helpless person;
- The commission of an offense against a woman who, to the knowledge of the offender, was pregnant;
- The commission of an offense against a person who was in a financial, official or other dependence on the culprit;
- The commission of an offense through the use of a minor, a person of unsound mind or mentally defective person;
- The commission of an especially violent offense;
- The commission of an offense by taking advantage of a martial law or a state of emergency or other extraordinary events;
- The commission of an offense by a generally dangerous method;
- The commission of an offense by a person in a state of intoxication resulting from the use of alcohol, narcotic, or any other intoxicating substances.

2. Depending on the nature of an offense committed, a court may find any of the circumstances specified in paragraph 1 of this Article, other than those defined in subparagraphs 2, 6, 7, 9, 10, and 12, not to be aggravating, and should provide the reasons for this decision in its judgment.

3. When imposing a punishment, a court may not find any circumstances, other than those defined in paragraph 1 of this Article, to be aggravating.

4. If any of the aggravating circumstances is specified in an article of the Special Part of this Code as an element of an offense, that affects its treatment, a court shall not take it into consideration again as an aggravating circumstance when imposing a punishment.

If any of the circumstances that impose a punishment is stipulated in the Article of the Special Part of the Criminal Code as a sign of a criminal offense affecting its qualification, the court cannot re-consider it when imposing a sentence as imposing it.

7.5 Appointment of a Punishment Lesser than that Prescribed by Law

The legislator gives the court the greatest opportunity to individualize the punishment of the executor. The principle of individualization of punishment is subject to the rule of appointing a milder punishment than provided by law. Thus, the law states that in the presence of several circumstances ment below the lowest limit established for this type of punishment in the Zag pArticle QC The court may also not impose additional punishment, which is required by the sanction of the article of the OC QC as compulsory.

It follows that a judge has the right to impose a milder punishment than provided bu law only for criminal offenses of medium gravity, grave and especially grave crimes. This list doesn't include criminal offenses of minor importance. Such an approach is justified because criminal offenses of a minor importance are criminal offenses for which the term of imprisonment does not exceed two years or the provided alternative punishment.. In this case, the judge can always appoint an alternative punishment or even exempt from serving a sentence with a trial (Article 75 of the Criminal Code).

The legislator identifies two types of sentencing more lenient than prescribed by law: the imposition of punishment is lower than the lower limit and the transition to another, a more lenient form of punishment.

In imposing a punishment below the lowest limit, the judge chooses the type of punishment provided for in the article sanction (alternative sanction), and in the event that the minimum and maximum sentences are determined, the judge may impose a punishment less than the minimum penalty provided for in this article. Thus, for trafficking in human beings or another paid contract for the transfer of human rights, a sentence of 3 to 8 years imprisonment is imposed. When applying the provisions of Article 69 of the Criminal Code on the imposition of a milder punishment than prescribed by law, the judge has the right to impose a sentence of less than 3 years imprisonment. But the judge has no right to go beyond the limits established for this type of punishment in the General Part of the Criminal Code.

The transition to another, a more lenient form of punishment than that provided for by law, is possible taking into account the provisions of Article 51 of the Criminal Code, which defines the system of criminal punishment. According to this system, the court has the right to move to a milder punishment in accordance with the hierarchical construction of the penal system.

7.6 Appointment of Punishment for a Set of Criminal Offenses

In the case of a set of crimes, the court, which imposes a punishment (basic and additional) for each crime separately, determines the final punishment by substituting a less severe punishment by a more severe one or by a complete or partial cancellation of the imposed punishments.

In drawing up sentences, the final punishment for the totality of criminal offenses is determined within the limits established by the sanction of the article of the Special Part of the Criminal Code, which provides for more severe punishment. If at least one of the offenses is intentional, serious or

particularly grave, the court may impose a final sentence for the totality of the offenses within the maximum term established for this type of punishment in the General Part of the Criminal Code. If at least one of the offenses is punishable by life imprisonment, the final penalty for the whole set of offenses shall be determined by including any less severe penalty by life imprisonment.

The main penalty imposed for a set of criminal acts may be accompanied by additional penalties imposed by the court for criminal acts of which the person was found guilty.

7.7 Appointment of Punishment for the Combination of Sentences

If a convicted person is sentenced after being convicted, but has committed a new crime before the commencement of the sentence, the court that imposes a new sentence, in whole or in part, shall add the unexecuted part of the sentence to the previous sentence.

When a sentence is passed in the form of a combination of punishments, the total term of the punishment may not exceed the maximum term established for this type of punishment in the General Part of the Criminal Code. In the formulation of sentences in the form of deprivation of liberty, the total term of imprisonment finally imposed on the aggregate of sentences shall not exceed fifteen years, and in the event that at least one of the offenses is particularly serious, the total term of imprisonment may be more than fifteen years, but shall not exceed twenty-five years. In the case of sentences consisting of life imprisonment and possible less severe punishments, the total term of imprisonment finally imposed on the totality of sentences shall be determined by absorption of less severe punishments by life imprisonment.

The final punishment for the combination of sentences should be greater than the punishment imposed for a new criminal offense, as well as from the unpunished part of the sentence under the previous sentence.

Appointed by at least one of the sentences, additional punishment or unsold part of it by the previous sentence is subject to attachment to the basic punishment, ultimately imposed by a combination of sentences.

Questions:

1 *What is the concept of punishment?*
2 *What is the purpose of punishment?*
3 *Describe the system and types of punishment?*
4 *State the general principles of punishment.*
5 *Describe appointment of a milder punishment than that prescribed by law.*
6 *Describe appointment of punishment for a number of crimes.*

TOPIC 8
Exemption from Punishment and Service

8.1 The Concept of Exemption from Punishment and its Types

1 **The concept of exemption from punishment.** The implementation of the ideas of humanization and differentiation of criminal responsibility in the Criminal Code provided the basis for the existence of the institution to release a person who committed a criminal offense from punishment. Discharge from punishment means the refusal of the state to impose a punishment on a person who was found guilty of a criminal offense by a conviction of a court. Discharge from punishment is important in counteracting criminal offense, since often achieving the goals that are facing criminal law is possible without serving a sentence. His detention may become unnecessary, ineffective, and impair the processes of resocialization of the executor.

2 **The difference between discharge from punishment and exemption from criminal liability**. According to the current Criminal Code, only a person may be released from punishment, which the court found guilty in convicting a criminal offense in a criminal conviction. In this case, one of the differences is the discharge from punishment for release from criminal liability, which, as already noted, may only take place before the conviction is issued by the court and is processed in a procedural way by a court ruling (decree) on the closure of proceedings in connection with the release of a person from criminal liability. In addition, the release of a person from criminal responsibility and release from punishment have different legal grounds, provided in the relevant articles of sections IX and XII of the General Part of the Criminal Code. Finally, a person who was released from criminal responsibility for the commission of a criminal offense is in all cases recognized as having no criminal record. A person who is released from punishment is, in many cases (but not in all), convicted.

3 **Types of release from punishment**. The types of exemptions provided for in Section XII of the General Part of the Criminal Code can be classified according to different criteria, in particular:

1) Depending on the “degree of proximity” of the punishment to the person who has committed the crime, distinguish:

- Exemption from the imposition of a punishment - takes place where the court, by deciding the conviction, at the same time, in the sentence itself, indicates that the punishment will not be imposed on the person, that is, the court pronounces the sentence without imposing a punishment on the guilty person. In particular, such an opportunity is provided by Part 4 of Article 74 of the Criminal Code, according to which a person who has committed a criminal offense of a small or medium severity may be released from punishment by a court judgment if it is recognized that, taking into account faultless conduct and a good attitude to work, this person cannot be considered socially dangerous at the time of trial in court..

- Exemption from serving a sentence imposed by a court occurs in cases where a court sentences a person to imprisonment, but in the same judgment decides that the person will not be punished. Such cases are, for example, provided for in Articles 75 and 79 of the Criminal Code. In addition, release from serving the sentence may also take place some time after the sentence has been pronounced - in the cases provided for in Article 80 QC.
- Exemption from further serving of a sentence imposed by a court occurs when a person, on the basis of a court's conviction, serves the sentence imposed on him by that conviction, but at some point before the completion of the serving of such a sentence, he is released from further serving of it. This type of exemption from punishment, in turn, is divided into two subspecies: the first is related to the fact that a person is exempted from further serving of a punishment without substituting it with another (for example, Articles 81, 83, 84 of the Criminal Code), and the second is related to cases when a person is exempted from further serving of a punishment by substituting it with another (Article 82 of the Criminal Code).

2) Depending on whether the right or duty of the court is the dismissal of a person from the punishment, one distinguishes:

- Mandatory exemptions are those in which the court is required to exempt a person from punishment. These include cases in which the CC implicitly states that a person is exempt from punishment. This is the case, for example, when the statute of limitations for the execution of the sentence has expired (Article 80 of the Criminal Code) or when the person, during the sentence served, suffered from a mental illness that prevented him from being aware of his actions (inaction) or from directing them (Article 184 of the Criminal Code).
- Optional exemptions - those in which the court has the right, but not obliged, to release a person from punishment. These include cases where the CC indicates that a particular person may be exempted from punishment. These are, for example, the types of exemptions provided for in Part 4 of Article 74 and Articles 75, 79 of the Criminal Code and some others.

3) Depending on whether certain conditions for the further conduct of a person exempted from punishment are put forward, one distinguishes:

- Conditional (or non-existent) types of exemption from punishment - those in which certain conditions are imposed on the further behavior of a person during a certain period, the performance of which affects the final nature of such exemption. These include, in particular, the cases provided for in Articles 75, 79 and 81 of the Criminal Code;
- Unconditional (or definitive) types of exemption - those in which no requirements for further behavior of the person are put forward and release from punishment becomes final from the moment of entry into force of the relevant law enforcement act of the court. These include, for example, cases provided for in Part 4 of Article 74, Articles 80 and 82 of the Criminal Code.

4 **A general approach to the characteristics of a particular type of exemption from punishment**. Characterization of a separate type of release from punishment logically begins with the definition of such a type of release from punishment. In addition, since the law often relates the possibility of release from punishment to the types of punishments, their amount and the crimes for which they are assigned, these issues are considered as preconditions for release from punishment. However, the mere existence of the precondition of dismissal is not sufficient for its implementation since each type of dismissal is associated with certain grounds for dismissal, that is, with those legal facts that only give rise to the right or obligation of a court to release a person from punishment. Since a certain group of types of release from the punishment is associated with the requirements for the subsequent conduct of the convict, then the conditions for discharge from punishment or their absence are subject to. After that, the nature of the release, that is, what it is - obligatory or optional, should be established. Finally, the criminal consequences of the release from punishment, which can be both favorable and unfavorable for a person, are determined. This sort of analysis of each type of release from punishment covers all of its criminal-legal characteristics.

