NATIONAL AVIATION UNIVERSITY

Educational and Research Institute of Law

Department of Criminal Law and Process

**METHODOLOGICAL RECOMMENDATIONS**

**for the organization of independent work of studentsз**

on the discipline " **Comparative Criminal law**"

081 / 16bz "Jurisprudence"

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

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**Introduction**

**Students' independent work is an important component of training in higher education institutions of highly skilled specialists.**

**The informational and methodological support of independent work of students is a list of questions for self-training, which are envisaged by the plans of practical classes, as well as a list of literature on the topic.**

**The main recommendation for self-education and deepening of knowledge on discipline can be the processing and critical comprehension of the recommended literature, especially the primary sources, as well as the preparation of schemes and comparative tables.**

**Independent work of students is intended to help achieve the goal set before the academic discipline. Getting to self-study, the student must realize the purpose of the discipline and the tasks that face it. The purpose of the discipline is to familiarize students with the general and special parts of criminal law in a comparative aspect, disclosing its meanings to protect the rights and legitimate interests of individuals and legal entities in criminal law, to strengthen the rule of law and law and order in society and the state, obtaining basic knowledge and giving students skills in their application.**

**Tasks for independent work are aimed at consolidating the educational material. Their implementation involves assimilating the main content of discipline topics. At the same time, the implementation of such tasks requires a creative approach from the student side, the ability to raise additional questions and answer them, evaluate their own work and compare them with others, analyze typical and non-standard situations.**

**MODULE 1. COMPARATIVE CRIMINAL LAW**

**Topic 1.2. General provisions of the law of the states of continental Europe**

**Plan**

**1. The Constitution of the European States as a source of criminal law.**

**2. General European Criminal Law**

**Guidelines**

**By studying this topic, students should first of all be identified with the notion of a source of criminal law in European states.**

**First of all, it should be noted that not all countries belonging to the European Union have the same criminal justice system. If for countries that were formerly included in the USSR or belong to the post-social states of the following rank (Lithuania, Latvia, Estonia, Romania, Poland, Bulgaria, Hungary, Slovenia, Slovakia, Croatia), the characteristic feature is the unicameral right, then for all countries of the Romano-Germanic The (continental) system is characterized by, firstly, the multiplicity of criminal law, and secondly, its full codification, but a common feature for all without exception (the EU member states is that the separate principles and provisions of the general nature that are Azov for criminal zakonavstva provided in the Constitutions of these countries. Therefore, according to legal tradition in all European countries, the Constitution is considered a source of criminal law. This provision is doctrinal in nature.**

**Students need to find out the historical aspects of the development of the constitutions of European states, to find out their structure and determine which constitutional norms should be considered as containing criminal law.**

**All constitutional provisions of the criminal law nature of their content can be divided into the following:**

**1) the principles of criminal law;**

**2) other general provisions of criminal law;**

**3) punishment and other criminal law;**

**4) criminalization of certain acts;**

**5) amnesty, pardon, and termination of prosecution;**

**6) immunity and other and other features of criminal liability of officials.**

**When independently working on this issue, students must analyze the constitutions of certain foreign countries and determine what their provisions should be attributed to one or another group of norms that have the character of criminal law and compare them with the texts of the criminal legislation of these countries. Students must determine which constitutional norms of criminal law have been textually incorporated into the criminal codes of these states.**

**For example, in separate constitutions only the principle of legality is defined. so, according to the Belgian constitution (1994), no punishment is established or applied otherwise than in accordance with the law (Article 14). The same applies to the Constitution of Spain (1978) (Article 25) of the Constitution of Lithuania (1992) (Article 7) Constitution of Liechtenstein (1921) (Article 33) Constitution of Luxembourg (1868) (Article 14 ) In Art. 34 of the French Constitution (1958) stipulates that only the law adopted by the Parliament establishes rules relating to the definition of offenses and penalties imposed on them, in addition, the declaration of human rights and citizens states that no one can be accused or imprisoned otherwise than in cases determined by law and in compliance with the procedure proposed by law (Article 7), that the law should establish only strictly and undeniably necessary punishments, and no one can be punished either by virtue of law, accepted or substantiated but before the guilt is committed and applied in accordance with the established procedure (Article 7)**

**Provisions concerning the limitation periods are contained in the Constitution of Bulgaria and Poland. The prosecution and execution of punishment for crimes against the world and humanity (Article 37 of the Bulgarian Constitution) are not extinguished. According to the Polish Constitution, war crimes and crimes against humanity are not subject to limitation periods (Article 43 of the Polish Constitution) and the expiration of the limitation period for crimes not persecuted for political reasons and committed by public officials or on their instructions, shall be suspended until the trial of the case (Article 44).**

**Having analyzed the constitutions of European countries, students must accept the conclusion that the law should be established: the responsibility of persons who occupy certain political positions; the consequences of not fulfilling their duties; their immunities of crimes for committing these persons are responsible; sanctions imposed on them; the consequences of their use, which may exclude the release of these persons from office or the loss of the mandate (as in the Portuguese Constitution). In this case, all provisions of substantive criminal law, concerning the grounds and conditions for the granting of immunity, must be reflected in the Criminal Code of Ukraine. The current Criminal Code of Ukraine does not regulate these issues, just like the part of the CPC of Ukraine.**

Students need to know the definition of pan-European criminal law on which it is based. Why is an analysis of pan-European criminal law important?

First, EU members today have 28 European powers, and the rest claim to be members of it. Ukraine has also declared its attempts to integrate into the EU. The state policy of Ukraine on adaptation of legislation is formed as an integral part of the legal reform in Ukraine and is aimed at ensuring the mandatory consideration of the requirements of EU legislation during the design rule.

Secondly, all European states, except Belarus and the Vatican, are members of the Council of Europe. Here it should be borne in mind that the need for harmonization of legislation applies not only to the legal space of the EU. So according to Art. 1 of the Council of Europe Statute, the aim of the Council of Europe is achieved through the improvement of agreements and the implementation of joint measures in the legal field.

Thirdly, the most active participant in other international organizations is the states of Europe. So all except the Vatican, the states are members of the UN. And of the 143 members of the WTO (World Trade Organization), 34 are the states of Europe.

The right of the EU is a special legal system, the norm of which governs the social relations that develop in the development of integration processes within the European Union.

The principles of the rule of law of the Union at present are unconditional in relation to its most important and significant fascination - the right of European associations (communitarian law). The balance of other (non-communist) components of this legal system with national law is ultimately not yet established.

Students should find the basic principles on which the EU criminal law is based and which should be gradually implemented in the criminal law of the country.

The European Community puts the human being at the center of its activities; it can not require the Member States to sanction criminal responsibility for certain actions, if there is no other, more lenient, way of protecting the fundamental interests of man. Only under this condition, the legal act requires the application of criminal sanctions, which are defined as "necessary" in accordance with the European principle of proportionality, the prosecution actually places appraisal judgments and social stigmatization that lead to a serious violation of human rights guaranteed by the European Community Statute.

Excessive extension of the criminal-executive system reduces the power and effectiveness of criminal prohibition. In accordance with the principle of good governance, the European Community itself should determine the need for the application of criminal law as a last resort for social control (ultima ratio).

The EU's commitment to member states to provide for criminal punishment for certain acts involves precisely such acts that can be blamed for the perpetrator ("guilty principle" - nulla roega gine culpa). This is not only a requirement to restrict the punishment of crimes that are particularly grave in terms of public order, but above all, it is a guarantee of respect for human dignity. In addition, it also meets the presumption of innocence. This means that the European legislature also has to establish that the rules that it imposes on sanctions permit execution of repressive functions in relation to committed misconduct (and in this sense, according to the principle of proportionality, the guilty principle). This does not lead to the answer to the question of criminal liability of legal entities, since such liability differs from personal responsibility of a person. The rules for prosecuting different types of activities should be developed in accordance with the legislative framework of each participating State.

Criminal law of a lawful state inevitably is based on the principle of legality. Criminal law and investigative actions constitute the general principle of European law in the meaning of Art. 6. From the Treaty on European Community (Lisbon), as well as enshrined in Art. 7 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. From this principle, there are three main requirements that the European Community must comply with: 1) the requirement of legality in the European sense of the word means that everyone must be able to predict which acts may lead to criminal liability. Also, the prosecution should be clearly and precisely recorded. This requires that the text be understood. In principle, the law must "speak for itself". Objective and subjective conditions of criminal liability, as well as punishment in all cases, should be predictable. While the exercise of this competence in the criminal justice area of ​​the European Union requires States Parties to exercise certain freedom of assessment, this leads to some disagreement in the development of legal acts. The more limited the field of freedom of choice and discretion accorded to different countries, the clearer and clearer the formation of a European act. If the European act is aimed at European standardization (full harmonization) of laws, it must meet the requirements of clear and specific accusations. This requirement of accuracy and quality is necessary when an order requiring criminal sanctions contains a reference to other European texts, so that the participating States themselves can agree on a European act with its own legislative base; 2) the criminal law has no retroactive effect, except for some cases in favoret. This consequence of the principle of legality also follows from the requirement of predictability in the law and means that European law can not require the application of criminal provisions as a reciprocal number.

The prohibition of reciprocity has only one exception, in the case of the position in favoret. Criminal law, containing provisions favorable to the accused (since they eliminate or mitigate the punishment), extends to acts committed before their entry into force (the principle of retroactivity in the mitius). The principles of reciprocity in mitius are recognized by all the states-participants. However, there are differences in the place of the principle in the hierarchy of norms, especially the wording of its interpretation in the Constitution for Europe. European Court in Luxembourg (Berlusconi case) and Art. 49 of the Charter of the European Union on the fundamental rights attached to this principle, at least in Europe, is of paramount importance. European law is linked to this principle. Consequently, it can not, in view of the harmonization of the law, require the State party to introduce this law, if it is subsequently changed to favorable for the accused until his final conviction; 3) criminal law is the "most powerful weapon" of the state. His application should take place in a democratic society, which is as directly as possible co-ordinated by the people themselves. In the absence of the competence of the European Union to develop a supranational criminal law, it is the participating States (ie national parliaments) that are the developers of punishment. However, European legislation restricts their right to discretion, requiring them to establish criminal liability for certain acts. That is why acts aimed at harmonizing the rules of law must have sufficiently democratic legitimacy. This democratic legitimacy can only come from national parliaments, only codes are followed by rules adopted at the European level. Consequently, it is necessary to strengthen the legality of these rules and increase the role of European legislation. In order to ensure the democratic legitimacy of decisions taken in criminal cases and the promotion of the rule of law in the process of their adoption, it is important that the bodies involved in the legislative process at European level inform national parliaments in a timely manner and in the most detail about draft acts (including after entry into force of the Lisbon Treaty). • States parties will have the opportunity to influence the final adoption of European acts (by voting by their representative in parliament), (the requirement of a parliamentary law - null poeva gine lega parlamentaria).

