

# EUROPEAN REFORMS BULLETIN 2018 No1

Indexed & Shared by:



# European Reforms Bulletin

2018

scientific peer-reviewed journal

No. 1

Founded and edited by Centre for European Reforms Studies, a.s.b.l. Grand Duchy of Luxembourg (Registre de commerce et des sociétés, Luxembourg, F 10.340, siège social: L-1541 Luxembourg, 36, boulevard de la Fraternité).

Tel.: +352661261668

e-mail: bulletin@email.lu

http://cers.eu.pn/bulletin.html

**Editorial board:** Yeskov S. (D.Sc., Assoc. Prof., Luxembourg, editor-in-chief), Zaiets O. (PhD, Assoc. Prof., Luxembourg, deputy editor), Dymarskii Ia. (D.Sc., Prof., Russian Federation), Kaluzhnyi R. (D.Sc., Prof., Ukraine), Karchevskiy N. (D.Sc., Prof., Ukraine), Korystin O. (D.Sc., Prof., Ukraine), Kretova A. (PhD, Russian Federation), Nedodaieva N. (D.Sc., Prof., Israel), Rozovski B. (D.Sc., Prof., Ukraine), Zabłodska I. (D.Sc., Prof., Ukraine).

European Reforms Bulletin is an international, multilingual (English, Ukrainian, Russian), scholarly, peer-reviewed journal, which aims to publish the highest quality research material, both practical and theoretical, and appeal to a wide audience. It is an official bulletin of the Centre for European Reforms Studies and is published 4 times a year (quarterly). It includes articles related to legal and economic issues of reforms in European Union and Europe-oriented countries, including efficiency and experience of these reforms, comparative studies on all disciplines of law, cross-disciplinary legal and economic studies, and also educational issues. It welcomes manuscripts from all over the world, in particular from countries which made European choice recently. It accepts articles from professional academics, researchers, experts, practitioners and PhD students.

*Responsibility for the accuracy of bibliographic citations, quotations, data, facts, private names, enterprises, organizations, institutions and government bodies titles, geographical locations etc. lies entirely with authors. All the articles are published in author's edition. Authors must accept full responsibility for the factual accuracy of the data presented and should obtain any authorization necessary for publication. The editorial board and the Centre for European Reforms Studies do not always share the views and thoughts expressed in the articles.*

*The editorial board reserves the right to refuse any material for publication and advises that authors should retain copies of submitted manuscripts and correspondence as material cannot be returned. Final decision about acceptance or rejection rests with the editor-in-chief and editorial board. By submitting an article for publication author declares that the submitted work is original and not being considered elsewhere for publication and has not been published before.*

Recommended for publication by the Centre for European Reforms Studies (protocol of the general meeting No. 13 01.02.2018)

© European Reforms Bulletin, 2018

© Authors of articles, 2018

## Table of contents

<b>Dikhtyarenko K.O.</b> Legal regulation of the circulation of precious metals and its types in Ukraine	2
<b>Dorokhin D.V.</b> Preventing Religious Extremism: Foreign Experience	8
<b>Jafarov M.</b> Reasons Affecting the Growth of the Illegal Crossing of the State Border of Ukraine	14
<b>Jafarzade J.</b> Historical and Legal Analysis of Criminal Responsibility for Group Violation of Public Order	20
<b>Kardashevsky Yu.R.</b> Philosophical Concepts of Analytics	26
<b>Kolomiets A.M.</b> The Actual Problems of Modern Research of Illegal Drug Using in Public Places	30
<b>Korystin Ye. O., Svyrydiuk N.P.</b> The Efficiency of Criminal Prosecution of Money Laundering in Ukraine	34
<b>Lisnichenko D.</b> International Standards and Experience of Foreign Countries regarding the Seizure of Property in Criminal Proceedings	40
<b>Sobko G.M.</b> The Concept of Mental Violence	49
<b>Zhurba S.A.</b> Theoretical foundations of the formation of forensic methods of investigation of crimes in the sphere of housing and communal services	55
<b>Kaliuzhnyi R., Lykhova S., Zaiets O.</b> Legal protection of human life in Ukraine	61

## LEGAL PROTECTION OF HUMAN LIFE IN UKRAINE

**Rostislav Kaliuzhniy,**  
DSc (Law), Professor

**Sophia Lykhova,**  
DSc (Law), Professor

**Oleksandr Zaiets,**  
PhD (Law), Assistant professor

Complex processes of social relations` formation are taking place in Ukraine at present which are based on democratic principles and respect for human rights and freedoms, since our country has set out on the road of building a law-based and democratic state in which universal values play the leading role. An increase in the effectiveness of measures reliably ensuring the legal protection of human life and health is an essential prerequisite for this. The formation of these relations in the country takes place through giving priority to ensuring individual rights over the rights of the state.

And it is quite natural that under these conditions, with further reform of criminal legislation having the task to protect human life and health, it is impossible to ensure the achievement of proper results without appropriate theoretical justifications, which is the focus of the monographic work «Criminal liability for causing the death of a person: the qualification of such acts and their dissociation from similar crimes»<sup>1</sup>.