5 **The order of release from punishment**. According to Part 1 of Article 74 of the Criminal Code "the release of a convicted person from punishment or its further serving, substitution of a milder, and also mitigation of the imposed punishment, except for release from punishment or mitigation of punishment under the law of Ukraine on amnesty or an act of pardon, can be applied only by a court in cases provided by the Criminal Code". Thus, the legislator himself establishes the general rule that the body competent to release a person from punishment is a court. The procedural order of a court ruling on the release of a person from punishment is defined in the CPC (Articles 7, 407, 4071, 408, 4081, 4082, 4083, etc.). In the event that the Verkhovna Rada of Ukraine adopts an amnesty law, the application of such a law to specific persons and their Discharge from punishment (regardless of whether such persons are suspected, accused, defendant or convicted at the time of entry into force of the law) are also carried out exclusively by the courts. When it comes to pardoning a convicted person, in this case, the corresponding decree of the President of Ukraine is directly enforceable by the body that carries out the punishment without a special court decision.

8.2 Exemption from Punishment on Probation

1 In the Criminal Code of 2001, in comparison with the Criminal Code of 1960, the range of punishments, which may be exempted from serving a probationary sentence, is considerably expanded. If the conditional conviction was possible only in the case of imprisonment and correctional works, now, according to Article 75 of the Criminal Code, exemption from serving a probation sentence is possible in the appointment of such basic punishments as correctional work, servitude limitations for servicemen, restraint of liberty or imprisonment, and, if sentenced to imprisonment, such dismissal is possible in the imposition of a punishment for a term not exceeding five years. As for additional punishments, then Article 77 of the Criminal Code allows the possibility not only of the appointment but also of the actual use of such punishments as a fine, provided that it is provided for by the sanction of the law, which condemns a person, deprivation of the right to occupy certain positions or engage in certain activities and deprivation of military, special rank, rank, rank or qualification class. The law excludes the possibility of appointment in such cases only one additional punishment – the confiscation of property. In addition, for the release of the test, a sufficient reason for this should be established. Article 75 of the Criminal Code describes this ground in a general way, giving the court the opportunity to specify it depending on the circumstances of the case. The law states that release with a probation may take place when the court concludes that, based on the gravity of the criminal offense, the person guilty and other circumstances, the correction of the convict is possible without serving a sentence. The severity of the criminal offense is determined first and foremost by the category of criminal offenses committed by the guilty act (Article 12 of the Criminal Code). The degree of gravity of a criminal offense should be specified taking into account the significance of the object and object of the attack, the nature of the act, situation, means, place and time of its commission, the absence of grave consequences, etc. It is also taken into account whether a criminal offense was committed or unfinished, whether committed in complicity or by one person. The form and degree of guilt, motives and the purpose of the criminal offense are subject to mandatory consideration. It is equally important to take into account the data characterizing the identity of the executor. They can be divided into four groups:

- Circumstances that characterize the behavior of the executor to commit a criminal offense: law-abidingness, preceding the commission of offenses, attitude to work or study, behavior in life, service to the Motherland, etc.;
- Circumstances directly related to the commission of a criminal offense: the initiative, preparation, organization of a criminal offense, the actual role in his commission, etc.;
- Circumstances that characterize the behavior of the executor after committing a criminal offense: assisting the victim, caring for his relatives, etc.;

- Individual characteristics of the person: gender, age, state of health, availability of dependent relatives, as well as features of character: kindness, sensitivity or anger, obfuscation, aggressiveness, skills and predisposition to gambling, drugs, alcohol abuse, etc. other Further, other data are to be taken into account, which, in particular, mitigate the punishment, for example, the commission of a criminal offense under the influence of coercion, threat, or as a result of material, service or other dependence; insignificant degree of person's involvement in a criminal offense; committing a criminal offense as a result of coincidence of severe personal, family or other circumstances, a minor or a woman in the state of pregnancy, a person in a state of strong emotional anxiety; the elimination or the desire to voluntarily eliminate the consequences of a criminal offense or to compensate for the harm done; active assistance in the disclosure of a criminal offense or criminal activity of an organized group; appearances with confession, sincere repentance, etc. All these circumstances, which form the unity of the basis for exemption from serving a sentence with a trial, must necessarily be taken into account by the court in their concrete terms and in their totality. Only such a comprehensive consideration can provide a reasoned conclusion to the court about the possibility of correction of the convicted person without real punishment. This is required by the Plenum of the Supreme Court of Ukraine, which, in paragraph 9 of the resolution of October 24, 2003 No. 7 (as amended on December 10, 2004, No. 18), clarified that the court decision on the release of a convicted person from serving a probationary sentence be properly motivated.

2 Exemption from serving a probationary sentence is always connected with the setting in the sentence of the probationary period, which is an integral part of it. The trial period is a certain period of time during which the control of the convicted person is carried out, and the latter, under the threat of the actual serving of the sentence, is obligated to perform the duties assigned to him and other conditions of the trial. This term includes the threat of the actual execution of a sentence if the convict does not meet the conditions of the trial and the possibility of a final release from serving a sentence and resetting a conviction if the person performs the duties assigned to him. The value of the trial period is also that only during this period the person is convicted and controlled by the enforcement authorities. The trial term disciplines the convict, teaches him to comply with the laws, reminds him that he is not justified, and undergoes a test, the outcome of which depends on his subsequent fate - the release of serving the prescribed basic punishment or his real funeral. The duration of the test period is set out in Part 3 of Article 75 CC in the range from one year to three years. The criterion for its duration in each particular case must be the time required for the convict to prove his correction without actually serving the basic punishment. This criterion must be determined taking into account the nature and gravity of the criminal offense, the type and term of the sentence, the circumstances characterizing the person condemned, etc. The calculation of the trial period begins on the day the judgment is issued, and it is not subject to reduction in an encouraging manner (paragraph 9 of the resolution of the Plenum of the Supreme Court of Ukraine of October 24, 2003, No. 7, as amended on December 10, 2004, No. 18).

3 Exemption from punishment with probation may be associated with the imposition by the court on a particular convicted person of certain duties prescribed by law. Article 76 of the Criminal Code of the Russian Federation contains an exhaustive list of such duties - to ask the victim publicly or otherwise:

- Not to leave Ukraine for permanent residence without the permission of the bodies of the criminal executive system;
- To inform the bodies of the penal enforcement system of any change in place of residence, work or study
- To appear periodically for registration with these bodies;
- Undergo a course of treatment for alcoholism, drug addiction or a disease that poses a danger to the health of others.

If necessary, the court may impose on the convicted person one or more obligations. Control over the fulfillment of such obligations significantly increases the preventive impact on the convicted person and thus the effectiveness of release from custody.

4 Exemption from serving a sentence with a trial for pregnant women and women who have children under the age of seven.

This is a special type of exemption from serving a sentence with trial, provided for by Article 79 of the Criminal Code. In many respects it does not differ from the release from punishment with trial established in article 75 of the Criminal Code, but it has its own peculiarities. First of all, it applies only to pregnant women and women with children under the age of seven. In addition, it is only possible for women who have been sentenced to deprivation of liberty or imprisonment, with the exception of those sentenced to more than five years' imprisonment for grave and particularly grave crimes. Among the conditions that constitute the basis for such release is the pregnancy of the woman or the presence of her children under the age of seven.

It should also be noted that the law gives the court the right to exempt a convicted person from serving not only the main sentence, but also the additional sentence, if it has been imposed.

The length of the trial period also has its own peculiarities. It is determined within the period during which a woman may be dismissed from work in connection with pregnancy, childbirth and child care in accordance with the law (article 179 of the Labor Code) until the age of seven.

Have their peculiarities and legal consequences of such dismissal. They may be favorable or unfavorable. The favorable consequences are the release of the convicted person from serving the basic and additional punishment and the cancellation of the conviction if the probation period has been successfully completed.

There are two types of adverse effects. The first type is that the court, on the recommendation of the supervisory authority, sends the convicted person to serve the sentence in accordance with the court's decision. This can happen if a woman abandons her child, puts it in an orphanage, disappears from her place of residence, avoids raising a child, caring for it, fails to perform her duties as a court, systematically commits violations of administrative sanctions and testifies to her reluctance to go the way of correction. The second type of negative consequences is when the woman commits a new crime during the probation period. In this case, the court orders her to be punished according to the provisions of articles 71 and 72 of the Criminal Code.

8.3 Exemption from Serving the Sentence Due to the Expiration of the Statute of Limitations for the Execution of the Sentence

According to Article 80 of the Criminal Code, exemption from serving a sentence in connection with the expiration of the statute of limitations for the execution of a conviction, shall be understood as the refusal of the state to execute the sentence imposed on a person in cases where it has not been executed within a certain period of time from the date of the entry into force of the verdict.

A prerequisite for such a release from serving a sentence is the conviction of a person for any offense with the imposition of any type of basic punishment of any size to any extent. The presence, type and amount of additional punishment do not affect the premise of this type of dismissal, in accordance with Part 2 of Article 80 of the CC, the limitation period for additional punishments is determined by the basic punishment imposed by the court sentence.

And only as an exception in accordance with Part 6 of Article 80 of the Criminal Code does not constitute the precondition for this type of release of a person's conviction of any kind or amount of punishment for criminal offenses against the peace and security of mankind provided for in Articles 437-439 and Part 1 of Article 442 of the Criminal Code. This exception is caused by those international obligations of Ukraine, which have been determined in advance and the exception provided for in Part 5 of Article 49 of the Criminal Code.

The reason for this type of release from serving a sentence is a successful termination of the limitation period for the execution of the conviction. This term begins to run from the moment such a judgment becomes effective and lasts all the time until the sentence is executed for any reason, but not related to the evasion of the person from its execution. Such reasons can be, for example, the inactivity of the state bodies entrusted with the execution of the sentence, the treatment of the person who after the sentence, but before the beginning of its implementation fell ill on mental illness, which deprives her of being able to realize or control their actions (inaction), various force majeure circumstances and so on.