**Topic 1.2. The general part of the European Criminal Codes**

**Plan**

**1. Legal consequences of conviction of a person outside the country**

**2. Extradition**

**Guidelines**

**Legal implications of a person's conviction outside the country**

**Studying this topic, the student should note that certain acts of international law contain provisions on the need for national courts to take into account the legal consequences of the conviction of a person outside the country. Thus, the United Nations Framework Convention Against Organized Crime (1997) obliged the States Parties to take legislative measures to recognize previous convictions abroad for the offenses set forth in this Convention, "with a view to establishing a criminal offense committed by an offender". The European Convention on the International Validity of Criminal Sentences (1970) defines the procedure and conditions for the execution of European judicial decisions in criminal cases, including sanctions, including imprisonment, fines, forfeiture, deprivation of rights. A person against whom a European judicial decision in a criminal case has been made can not be prosecuted for the same action, be punished or subjected to a sanction in another state if: a) he is acquitted; b) he has completely left or is serving a sentence; c) pardoned or amnestied; d) can not be punished for the time lapse of time; e) judged without a sanction. The Ukrainian legislator should pay attention to the need to bring the Criminal Code of Ukraine into this Convention. Thus, in the literature it was appropriate, in particular, to supplement Art. 88 of the Criminal Code of Ukraine on the provision that the legal value of the conviction, the terms of its repayment and the grounds for withdrawal in Ukraine are the same for both those convicted by the courts of Ukraine and those convicted by the courts of foreign states and determined on the basis of this Code. However, the proposal of the same scientist to exclude from the Criminal Code of Ukraine, Part 2 of Art. 7 or formulate it in the wording that would allow the criminal prosecution of persons who have already suffered criminal offenses outside Ukraine, if provided for by international treaties of Ukraine, is contrary to the ne bis in idem principle and is therefore inappropriate.**

**At the same time, students should know the peculiarities of legislation, which is contained in a number of international conventions.**

**It is important to take into account the provisions of the European Convention on the International Consequences of the Disqualification from the Right to Drive Automobile Vehicles (1976), according to which a Party that has taken a decision to deprive a driver's right immediately informs the Party that issued these rights and also the Party on whose territory the offender lives, and the Party receiving the notice of deprivation of the driver's rights may take a decision to deprive these rights. The Framework Decision of the EU Council on the execution of judgments on the freezing of property or evidence in the European Union (2003) stipulates that if the property subject to confiscation and material evidence are in the territory of the Member State, the competent judicial authority of the other State concerned must take a decision " freezing".**

**Students have to compare European legislation with domestic law. Yes, according to Art. 9 of the Criminal Code of Ukraine, the verdict of a court of a foreign state may be taken into account if a citizen of Ukraine, a foreigner or a stateless person were convicted of a crime committed outside Ukraine and again committed a crime on the territory of Ukraine (offset principle). At the same time, the relapse of crimes, notresponsible punishment or other legal consequences of the sentence of a court of a foreign state are taken into account in the qualification of a new crime, the imposition of a punishment, release from criminal liability or punishment.**

According to Art. Article 114 of the Criminal Code of Poland is not an obstacle to prosecution for the same crime by a Polish court, except when a sentence passed abroad is enforced in Poland or when this sentence became the basis for the transfer or extradition of the culprit from Poland . However, this article also defines the rules for the enrollment of the punishments actually carried abroad.

The Criminal Code of Austria states that confiscation and seizure of objects apply to all property values ​​and objects that are located in Austria (§ 65-a). In § 66 the meaning of the offset principle is reproduced.

In article 5-a of chapter 2 of the Criminal Code of Sweden, the legislator directly refers to the European conventions on the international validity of judicial decisions in criminal cases (1970) and the transfer of judicial proceedings in criminal matters (1972). It is also noted that when the question of liability for an act was resolved by a court decision which entered into force in the foreign state where the act was committed or in a foreign state, where the said conventions were found to be valid, the accused, as a general rule, can not be prosecuted for the same act in Sweden if: a) he was found to be innocent; b) he was found guilty of a crime without a punishment; c) if the prescribed punishment has been completely disposed of or is in progress; d) if the sentence was canceled by the law of the foreign state. Article 6 states: if a person is convicted in Sweden for an act for which she has already been convicted outside the Kingdom, the punishment is determined taking into account the fact that the person has suffered outside the Kingdom; in these cases, a less severe punishment is imposed than the one foreseen by the act, or the person may be completely exempted from punishment.

Studying the issue of extradition, students must know its definitions and how to use it in different European countries.

Extradition ("extradition") is an indispensable tool by which the principle of inevitability of criminal liability and punishment of persons who have fled abroad is ensured.

With its development, extradition should be due, primarily, to the international activities of France, during which the fundamental principles of the modern institution of extradition were worked out; The institution of extradition, as a rule, developed from ad hoc to bilateral and, subsequently, multilateral agreements of a general nature, replacing, in certain areas (in particular, within the EU) the institution of extradition with the institution of the so-called "arrest warrant, with the simultaneous consolidation of the basic provisions on extradition in special laws; extra-legal relations gradually became more complicated and therefore the list of crimes that could be the basis for extradition ("extradition nomenclature") gradually expanded, which entailed the necessity of harmonizing the criminal legislation of the member states of the respective treaties.

Students should pay the main attention to the legislation of Ukraine: the Criminal Code of Ukraine (parts 1 and 3 of Article 10) establishes: 1) citizens of Ukraine and stateless persons permanently residing in Ukraine who have committed crimes outside Ukraine can not be issued to a foreign state for prosecution and adjournment to court; 2) foreigners and stateless persons who do not permanently reside in Ukraine who have committed offenses outside Ukraine and are in its territory may be issued to a foreign state for prosecution and extradition to a court or transferred to serve a sentence if such extradition or transfer provided for by international treaties of Ukraine. In this regard, it should be noted that as of February 1, 2006, Ukraine, in addition to the European Convention on Extradition and Protocols to it, has concluded and ratified six bilateral extradition (extradition) treaties with individual states of Asia, Africa and South America.

However, Ukraine has not yet signed and ratified the new version of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, adopted on October 7, 2002. Compared with the current Convention of January 22, 1993, the new Convention is substantially different there are terms of issue.

Students must list cases where the extradition provisions are not applicable.

Yes, the issue does not occur if, in particular:

a) the person is a citizen of the requested Party;

b) the expiration of the limitation period or criminal prosecution can not be violated due to another legitimate reason;

c) the person has already been convicted or acquitted, released from criminal liability or from punishment; d) the act, in accordance with the laws of one of the Parties, is prosecuted only in the private prosecution;

e) extradition may undermine the sovereignty, security of the requested Party; e) the request for extradition is connected with the prosecution of a person on the basis of race, gender, religion, ethnicity or political beliefs;

e) the act relates to the law of the requested Party for war crimes, which are not crimes under ordinary criminal law;

g) the person was previously issued by the requested Party to a third State and the consent of that State for extradition has not been obtained;

(c) the person whose extradition is requested has been granted asylum in the territory of the requested Party. An extradition may be refused if the act in respect of which extradition is requested is committed in the territory of the requested Party.

In general, many international treaties regulate the issue of extradition. As a rule, the well-known principle of "issue or court itself" applies. The above mentioned United Nations Framework Convention Against Organized Crime (1997) obliges States to take legislative measures to ensure that offenses committed by organized crime entities are regarded as punishable by the extradition of the perpetrator and not considered as political in order to extradite. According to the European Convention on Extradition (1957), the Parties undertake to give each other all persons who are prosecuted for the commission of an offense or are wanted for execution of a sentence. The Convention specifies: offenses entailing extradition; political offenses; war crimes; issue of own citizens; place of extradition; principle non bis in idem: limitation period; impact on the issuance of the possible use of the death penalty. The Convention was developed by the Additional Protocol (1975), which made some clarifications to the concept of "political offenses", and the Second Additional Protocol (1978), which defines the term "financial offense" in a new way, and also found that extradition was not committed for an offense, in respect of which an amnesty was declared in the requested State and for which that State was competent to prosecute in accordance with its criminal law. The EU Charter on Fundamental Rights (2000) prohibited expulsion or extradition to a state where there is a serious risk of a person being subjected to death penalty, torture or other degrading treatment or punishment.

In addition to extradition, international acts regulate the issue of the transfer of persons for serving a sentence. Thus, the European Convention on the Transfer of Sentenced Persons (1983) determines the procedure and conditions for the transfer of persons convicted on the territory of one Party to the territory of the other Party for serving the sentence imposed on it. The convention contains six conditions for the transfer of a convicted person, which, briefly, without regard to the nuances, can be formulated as follows: 1) the person is a citizen of the execution state; 2) the sentence is final; 3) the person has to serve on sentence for at least another six months; 4) the person agrees to the transfer; 5) the act is recognized as criminal in both states; 6) Both States agree to the transfer.

The Criminal Code of the Republic of Lithuania pays considerable attention to the issue of extradition. According to his art. 9 citizen of Lithuania who committed a criminal act on the territory of Lithuania or on the territory of another state may be issued to a foreign state or transferred to the International Criminal Court in accordance with the international treaty of Lithuania. In contrast, the relevant foreign citizen is issued. The abovementioned persons may not be issued, in particular, if: 1) the committed act for the CC of Lithuania is not recognized as a crime or the expiration of the limitation period; 2) a criminal offense committed on the territory of Lithuania; 3) the person is prosecuted for a crime of a political nature or may be executed in another state; 4) the person for the committed act was convicted, acquitted or released from criminal liability or punishment, including according to an act of amnesty or pardon. Persons who have been granted asylum in Lithuania shall not be issued to another state, except in cases where they commit the crimes listed in art. 7 of this CC (on the content of Article 7 see above).

In our opinion, such a norm should be foreseen in the Criminal Code of Ukraine. At the same time, it needs some improvement, taking into account the provisions of international treaties that are in force in Ukraine. In addition, it should separately identify cases in which a person is not released under any circumstances (for example, if an act committed under the Criminal Code of Ukraine is not recognized as a crime or if a person is prosecuted for a crime of a political nature or in another state may be executed or if it is for the committed act was justified), and cases when it may not be issued.

**Topic 1.3. Criminal act**

Plan

1. Participation in a criminal act.

2. The multiplicity of criminal acts.

3. Circumstances that exclude the crime of the act.

Guidelines

During independent work on this topic, students must analyze criminal law at least in the European countries of Lithuania, Latvia, Bulgaria, Poland, France, and the People's Republic of China (or other countries for their selection) and to establish definitions of mutual criminal law institutes and compare them with similar criminal law institutions for the Criminal Code of Ukraine.

Students should know what features of complicity in the crime are foreseen in France's criminal law.

In today's criminal law of France, this institution is regulated as a whole, as in the KK in 1810. The Code does not contain a general definition of complicity, but only refers to the types of accomplices.

In the doctrine there are two forms of complicity:

a) co-enforcement;

b) complicity in own (narrow) understanding.

Coexistence It occurs when several persons participate in the commission of one crime, that is, there is a group character of actions that is qualifying. For example, committing a crime with a gang. According to the definition in the Criminal Code, a gang is any group formed or grouped together for the purpose of committing crimes. This circumstance is an aggravating sign.

The Criminal Code also has the notion of a community of intruders (Article 450-1 defines the features of the association of intruders and establishes liability and punishment in the form of imprisonment for up to 10 years and a fine of 1 million francs, Article 311-4 establishes liability for theft in complicity and punishment in the form of deprivation of liberty for a term of up to 5 years, Article 412-2 establishes the responsibility for conspiracy and punishment in the form of imprisonment for up to 10 years and a fine of up to 1 million francs).