Ultimately, such a reform is inconceivable without a solid methodological basis, pragmatically oriented legal research and developments, which is the essence of this monograph.

In the peer-reviewed monograph written by the well-known Ukrainian scientists who also have considerable practical experience, a set of both theoretical as well as practical methodological approaches and methods were put forward for the correct interpretation and application of a number of criminal norms that regulate liability for causing the death of a person. Considerable part of the work is devoted to numerous theoretical and legal problems in the application of these norms and the authors suggested their own vision of the ways of solving them. Consideration was given in the monograph to a large number of laws and by-laws, including international ones, which will be useful in further scientific research and practical application of the specified norms of criminal legislation.

In this respect this monograph is the first and the most profound and comprehensive work in the modern domestic legal literature devoted to crimes related to encroachment on human life.

Therefore, the monograph is an extremely important work as it deals with an issue of the criminal and legal protection of people's lives. That is why the criminal legislation of Ukraine classifies the majority of crimes related to encroachment on the life of a person or causing death as serious or particularly serious crimes.

Crimes in the sphere of causing the death of a person are especially dangerous for people, as they encroach on the most precious thing in the existence of a person who, in accordance with Part 1 of Art. 3 of the Constitution of Ukraine, is regarded as the highest social value.

Their conclusions are based on a thorough analysis of an extremely wide range of works by domestic and foreign authors.

At the beginning of the monograph, the authors established their own non-traditional order for the analysis of an offence: the objective side, the subject, the subjective side, the object.

The work consists of XIV chapters which relate to the corresponding chapters of the Criminal Code of Ukraine: crimes against national security of Ukraine; criminal offences against life and health of a person; criminal offences against property, criminal offences against environment; crimes against public safety; criminal offences against occupational safety; criminal offences against traffic safety or safety of transport operations; criminal offences against public order and morality; criminal offences related to the circulation of narcotics, psychotropic substances, their analogues or precursors, and other offences against public health; crimes against the authority of government, local government or associations of citizens; criminal offences against justice, criminal offences against the established procedure of military service (military offences); criminal offences against peace; security of mankind and international legal order. Only legislative rules dealing with acts causing human death were analyzed in the work.

---

<sup>1</sup> Romaniuk B.V., Bantishev O.F. Criminal liability for causing the death of a person: the qualification of such acts and their dissociation from similar crimes: monograph. - Kyiv - Ternopil, 2017. - 678 p.

The whole chapter XV deals with the legislative norms which should include the liability for acts leading to the death of an injured party.

It is also important that the authors begin to examine the groups of criminal-legislative norms of a corresponding chapter with a thorough linguistic, etymological, philosophical and legal analysis of certain concepts.

Chapter I in particular, methodically describes complex issues regarding the essence of such categories as «national security» and «state security», and analyses the development of domestic and foreign political and legal ideas about the national and state security, their mission in society and the basis on which they build on their cooperation with the state and governmental bodies.

Based on this analysis the authors come to the conclusion that social relations in the sphere of national security require criminal-legislative protection. So they suggest titling the first chapter of the Criminal Code of Ukraine as follows: Crimes against National Security of Ukraine and include into this chapter the revised legislative rules of other chapters where exactly these national values are the main object of encroachment, especially in the case of a terrorist attack.

In chapter II the main focus was on a criminal assault on the life of an individual. Close attention was paid to the issues of setting international and domestic standards for the extremely controversial issues relating to euthanasia and the beginning of human embryo's conscious life. Until now, there has not been any established scientific knowledge and practice regarding the criminal and legal settlement of acts that relate to the commission of euthanasia and abortion. Euthanasia is banned in Ukraine, but abortions are allowed, which is also a loss of human life during embryonic development. The authors consider it necessary to protect the child's life even in the womb, as medical science claims that a fetus at a certain stage of development has all the signs of human life. If so, then it is worthy of legal protection even before the child has been born.

The scientists also came to an important conclusion that the limits of the necessary defence should not be considered as exceeding when any means or things for the defence against an armed person or against a person using other things as a weapon, or against an assault of a group of people (two or more persons) were used as well as for the prevention of unlawful forcible intrusion into housing, other premises or any vehicle.

Equally interesting is the third section which deals with crimes related to property. The authors gave a clear explanation of the ways of committing these crimes and expressed their opinion on the need to give a legislative definition for major damage directly in Art 194 of the Criminal Code of Ukraine.

Chapter IV also deserves the attention of scientists where it is said that almost all the dispositions of the articles in this section are blanket. In that regard, it is necessary to find out in detail which legislation regulates legal relations connected with the use and protection of the relevant natural resource (land, mineral resources, water, air, flora and fauna, and the like). Therefore, the authors of the work provide specific acts of law that relate to these legal relationships, and that will enable not only their better study, but also the application of specific norms of the CC of Ukraine by practitioners.

Chapter V is not devoted just to the important issues of the application of criminal law provisions that relate to public safety. The authors expressed their view on a disputed issue which is the very definition of the concept «public security». This will contribute to a better study of the legal relations in this sphere and their criminal and legal regulation.