Duration of the limitation period for the execution of a conviction depends on the severity of the offense committed by the person, the type (and when it comes to deprivation of liberty, and the size) of the punishment imposed on her and determined by Part 1 of Article 80 CCIn particular, five differentiated time limits are established:

1 Two years in the case of a person sentenced to a penalty less severe than deprivation of liberty, regardless of the severity of the offense committed;

2 Three years in the case of a person sentenced to a penalty involving deprivation of liberty, regardless of the severity of the offense, or to imprisonment for a minor offense;

3 Five years in the case of a person sentenced to imprisonment in the form of deprivation of liberty for a medium crime, as well as sentenced to imprisonment for a term of up to five years for a serious crime;

4 Ten years in the case of a person sentenced to deprivation of liberty for more than five years for a serious offense, as well as sentenced to deprivation of liberty for up to ten years for a particularly serious offense;

5 Fifteen years in the case of a person sentenced to imprisonment for a term of more than ten years for a particularly serious criminal offense.

If a person is convicted of a combination of criminal offenses, the limitation period for the execution of the conviction is determined on the basis of the final sentence, taking into account the most serious criminal offense included in the aggregate.

The expiration of the limitation period is considered to be safe if the person during such a period did not evade the serving of the punishment imposed on her and did not commit new criminal offenses of moderate, severe or especially grave nature. Otherwise, the following may occur:

- Suspension of the limitation period for the execution of a conviction, which occurs from the moment when the convicted person evade the serving of a sentence. In these cases, according to Part 3 of Article 80 CC of the limitation period does not expire during the entire period of evasion, and its course is restored from the day the convict appeared for serving a sentence or from the day of his detention. In cases of suspension of the limitation period for the execution of a conviction, the period of time which has elapsed until the stop does not lose its legal value and is taken into account in the general period of limitation, together with the interval of time which will expire after the restoration. It should be borne in mind that in this case, unlike cases of suspension of the limitation periods provided for in Article 49 of the CC, the law does not limit the maximum duration of a term in case of a stop. However, according to Part 3 of Article 80 CC in the event of suspension of the limitation periods provided for in paragraphs. 1-3 part 1 of this article, such terms are doubled.
- The limitation period for the execution of a conviction is interrupted in cases when before the expiration of the limitation period (both an expiring and interrupted) the convicted person commits a new criminal offense of moderate, severe or especially grave nature. Calculation of the limitation in this case begins from the date of the commission of the new criminal offense. That is, from the day of commission of a new criminal offense, the limitation period of bringing a person to criminal liability for this criminal offense (Article 49 of the Criminal Code) and the limitation period for the execution of a conviction for a previous criminal offense begin to expire. The commission of a criminal offense of a minor nature does not interrupt the expiration of the statute of limitations for the execution of a conviction.

8.4 Parole

According to Article 81 of the Criminal Code, conditional release from serving a sentence should mean the release of a person from further serving of a sentence by a court appointed by it, which in fact already takes place under the condition not to commit a new criminal offense within the period remaining until the moment of termination of the sentence. Questions on the use of parole release from serving the sentence are explained in the Resolution of the Plenum of the Supreme Court of Ukraine dated April 26, 2002, No. 2 “On conditional release from serving the sentence and substitution of the unserved part of the sentence with a milder one” (hereinafter - the Resolution of April 26, 2002, No. 2)..

The prerequisite for early release from serving a sentence under Part 1 of Article 81 of the Criminal Code is serving one of the five basic types of punishment: correctional work, restriction of military service, restriction of freedom, detention in a military disciplinary battalion, or imprisonment. Persons serving other basic forms of punishment may not be released from them on parole. In addition, in accordance with the above-mentioned provision of the Criminal Code, a person may be suspended in advance, in whole or in part, and from serving additional punishment.

According to the statement of the Supreme Court of Ukraine, such additional punishment, which can be released early (i.e. before the expiration of the term), is only deprivation of the right to occupy certain positions or engage in certain activities (paragraph 7 of the Resolution dated April 26, 2002, No. 2).

The condition of early release from serving a sentence is recognized by bringing the convicted person to correction by diligent conduct and attitude to work. It consists of two elements, each of which is mandatory for its availability.

The first element of the basis (the so-called material element) in accordance with Part 2 of Article 81 of the Criminal Code is the convicted person's conviction of his correction in good faith and attitude to work. When sentencing a correction, it is necessary to understand the achievements and consolidation of such a situation, in which the person does not have to expect the commission of new criminal offenses in the future. In other words, at a certain stage, till the end of serving the sentence, one of its goals is already achieved - correction of the convicted person, in connection with which further serving of the sentence is inappropriate.. The reason of the convicted person of his correction must be confirmed by good faith behavior, exemplary observance of the regime, conscious observance of discipline, instructions of the administration, the presence of incentives and absence of penalties, etc., and attitude to work - honest and complete fulfillment of their duties, improvement of qualifications, observance of the rules, safety of production, etc.

The second element of the basis (the so-called formal, or formalized, element) in accordance with Part 3 of Article 81 of the Criminal Code is a conviction by a convicted person of a certain part of the punishment imposed on her. The size of this part depends on the severity of the criminal offense committed by the person, the form of guilt with which this criminal offense was committed, the presence of relapse and some other factors. In particular, for the presence of this element of the grounds the person must leave:

1 Not less than half the length of the sentence imposed by the court for a minor or moderate criminal offense, as well as for a careless, serious criminal offense;

2 Not less than two-thirds of the sentence imposed by the court for an intentional serious criminal offense or for an accidental or particularly serious criminal offense, as well as if the person previously served a sentence in the form of deprivation of liberty for an intentional criminal offense and, before being released or convicted, committed intentional misconduct; who was sentenced to imprisonment;

3 Not less than three-quarters of the sentence imposed by the court for an intentional particularly serious criminal offense, as well as a sentence imposed on a person who was previously released on probation and who, for the unforeseeable part of the sentence, re-offended intentionally.

The nature of this type of release from serving a sentence is optional - in the presence of preconditions and grounds for such dismissal, the court has the right, but not obliged to do so.

The criminal consequences of the parole release from serving a sentence depend on the nature of the person's behavior during the specified probationary period and may be both favorable to the individual and unfavorable.

8.5 Substitution of the Unserved Part of the Sentence

The concept of substituting the unserved part of the sentence with a more lenient one is determined by the provisions of Article 82 of the Criminal Code. Replacement of the unexecuted part of the sentence with a more lenient one means the release of the convicted person from further serving the sentence imposed on him by the court of a certain type of punishment by substituting the unexecuted part of this punishment with another, more lenient form of punishment. Questions of the use of substitution of the unexecuted part of the sentence with a more lenient one are explained in the Resolution of the Plenum of the Supreme Court of Ukraine dated April 26, 2002, No. 2.

A prerequisite for substituting the unserved part of the sentence with a milder is the actual serving of the convicted person of the basic punishment in the form of restraint of liberty or imprisonment. A person who is serving another type of basic punishment cannot be released from his further serving by substituting his undisclosed part with another, more lenient form of punishment. In addition, according to Part 2 of Article 82 of the Criminal Code in case of substitution of the undisputed part of the basic punishment of a milder convict may also be released from additional punishment in the form of deprivation of the right to occupy certain positions or engage in certain activities. According to the explanation of the Plenum of the Supreme Court of Ukraine, such an exemption from additional punishment is unconditional (paragraph 2, paragraph 7 of the resolution of April 26, 2002, No. 2).

The reason for substituting the unpatented part of the sentence with the milder consists of two elements, each of which is mandatory.

The first element of the basis (the so-called material element), in accordance with Part 3 of Article 82 of the Criminal Code, is that a convicted person should be on the path of correction, that is, in the process of serving a sentence on a convict, those features should be manifested, the further development of which will minimize the possibility of committing a new criminal offense. However, the consolidation and development of the already achieved result still requires the continued serving of sentenced prisoners, albeit milder, as compared to what he still served. Achievement of such a state should be distinguished from cases where the convicted person has already fully proven his correction by his conscientious behavior and attitude to work - such a state is an element of parole from serving the sentence.

The second element of the basis (the so-called formal, or formalized, element) in accordance with Part 4 of Article 82 of the Criminal Code, is the conviction of a certain part of the sentence imposed on him. The size of this part depends on the severity of the criminal offense committed by the person, the form of guilt with which this criminal offense was committed, the presence of relapse and some other factors. Parts of the punishment to be held for the presence of this element of the grounds are differentiated according to the same characteristics as in the parole release, but in this case they are smaller. In particular, for the presence of this element, the grounds for dismissal must be dismissed by:

- Not less than one-third of the sentence imposed by the court for a minor or moderate criminal offense, as well as for a an inadvertent, serious criminal offense;
- Not less than one-half of the sentence imposed by the court for an intentional serious offense, or for an inadvertent or particularly serious offense, as well as in the case where the person has previously served a term of imprisonment for an intentional offense and, before being released or sentenced, has committed an intentional offense for which he was sentenced to imprisonment;

- Not less than two-thirds of the term of the sentence imposed by the court for an intentional particularly serious criminal offense, as well as the sentence imposed on a person who was previously released on conditional release and committed a new intentional criminal offense for the unforeseen part of the sentence.

If these conditions and reasons exist, the CC court, in accordance with Part 1 of Article 82, shall replace the unexecuted part of the sentence with another sentence in accordance with the following rules:

1 The punishment with which the unexecuted part of the punishment previously imposed on a person is replaced must be softer, that is, it must be higher than the punishment to be replaced, according to the "levels of punishment" in Article 51 of the CC. For example, if a person is serving a term of imprisonment, it may be replaced by restriction of liberty, correctional work, arrest, etc.

2 This punishment must necessarily be terminated. Therefore, the unexpired portion of a sentence of imprisonment or restriction of liberty, such as a fine or confiscation of property, cannot be substituted.

3 The conditions for imposing a more lenient form of punishment shall be determined within the limits established by the General Part of the Criminal Code for this form of punishment. For example, if the unserved part of imprisonment is substituted by restriction of liberty, the term of the latter cannot be less than one year and more than five years;

4 The term of a more lenient punishment shall not exceed the term of the unserved part of the punishment previously imposed by the court verdict. For example, if a person was sentenced to three years' imprisonment with restriction of freedom, this more lenient type of punishment cannot be replaced with less than one year (the minimum term of this type of punishment) and more than three years (the term of the unexecuted part of the punishment).

This type of release from serving the sentence is optional - if there are preconditions and reasons for such release, the court has the right, but is not obliged to do so.

8.6 Exemption from Punishment for Pregnant Women and Women with Children under Three Years of Age

The concept of exemption from serving sentences for pregnant women and women who have children under the age of three is determined on the basis of Article 83 of the CC. The exemption from serving sentences for pregnant women and women who have children under the age of three is understood as the refusal of the state to further punish the said category of convicts, provided that they bring their correction and honestly fulfill the maternity duty.