The executor, according to the doctrine, recognizes the one who carries out or attempts to commit a criminal act, and in some cases, a misdemeanor. In our time, the concept is somewhat expanded. Artist figure is independent, that is, is not included in the circle of participants.

Participation in the narrow sense is any activity of individuals who facilitate the commission of an offense or provoke its implementation by the executor, and this activity itself may not be criminalized in isolation from the act of the executor.

The legal element of complicity is assumed in Art. 121-6 and 121-7 and relevant articles of the Special Part of the Criminal Code of France.

The material element consists in committing acts and can be expressed both in action and in inaction. According to KK 1810, complicity was possible only in a crime or misdemeanor. Under the new KK one can assume the possibility of complicity and in violation.

The moral element is the intention to commit a crime, if a person did not know that it contributes to the commission of a crime, then it is not brought to justice. The criminal behavior of an accomplice follows from the criminal behavior of the performer.

What is "an inclusive nature of complicity" under the criminal law of France?

In France, according to the doctrine, recognized the accessory nature of complicity: the participants, contributing to the performer, automatically

join, that is, lend a criminal character. Participation is determined by the actions of the executor, and the accomplices have the same responsibility as the performer, if consciously participate in

crime, are aware of intentions and contribute to its implementation. In the opposite case there is no moral element. In accordance with the acoustic theory, if the performer is not prosecuted, then not subject to criminal liability and accomplices of the crime.

There are deviations from the accessory theory:

1. Participation by incitement - pursued incitement to any criminal act;

2. Participation by way of guidance or guidance;

3. Participation through the provision of assistance or assistance.

In the new French Criminal Code of 1992, there is no co-ownership through the provision of funds.

 Students need to know what types of complicity in the crime are provided by French criminal law.

In France there is no general legislative definition of complicity. From the analysis of Art. 121-7 it is possible to distinguish 3 forms of complicity in the narrow sense of the word, and they correspond to the doctrine of criminal law:

a) inducing a person to commit a criminal offense. Should not have the form of general wish (exclusions are crimes against the state - betrayal, espionage). In some cases, the instigator is punished in the same way as the performer;

b) the provision of various information, information for the commission of a criminal act. For example, provide an address.

c) the provision of real estate for the commission of a criminal act (before, during or after the commission).

Assistance provided after the commission of a crime can be regarded as a crime, not complicity. The only exception is the situation where the aid agreement took place before the crime was committed.

The promotion of a crime may also be in form without action, if a person was obliged to take certain actions by virtue of his duties or the position he occupies.

The partners are the same as the performers, which is enshrined in the law (Article 121.6 of the Criminal Code of France). However, in practice, as a rule, they are punished more leniently, based on the role they performed.

Art. 121.7 The Criminal Code of France, 1992, contains a list of actions that are covered by the concept of incitement: through gifts, promises, threats, orders, abuse of power or influence. This is an exhaustive list of actions. The main condition for establishing complicity is that they (actions) must be direct, positive, concrete. There are exceptions for state crimes.

Incitement to betrayal, espionage, if these incitements did not result in, are punishable by 7 years of imprisonment or a fine. A person acting as an instigator is punished as an executor in some cases.

Characterized by providing the performer with various kinds of information, information for committing a crime. French jurisprudence refers to this type of complicity and the address of a potential killer, information about the way of life of the victim.

Not only assistance or assistance, but also complicity through the provision of funds and facilities. The main condition is to assist the artist with the intent.

It is not necessarily the use of funds or facilities provided by the executor, the fact of their provision is important. Such complicity can take place both before and during the commission of a crime.

In studying this topic, students must analyze what circumstances affect the responsibility of accomplices under French criminal law.

Circumstances affecting the responsibility of accomplices:

a) real ones are those that characterize the very act (accomplishment in the night or with weapons - aggravating circumstances). The contributor must envisage all qualifying circumstances, but even if they were not known to accomplices, they affect their responsibility. Even if the accomplices were not aware of the aggravating circumstances, they all increase the responsibility of the accomplices (for example, article 311.8 for theft of the weapon, even if it does not apply, the liability increases from 5 to 20 years imprisonment);

b) personal - those that characterize the identity of a specific offender and the criminal responsibility of other accomplices do not affect (for example, a recidivist - a aggravating circumstance, a minor - softening).

Masters must be guided by the signs of excessive execution provided by France's criminal law.

Excess of the executor under the criminal law of France - this is the exit for the original plan. Excess performer is characterized by:

1) first, a deviation from the original intention in the process of committing an act;

2) secondly, the perpetrator committed another crime, different from the original plan;

3) thirdly, the excess is associated with joining an accomplice to any "business" of the executor.

In accordance with these characteristics of the excesses provided by the French criminal law, various decisions on the responsibility of accomplices in the following situations:

a) in the commission of one crime. For example, in the case of theft, weapons are used - and accomplices are responsible;

b) in the commission of another crime. For example, in the case of theft, rape takes place - and accomplices do not bear responsibility;

c) uncertain intent. For example, he gave money to commit a crime in order to take revenge on someone - and the accomplice is responsible for all acts of the performer. But the accomplice is not responsible if the nature of the crime changes, that is, there is no complicity.

Masters must distinguish complicity in crime from involvement in a crime.

In French criminal law, there are several types of involvement in a crime:

1) concealment:

a) concealing things - this is in accordance with Art. 321.1 fooling, storing, transferring things or providing mediation services when the perpetrator knows that this thing has been obtained by committing a crime or misdemeanor is punishable by imprisonment of up to 5 years or a fine of up to 2.5 million francs;

b) if the concealment is carried out simply or with the use of technical means, a gang, then the penalty is increased to 10 years' imprisonment or a fine of up to 2 million francs;

c) in accordance with Art. 321.3, the guilty is punishable by a fine in the amount equal to half the cost of things that are hidden, provided that the concealer is precisely known, as a result of which the crime of extracted data is a thing;

d) if known aggravating circumstances, the concealer is punishable taking into account aggravating circumstances;

2. Failure to report a crime is in accordance with Article 434.1, the failure of the law enforcement agencies to report a crime that could prevent or reduce the consequences of a crime committed or committed. Punished by deprivation of liberty for up to a year and a fine of up to 300,000 francs. For failing and concealing persons, relatives of the executor are released from liability;

3. Conviction of a crime is not an impediment to a crime or misdemeanor and is punishable by imprisonment up to 5 years and a fine of up to 500,000 francs under the following conditions: the person was able to provide assistance to the victim; assistance could be provided for the physical integrity of a person without risk to himself or others; assistance could be provided by immediate action.

The French Criminal Code provides for liability for non-assistance during a natural disaster.

In addition, masters must know which features of the required defense are provided for in Germany's criminal law.

In the Roman-Germanic system of criminal law, the necessary defense is assigned to a range of circumstances that exclude the wrongful act. To the conditions of legality of defense include:

1) the attacker is an individual;

2) mass assault is unlawful;

3) available (the attack has begun, not yet completed);

4) it is allowed to protect not only himself but also other persons;

5) there is no excess of the limits of the necessary defense.

Discussion questions in the German criminal law theory with the problem of exceeding the limits of the necessary defense. In this case, as a rule, distinguish two types of such excess:

1) the mismatch of the means of protecting the severity of the attack;

2) violation of the principle of the presence of an attack (premature or belated protection).

Students should freely determine the signs of extreme necessity provided for in the criminal law of England and the United States.

In England, causing harm in an emergency is considered to be a circumstance which exempts from criminal and civil liability. The conditions of the lawfulness of causing harm in this case are as follows:

Questions for self-control:

1. What are the signs of the necessary defense provided for in France's criminal law?

2. What are the signs of the necessary defense provided for in the criminal law of England and the United States?

3. What are the signs of the necessary defense provided for in the criminal law of Germany?

4. What are the signs of extreme need envisaged in the criminal law of England and the United States?

5. What are the signs of extreme need envisaged in French criminal law?

6. What are the signs of extreme necessity provided for in German criminal law?

7. What are the signs of coercion, as circumstances precluding the crime of the act, provided for in the criminal law of France?

8. What are the indications of coercion, as a circumstance that excludes the crime of an act, provided for in the criminal law of England and the United States?

9. How does the execution of the order affect the responsibility of criminal law of foreign states?

10. How does the consent (request) of the victim to the responsibility for the criminal law of foreign countries puts out?

11. What are the circumstances that exclude the crime of the act, provided for in the criminal law of Russia?

12. What are the circumstances that exclude the crime of the act, provided for in the criminal law of Japan?

Topic 1.4. Legal consequences of a criminal offense (legal) act

Plan

1. Judgment and rehabilitation

2. Exemption from criminal liability, Exemption from paternity

Guidelines

       In this subject, students must, firstly, study the definition (definition) of convictions, and secondly, to consider the criminal law of foreign countries on the example of the criminal law of criminal procedure. Students also need to distinguish the criminal record from rehab. At the same time, special attention is drawn to the fact that the institute of convictions is provided in the Criminal Code of Ukraine, and the institute of rehabilitation is absent.

Having analyzed the relevant material, students should draw conclusions as to the need to supplement the Criminal Code of Ukraine with the rehabilitation norm, justifying both a positive and a negative attitude towards this idea.

       When studying the issues of exemption from criminal liability, the release of punishment students should pay attention to the following points and norms contained in the international normative legal acts.

Then, after obtaining general knowledge of everyday domestic and international legal approaches to institutes for exempting from criminal responsibility and penalties, analyze the legislation of foreign countries, which contains the relevant provisions.

       Students must distinguish between "conviction" and "rehab".

Article 63 of the Criminal Code of Latvia defines the relevant notion: convictions are the legal consequences of the conviction of a person who committed a criminal act that has the force during the serving of a sentence imposed by a court, as well as after his departure to repay or cancel the conviction in accordance with the procedure established by law. The terms of criminal record in this CC, in contrast to the Criminal Code of Ukraine, are established depending on the type and extent of punishment and do not take into account the gravity of the crime: one year - after serving sentences in the form of arrest, forced labor or fine; 2, 5, 8 years - after the sentence of V type of deprivation of liberty for a term no longer, respectively, C, 5, 10 years; 8 years after serving a sentence of imprisonment for more than 10 years, but at the discretion of the court. It is allowed to remove a criminal record in the order of amnesty and pardon.

      Unlike the Criminal Code of Ukraine, in art. 88 which is expressly mentioned for only one consequence of conviction - taking into account it in case of a new crime, in Art. Article 97 of the Criminal Code of Lithuania states that conviction is also taken into account when deciding on: exemption from criminal liability or punishment; conditional release from punishment or replacement of sentences by more than one; recognition of a person as a dangerous recidivist.

Ordinary terms of conviction are established in this Criminal Code depending on the severity of the crime. An exception is made for persons recognized as dangerous repeat offenders (irrespective of the gravity of the crime, the term of conviction for them is 10 years) and minors (the terms of conviction after the sentence is served or the exemption from punishment of minors is reduced by half) - the commission of a criminal offense does not create a criminal record, but a careless crime creates. The Criminal Code of Lithuania, with the convictions, as well as the Criminal Code of Belarus, recognizes persons exempted from punishment. This is not the case in most of the other analyzed criminal codes.