The authors believe that in the construction of the disposition of Art. 258 CC of Ukraine the fact was not taken into account that a terrorist act itself is an act against the state and its institutions. Currently, it covers a number of other acts that are committed in a similar way, including those aiming even at fulfilling interpersonal requirements of people. Ways of solving this important issue are suggested.

Chapter VI is devoted to crimes against the safety of production. It is noted that in the current circumstances production is moving ever closer to becoming an object where complex machines and mechanisms are applied which not only automate the process of manufacturing, but also require a better protection of people's labour and the observance of strict rules of their operation. Worthy of attention is the fact that deviation from normative regulations and established security requirements that are developed for enterprises, structures, agriculture, transport and other modern industries cause or can cause serious damage to the life and health of not only the workers of production, but also to outsiders and their property.

A special chapter VII is devoted to the scientific analysis of crimes against traffic safety and the operation of transport. The authors insist that for certain crimes, including crimes against the safety of traffic and the exploitation of transport, it is the state that may present an injured party, which should be mentioned in part one of Art 55 of the Code of Criminal Procedure of Ukraine. Definition of the victim should also be included to the CC of Ukraine.

Worthy of attention is the authors' approach to the analysis of other types of crimes, described in the following sections of the monograph. Particular attention should be paid to a detailed study of norms that relate to crimes

connected with the use of narcotic drugs, psychotropic substances, precursors and their analogues.

We can not but support the authors' suggestion that section XIII of the Special Part of the CC of Ukraine should be divided into two separate sections, namely «Crimes in the sphere of circulation of narcotic drugs, psychotropic substances, their analogues or precursors» (articles 305-320 CC Ukraine) and «Crimes against public health» (articles 321-327 of the CC of Ukraine).

In this case, the smuggling of counterfeit medicines should be taken out from Art. 305 of the CC of Ukraine «Smuggling of narcotic drugs, psychotropic substances, their analogues or precursors or adulterated medicines» and placed in the section «Crimes against public health» as a separate article.

Among the crimes in this section of the Special Part of the CC of Ukraine there are crimes which have falsified medicines as their subject (Article 321-1 of the CC of Ukraine «Illegal Production or Sale of Poisonous or Drastic Substances»). This, however, was not given due consideration in the title of the article. Therefore, changes to the title of this article should be introduced by adding falsified drugs to the subject of these crimes.

This also applies to crimes against peace, the security of mankind and the international legal order (section XV of the Special Part of the CC of Ukraine), which may affect relations of Ukraine with foreign states in a negative way; violate public safety, normal activity of public authorities, courts, the order of military service and the like.

When analyzing the syllables of crimes that cause the death of a person, special attention is also paid to separating these crimes from related criminal offenses, since this is not only a theoretical issue, but also a practical one. In this, the authors characterize related crimes as those which are identical in their external manifestations of their objective side and which should be separated on the basis of a number of elements and signs.

Addressing the issue of the syllables of crimes which are connected, in one way or another, with the deprivation of human life, the authors rightly believe that the norms of the criminal law which deal with the loss of lives actually mean the death of at least one person and this should be properly reflected in the CC of Ukraine.

Considering the objects of these crimes, the authors of the monograph note that a person's life in the crimes where there are two or maybe three objects can in no way be regarded as an additional object, since a person, his life, health, honour, dignity, inviolability and security are the basic social values in Ukraine.

They also suggested making changes and additions to a number of norms of criminal legislation, which, along with the already existing, should also consider death as an aggravating circumstance. These suggestions are fair and should be favored by the legislator.

At the same time, it should be said that the procedure for the analysis of the syllables of crimes (the objective side, the subject, the subjective side, the object) proposed by the authors is not indisputable and needs further elaboration. We also suggest further improvement of the peer-reviewed work through using a wider range of examples from jurisprudence.

Notwithstanding the above said, the work as a whole, as far as its content, structure, logic and consistency are concerned, represent novelty, practical value and is of great importance at the present stage of our society. It is the first comprehensive study of the legal protection of human life in Ukraine under the new criminal legislation, and therefore is an original and significant scientific research that deserves the attention of scientists, practitioners and legislators.

**Rostislav Kaliuzhnyi,**  
DSc (Law), Professor

**Sophia Lykhova,**  
DSc (Law), Professor

**Oleksandr Zaiets,**  
PhD (Law), Assistant professor

Centre for European Reforms Studies a.s.b.l.  
(Grand Duchy of Luxembourg)

# European Reforms Bulletin

scientific peer-reviewed journal

**2018**  
**No. 1**

Passed for printing 01.02.2018. Appearance 15.02.2018.  
Typeface Times New Roman. Circulation 100 copies.

---

Design, computer page positioning, layout: **Centre for European Reforms Studies, a.s.b.l. Grand Duchy of Luxembourg**  
All the articles are published in author's edition. Publishing institution: **Centre for European Reforms Studies, a.s.b.l. Grand Duchy of Luxembourg** (Registre de commerce et des sociétés, Luxembourg, F 10.340, siège social: L-1541 Luxembourg, 36, boulevard de la Fraternité),  
+352661261668, e-mail: [bulletin@email.lu](mailto:bulletin@email.lu), <http://cers.eu.pn/bulletin.html>