A prerequisite for the release from serving the sentence of pregnant women and women who have children under the age of three, in accordance with Part 1 of Article 83 of the Criminal Code is their basic punishment in the form of restraint of liberty or imprisonment, in addition to serving prison sentences in the form of imprisonment imposed by the court for a term of more than five years for intentional grave and especially grave criminal offenses. Women who serve other types of punishment or serving a term of imprisonment of more than five years prescribed for intentional grave or particularly grave criminal offenses cannot be released from punishment on the basis of Article 83 of the CC.

The grounds for exemption from serving sentences for pregnant women and women with children under the age of three consist of two elements, each of which is compulsory.

The first element of the grounds under Part 1 of Article 83 of the Criminal Code is a woman's pregnancy, which occurred while she was serving her sentence, or the birth of her child. A woman who had a child at the time of conviction (in which case it was possible to apply Article 79 of the Criminal Code) or adopted a child while serving her sentence cannot be released under Article 83 of the Criminal Code.

The second element of the base in accordance with Part 2 of Article 83 of the Criminal Code means that a convicted woman has a family or relatives who have agreed to live with her, or that the convicted person has the opportunity to provide appropriate conditions for the upbringing of the child. A woman who does not have a family or a relative who agrees to live with her and cannot independently provide proper conditions for the upbringing of the child (for example, he does not have an orderly dwelling, a legitimate source of livelihood, etc.) cannot be released from further serving a sentence in the event of her pregnancy or the birth of a child during the serving of a sentence.

The condition for the release of pregnant women and women with children under the age of three is that such a woman should correct herself and honestly fulfill her parental responsibilities. For such a woman, a special trial period is established (although this term is not used in the law), which lasts from the moment of release from serving a sentence until the expiration of the period for which a woman may be dismissed from work in connection with pregnancy, childbirth and, as a rule, until the child reaches the age of three. If the child dies before the age of three, the probationary period for the mother of such a child ends upon her death.

Exemption from serving a sentence for pregnant women and women with children under the age of three is optional. This means that the court has the right, but not the obligation, to grant such a release, provided that the conditions and reasons are met.

8.7 Exemption on Medical Grounds

The concept of exemption from serving a sentence for illness: Article 85 of the Criminal Code provides for four different types of exemption from serving a sentence for a disease, the characteristics of which are to some extent different. The first type is the refusal of the state to further punish the person who became ill with a mental illness during his occupation (Part 1 of Article 84 of the Criminal Code). The second type is the refusal of the state to further punish the person who became ill with a serious illness (other than mental illness) during his occupation (Part 2 of Article 84 of the Criminal Code). The third type is the refusal of the state to carry out the punishment imposed on a person who, after committing a crime, became ill with a serious illness (except for mental illness) (Part 2 of Article 84 of the Criminal Code). The fourth type is the refusal of the state from further execution of a punishment concerning a serviceman who has been declared unfit for military service due to his state of health (Part 3 of Article 84 of the Criminal Code). The following description of exemption from serving a sentence on the grounds of illness should be made separately for each of its named types. Some issues of exemption from serving a sentence are explained in the Resolution of the Plenum of the Supreme Court of Ukraine dated September 28, 1973, No. 8 “On the practice of using the courts to exempt convicted persons who have suffered from a serious illness” (hereinafter - Resolution of the Supreme Court of Ukraine dated September 28, 1973, No. 8), in the application of which it should be taken into account that it was adopted at the time of the Criminal Code of 1960.

The prerequisite for the first type of release from serving a sentence for illness is the actual detention of a person by any punishment imposed by a court. A prerequisite for the second type of release from serving a sentence for illness is the actual detention by a person appointed by its court of punishment, the subsequent occurrence of which is impeded by a certain serious illness. The preconditions for this type of release from punishment of the person serving such punishments as deprivation of the right to occupy certain positions or engage in certain activities, deprivation of military or special rank, rank or qualification class are not created, since no illness can prevent their occurrence. The prerequisite for the third type of release from serving a sentence for a disease is the conviction of a person with the imposition of such a sentence, which would prevent the occurrence of a serious disease present in such a person. The conditions for the second and third types of release are generally similar. The difference between them lies only in the fact that in the second kind of release from serving a sentence, such punishment already takes place person, and in the third - it is only

determined by the court and still does not happen. Finally, the condition for the fourth type of release from serving a sentence is the actual serving of the sentence by the convicted person with the main punishment in the form of a servitude limit for servicemen, an arrest (which takes place in the guardhouse) or detention in a disciplinary battalion.

The basis of the first type of release from serving a sentence for an illness is the recognition of a person's illness while serving a sentence for a mental illness, which deprives him of the ability to realize or control his actions (inaction). They refer to those mental illnesses and at the stage of their development, the presence of which in a person, for example, when committing a socially dangerous act, gives grounds for its recognition as insolent. For this reason, Part 1 of Article 84 of the Criminal Code stipulates that a court may impose compulsory medical measures in accordance with articles 92-95 of the Criminal Code on a person who is released from serving a sentence for mental illness.

The reason for the second type of exemption from serving a sentence for a disease is the recognition of a person's disease while serving a sentence for another (non-psychological) serious disease, which impedes the punishment. “The list of diseases, which are the basis for submission to courts of materials on release of convicts from further imprisonment” was approved by the joint order of the State Department of Ukraine for Execution of Sentences and the Ministry of Health of Ukraine dated January 18, 2000, No. 3/6.

It should be noted that the mere fact of a serious illness, which, however, does not prevent further prosecution or can be cured during the course of serving a sentence, does not constitute grounds for this type of exemption from punishment. Therefore, the law requires the court to decide that a particular illness prevents a person from serving a sentence, taking into account the seriousness of the crime, the nature of the illness, the convicted person and other circumstances of the case (Part 2 of Article 84 of the Criminal Code). Pursuant to paragraph 2, subparagraph 2, of Resolution No. 8 of September 28, 1973, the court may exempt convicted persons from serving their sentences in places of deprivation of liberty if they have fallen ill while serving their sentences and this illness prevents them from serving their sentences, i.e. if further detention in places of deprivation of liberty endangers their lives or may lead to serious deterioration of their health or other serious consequences. This also applies to those who became ill as a result of a conviction, but during their sentence they became ill as a result of the progression of the character specified in the List of Diseases.

The reason for the third type of release from serving a sentence is the illness of a person after committing a crime for any serious illness (other than mental), which, in the opinion of the court, will prevent him from serving his sentence. In this case, the court must also conclude that a certain illness will prevent a person from serving a sentence based on the severity of the crime, the nature of the illness, the convicted person and other circumstances of the case (Part 2 of Article 84 of the Criminal Code).

The reason for the fourth type of exemption from military service due to illness is the recognition of a serviceman as unfit for military service due to his state of health. The list of illnesses for which the Military Medical Commission may declare a serviceman unfit for further military service is given in Appendix No. 1 "List of illnesses, conditions and physical defects determining the degree of fitness for military service in the Armed Forces of Ukraine" to the Regulation on Military Medical Examination and Medical Examination in the Armed Forces of Ukraine, approved by the Order of the Minister of Defense of Ukraine dated January 4, 1994, No. 2.

The condition for exemption from serving a sentence on the grounds of illness has not been established for any of its four types of laws. In other words, all four types of exemption from serving a sentence for illness are unconditional.

By their nature, the first and fourth types of exemption from serving a sentence for illness are mandatory, and the second and third are optional.

8.8 Exemption from Punishment on the Basis of the Law of Ukraine on Amnesty or an Act of Pardon

The concept of release from punishment in connection with amnesty is defined on the basis of a systematic analysis of Articles 85 and 86 of the Criminal Code and the Law of Ukraine "On the Application of Amnesty in Ukraine". Discharge from punishment in connection with amnesty should be understood as the refusal of the state to apply to a person who has committed a criminal offense, the court appointed by it to punish him, or the refusal of the state to further execution of the sentence against such person. It should also be noted that under the Amnesty Law a person who has not yet been sentenced by a court may be released from criminal liability.

In accordance with Part 3 of Article 92 of the Constitution of Ukraine, amnesty is proclaimed by the law of Ukraine. The peculiarity of amnesty laws is that they are adopted only by the Verkhovna Rada of Ukraine and cannot be adopted by an all-Ukrainian referendum (Article 74 of the Constitution of Ukraine), and the Verkhovna Rada of Ukraine itself can adopt them no more than once during a calendar year (Article 6 of the Law "On the Application of Amnesty in Ukraine").

The prerequisite for release from punishment under amnesty is conviction of a person for committing a criminal offense with the appointment of a certain type and degree of punishment, with the exceptions established by the Law "On Amnesty in Ukraine" and with the clarifications (peculiarities) provided by the specific law on amnesty. In particular, in accordance with Part 1 of Article 3 of the Law "On Amnesty in Ukraine", amnesty shall not be granted: to persons sentenced to life imprisonment; to persons with two or more convictions for committing serious crimes; to persons convicted of particularly dangerous crimes against the state, banditry, intentional homicide under aggravating circumstances, etc.

Specific amnesty laws may also include additional categories of persons not covered by the amnesty, or determine only the categories of persons to whom it applies, or link the application of an amnesty to a person's conviction only to a certain type of punishment or to a certain part of a person's imprisonment. In addition, in the cases specifically provided for by the amnesty law, the precondition for the release of a person from punishment may be supplemented by requirements concerning his conduct while serving the sentence.

The reason for release from punishment in connection with amnesty is the entry into force of the Law of Ukraine on Amnesty.

In the presence of these conditions and reasons for refusal of the state to prosecute the person punishment imposed on her can be carried out by:

- Releasing a person from further serving a sentence without substituting it with another form of punishment;
- Exempting a person from further serving a sentence by substituting it with another, more lenient form of punishment;
- Reducing the part of the person who did not serve his part of the sentence.

According to Part 1 of Article 5 of the Law "On the Application of Amnesty in Ukraine" of persons subject to an amnesty may be exempted from serving both the basic and additional punishment imposed by the court.

The condition for the release from punishment in connection with the amnesty is not provided by the legislation of Ukraine. No special requirements for the conduct of persons released from punishment under the amnesty, depending on which execution would be put at the expiration of such dismissal, is not established.

The nature of the release from punishment in connection with the amnesty is mandatory - the court is obliged to release from the punishment of every person covered by the law on amnesty.

The concept of discharge from punishment in connection with pardon is determined on the basis of a systematic interpretation of the provisions of Articles 85 and 87 of the Criminal Code, as well as the Regulations on the implementation of pardon, approved by the Decree of the President of Ukraine dated July 19, 2005, No. 1118/2005. According to it, pardon is a refusal of the state, represented by the

President of Ukraine, to further execute the punishment of a convicted person sentenced by a court. Unlike amnesty, which is declared by the law of Ukraine for a certain circle of unnamed (non-personified) persons, pardon is carried out by the decree of the President of Ukraine for a specific (personified) person convicted of a criminal offense.