       In all mentioned criminal codes it is indicated that a person is considered to be convicted from the day of entry into force, by a court conviction.

The Criminal Code of Bulgaria, instead of the notions of "repayment of convictions" and "cessation of convictions", operate with the term "rehabilitation". Rehabilitation eliminates conviction and cancels the consequences for the future, which the law links with the very fact of conviction (Article 85). Types of rehabilitation are rehab right and rehabilitation by the court.

Rehabilitation on the right (Article 86) does not occur in the case of committing a crime by an adult, if it has already been rehabilitated once, and - according to the criterion of the type of punishment - can occur only in cases where the person is convicted:

a) has not committed a new offense conditionally and during the probationary period;

b) to imprisonment for a term up to three years, correctional work or compulsory settlement and, within three years from the moment of serving the sentence, "did not commit a new offense punishable by deprivation of liberty or more severe punishment;

c) to a fine, public censure or deprivation of the rights and during the year since the execution of the sentence did not commit another crime of a general nature; d) until he reaches the age of majority and for two years from the moment of serving the sentence "did not" commit a new crime of general character for which he could be sentenced to imprisonment.

   In addition, according to the general rule, a person is considered not to be convicted and in the event that the stipulated articles expired. 82 of this Criminal Code the sentencing date and the convicted person did not commit a new crime of general character for which he could be sentenced to imprisonment.

    In all other cases, only a rehab is possible by a court that sentenced a court of first instance in the aggregate of conditions, namely when a convicted person:

a) has not committed a new offense punishable by imprisonment or more severe punishment within three years from the date of the sentence;

b) behaved very well; c) reimbursed the damage caused by the willful crime (but its compensation for valid reasons can not be an obstacle to rehabilitation);

d) has served her additional punishment in the form of compulsory settlement, deprivation of the right to occupy a certain position, engage in certain activities or residence in a particular area, or paid a fine imposed on her as additional punishment (Article 87).

       Chapter XII of the Criminal Code of Poland is entitled "Removal of criminal record", but not the concept covers cases of custody. That is, this Criminal Code also distinguishes between redemption of a conviction for a certain period and its withdrawal by a court. It is necessary to pay attention to the provisions of Art. 106 of this Criminal Code, according to which "from the moment of repayment the conviction is considered non-existent; the record about the conviction is excluded from the register of convicts. "The time limits which must be passed for repayment or custody are quite significant. Even in the case of a conviction or a restriction of liberty, according to the general rule, repayment of conviction comes into force after the law expires 5 years after execution of these punishments, and according to the convict's statement - not earlier than the expiry of 3 years. It prevents the termination of conviction of an unenforced criminal law measure.

         According to the Criminal Code of Switzerland, the terms of rehabilitation depend on the type of punishment and security measures. Article 80 of this Criminal Code stipulates that the person who keeps the register of criminal record officially cancels the entry if, from the date of the sentence on the length of the sentence appointed by the court, the following periods have elapsed: for the convict prison and the isolation of "ordinary" criminals - 20 years; for imprisonment, other security measures and detention at an educational institution - 15 years; for arrest and fine as the main punishment - 10 years. At the request of the convict and in certain circumstances (proper conduct, reimbursement of a school, etc.), the judge may reduce these terms according to the age of 10. 5 and 2 years, and in special circumstances and less. Renewal in the ability to hold positions, engage in a married profession, craft or enter into trade agreements, as well as in the parental authority or the ability to be a guardian upon the request of the convict, may take place 2 years after the sentence was passed (Articles 77-79).

The possibility of rehabilitation of a person by law and by court decision is provided by the Criminal Code of France (Chapter IV of Chapter 3 of Section III of Book 1), but the grounds and conditions

Rehabilitation by court decision is regulated by the CPC of France. The minimum period of rehabilitation by law is 3 years (from the day of payment of the fine or the total amount of penalty days), the largest - 10 years (from the date of first sentenced imprisonment in the form of imprisonment for up to 10 years or two or more sentences imposed in kind of imprisonment with a general term of up to 5 years). In other cases, rehabilitation is possible at the same time as the expiration of the statute of limitations, which in the case of a crime is 20, and the offense is 5 years (Articles 133-2, 133-3, 133-13). Rehabilitation can not come before the end of social-judicial supervision (Articles 131-36-1, 133-16) and is impossible at all in the case of committing crimes against humanity (Article 213-5).

According to Art. 136 Criminal Code of Spain, the conviction is not repaid, but can only be canceled by a court at the request of a convicted person, agreed with the Ministry of Justice or the Ministry of Internal Affairs. The zapne in the Central Register of criminals and persons who deviate from punishment may be revoked stucco, provided that the person:

1) "fulfilled civil liability" arising from a criminal act (except cases insolvency declared by a court);

2) did not commit new crimes in certain terms, calculated from the date of execution of the corresponding type of punishment or termination of conditional release (minimum term - 6 months, maximum - 5 years).

Criminal Code of Estonia, Criminal Code of Austria, Criminal Code of the Netherlands, Criminal Code of Germany, Criminal Code of Sweden, Criminal Code of Denmark, Criminal Code of Norway do not contain institutes of criminal record or rehabilitation.

However, the Criminal Code of Germany provides for certain analogues of rehabilitation. These may include, for example: "renewal in rights", when the court can restore the lost person by a court judgment (to occupy certain positions, election, etc.), if half of the time has actually passed and there are reasons to believe that the convict will no longer commit intentional crimes ( § 45 and 45-b); early termination of established supervision (§68); early cancellation of the prohibition on the issuance of aeolian rights (§ 69-a).

The next topic that students should read are exemptions from criminal responsibility and punishment.

Ubi est confcssio, ibi est remissio (where there is a confession of guilt, there is an excuse too). This ancient Roman postulate is predominantly governed by legislators around the world, defining in criminal laws the grounds on which the guilty person can not be punished. It is the concept of "release from criminal responsibility for the first time in Soviet criminal law appeared in the Foundations of Criminal Legislation of the Union of PCP and Union Republics (1958). 21.2 thousand people were released from criminal liability, of which, in connection with: the change of the situation - 5.6 thousand; reconciliation of the victim with the victims - 4.7 thousand; effective repentance - 2.7 thousand; transfer to bail - 2,3 thousand

Ukrainian criminologists concerned only certain aspects of the release from criminal liability under the criminal law of some foreign countries. V. Baulin, in particular, pointed out that the current legislation of France, Belgium and Holland is characterized by the phenomenon of "transactions" - agreements between the prosecutor and the accused, which repays a public action (for example, by paying a fine in favor of the state), but the law of France, except the phenomenon of "mediation" as a conditional refusal to initiate a criminal case. In Germany, Italy, Spain, Scandinavia there are also similar institutions, which testify to the implementation of the principles of criminal prosecution and the saving of criminal repression in the legislation. SM The school studied issues of the institution of amnesty and pardon according to the legislation of Russia and Belarus.

 Today, the Institute for Exemption from Criminal Liability in Ukraine "works": only in 2004, 21.2 thousand people were released from criminal charges in public prosecution cases, including: in the change of situation - 5.6 thousand; reconciliation of the victim with the victims - 4.7 thousand; effective repentance - 2.7 thousand; transfer to bail - 2,3 thousand

The provisions of the legislation of the Federal Republic of Germany, France and Sweden on the conditional release from punishment or his serving was analyzed by O.F. Covity She drew attention to the fact that these states prefer the conditional release over the unconditional, made a classification of legal obligations that can be relied on a person conditionally released from punishment or his serving, for their functional purpose, and an important conclusion about the desirability of entering into the . 76 of the Criminal Code of Ukraine a greater number of such duties, in particular those relating to the elimination of the consequences of the crime.

O.O. Dudorov, having studied the issue of a criminal-legal compromise in tax crimes under the legislation of the CIS, Bulgaria, Germany, Spain, Finland and others, made the right conclusions about that. that: a criminal-law compromise in the field of taxation may be a form of exemption from criminal liability (Spain, Russia) or from punishment (FRG), termination of criminal prosecution (Finland) or mandatory mitigation of punishment (Bulgaria); there is a group of countries (including Ukraine), in which the said compromise is considered, mainly as a way to fill the state treasury (Bulgaria, until recently and Russia), while in the legislation of those countries that historically have much more experience of criminal drapery protection of tax relations, the emphasis is not on fiscal but on the law enforcement component of encouragement - on the timely informing of the competent authorities of unknown facts of criminal acts.

Having analyzed the legislation of Russia, Belarus, Bulgaria, Poland, Switzerland, Germany and Spain, O.L. Ermak proved that the conditions for the release from criminal responsibility of members of criminal formations are:

1) Voluntary declaration of the person about his participation in the criminal formation (Russia, Belarus, Poland, Bulgaria, Germany);

2) the fact that the person did not commit the crime (Russia, Bulgaria, Spain) or a serious crime (Belarus);

3) active assistance in the disclosure, investigation of the actions of this formation or the impediment of further activities (Belarus, Poland, Bulgaria, Switzerland, Germany), and that the legislation of Bulgaria and Poland allows the release of criminal responsibility even from the leader and organizer of criminal formation.

G.O. Ustadi appealed to the experience of other states in the context of the study of criminal-law compromise and noted that "today, Western European countries are working to improve legal norms based on a well-developed system of stimulating law-abiding behavior of former offenders, trying to achieve maximum possible coherence between the state and those who violated law, by further improving the compromise norms and expanding their capabilities. The concept of compromise in Western society is losing abstract theoretical character and becomes instrumental in its content as a means of achieving practical goals. " This becomes possible only after the achievement of the pessary arrangements between the parties - the parties to the compromise agreement. However, one can not agree with the statement of GO Ustad that the compulsory condition for the existence of such a compromise is the reimbursement of the losses incurred and the elimination of the damage. As will be shown below, this is not always possible. Similar to the above opinion expressed by SM A school that insists on the expediency of consolidation in the Criminal Code of Ukraine norms on the prohibition of the use of an amnesty in cases where the guilty did not compensate for the damage caused by the crime. But among the tens of thousands of people who are subject to amnesty each year, a significant percentage is made up of individuals who have no material opportunity to do so. After all, as the author himself points out, "amnestied and pardoned persons ... as a rule, minors, invalids, pregnant women". Sincere and understandable desire SM Schools for the service of victims and civilian plaintiff slightly blinded him to the fact that in places of deprivation of liberty, as a rule, not only wealthy people who simply do not want to reimburse their losses. Consequently, he makes an attempt to put an amnesty in dependence on the property of a person, which, in our opinion, contradicts Art. 24 of the Constitution of Ukraine.

In general, the grounds for the release of criminal responsibility and punishment under the laws of other states were not sufficiently investigated. Meanwhile, such studies are currently extremely relevant. Yu.V. Golik points out that the philosophy of encouragement in criminal law is, in general, a relatively new topic, although it has long been known: promotion and punishment - paired categories, and use them based on their parity. It's not for nothing that the Balance of Justice has just two pieces. All punishment criminal law ceases to be criminal, and without encouragement, all criminal justice will lose meaning, turn into a heartless punitive mechanism.

In the context of these issues, consider the relevant provisions of international law.

Thus, it is obvious that all States parties should reflect in the national legislation the requirements of the UN Convention on the Non-Application of the Limitation Period for War Crimes and Crimes against Humanity (1968) and the European Convention on the Non-Application of the Limitation Period for a Crime "against Humanity and" Aspen Crimes "(1974) , according to which no limitation period applies to the corresponding crimes, irrespective of the time of their commission. On Exemption from Criminal Liability and Punishment The UN's minimum standard rules for measures not related to imprisonment (Tokyo Rules, 1990) say so: in appropriate cases, it is necessary to inscribe not only the court but also the police, prosecutor's office or other institutions that deal with criminal cases, the right to dismiss the offender of responsibility, if, in their opinion, there is no need to institute proceedings in order to protect society, prevent crime or ensure compliance with the law and the rights of victims. After sentencing a petition of the offender, the court may apply such measures as vacation and placement in a penitentiary institution, release in connection with work or study, various forms of dismissal under the word of honor, reduction of the term, etc.

The Recommendation of the Council of Europe on the simplification of criminal justice (1987) states that States should state in their national law the possibility of:

1) denial of prosecution and termination of it for discretionary reasons, when the court has sufficient evidence of guilt;

2) out-of-court settlement of conflicts. In this law, the categories of offenses in which such a settlement is possible, its conditions (payment of a sum of money to a suspect to a state or a state or charitable organization, reimbursement of the harm caused and restoration of the rights of the victim, provision of compensation to the victim), etc., should be envisaged;

3) granting the court the right, passing the stage of the hearing, with the consent of the accused decision-making, an equivalent sentence, for example, a decision on administrative enforcement (with the sanctions should be limited to a fine and deprivation of rights). The Convention on Corruption in the Context of Criminal Law (1999) obliges States to adopt legislative measures to ensure the effective protection of "justice assistants" who report relevant offenses or otherwise cooperate with investigating authorities.

Topic 1.5. Peculiarities of punishments and other legal consequences of committing a criminal offense against certain categories of persons

Plan

1. Features of criminal liability of legal entities.

2. Features of criminal liability of members of parliaments

3. Features of criminal responsibility of mass media representatives.

Guidelines

Studying this question, students must, first of all, have an idea of ​​which persons are legal. It should take into account the European tradition on this issue.

To begin to study the issue of the responsibility of parliamentarians should be read in the text of Art. 27 of the Rome Statute, the International China Court (1998).

The study of this issue should begin with the study of the Council of Europe's recommendations on issues of incitement, "incitement to hatred" (1997)

Students should know the features of punishment and other legal consequences of committing a criminal (illegal) act against certain categories of persons.

Similar provisions include the Council of Europe Convention on Cybercrime (2001), Environmental Protection through Criminal Law (1998), and a series of acts issued within the EU. Thus, the Second Protocol to the Convention on the Protection of Financial Interests of the European Communities (I997) 3 stipulates that legal persons should be held responsible for fraud, active corruption and money laundering committed on their own

the benefit of any person acting either individually or as part of a body of a legal entity that holds the main position in a legal entity, based on the authority:

a) representation of a legal entity;

b) make decisions on behalf of the legal entity

c) to control the legal entity.

Legal persons can be recognized responsible also when the insufficiency of supervision or control by the indicated person has led to committing fraud, an act of active corruption or money laundering in favor of this legal entity by a person under its authority (Article 3).

Sanctions for legal entities should include criminal and non-criminal fines and may include other sanctions:

 a) deprivation of the right to public assistance;

 b) disqualification from commercial activities; c) placement under judicial supervision;

 d) liquidation by court order. Similar provisions are contained in Articles 4 and 5 of the EU Council Framework Decision "On Combating Trafficking in Human Beings"

(2002) - on the liability of legal entities for trafficking in human beings, in Articles 6-9 of the Council of the EU Framework Decision "On Combating the Sexual Exploitation of Children and Child Pornography"

(2003) - on the liability of legal entities for the sexual exploitation of children and child pornography, etc.

Students need to know the features of criminal responsibility of legal entities.

The criminal codes of most European states were adopted before it was considered necessary at a pan-European level to foresee the criminal liability of legal entities. For this and other reasons, as a rule, they do not have chapters specifically devoted to this issue, and where it is recognized that the responsibility is to be established, these issues are regulated by separate articles. In all such cases, a rule is unequivocally established that the criminal liability of a legal entity does not invalidate the criminal liability of an individual who committed or organized a criminal act, incited or encouraged him.

According to Art. 20 of the Criminal Code of Lithuania, a legal entity (other than a state, authority or institution of a state or local government) is liable only for those criminal acts for the commission of which the liability of a legal entity is provided for in the Special Part of this Criminal Code. Such acts include, in particular: careless murder or causing serious harm to health due to violation of safety rules of conduct (Part 3 of Article 132 and Part 3 of Article 137), some crimes against the private life of an individual (Articles 166-168), illegal the use of energy and communication services (Article 179), the appropriation of someone else's property or property rights (Article 183), causing property damage by deceit (Article 186), careless destruction or damage to property (Article 188), crimes in the field of intellectual property rights (articles 192-195, 204), crimes against computer science (articles 196-198), most crimes and Crimea illegal offenses in the sphere of economic activity and entrepreneurship (articles 199, 200, 202, 203, 206-208, 213, 216-220, 223, 223), bribery (Article 225), bribery (Article 227), violation of the rules of storage weapons, ammunition, explosive devices or substances (Article 255), violation of the rules of lawful handling of radioactive substances (Article 257), as well as with narcotic, psychotropic, potent or poisonous substances (Art. 268), some crimes against the environment and health of the population (articles 270, 271, 273, 275-277), illegal transfer of persons across the state border (Article 292), organization of trips abroad of Lithuanian citizens for the purpose of their illegal stay there (Article 293), crimes involving the forgery of documents and measuring instruments (Articles 300-306). In total, this list counts more than 50 crimes.

A legal entity may be liable for criminal acts committed by an individual if they were committed in favor or in the interests of a legal entity:

1) an individual who:

a) acted on behalf of a legal entity or

b) served the executive functions and, while in the service of a legal entity, had the right: to represent it, to make a decision on its behalf or to control its activities;

2) her employee or authorized representative due to insufficient control over the above persons.

But for these crimes, the specified legal entity can only be held liable if it is:

a) in the non-fulfillment or inappropriate execution of direct provisions of the law establishing obligations or prohibitions in relation to the pursuit of certain activities

b) in the performance of activities that do not conform to the statutory documents or stated objectives;

c) if an act that causes or poses a real danger of causing harm to a significant extent to a person, society or state was committed in the interests of this legal entity or was authorized, authorized, approved, used by an authority or person with the functions of its management.

According to Art. 14 of the Criminal Code of Estonia, a legal entity (other than the state, local self-government bodies and public legal entities) may be liable for acts committed by its body or manager in the interests of this legal entity. According to Art. 37 of this Criminal Code, which is capable of being the subject of a guilty act, is recognized as a legal entity. A legal entity is the subject of such crimes and offenses as: private prosecution (Article 137); illegal conduct of experiments on people (Article 138); active agitation on election day (Article 168); purchase-sale of a child (Article 173); promoting the employment of juvenile prostitution, the use of a minor for the creation of a pornographic work and some other similar acts (articles 176-180); illicit drug trafficking and some other acts in this area (articles 184, 189, 190); the spread of infectious diseases and epizootics (Article 193); illicit drug traffic (Article 194); ignoring the requirements of hygiene and safety (Article 196), etc., and only about 130 crimes and misdemeanors.

Poland, in connection with its accession to the EU, has fulfilled the conditions for bringing its own criminal law in line with European standards, in particular with regard to the criminal liability of legal entities and other collective entities. On June 27, 2002, the Polish Sejm adopted a special law "On the liability of collective actors for actions prohibited under the threat of punishment", which contains 48 articles, half of which are material. This Law was analyzed in detail by V.K. Grischuk

A collective entity in the Law means, in addition to a legal entity, also a trade organization and their union, an organization in a state of liquidation, a foreign organization, etc. The liability of a legal entity is derived from a criminal act of the individual (who acted on behalf of the first or in his interests, etc.). At the same time for bringing to criminal responsibility of a collective entity there should be a judicial decision regarding an act committed by a specified individual. The Law specifically lists the crimes committed by the said individual resulting in the criminal relevance of the collective entity. These include, in particular, crimes against: economic activity; order of insurance; order of banking activity; industrial property rights; the order of the activity of trade unions; order of foreign economic operations; the order of the circulation of weapons, explosive materials, etc.; order of circulation of money and securities; the interests of the service; order of protection of information; the authenticity of documents; property; nature; the order of competition; order of taxation.

The problem of guilt was decided by the Polish legislator in the following way: in order to bring the collective subject to criminal liability, it should be established that on his part there was a fault in relation to the individual in question as regards:

a) recruitment;

 b) inadequate control;

 c) inadequate supervision.

The Criminal Code of Austria does not establish the criminal liability of legal entities. At the same time, its establishment is in the immediate plans of the Austrian legislator, as evidenced by the works of EO Fabrics

Extremely detailed details of the criminal liability of legal entities are defined in the Criminal Code of France, where they are devoted to dozens of articles. Article 121-2 of this Criminal Code expressly states that legal persons, with the exception of the state, are liable to criminal liability in appropriate cases, for criminal acts committed in their favor by bodies or representatives of a legal entity. However, local self-government bodies and their associations are subject to criminal liability only for criminal acts committed in the exercise of delegated authority in the civil service.

NOT. Krylova notes that the liability of legal entities, according to the Criminal Code of France, is due to the presence of two circumstances: 1) a criminal act committed in favor of a legal entity and 2) his manager or representative. At the same time, the commission of a crime "in favor" or, in other words, "to the account" of a legal entity means that as a result of its commission, the legal entity receives a certain benefit, not necessarily material (for example, a legal entity can be held responsible for terrorist acts, pursuing political, religious or other goals); committing an act, albeit in favor of a legal entity, but other persons, other than directors or representatives (technical workers, ordinary employees), does not entail criminal liability. The responsibility of legal entities does not come for all criminal acts, but only for those that are explicitly mentioned in the legislation, including unintentional

The French legislator has criminalized legal persons for: crimes against humanity, unintentional assault on life, encroachment on human inviolability, putting people at risk, illicit drug trafficking, discrimination, condemnation, human experiments, encroachment on private life, false denunciation, " computer "crimes and misconduct, all kinds of robbery, abuse of trust, encroachment on the main interests of the nation, terrorism, etc.

The French Criminal Code uses the term "relapse" in relation to legal entities. For example, the size of the fine for them increases tenfold if a legal entity, already convicted of a crime orprocedure, within 10 years after the end of the previous sentence is again brought to criminal liability (Articles 132-12-132-14). Article 133-14 defines the features of rehabilitation under the law for legal entities. It is possible after the expiration of 5 years from the date of execution of the sentence (regarding the fine - from the date of payment).

**Topic 1.6. General characteristics of the special part of the criminal codes of European states**

Plan

1. Features of the definition of sanctions for a criminal act

**Guidelines**

Students should know the features of the definition of sanctions for a criminal act.

Realization of these intentions will take a lot of time. At least the years since the said application V.T. Malyarenko, make them skeptical about her: after all, during this time the "visa" did not move at all.