In addition, we should note that according to paragraph 1 of Article 44 of the Criminal Code of Ukraine, even a person who has not yet been convicted of a crime may be exempted from criminal liability in the form of a pardon.

Condition of exemption from punishment in the form of pardon consists of two obligatory elements: material and formal. The material element of the condition is the conviction of the person with the imposition of punishment, as well as its actual implementation. The formal element of the condition is the existence of an application for a pardon filed with the Secretariat of the President of Ukraine. Pardon petitions may be filed by

- Persons convicted by Ukrainian courts and serving their sentences in Ukraine;
- Persons convicted by foreign courts and transferred to Ukraine to serve their sentences without the condition of non-application of a pardon;
- Persons convicted by courts of Ukraine and transferred to a foreign state to serve their sentence, if that state has agreed to recognize and execute the decision on pardon taken in Ukraine;
- Defenders, parents, spouses, children, legal representatives of persons referred to in paragraphs “a”, “b”, “c”;
- Civil organizations, etc.

The grounds for exemption from punishment in the form of pardon shall be the entry into force of a corresponding decree of the President of Ukraine on pardon.

If these conditions and reasons for pardon are given, the President of Ukraine by his decree may

- Replace a person sentenced to life imprisonment with this type of punishment in the form of imprisonment for a period of twenty-five years;
- Release a person sentenced to a certain type of punishment (other than life imprisonment) from further serving this punishment without replacing it with another type of punishment.
- Release a person sentenced to a certain type of punishment (except life imprisonment) from further serving this punishment, replacing it with another, softer type of punishment;
- Reduce the uncompleted part of the sentence.

By its nature, pardon is optional, if there are preconditions and reasons for such pardon, the final decision on pardon is at the discretion of the President of Ukraine.

There are no conditions for release from punishment in connection with pardon in the Criminal Code. Therefore, in the case of pardon, no requirements for the further conduct of the pardoned person, depending on the execution of which the final sentence of his release from punishment would be imposed, can be made.

Questions:

1 Give the concept of pardon and its types.

2 Define the term “parole”.

3 Define the term “release from punishment due to the expiry of the statute of limitations”.

4 Define the concept of parole.

5 Give the notion of discharge from punishment for pregnant women and women with children under three years of age.

6 Give the concept of release on medical grounds.

7 Give the concept of exemtion from punishment on the basis of the Law of Ukraine on amnesty or an act of pardon.

TOPIC 9
Measures Under Criminal Law

9.1 The Concept and Purpose of Involuntary Medical Treatment

The purpose of coercive measures of a medical nature is to prevent the commission of new socially dangerous acts or to correct convicts in the case of the use of coercive medical measures against them.

Coercive medical measures are state coercive measures in the form of various medical and rehabilitative measures ordered by the court in criminal proceedings against persons with various mental disorders who have committed socially dangerous acts, with the aim of treating such persons and preventing them from committing new socially dangerous acts, and with strict observance of the inviolability of their rights and legitimate interests.

Coercive medical measures have a double nature. On the one hand, they are coercive, i.e. legal, measures; on the other hand, they are medical measures, since their content is reduced to diagnostic examination, treatment, clinical supervision and rehabilitation measures.

Coercive measures of a medical nature cannot be considered as punishment, since their purpose and methods are fundamentally different, but they are coercive because they are imposed and terminated only by the court, regardless of the consent of the patient or his legal representatives.

Coercive measures of a medical nature are applied to mentally ill persons who, as a result of their mental disorder, constitute a danger to the public and commit socially dangerous acts. Medical measures are not punitive in nature, do not constitute a criminal record, and do not constitute a full sentence.

The use of coercive measures of a medical nature is the right and not the duty of the court.

The appointment of coercive measures of a medical nature is possible if the court establishes a number of conditions:

1 It is established that a person has committed a socially dangerous act which has the characteristics of a specific criminal offense.

2 It is established that, at the time of committing the crime, the person was in a state of insanity or limited responsibility, or that after committing the crime, the person became ill with a mental illness that excludes the possibility of imposing or enforcing punishment.

The person is in such a mental condition that he/she is a danger to himself/herself or others: Coercive medical measures cannot be applied to a person who has committed socially dangerous acts in a state of insanity, or who, after committing a crime, has become mentally ill, but before being sentenced has recovered, or whose mental state has changed to such an extent that he or she is no longer socially dangerous.

When applying coercive measures of a medical nature, the court has no grounds for determining the duration of coercive treatment, since the question is not about the duration of treatment, but about the state of health. It should also be noted that the question of the dependence of the duration of compulsory treatment on the nature and severity of the offense is inadmissible.

Only the peculiarities of the person's mental condition and the resulting danger to himself and others determine the duration of compulsory treatment. Therefore, there may be cases when a mentally ill person who has committed a crime of insignificant gravity may be subjected to compulsory treatment

for a long period of time, while another person who has committed a grave or particularly grave crime may not be subjected to compulsory treatment at all.

The conclusion of the forensic-psychiatric examination of the nature and severity of the disease and the choice of the type of compulsory treatment for a mentally ill person has the nature of a recommendation for the court, since the examination does not take into account the severity of the committed act, which is the competence of the court.

9.2 Persons Subject to Involuntary Medical Treatment

Article 93 of the Criminal Code clearly specifies the circle of persons to whom the court may order coercive measures of a medical nature. The list is opened by persons who committed socially dangerous acts in a state of insanity and on the basis of Part 2 of Article 19 of the Criminal Code are exempted from criminal liability. This category includes persons with whom they have access to socially dangerous acts of a wide range of mental disorders (chronic mental illness, temporary mental disorders, dementia, and other painful states of the psyche) that deprived them of the ability to realize their actions or to direct them.

The use of compulsory medical measures is possible for persons suffering from a mental disorder, due to which they were not able to fully understand and control their actions during the commission of a criminal offence, and therefore fall within the scope of article 20 of the Criminal Code. The actions of such persons are clearly recognized as a punishable offense. The execution of the latter may be combined with the use of coercive medical measures, in which its fundamental difference from the application of such measures to the persons specified in paragraphs 1 and 3 of Article 93 of the CC.

Compulsory medical measures under Part 2 of Article 20 of the Criminal Code should not be applied to all persons found guilty by the court, but only in cases where the mental disorder may be dangerous “to oneself or others”.

Only one type of compulsory medical treatment may be applied to persons who have committed a criminal offense in a state of limited mental responsibility - provision of outpatient psychiatric care in a compulsory manner (in accordance with parts 3, 4 and 5 of Article 94, other types of compulsory medical measures are applied to mentally ill persons, whose category does not include persons with limited dignity). The peculiarity of compulsory outpatient psychiatric care for persons with limited legal capacity is that it is provided at the same time as the punishment they receive. If the punishment includes deprivation of liberty, the execution of compulsory medical measures is the responsibility of the medical service of the law enforcement bodies. If the punishment does not involve deprivation of liberty, the implementation of compulsory outpatient treatment relies on psychiatric health care facilities.

A group of persons specified in Part 3 of Article 93 of the Criminal Code, combines the fact that they committed a criminal offense in a state of integrity and found guilty of it, and mental illness in some developed until the sentence, while in others - after sentencing during the serving of punishment. In the first cases, mental illness impedes the ability to understand the content of the indictment, to testify, to exercise its protection, to understand the meaning of punishment, that is, such persons cannot, due to their mental state, participate in procedural actions. In other cases, mental illness impedes the ability to realize the social danger of the executor and the meaning of the punishment imposed, and thus the purpose of punishment cannot be achieved, which makes its execution meaningless. Forced measures of a medical nature may be applied after serving part of the punishment and may be replaced by a punishment if the recovery occurred and the expiration of the limitation period.

9.3 Types of Involuntary Medical Treatments: Its Continuation, Modification, or Termination

Article 94 of the Criminal Code provides a list of types of compulsory medical measures and types of psychiatric institutions in which they are carried out. The difference between them is the nature of restrictions on the rights and freedoms of the individual and the specifics of supervision: the minimum restrictions in the provision of outpatient psychiatric care in a compulsory order and more significant in the compulsory treatment in psychiatric hospitals, which is provided with the organization of ordinary, increased and strict supervision. Establishment of differentiated regimes of restraint of mentally ill persons who have committed socially dangerous acts, aimed at eliminating the possibility of their committing new socially dangerous acts.

Criteria for choosing a court of a form of coercive measures of a medical nature, provided for in Part 1 of Article 94 of the Criminal Code, depend on the nature and severity of the disease, the seriousness of the offense, taking into account the danger of a mentally ill person and others.

In any case, when a court chooses the type of coercive measures of a medical nature, it is necessary to assess the social danger of a patient, which is defined as the risk of a patient repeatedly committing a socially dangerous act. The degree of social dangerousness of mental illness is determined on the basis of the analysis of the severity of the committed act and the type of its social dangerousness (active or passive), taking into account the possibility of repetition of socially dangerous acts.

The provision of outpatient psychiatric care under a compulsory order is a new type of compulsory medical measure for domestic legislation. The Criminal Code does not indicate specific signs of mental disorder as a basis for the appointment of compulsory outpatient psychiatric care.

It is emphasized that the main condition is the mental state of a person who does not need to be admitted to a psychiatric hospital, i.e. for which it is possible to carry out compulsory systematic supervision and necessary medical and rehabilitative measures on an outpatient basis. This type of compulsory treatment can be applied to persons who are able to understand the content of the compulsory event and organize their behavior in an outpatient setting in accordance with the doctor's requirements.

A psychiatric facility with routine supervision is intended for mentally ill patients who, because of their mental condition and the nature of the socially dangerous act committed, require compulsory treatment, but without significant restrictions or increased supervision.

A psychiatric facility with intensive supervision is designed for mentally ill patients who require intensive care and treatment, but who have not committed socially dangerous acts against the lives of others and do not pose a threat to society.

A closely supervised psychiatric facility is intended for mentally ill patients who, because of their mental condition and character, pose a particular danger to society, given the high risk of committing aggressive acts against the lives of others.

Article 94 of the Criminal Code does not contain any indication of the psychological state of persons subject to coercive measures of a medical nature, as this is the competence of forensic psychiatric experts. The conclusion of a forensic psychiatric examination of a person's mental state is the legal basis for the application of coercive measures of a medical nature, but, like any expert opinion, it requires assessment by a court. The recommendations of experts are not binding on the court. The court, guided by the provisions of the Criminal Code and the Code of Criminal Procedure, makes its own decisions. The court does not indicate the name of a particular psychiatric institution where the executioner should be treated. The court decision indicates the type of compulsory medical measures. The choice of a particular psychiatric institution is made by the health authorities, taking into account the nature of the compulsory medical measures and the place of residence of the person for whom they

are intended. The provision of outpatient psychiatric care is limited for convicted persons sentenced to imprisonment and detained at the place of detention. The court does not determine the conditions of treatment.