At the same time, there is no doubt that the specified scientifically based criteria will be developed sooner or later. This is evidenced by the already realized intentions of some European countries to put in order the determination of criminal sanctions. After all, this problem exists in Western European states. One Spanish criminologist clearly demonstrated how wide the range of punishments provided by the laws of different states for the same "serious violations of international humanitarian law". For example, the military-criminal law of the Netherlands imposes extremely severe penalties for them, Spain and Sweden - from extremely soft to extremely strict, Norway, Denmark, Switzerland, and Germany - are generally relatively lightweight1.

The legislator in the design of criminal law should explicitly provide for specific sanctions in them, on the one hand, to create a basis for the legitimate attachment of punishment, on the other - to comply with the requirements of the principles of individualization of punishment and justice. To do this, it is necessary to give the court the right to a certain freedom in choosing a specific punishment and its size. These preconditions determine the existence in criminal law of relatively specific and alternative sanctions.

Criticizing the lawmakers of Russia, researchers note in particular that: the use of the same fines for crimes, different in severity category, is erroneous, since sanction is an indicator of the social danger of the act for which it is foreseen; sanctions must comply with applicable qualifying features. The transition "simple - qualified - especially skilled warehouses" should be reflected smoothly in sanctions. There can be, for example, the gap between the maximum penalty for a simple crime and the minimum sanction for a qualified one. At the same time, the minimum penalties for simple and for qualified crimes should not coincide, and even the second one should be less than the first one. False (except for crimes of minor importance) is the construction of sanctions with the definition of only the upper limits of punishment, since in this case, for a simple and for a qualified offense can be imposed the same punishment, and this erases the line between the categories of crimes. It is unquestionably proposed (this proposal also applies to the Ukrainian legislator): in the crimes of one category of severity, the lower and upper limits are set in the same boundaries; in sanctions of norms that provide for responsibility for serious crimes, where only their upper limit is specified, to determine the lower limits of deprivation of liberty; the lower and upper limits of fines and correctional works for the crime of one category of severity set in the same range; the upper limit of the sanction for a simple crime to be set equal to the lower limit of the penalty for a qualified crime.

With regard to judicial discretion, it must always remain within the limits of the sanction. It is only possible, as R. Tselpelius writes, that in the interests of legal certainty, as well as the same treatment in identical situations, it would be desirable to have a network with the systematization of types of acts and punishments for them, taking into account the personal fault of the offender, his ability to go to the path of correction, the need for security society, etc.

As a rule, sanctions depend on the system of values ​​adopted in one or another state, on how dangerous the state considers different criminal acts, from the fact that the criminal-law system of a particular state itself is a repressive or, conversely, humane one.

At the moment, our goal is to show how sanctions are determined in the criminal laws of European states, to demonstrate individual at least the dotted lines outlined in these laws for the definition of sanctions.

It is worth pointing out that the EU criminal law instruments bring the approximation of criminal justice standards in the member states through the "minimum harmonization" method, namely by setting the upper limit of criminal sanctions.

For example, the Framework Decision of the EU Council on Combating Corruption in the Private Sector (2003) defines appropriate sanctions, at least in the range of one to three years' imprisonment. The EU Council Framework Decision on combating trafficking in human beings (2002) also directly imposes sanctions: in the presence of aggravating circumstances, the upper limit of the "human trafficking" sanctions in all states should be at least 8 years' imprisonment (Article C). Similar provisions for the definition of specific sanctions include the framework decisions of the Council of the EU "On Combating the Sexual Exploitation of Children and Child Pornography" (2003). "On Criminal Legal Protection of the Environment" (2003), "On Increasing the Standard of Criminal Responsibility with the Penalty for the Help of Illegal Entry, Transit and Stay" (2002), etc.

It is appropriate to point out that EU legislation on criminal law is a criminal approximation of standards

- Sanctions in the form of a fine are typical: the size of the fine is always set in the range of up to 100, up to 200 or up to 300 penalty units (all three variants);

- the amounts of money collection, as well as the term of arrest are not established, that is, the court has the right to determine them independently, based on their limits provided by the General Part. Instead, the size of the fine and the terms of imprisonment are established in all cases.

In the Criminal Code of Poland:

- Sanctions allow for extremely broad judicial discretion, which probably reflects the high degree of public confidence in the court. So, in many cases, the law provides for a penalty of imprisonment for a term of 6 months to 8 years, from one year to 10 years, from 2 to 12 years, etc .;

- in many chapters of the Special Part of this Criminal Code there are "additional" articles or "additional" paragraphs of the articles with the requirements that in cases of crimes and in what circumstances the court may apply extraordinary mitigation or refusal of punishment (for example, 139 or § 4, Article 140). Such norms are generally several dozen;

- the vast majority of sanctions foresee only one type of punishment - imprisonment for a certain period;

- Sanctions for preparation for one or another crime, which is recognized as a criminal punishment, are defined in a separate section of the article or in a separate article (in case of several crimes) and are considerably more lenient than the sanctions for the corresponding crime;

- sanctions determine only punishment, but not criminal-law measures. At the same time, in some chapters of the Special Part of this Criminal Code, there are "additional" articles or "additional" paragraphs of the articles with the prescriptions that, in cases about which crimes a court may resort to confiscation (such as Article 139 or § 4, Article 140) ;

 - Sanctions often include only the lower limit of punishment in the form of imprisonment ("punishable by imprisonment for a term of at least 5 years"). In this case, of course, it means that the upper limit of the corresponding type of punishment is set in the General Part. For example, it is usually 15 years for imprisonment;

- Limits of punishment in the form of a fine or restriction of freedom in sanctions are usually not determined. Obviously, in these cases the court should refer to the provisions of the General Part. Exception is Art. 309, which specifies the amount of fines that may be imposed along with deprivation of liberty for a number of crimes listed in this article.

Even more specific sanctions are defined in the criminal codes of the states of Western Europe.

The German legislator, by adopting the so-called 6th Law on the reform of criminal law of January 26, 1998, for the first time set itself a specific task - to harmonize the limits of punishment in the modern CC of the Federal Republic of Germany. The system of punishment limits should take into account the need to provide more reliable protection primarily such benefits of the person as life, physical integrity, personal will, sexual self-determination, and only then - material goods such as property, property and security of legal relations. With the aim of harmonizing the limits of punishment, taking into account the true value and significance of various legal benefits, this Law eliminated the contradictions between punishments for bodily harm, murder and sexual delicts, on the one hand, and accusations against property, property and forgery of documents, on the other. Within these groups of criminal acts, the limits of punishment were also duly coordinated. Sanctions in the form of deprivation of liberty in the Criminal Code of the Federal Republic of Germany are determined by the upper limit (for example, "up to 5 years"), or for the lower ("at least one year"), or for both of them ("from two months to 5 years"). Within both boundaries, the deprivation of the right to occupy certain positions is also determined. Monetary fines, except as specifically specified in the General Part of this Criminal Code, are usually provided as an alternative to deprivation of liberty for all offenses. The size of fines in sanctions, as a rule, are not determined, since they are defined in the Free Section and are elected at the discretion of the court.

According to the CC of the Netherlands (Article 23), there are six categories of fines depending on their size - 500 (first category), 5 thousand (second), 10 thousand (third), 25 thousand (fourth), 100 thousand (p yat) and a million guilders (sixth) 3. Therefore, the sanctions usually specify only the category of fine, but not its size, which is quite convenient.

In general, Dutch judges are bound only to the maximum amount of sanctions (only the maximum limits of imprisonment are specified in the sanctions articles). At the same time, the court has the right to mitigate the punishment at its discretion: there is no list of mitigating circumstances in the Criminal Code; it is considered that the contrary would be contrary to "trust in judges". Sometimes the court has the opportunity to make a decision on imposition of sanctions in the range from one day to life imprisonment.

Some rules of the Criminal Code of the Netherlands, which provide for criminal offenses with aggravating features, do not have sanctions and reference is made to the "basic" norms, but indicating that, for example, the terms of imprisonment may be increased in a certain proportion. For example, in Part 4 of Art. 138 indicates that the terms of imprisonment provided for in paragraphs 1 and 3 may be increased by one third if the crime is committed by two or more persons jointly. In Article 304 of this CC, contained in section XX "Physical Image", it is specified that the terms of imprisonment specified in Articles 300-303 may be increased by a third under certain aggravating circumstances.

In the Criminal Code of Switzerland sanctions establish only the type of punishment, and its limits are defined in the General Part. Such an approach extends beyond the limits of judicial discretion. After all, having clarified, for example, the sanction of Art. 276 of this Criminal Code, with the help of the norms of the General Part, it can be established that the calls of servicemen for rebellion are punishable by imprisonment for a term of 3 days to 20 years.

The Austrian Criminal Code contains the aforementioned provision, which allows in two cases (in the case of committing any crime as a dangerous recidivist or official) in excess of the upper limit of the sanction by half.

In the Criminal Code of France, attention is paid to the extremely severe sanctions imposed for crimes against human beings. For example, simple rape (Article 222-23) is punishable by imprisonment for a term of 15 years, qualified (Article 222-24) - 20 years, and especially qualified (Articles 222-25 and 222-26) - 30 years (if rape caused the victim's death) and even life imprisonment (if the rape was combined with torture or acts of cruelty, preceded or followed by them). Illegal arrest or detention is punishable by imprisonment for a term of 20 years, and the same for a minor - for a term of 30 years; if these actions have caused a chronic illness or injury caused by, say, the conditions of detention, the punishment increases, respectively, up to 30 years imprisonment and life imprisonment (Articles 224-1 - 224-5). At the same time, theft is punishable by imprisonment for a period of intentional and treacherous murder, committed for reward and with particular cruelty (Article 140), the most severe punishment is imprisonment for a term of 20 to 25 years, and for causing death due to gross negligence ( Article 142) - imprisonment for a term from one to 3 years. Theft (Article 235) is punishable by imprisonment for a term of 6 to 18 months, and for aggravating features (Article 239) - from one year to three years.

**Theme 7. Criminal acts against person, property, computer economic and environmental criminal acts**

**Plan**

**1. Computer crime**

**2. Economic criminal acts and acts against the financial system.**

**Guidelines**

Students should pay attention to criminal liability for computer crime.

 Questions of criminal liability for some computer criminal acts were investigated by D.S. Azarov on the example of such European states as Germany, France, Spain, and N.A. Rosenfeld - on the example of Germany, France, Norway, Sweden, as well as CIS countries. D.S. Azarov pointed out in this connection the need for the earliest ratification of the Convention on Cybercrime and, on the example of European states, the implementation of its provisions in domestic law. However, for obvious reasons, it should be criticized for his conclusion that "the object of all computer crimes is the ownership relations with regard to computer information." According to N.A. Rosenfeld, the criminal laws of individual states of the CIS member states contain a very broad list of crimes that substitute for traditional crimes and provoke artificial conflicts, and the criminal laws of others are too narrow (only one norm). The analysis of the grounds of responsibility for these crimes under the laws of a number of European states was carried out by us.