If the court finds that a person's mental condition does not pose a danger to himself or others, it may transfer the patient to the care of relatives or guardians under compulsory medical supervision. Such medical supervision is a non-compulsory medical measure. Non-compulsory measures are imposed by the court, but unlike compulsory measures, in which the appointment, termination and control of the conduct are carried out by the court, these measures of a medical nature are provided and controlled only by health authorities.

The conditions for the use of coercive measures of a medical nature in cases of mental illness are determined by the peculiarities of the mental condition, the severity of the illness and its course.

The main criterion for considering the use of coercive medical measures is the elimination of the patient's danger to the public due to mental disorders.

Coercive measures of a medical nature shall be terminated in case of full recovery of a person, constant improvement of his mental condition or such a change in the mental condition that the preliminary danger of this person to other persons completely disappears or significantly changes. It should be remembered that the disappearance or reduction of social danger can occur not only in the case of improvement of the mental condition, but also as a result of its deterioration.

Gradual abolition of coercive medical measures by replacing their more severe form with a less severe one is not obligatory.

The application of the type of coercive measures chosen by the court continues in the absence of a steady improvement of the mental condition of the patient, the absence of a positive dynamics of those psychopathological phenomena, which were associated with a socially dangerous act.

The procedure for reviewing the circumstances indicating the need to stop the use of coercive measures of a medical nature or the procedure for changing their nature is described in detail in Part 2 of Article 95 of the CC. The establishment of the maximum period of periodic examination of a patient by the psychiatry commission "at least once every six months" introduces a fundamentally new legal norm - the continuation of the use of coercive measures of a medical nature each time for a period that cannot exceed six months.

The regulation of the procedure for the court's decision on the prolongation, modification or termination of coercive medical measures by the legal norms of the current Criminal Code guarantees the protection of the rights of persons suffering from mental disorders.

As stated in Part 2 of Article 95 of the Criminal Code, the procedure for the continuation or modification of compulsory measures of a medical nature is also applied to persons who have committed a criminal offense in a state of conviction but were suffering from a mental illness prior to the pronouncement of the sentence, and to persons who have become mentally ill while serving a sentence. Thus, in case of recovery from mental illness after completion of compulsory medical measures, such persons are punished accordingly on general grounds or may be subject to further punishment. At the same time, the time during which persons were subjected to compulsory medical measures shall be credited to the term of the sentence imposed or restored (Part 4 of Article 84).

9.4 Compulsory Treatment: Grounds for Appointment and Procedure for Service

Forced treatment is a measure of criminal legal coercion that can be applied by a court, regardless of the punishment imposed, to persons who have committed criminal offenses and have a disease that is a danger to the health of others.

In the case of imposing a sentence in the form of deprivation of liberty or restraint of liberty, compulsory treatment is carried out at the place where the sentence is served. In the case of other types of punishment, compulsory treatment is carried out in special medical institutions.

Article 96 of the Criminal Code specifies the details of the application of compulsory treatment to persons who have committed a criminal offense and have a disease that is a danger to the health of other persons.

Compulsory treatment is different from compulsory medical measures:

- Disease;
- The possibility of the use of compulsory treatment and at the place of serving the sentence, and compulsory measures of a medical nature drag the direction of the person, usually in specialized psychiatric institutions;
- Sometimes treatment.

Diseases that pose a threat to the health of other people include serious infectious diseases: leprosy, cholera, plague, pulmonary tuberculosis in the phase of disintegration, etc. The mentioned diseases have different forms of infectiousness; therefore in each case the court must make a decision on the use of compulsory treatment on the basis of the conclusion of the forensic examination.

The place of compulsory treatment depends on the type of punishment imposed. In the case of punishment in the form of deprivation of liberty or restraint of will, compulsory treatment is carried out in the institutions of the medical service of the law enforcement bodies, and in the case of other types of punishment in special medical institutions.

9.5 Spesial Confiscation: Concept and Essence

Recently, the theme of **special confiscation** is considered one of the most controversial and ambiguous among lawyers and lawyers of Ukraine.

At the very moment of the introduction of the bill, which foresaw the “strengthening” of the institution of special confiscation, on the first reading, made it difficult to breathe many “law-abiding” citizens of Ukraine and heavily added work to the law community.

Special confiscation under the law of Ukraine: Traditionally, confiscation, as a form of criminal punishment, could be applied only on the basis of the conviction of a court, that is, after the guilty person was convicted of a criminal offense.

But, given that most of the suspects in corruption criminal offenses hid from the authorities, including outside Ukraine, the process of guilty did not produce the desired results.

The aforesaid resulted in the absence of convictions and the actual inability to return illegal assets in favor of the state.

Thus, the fact that there was a need to improve the mechanisms for the return of the proceeds of criminal offense was the indisputable fact.

The first significant step in the transformation of the “special confiscation” institute was the adoption of the Law of Ukraine “On Amendments to the Criminal and Criminal Procedural Codes of Ukraine on the implementation of the recommendations contained in the sixth report of the European Commission on the implementation by Ukraine of the Plan of Action for the liberalization of the European Union visa regime for Ukraine, on improving procedures for the arrest of property and the institution of special confiscation” of 18.02.2016.

According to the new wording of Article 96-1 of the Criminal Code of Ukraine (special confiscation is a forced, uncompensated seizure of money, valuables and other property, which is associated with the commission of a criminal offense, by a court decision into the property of the state.

The money, valuables and other property are subject to seizure:

- If they were obtained as a result of a criminal offense or are the proceeds of illegally obtained property;
- If they have been used for committing unlawful actions;
- If they have been the subject of a criminal offence;
- If they have been used as means or instruments for the commission of a criminal offense.

It is important that now the seizure of property is possible not only from the person who committed the criminal offense, but also for the third parties to whom such property was transferred.

The above norm has been subjected to justified criticism regarding the estimated nature of the grounds for application of a special confiscation to a third person.

In particular, the property of a third person may be confiscated if the person knew or should have known that the property:

- Is an income and/or received as a result of a criminal offense;
- Was intended (used) for inducing a person to commit a criminal offense, financing, material support or compensation for its commission;
- Was the subject of a criminal offense and/or was found, produced, adapted, used as a means or instrument for its implementation.

At the same time, for the purposes of special confiscation, regardless of how a third party has received or acquired such property - free of charge or against payment.

Transparency of the receiver: It should be noted that the legislator has established a norm according to which special confiscation cannot be applied to property owned by a bona fide purchaser.

Probably, the legislator, the norm of conscientiousness, emphasizes that the third person can be deprived of the property only if it is established in court that there is sufficient evidence that the person knew or should have known about the "connection" of the acquired property with the criminal offense.

However, even if the person knew that the property of the previous owner was acquired illegally, this would be very difficult in practice, especially if the purchase was made at market price.

Thus, special confiscation should facilitate the seizure of all assets obtained as a result of a criminal offense and, at the same time, not to "select" legally acquired property.

But the fact remains that the expansion of the conditions for the use of a special confiscation can clearly lead to a breach of the guarantees of protection of property rights and thereby the Basic Law of the State.

Moreover, the institution of special confiscation "is doubtful" corresponds to the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees each person the right to respect for their property.

Thus, in the case of Marx vs Belgium, the European Court stated that this article was aimed at protecting against the unlawful deprivation of property.

In the case of Sporrong and Lonrrot vs. Sweden, the Court ruled that, in applying the confiscation of property, the state must take into account a fair balance between the interests of society and the rights of individuals.

In the context of Ukrainian changes in the law, it should be emphasized that the right to respect for property includes the concept of its preservation.

Thus, taking into account all the "good" goals of the institution of special confiscation, it simultaneously creates a fertile ground for all kinds of abuses and illegal deprivation of property rights.

Questions:

1 *Give the definition of coercive medical measures.*
2 *Identify the purpose of using coercive medical measures.*
3 *To which persons are coercive medical measures applicable?*
4 *Identify types of coercive medical measures.*
5 *To whom is the provision of outpatient psychiatric care in a compulsory manner?*
6 *To whom is hospitalization in a strictly supervised psychiatric institution obligatory?*
7 *Extend the termination of the use of coercive medical measures.*
8 *How is the continuation of the use of coercive measures of a medical nature?*
9 *What is compulsory treatment and to whom is it used?*
10 *How is compulsory treatment carried out?*

TOPIC 10
Specific Features of Criminal Liability and Punishment of Minors

10.1 Features of Criminal Liability of Minors

The subject of a criminal offense is a person who, at the time of committing the criminal offense, has reached a certain age: sixteen (general age) or fourteen (reduced age) years. The age of the subject of a criminal offense fulfills not only the role of the criterion of the lower age limit, which can be criminal responsibility, but is an occasion that determines the nature and severity of criminal responsibility.

Minors are persons under 18 years of age. Among juveniles in the Criminal Code of Ukraine a number of categories of persons are distinguished, in particular: minors, i.e. persons under 14 years of age, newborns, children under 16 ears of age, etc.

With regard to the criminal liability and punishment of minors, it is important to distinguish between those who have reached the age of criminal responsibility. In this sense, minors are persons who have reached the age of 16 years, in some cases 14 years, but who are under the age of 18 years. A person is considered to have reached the corresponding age not on the day of his birth, but from 0 hours of the next day.

Taking into account the biological, psychological and social characteristics of minors, the law firstly provides them with enhanced criminal law protection, and secondly, it provides for the peculiarities of bringing it to justice, release from responsibility, the imposition of punishment, release from punishment and his serving. This position is based on international legal instruments, in particular the Declaration of the Rights of the Child, in the Preamble which states that minors, in view of their physical and mental immaturity, need special protection and protection, including due legal protection.

In the Special Part of the Criminal Code there is a significant number of standards for criminal offenses against victims from which only underage (or their separate categories) can act, or the punishment of which increases when they commit juvenile delinquency. The victim, who is characterized by the relevant features, is a sign of the basic or qualified (especially qualified) syllables of a number of criminal offenses.