Particular attention was paid to the analysis of computer criminal acts under the criminal laws of some European states (Holland, Germany, France, Spain, Czech Republic, Poland, CIS countries) Russian scientists. Yes, T.L. Tropin notes: if we analyze the legislation of the European states, including the special rules on computer crimes, and the "general rules" on which a person is likely to be prosecuted for committing a computer crime (in the absence of special rules), then we can conclude that, that in the majority of EU member states criminalized such computer attacks: illegal collection of computer information; malware refusal of service; attempt to invade; unauthorized access to information; unauthorized interception of information; unauthorized modification of information; unauthorized access to communication systems.

The Council of Europe for the first time devoted attention to the definition of computer-related criminal acts more than 15 years ago. But the most widespread and concrete character is the Convention on Cybercrime adopted in 2001. Russian authors suggest revising the structure of computer crimes identified by the CISC, and laying the basis for the classification proposed by the Convention. All offenses established by this Convention as such that each Party, in accordance with its domestic law, has a criminal record, is divided into four main groups.

This is a violation:

  1) against the confidentiality, integrity and availability of computer data and systems;

2) connected with computers;

3) related to the content of computer information, namely, child pornography;

4) related to copyright and related rights. In addition, according to the Additional Protocol to the Convention on Cybercrime to Incite Racist Acts and to Make Xenophobia Committed by Information Systems (2003), each party should recognize the crimes of acts committed through the dissemination of information systems of threats and the image of other people for the reason that they belong to a certain race, national, religious, etc. group.

The EU Council Framework Decision on combating fraud and counterfeiting of non-cash means of payment (2001) stipulates that each state should criminalize such computer-related acts:

1) deliberate execution or induction of a transfer of money or money and, thus, causing unlawful loss of the property of another person with the intention of obtaining unauthorized economic profit for the perpetrator or for a third person by means of: introduction, modification, destruction or blocking computer (including identity) data, without the right to do so; 2) interference with the functioning of a computer program or system, without the right to do so (Article 3);

3) deliberate fraudulent creation, acceptance, receipt, sale or transfer to another person or possession of computer programs in which any of the crimes specified in art. 3 (Article 4)

In the Criminal Code of Latvia, these crimes are included in Chapter XX "Criminal acts against public security and public order", which is unduly criticized by experts, since under the conditions of comprehensive informatization and computerization, their separation into a separate chapter would be a promising step. The Criminal Code of Latvia provides for liability for: unauthorized entry into the computer system (Article 241) (aggravating the responsibility for this and the next act of overcoming the means of protecting computer software software or connecting to the communication line); unauthorized purchase of software (Article 242). It is about copying software, file or database; damage to the software (Article 243). This refers to unauthorized modification, modification, damage or destruction of information, the introduction of appropriate knowingly false information, intentional damage or destruction of the media of such information; distribution of a computer virus (Article 244); violation of the rules of information system security (Article 245).

The Criminal Code of Belarus contains a separate section XII "Crimes against Information Security", which, however, includes only one chapter 31 with a similar name. However, this chapter is very carefully designed. Its seven articles assume responsibility for: unauthorized access to computer information (Article 349); modification of computer information (Article 350); computer sabotage (Article 351). It is about deliberate destruction, blocking, damage to computer information or programs, etc.; unauthorized possession of computer information (Article 352); manufacture or sale of special means for obtaining unauthorized access to a computer system or network (Article 353); development, use or distribution of malicious software (Article 354); violation of the rules of operation of a computer system or network (Article 355).

A compulsory feature of crimes provided for in Articles 349, 350, 352, 355 is the task of substantial harm (an assessment mark). Considering that according to Part 4 of Art. 11 of this ISC is not a crime an act that did not cause or could have caused material harm, indicating significant harm in the articles mentioned is false.

In the Special Section of the Criminal Code of Lithuania there is Chapter XXX "Crimes against Informatics". These include: the destruction or alteration of computer information (Article 196); the destruction or alteration of a computer program or the introduction into the computer network of a program that has violated or changed the work of the network, database or information system (Article 197); appropriation or disclosure or other use of computer information protected by law about a legal or natural person (Article 198). The first two acts lead to criminal liability only in case of causing great harm.

In the Criminal Code of Estonia, 1961 (in the wording of 1992), there was a special chapter 14 "Crimes in the field of computer information and data processing", which contained nine articles (articles 268-276). However, the Estonian legislature decided to abandon such an approach. He went the way that was preceded by the legislators of the Western European countries (in particular, Austria) who differentiated computer crimes depending on the sphere of public relations that the offender committed, and identified three groups of relevant criminal acts: economic, against the rights and freedoms of individual actors and organizations and against the interests of the state and society as a whole.

In the current Criminal Code of Estonia, the relevant acts are prescribed by various sections and even heads, in particular: 1) Chapter 1 "Guilty actions against property" of Chapter 13 "Guilty actions against property": computer pesting - illegal substitution, erasure, damage, blocking, entry into computer data or programs (Article 206); damage to computer network connections or interference with the implementation of connections (Article 207); the spread of a computer virus (Article 208); 2) section 2, "Offenses against property in general", chapter 13: obtaining property benefits by way of insertion, substitution, erasure, blocking of computer programs or data or other interference with the processing of data with the effect on the results of processing data (Article 213 ); illegal use of a computer, computer system or network by removing code, password or other means of protection (Article 217); 3) Section "Criminal actions against public authority", chapter 16 "Guilty actions against public rest": illegal transfer of protective codes of computer, computer system or network (Article 284).

Computer technologies are used for extortion and fraud, bank robbery and commercial espionage, cell phone simulation and software tampering, computer viruses are a means of revenge for employers or other individuals and hooliganism. The number of these and other computer crimes is steadily increasing1. Therefore, the relevant provisions of the criminal codes of European states are constantly being improved.

So, trying to adapt the criminal law passed in 1937 until the appearance of new types of crimes, the Swiss legislature at the end of XX century. introduced articles 143-bis, 144-b, 150-b into it, as well as amended articles 143, 147 and some others. Consequently, the current Criminal Code of Switzerland provides for liability for such computer crimes, in particular: acquisition of mercenaries of data collected or processed by electronic or other similar means, if these data are especially protected from unauthorized access (Article 143); unlawful penetration into a stranger, especially a protected data processing system without selfish purpose (Article 143-bis); improper modification, destruction or damage to data collected or transmitted electronically or in a similar manner (Part 1, Article 144-b); fraudulent misuse with the data processing installation - incorrect, incomplete or unlawful use of the data, other influence on the process of processing or transmission of data with mercenary, which is achieved by ensuring the delay of the onset of property damage (Article 147); manufacture and release into circulation of equipment, its components or data processing programs intended for illegal decoding of radio programs or telecommunication services (Article 150-b).

It was roughly the same in 2002 and the Austrian legislator, adopting a special law on changes to the Criminal Code, which became a response to a new threat in the field of information technology. With the help of this law, the EU Convention on Cybercrime was implemented in Austria. Currently, the Austrian CC in this area is responsible for: illegal access to the computer system (§ 118-a); violation of telecommunication secrecy (§ 119); illegal interception of data transmitted on a computer system with mercenary misery (§ 119-a). In this case, the data refers to personal data, any other data or programs; illegal (illegitimate) use of recording and eavesdropping devices (§ 120, paragraph 2-a); data damage (§ 126-a); violation of the functioning of the computer system (§ 126-b); illegal (unlawful) use of computer programs or access data (§ 126-e); fraudulent, deceptive, data processing (§ 148-a); falsification of data (§ 225-a).

Some of these acts are attributed to criminal acts that encroach on the private sphere, others - to criminal acts against someone else's property, the latter to criminal acts against the authenticity of documents and means of proof.

Attack on automated data processing systems is dedicated to the special chapter 3 of section II of the book of the Criminal Code of France. It refers to them, in particular: fraudulent receipt or fraudulent preservation of access to the specified system, including which caused the destruction or alteration of data or deterioration of the functioning of the system (Article 323-1); interruption of work or violation of the functioning of the system (Article 323-2); fraudulent introduction of information in the system or fraudulent destruction or alteration of the data contained in it (Article 323-3); participation in an organized group or conspiracy aimed at preparing for the criminal acts provided for in Articles 323-1, 323-3 (Article 323-4).

Separately allocated attacks related to the use of card files and processing of data on the computer: committing or giving feedback indicating the commission of automated processing of name data without the implementation of the statutory formalities (Article 226-16); committing or giving feedback on the processing of this data without taking all precautionary measures necessary to ensure the safety of data (Article 226-17); collecting and processing data in an illegal manner (Articles 226-18); insertion or storage in the computer memory of data prohibited by law (Article 226-19); the preservation of certain data beyond the statutory term (Articles 226-20); use of data for a purpose other than that provided for (Article 226-21); disclosure of data, can lead to the consequences specified in the law (Article 226-22).

This Criminal Code also provides for liability for acts committed with computer information to the detriment of the interests of the state: the collection or transfer to a foreign state of information contained in the computer memory or card index, destruction, theft, seizure or copying of data of the nature of secrets national defense kept in the memory of a computer or in card files, as well as familiarization with them of the data of unauthorized persons (Articles 411-7, 411-8, 413-9, 413-10, 413-11)

Article 186-1 of the Criminal Code of France establishes liability for unlawful interception of data in telecommunication systems. Finally, another kind of "computer" criminal act is sexual aggression, committed through the use of telecommunication networks and the dissemination of messages addressed to an uncertain circle of persons (Article 222-28).

In Germany, the discussion about the expediency of developing a criminal law, which implies responsibility for acts related to computers, began in 1975, that is, since the new edition of the Criminal Code of 1871, the German legislator did not consider it necessary to allocate a computer Computer crime in a separate section, nevertheless, very carefully took care of the development of their system and one of the first in Europe devoted to the relevant changes to the Criminal Code of the Federal Republic of Germany a special law of May 15, 1986.

He was responsible for the following, in particular, acts: computer fraud, which refers to the effect on the result of processing data due to improper creation of programs, the use of incorrect or incomplete data, etc. with the intention of obtaining property benefits, which caused property damage to another person (§ 263 -and). In the German doctrine it is assumed that computer fraud is a deception not subject, but a program.

Theme 8. Criminal acts against security, public order, religion, public health and criminal acts in the public sphere

Plan

1. Criminal acts against the safety and operation of transport.

2. Criminal acts in the area of ​​the circulation of narcotic drugs, psychotropic substances, their analogues or precursors and other criminal acts against the health of the population.

3. Criminal acts against the rule of law

Guidelines

Students should know the experience of other states regarding criminal law safety of traffic safety and operation of vehicles, which V.A. Thinking Having analyzed the criminal laws of the sixteen states of Europe, he came to the conclusion that the relevant special sections were identified in the criminal codes of Switzerland, Spain, Holland, Bulgaria and Poland; In the penal codes of Austria, Denmark, Germany and some other mentioned crimes are considered mainly as separate crimes against public safety, and in Sweden, along with some articles of the Criminal Code of Sweden, there is a special law "On Road Traffic Crimes" of 1951.

When defining criminal acts against traffic safety and the exploitation of transport, European states are guided by separate acts of international law. For example, the European Convention on the Punishment of Road Traffic Offenses (1964). The provisions of the Council of Europe Convention on Road Traffic (1968) have become crucial for criminal law in many countries of the continental Europe to criminalize the driver's abandonment of the road traffic accident.