Increased criminal liability is established in relation to encroachment directed against:

1) Minors (Article 2, Part 2 of Article 115, Part 1 of Article 135, Part 2 of Article 136, Part 2 of Article 146, Part 4 of Article 152, Part 2 of Article 156, Part 2 of Article 299, Article 307);
2) Newborns (Art. 117, Part 2 of Art. 135, Art. 148);
3) Minors who have not yet reached the age at which employment is permitted under current legislation (Art. 150);
4) Persons under 16 years of age (Part 1 of Art. 156);
5) Persons who have not reached 15 years of age (Article 167);
6) Minors or disabled children who are dependent on their parents (Article 164);
7) Children who have not reached sexual maturity (Part 1 of Article 155);
8) Simple children (Part 1 of Article 120, Part 2 of Article 130, Part 2 of Article 133, Article 137, Part 2 of Article 140, Article 141, Part 2 of Article 142, Part 2 of Article 144, etc.).

The basis and principles of criminal liability of minors are the same as those applicable to adults. Section XV of the General Part of the Criminal Code focuses only on the norms related to the peculiarities of criminal liability and punishment of minors:

1 Establish broader conditions for exemption from criminal liability than those for juveniles, in particular the use of coercive measures of an educational nature.

2 Include limitations on the severity of the types and levels of penalties and other penal measures.

3 Provide for milder requirements (conditions) for exemption from criminal punishment.

4 Regulate the requirements for repayment and expungement of criminal records.

If these or other issues are not regulated by the articles of Section XV of the General Part, then consideration of cases of minors should be guided by the provisions set forth in other sections of the General and Special Parts of the Criminal Code.

Along with the general provisions relating to criminal liability of persons who have committed criminal offenses, the criminal law provides for certain features of criminal liability and punishment of minors. These features are provided for in Section XV of the Criminal Code and concern:

1 The exemption of minors from criminal liability (Article 97, Part 2, Article 106);

2 Types of penalties applicable to minors (Articles 98-102);

3 The appointment of a punishment (Article 103);

4 Exemption from punishment and deportation (Articles 104-107).

5 Repayment and removal of conviction (Article 108).

Setting these features, the legislator proceeded from the psychological characteristics of this age: instability of mental processes, lack of sufficient life experience, knowledge, skills of social behavior. Such a psychophysical incompleteness of the process of forming a person leads to a complete failure (at the level of psychophysical development of an adult) to realize the actual signs and social danger of such a complex social phenomenon as a criminal offense, to adequately assess their actions.

On this basis, Part 1 of Article 66 provides that the criminality of minors is a mitigating circumstance. This norm reflects a steady tendency to mitigate the responsibility of minors in comparison with the responsibility of those who committed a criminal offence at the age of majority.

The need to separate the special rules on juvenile criminal responsibility is due to the principles of justice, humanism, and the saving of criminal repression. The peculiarities of juvenile psychology, in particular their tendency to perceive external influence, on the one hand, tend to limit as much as possible their communication with adult offenders placed in separate institutions for serving a sentence, and on the other hand - allows them to be confined to such persons relatively softly measures sufficient to ensure their correction and re-education. Society has no right to impose the same stringent requirements on juveniles as to its adult members. Therefore, often for underage there are measures of educational and pedagogical, not punitive character.

10.2 Features of Exemption of Minors from Criminal Liability

The law provides for two types of exemption from criminal liability of minors:

1 Exemption from criminal liability with the use of coercive measures of an educational nature (Article 97);

2. Exemption from criminal liability in connection with the expiration of the satute of limitations (Article 106).

Exemption from criminal liability with the use of compulsory educational measures: A minor may be exempted from criminal liability on the basis of the general norms stipulated by the Criminal Code, as well as on the basis of an act of amnesty or pardon. The application of most norms of the Criminal Code on exemption from criminal liability of minors does not differ in any particular way. Thus, exemption from criminal liability in connection with active repentance (Article 45), in connection with reconciliation between the guilty party and the victim (Article 46), in connection with the handover of a person for trial (Article 47) and in connection with a change in the situation (article 48) applies to minors under the same conditions as to adults.

Exemption from criminal liability in connection with the expiration of the limitation period for prosecution (Article 49) with regard to persons who committed a criminal offense under the age of eighteen years, is applied taking into account that for them, Part 2 of Article 106 provides for shorter limitation periods.

Article 97 provides for the application of juvenile-specific types of exemption from criminal liability - with the use of coercive measures of an educational nature. Such measures are not a criminal offense; they differ significantly from them in their severity. At the same time, they are subject to certain restrictions and deprivations for the person to whom they are applied. Coercive measures of an educational nature are a measure of state coercion applied independently of the will of the executor; their imposition is conditioned, inter alia, by the need to deprive the juvenile who committed the crime of the illusion of impunity for his actions and the full forgiveness of the executor in connection with the release from criminal liability.

Coercive measures of an educational nature for minors may also be used as one of the specific types of exemption from criminal liability and to exempt such persons from criminal punishment. The types of these measures are the same; they are stipulated in Part 2 of Article 105. The conditions of their application are different in relation to each of these penal institutions. Article 97 establishes the conditions for exemption from criminal liability with the use of coercive measures of an educational nature and the reasons for their abolition, and Part 1 of Article 105 establishes the conditions for exemption from punishment with the use of such measures.

Exemption from criminal liability with the use of coercive measures of educational nature is allowed subject to a set of conditions relating to the executor of a criminal offense committed by him, a forecast of his subsequent behavior. In accordance with Part 1 of Article 97, the conditions for such release are

1 Minor. It seems inappropriate to use coercive measures of an educational nature with regard to a person who has already reached the age of majority, as these measures are not capable of exerting the expected effect on him/her. Therefore, the exemption from criminal liability for the use of such measures should apply only to persons who are minors in the proceedings.

2 Committing a crime of minor gravity for the first time. This means, first of all, that the juvenile is prosecuted for an offense for which the law provides for punishment in the form of deprivation of liberty for a term not exceeding two years or other, milder punishment (Part 2, Article 12). A minor shall be considered to have committed such an offense for the first time if he or she does not have a criminal record for any offense. Article 97 may not be applied to a minor who first commits a minor offense but sooner or later commits another offense. At the same time, a juvenile whose criminal record for a previously committed offense is repaid or withdrawn shall be considered to have committed the offense for the first time.

3 The possibility of correction of a minor without the use of punishment, which must be determined taking into account the guilty person, his conduct after the criminal offense. The existence of such a possibility may indicate, in particular, the actual commission of the crime for the first time, genuine remorse, voluntary compensation for the damage and irreproachable conduct after the crime, loss of ties with the previous environment which adversely affected the minor.

It is the right and not the duty of the court to apply this type of exemption from criminal liability. In this case, the court may apply such an exemption only by establishing the existence of the conditions

specified in Part 1 of Article 97. The position of the minor himself or his legal representatives is not decisive for the court. However, the application of such a measure, such as the transfer of the minor under the supervision of the parents or persons replacing them (under Part 2, Article 105), by its very nature, is possible only with the consent of the persons exercising such supervision.

The type of compulsory measures of an educational nature, the duration of the application of those of a temporary nature and the content of the restrictions are chosen by the court, taking into account, in principle, the same circumstances that serve as general principles for the imposition of punishment.

Thus, when choosing obligatory measures of an educational nature, the court must take into account the nature and extent of the public danger posed by the offender, the guilty person, the circumstances that mitigate or aggravate the punishment for the offense, if it is actually intended. At the same time, the court is not bound by the sanction of the article of the Special Part of the Criminal Code, which provides for the offense for which the minor is released.

- At the same time, compulsory measures of educational nature are appointed taking into account the provisions set forth in Part 2 of Article 105:
- Educational measures can be appointed, only explicitly specified in this article of the Criminal Code (their list is exhaustive).
- The duration of the educational measure provided for in Paragraph 5 of Part 2 of Article 105 - sending a minor to a special educational institution cannot exceed the established term of the Criminal Code, that is, not more than three years.
- Educational measures envisaged in Paragraphs 2 and 3 of Part 2 of Article 105 may be appointed for a term not exceeding the age of reaching the age of majority.

Several coercive educational measures provided for in Part 2 of Article 105 may be applied to a minor at the same time, provided that the application of one of them does not exclude the application of another. For example, sending a minor to a special educational institution for children and adolescents makes it unnecessary to impose restrictions on leisure time and to establish special requirements for the minor's behavior or to place the minor under parental supervision. On the other hand, the imposition of an obligation on a minor who has reached the age of fifteen and who possesses property, money or earnings may (and should) be accompanied by the use of coercive measures related to long-term educational effects.

It seems that the juvenile must make reservations in all cases, including when the court deems it necessary to apply also more severe coercive measures of an educational nature.

The possibility of applying several measures at the same time derives primarily from the content of Article 97. In its name and provisions, these measures are referred to in the plural. In addition, when the same measures are designated for exemption from criminal punishment in accordance with the direct indication of the law (Part 2 of Article 105), several of them may be applied.

In accordance with Part 1 of Article 97 compulsory measures of an educational nature are imposed on juveniles who have reached the age from which criminal liability comes, that is, 16, and in some cases, 14 years of age.

These same measures, in accordance with Article 97, can also be applied to underage who has not reached the age from which criminal liability may occur. The application of compulsory measures of an educational nature to such a person is not connected with its release from criminal liability, since it, without being the subject of a criminal offense, is not subject to such liability.

Coercive measures of educational nature in relation to a person who has not reached the age of criminal liability shall be applied in the presence of the following conditions:

1 The person has not reached the age of 11 years;

2 The person has committed an act which falls under the Special Part of the Criminal Code.

The law does not impose any additional requirements for the imposition of coercive measures of educational nature on persons under the age of criminal liability, in particular concerning the gravity

of the offence committed and its commission for the first time. At the same time, it shall be established that such a minor has actually committed a socially dangerous act, that he/she is capable of understanding the meaning of his/her actions and directing them due to his/her intellectual development. If due to the lag in development the minor does not understand the meaning of his actions, then he cannot be assigned coercive measures of educational nature.

The use of compulsory educational measures for a minor who has not reached 16, and in some cases 14 years of age, is the only and final measure. Regardless of his conduct during the implementation of such measures, they cannot be canceled and replaced by other, more severe measures of influence. The law also does not provide for the replacement of one compulsory measure of an educational nature to another, stricter, in connection with the non-enforcement of the restrictions, requirements, obligations imposed by the court.

The release from criminal responsibility of a juvenile who has committed a crime with the use of coercive measures of an educational nature is not final. There are two possible consequences of the application of Article 97 - positive and negative.

Positive occurs when the juvenile understands the educational measures applied to him, fulfills the restrictions, requirements, responsibilities.

In this case, the juvenile's release from criminal responsibility is final and irrevocable after the execution of a one-time educational measure (declaration of a reservation, compensation for property damage) or after the expiration of the period for which continuing educational measures were prescribed (restriction of leisure time and establishment of special behavioral requirements, completion of a stay in a special educational institution). Irrespective of his subsequent conduct, he cannot be held responsible for a criminal offense committed previously.

Negative for a minor effect is provided by Article 97 and consists in the abolition of previously imposed coercive measures of an educational nature and bringing him to criminal responsibility.

The only reason for the abolition of compulsory measures of educational nature of the CC refers to the evasion of the juvenile from the application of such measures to him. Apparently, it is about avoiding the implementation of measures imposed by the court, which may consist of: escaping underage from home. Failure to comply with the requirements of parents, pedagogical or labor collective, individual citizens, under the supervision of which is handed over to a minor; non-performance of the obligation imposed by the court to compensate for the property damage caused or other restrictions or special requirements to its behavior; escape from a special educational institution or violation of the rules of conduct in them, etc. Avoidance of a reservation may consist in committing juvenile offenses or other offenses after it has been committed.

The time during which underage may be prosecuted in connection with the evasion of the enforcement of compulsory measures of an educational nature is determined taking into account other articles of the Criminal Code and the content of his actions. In doing so, the following provisions should be taken into account: a) evasion from coercive measures of an educational nature, which are carried out for a certain time, should be taken into account if it is carried out during the period for which such measure was applied; b) non-performance of certain actions should be evaluated as an avoidance, if the term specified for this court expires; c) In any case, criminal prosecution is not possible if the statute of limitations for criminal prosecution established by the Criminal Code has expired. In this case it is 2 years in accordance with Paragraph 1 of Part 1 of Article 106.

The abolition of compulsory measures of an educational nature means that the criminal proceedings of a minor are restored. He is prosecuted and all measures provided for by the Criminal Code for the committed criminal offense can be applied to him. At the same time, the repeated exemption from criminal liability - other than the amnesty and pardon provided by the CC – is not strictly prohibited by law, and it is unlikely that it is expedient, given the characteristics of the guilty person who did not sincerely repent, his behavior did not confirm that he was no longer publicly dangerous and did not justify the trust shown to him.

If underage in the period of the enforcement of compulsory measures of educational nature commits another criminal offense, this indicates evasion of such measures, first of all, from the reservation made to him. Therefore, they should be abolished, and the executor should be prosecuted for both criminal offenses. That is, there is a set of criminal offenses, the punishment is then appointed according to the rules defined in Article 70 and Part 2 of Article 103.

The release of minors from criminal liability in connection with the expiration of the limitation period: Article 106 regulates the details of the release of minors from criminal responsibility in connection with the expiration of the prescription of bringing to criminal responsibility. In accordance with Part 1 of Article 106 for the application of this rule of the court it is necessary, first of all, to take into account the general reasons for using the institution of the prescription of bringing to the criminal responsibility stipulated in Article 49 of the Criminal Code (the expiration of the terms provided by law after the commission of criminal offenses and up to the date of the entry into force of the law, non-accountability during these terms of the new criminal offense, absence of evasion from the investigation or trial).

In the presence of general grounds and conditions for the application of such release, the court shall take into account its peculiarities with regard to minors. Such peculiarities in accordance with Article 106 are: firstly, the possibility of its application to persons who have not reached the age of eighteen years before committing a criminal offense, regardless of their age at the time of the issue of the dismissal; and secondly, the establishment of reduced deadlines in it. Part 2 of Article 106 provides for such limitation periods:

1 Two years in the case of a minor offense;
2 Five years in the case of a crime of medium gravity;
3 Seven years in the case of a grave offense; and
4 Ten years for a particularly serious offense.

10.3 Types of Penalties for Juveniles and Peculiarities of Their Appointment

The law provides for an exhaustive list of types of punishment that can be applied to underage. According to Part 1 of Article 98, the following are the main types of punishment:

a) fine;
b) ublic works;
c) corrective work;
d) arrest;
e) imprisonment for a certain period.

On the basis of Part 2 of this article, underage may be subject to additional penalties in the form of a fine and deprivation of the right to occupy certain positions or engage in certain activities.

It should be noted, first of all, that in the very content, conditions of application of these types of punishment take place certain features, in comparison with similar punishments in their application to adulthood. These features in general reflect the tendency of mitigating penalties that can be applied to minors.

In accordance with Part 1 of Article 99 penalty applies only to underage who have independent income, own funds or property that may be subject to foreclosure. Part 2 of this article restricts the amount of fines: it may be assigned up to five hundred non-taxable minimum incomes of citizens, determined by law, with mandatory consideration of the property status of underage.

According to Article 100 these types of punishment can only be used for minors from 16 to 18 years of age. In addition, the terms of these punishments are considerably smaller: public works may be prescribed for a period of from thirty to one hundred twenty hours, and their duration cannot exceed two hours per day; the period of corrective labor is set from two months to one year, with the deductions in the income of the state appointed by the court in the amount of five to ten percent.

Deprivation of liberty on the basis of Article 101 is to keep juveniles in isolation in specially adapted facilities and can be applied only to juveniles who have reached the age of 16 at the time of sentencing and for a period between 15 and 45 days.

Deprivation of liberty in accordance with article 102, part 2, cannot be applied at all to juveniles who have committed a minor crime for the first time.

In addition, the Criminal Code sets lower (than adult) limits for the maximum term of imprisonment. Part 1 of Article 102 provides that the punishment in the form of deprivation of liberty for persons who have not attained the age of eighteen years, cannot be appointed for a term exceeding ten years, and in the cases provided for in Part 5 of Article 102 - not more than fifteen years.

Depending on the severity of the criminal offense for which the juvenile was convicted, imprisonment may be imposed (Article 102):

a) for repeated criminal offenses of minor gravity - for a term not more than two years;
b) for a crimes of minor gravity - for a term not exceeding four years;
c) for a grave criminal offense - for a term not more than seven years;
d) for a particularly grave criminal offense - for a term not more than ten years;
e) for a particularly grave criminal offense, combined with the deliberate deprivation of human life – for up to fifteen years.

Minors sentenced to imprisonment shall serve it in special educational institutions, as much as possible adapted for these persons.

There are certain peculiarities in imposing a juvenile sentence. They are caused, first of all, by the fact that when imposing a juvenile sentence the court must take into account the conditions of his life and education, the influence of adults, the level of development and other characteristics of the person of a minor.

Particular importance is attached to the age-specific characteristics of the minor, which requires not only the determination that the person has formally reached the age of criminal responsibility, but also the elucidation of all individual psychophysical characteristics of the minor of a certain age.

Practice goes along with exclusion of criminal responsibility. responsibility and punishment for those minors who, although reaching the age from which responsibility is established, however, lag behind (not in connection with mental illness) in mental development from the level typical for this age, which determines the possibility of realizing the factual features and social danger the accomplice. Therefore, we can say that the general principles of sentencing minors are applied taking into account the peculiarities of their age psychophysical development.

The possibility of relatively easy (compared to adults) to change the direction of the formation of teenage explanations and the general direction in assigning punishment - its mitigation. This is precisely what, as already indicated, is emphasized in Article 66, which recognizes the commission of a crime by a minor as a mitigating circumstance.

Practice clearly follows the path of the most frequent application to juveniles of favorable institutions of criminal law, such as the imposition of a lighter punishment than that provided for by law (Article 69).

10.4.1 Redemption and Custody

The release and custody of persons who have committed a criminal offence before reaching the age of eighteen shall be in accordance with Articles 88-91, but subject to the particularities provided for in Article 108, which include

1 The duration of the period of detention, and
2 The conditions for the early expungement of the criminal record.

Part 2 of Article 108 defines juvenile offenders as:

a) a convicted person who has not been sentenced to imprisonment after serving that sentence;

b) convicted to imprisonment for a criminal offence of minor or medium gravity, if he or she does not commit a new criminal offence within one year from the date of the sentence;

c) sentenced to imprisonment for a felony of grave criminal offense, if he does not commit a new felony within three years from the date of sentencing;

d) sentenced to imprisonment for a particularly serious criminal offence, unless he commits a new offence within five years from the date of sentencing;

e) sentenced to imprisonment for a particularly serious criminal offence, unless he commits a new offence within five years from the date of sentencing.

Early termination of conviction from persons who committed a criminal offense under the age of eighteen years shall be applied on the grounds provided for in Article 91 of the CC, taking into account the following characteristics:

- Sentence in the form of deprivation of liberty for a serious or particularly serious crime;
- The termination of at least half of the term of imprisonment specified in Paragraphs 3 and 4, Part 2, of Article 108, i.e. if they have been sentenced for a serious crime, then early termination of imprisonment is possible after one year and six months after the sentence has been served, and if they have been sentenced for a particularly serious crime, then after two years and six months.

But the general condition is the failure to complete these terms in the new criminal offense.

Questions:

1 Who are minors?

2 What are the characteristics of the criminal responsibility and punishment of minors?

3 Can coercive measures of an educational nature be applied after the age of majority?

4 What types of exemption from criminal responsibility can be applied to juveniles?

5 What are the conditions for the release of minors from criminal responsibility with the use of coercive measures of an educational nature?

6 What are the basic and additional types of punishment that can be applied to a minor?

7 What circumstances should the court take into account when sentencing a juvenile?

8 What are the characteristics of release of juveniles from serving a sentence with trial?

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CRIMINAL LAW OF UKRAINE: GENERAL PART

Електронне навчальне видання

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КРИМІНАЛЬНЕ ПРАВО УКРАЇНИ: ЗАГАЛЬНА ЧАСТИНА

Навчальний посібник

(Англійською мовою)

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Свідоцтво суб'єкта видавничої справи ДК № 3062 від 17.12.2007.

Боротьба зі злочинністю в Україні ведеться за допомогою політичних, економічних, організаційних, законодавчих та інших заходів. Проте лише Кримінальний кодекс створює необхідну правову основу (базу) для боротьби зі злочинністю. Для виконання цих складних завдань важливо, щоб це законодавство було не лише досконалим, а й його ретельно та ґрунтовно вивчали ті, хто буде застосовувати й упроваджувати на практиці.

У навчальному посібнику висвітлено найважливіші теми навчальної дисципліни «Основи кримінального права», зокрема, питання Загальної та Особливої частин Кримінального кодексу України. Особливу увагу приділено новелам законодавства, зумовленим запровадженням поняття «кримінальне правопорушення».

Буде корисним для осіб, уповноважених здійснювати офіційну кваліфікацію правопорушень, а також для наукових, науково-педагогічних, педагогічних працівників та осіб, які є здобувачами всіх рівнів вищої юридичної освіти і вивчають дисципліни «Кримінальне право» та «Основи кримінального права» англійською мовою.