In chapter 27 of the Criminal Code of Russia, "Crimes against traffic safety and operation of transport" provides only 8 crimes (for comparison: in Chapter 28 of the Criminal Code of Belarus - 13, and in Section XI of the Special Part of the Criminal Code of Ukraine - 17).

This almost entirely applies to Chapter XXI of the Criminal Code of Latvia "Criminal acts against traffic safety". It should be pointed out as follows: a) violation of the rules of the traffic and operation of vehicles is considered a criminal offense in case of causing the injured light bodily harm with a disorder of health or bodily harm of moderate severity; Such aggravating liability as the act of committing this act under the influence of alcoholic beverages or stomping agents, makes it a particularly grave crime (Article 260); b) a criminal offense is the management of a vehicle or training for the practical driving of a vehicle under the influence of alcoholic beverages or stomping agents repeatedly during the year (Article 262), and the crime is the admission to the management of a vehicle of persons who are under the influence of the specified substances, a person , responsible for the technical condition or operation of vehicles - subject to the consequences of the stipulated st.260; c) Art. 265 provides for liability for the illicit manufacture, sale, issue, forgery, destruction or theft of a registration document, unit or registration plate of a vehicle.

Chapter XXXIX of the Criminal Code of Lithuania refers to crimes and criminal misconduct against the security of the traffic movement, in particular, such specific ones as: poor-quality care of transport routes, road structures (Article 278); damage to vehicles, roads, railways, including gas and oil pipelines, lines of electricity and communication, etc. (Article 280); violation of rules that ensure the safe operation of transport (Article 282). The subject of the last of the listed crimes is a person who does not control the vehicle. In general, all of these articles are constructed more compactly, concisely than in the Criminal Code of Ukraine, without undue duplication (as in Articles 277 and 292 of the Criminal Code of Ukraine, which provide for responsibility for the same acts concerning various objects of transport infrastructure).

Responsibility for violation of the rules of the traffic or operation of vehicles (Article 281 of the Criminal Code) is differentiated depending on: a) the presence or absence of a state of alcohol, narcotic intoxication or the impact of psychotropic or other similar substances; b) the type and severity of the damage. Thus, by itself driving a vehicle in a state of intoxication (part 2 of Article 281), even in the absence of violations of other rules and consequences, is recognized as a criminal offense and is punishable by a fine or arrest. A similar act, if it was connected with the violation of other rules and caused even a minor gravity of damage to human health or property damage, may be punished by imprisonment for up to 3 years (Part 1, Article 281). Violation of rules not related to the state of intoxication is punishable by imprisonment for up to 5 years in the case of causing grave damage to human health (Part 2 of Article 281), and in the state of intoxication - for up to 6 years years (part 3 of Article 281). Violation of the rules not related to the state of intoxication is punishable by imprisonment for up to 8 years in the case of the death of a person (Part 4 of Article 281), and in the state of intoxication - for a period of 3 to 10 years ( Part 5, Article 281). In this case, the person is recognized as being in a state of intoxication, if her blood contains 0.4 or more beverages of alcohol. Consequently, a slight alcohol intoxication by the driver, even if it caused minor damage to human health or property damage, is neither a crime nor a criminal offense.

The Criminal Code of Estonia, which has a special chapter 23 "Guilty actions against traffic safety", provides for liability, in particular, for driving a motor vehicle in a state of intoxication by a person who was previously punished for committing the same act, as well as the transfer of control to a person , which is in a state of intoxication (Article 424). Unfortunately, from this article it is unclear how a person may have been punished for this act before, if the obligatory feature of this crime is a repetition.

A specific crime under Art. 426: Illicit application of a color scheme on a motor vehicle similar to a color scheme used on an on-line vehicle or illegally installed on a mechanical vehicle of a device for the submission of special signals or the use or control of a motor vehicle so designated. The grounds for liability for violation of the person who manages the vehicle, the requirements of movement and operation of vehicles are originally defined in this Criminal Code. In fact, the disposition of the parts of the first articles 422 and 423 differs only in that the first of them refers to the commission of an act through negligence of grave harm or death of a person, and in the second - to commit the carelessness of the specified act in question. Consequently, when committing a crime envisaged in Art. 422, the mental attitude of the perpetrator is characterized by the intention to violate the requirements of motion or exploitation and negligence to the consequences, and in the commission of the crime provided for in Art. 423, - negligence both to the act and to the consequences.

Specific provisions of Chapter 11 of the Special Part of the Bulgarian Criminal Code provide for certain "traffic offenses and other means of communication", such as: driving a motor vehicle in a state of intoxication with a concentration of alcohol in the blood of more than 1.2 per thousand units, or the same actions committed by a person for the second time after conviction for them, with the concentration of alcohol in the blood of more than 0.5 per thousand units, as well as control of a mechanical means of transport after the use of narcotic drugs or their analogues (Article 343-6); management of a motor vehicle during the period of serving a sentence in the form of deprivation of the right to direct him (Article 343-in); illegal entry into another's vehicle without the consent of the owner (Article 346-a). Circumstances that impede the violation of the rules of motion in the management of a railway warehouse, an aircraft, a mechanical means of transport, a ship, a military or a special machine, in addition to the relevant consequences for the health and life of the victim, is also recognized as committing a crime in a state of intoxication or after the use of narcotic drugs means or their analogues, as well as the disappearance of the culprit from the scene (Article 343). Instead, if a person did everything after committing this act

dependent on her to assist the victim, the punishment is significantly mitigated (Article 343-a).

Similar acts punish acts committed in the state of alcohol intoxication or under the influence of a stuffy substance, as well as combined with the disappearance of the culprit from the scene, and according to the Criminal Code of Poland (Article 178). However, this Criminal Code recognizes crimes by itself as a control in the specified state by water or air, mechanical or other land vehicle (Article 178-a), and performing work related to ensuring the safety of movement of mechanical means of movement (Article 180).

Taking into account all of the above, it is possible to agree in general with VM's position. Burdin, who proposes to use the experience of other states and in the Criminal Code of Ukraine to foresee responsibility for driving a vehicle in a state of alcohol intoxication, if the amount of alcohol in the blood of the driver is two millimeters or more, or in the state of narcotic or toxic intoxication, when the person does not could fully realize their actions and (or) manage them.

Somewhat unconventional for the criminal codes of the states of Western Europe is the inclusion in their Special section of special chapters or chapters on transport crimes. However, the Criminal Code of Switzerland has such a section (Section 9 "Offenses and Misdemeanors Against Public Transport"), it is only responsible for: obstructing the work of the public (Article 237), rail transport (Article 238) and the work of the railway, postal, telegraph and telephone companies communication and enterprises to provide water, light, energy or heat (Article 239). Actions related to violation of the rules of the traffic, if there are grounds, qualify for articles that provide for responsibility for crimes against life, health, etc.

A similar approach has been adopted by the Austrian legislator. Acts of a person who violated the rules of the traffic, which resulted, for example, in the death of the victim, qualify for § 80, and in particularly dangerous circumstances (for example, when a person by means of the use of stuttering agents proved to be intoxicated) - under § 81 of the Criminal Code Austria Actually transport in this Criminal Code are only criminal acts such as air piracy (§ 185) and the deliberate threat to the safety of air travel (§ 186).

The Criminal Code of France does not distinguish transport crimes, and theft of the vehicle (Articles 224-6 and 224-7), as well as the transmission of false information, which endangered the safety of the aircraft (Article 224-8), constitutes an attack on human freedom. Suspension of movement by a driver of a land, river or sea vehicle who knows that as soon as he became the cause of an accident, he or she shall be guilty of criminal or civil liability as criminal offenses against justice (Article 434-10).

The system of crimes against transport safety in the Criminal Code of Spain is relatively developed (Special Chapter IV, Section XVII, Book 2). These include: driving or motorcycle driving while under the influence of toxic, narcotic or psychotropic substances or alcoholic beverages (Article 379); refusal of the driver to submit to a legally established inspection to check his presence under the influence of the specified substances or alcoholic beverages (Article 380); driving a car or motorcycle "with obvious frivolity" or "with a deliberate disregard for the lives of other people", which has put a particular danger to life or health of people, in any case, it is believed that there is a clear lack of discretion and conscious disregard for the life of other people, if "the blood of the driver is a high concentration of alcohol, and the speed of the car is disproportionately excessive in relation to the established limits" (Articles 381 and 384); violation of traffic safety rules by installing unexpected obstacles on the road, flooding slippery or flammable substances, moving or damaging road signs, etc., or by not restoring safety on the road if the person has such a duty (Article 382). None of the articles in this section, as well as any article that establishes liability for other crimes in this section, which is a sign of danger, does not provide constructive or aggravating responsibility for indications that cause specific harm to life, human health , for property, etc.

That is why in art. 383 states: if, in addition to the acts provided for in Articles 379-382, a real harm is caused, irrespective of its severity, the court may classify an offense under an article that provides for such harm and, accordingly, more severe punishment.

The Spanish legislator has developed an interesting system of crimes related to the stealing of means of transportation; the system is directed primarily to convince the perpetrator of the need to voluntarily return the stolen means of transportation (chapter IV "On theft and stealing of means of transport" of Section XIII of Book 2).

So. according to Art. 244 of the Criminal Code of Spain, the abduction of another car or motorcycle over 400 euros without the intention of assigning them if they: a) returned within 48 hours in the same condition, - shall be punishable by arrest or a fine; b) is not returned in this term - is punished as theft or robbery in the form of imprisonment. In 2003, the Spanish Criminal Code was supplemented by a provision that provided for the use of a deliberately stolen means of transportation.

In the Criminal Code of Germany, transport crimes are not specifically allocated. But in Chapter 28, "Highly Dangerous Criminal Offenses," several paragraphs are comprised compactly, which provides for liability for: a dangerous attack on the activity of rail, sea or air transport (§ 315) and violation of safety rules for these modes of transport (§ 315-a); dangerous interference in traffic, including rail (§ 315-b 315-d), violation of traffic safety rules (§ 315-e and 315-d) and driving under the influence of alcohol (§ 316); a robbery attack on a driver of a car (§ 316-a) and an attack on air or river transport (§ 316-e).

These two crimes are considered to be extremely serious, as the penalty for imprisonment for them can not be less than 5 years; interference with the activities of telecommunication installations (§ 317). The grounds for criminal liability for violating the rules of road safety (§ 315-e-316) in the Criminal Code of the Federal Republic of Germany are formulated very specifically.

First, the punishment is a specified violation, if it only creates a danger to the life or health of another person or to someone else's worth of significant value (that is, the occurrence of real consequences is not required). Secondly, the punishment is to drive a vehicle in the state of intoxication or under the influence of a stuffing substance, which in itself is recognized as posing a danger (in this case § 316 emphasizes that the fault in such an act may also be characterized by negligence). Thirdly, § 315 gives an exhaustive list of violations of traffic rules, which entail criminal liability for the Criminal Code of the Federal Republic of Germany.

In addition, § 142, which is included in Section 7 "Criminal Offenses Against Public Order" of the Special Part of the Criminal Code of the Federal Republic of Germany, provides for liability for the illegal abandonment of the road traffic accident. The subject of this act is the participant of the traffic accident - everyone whose behavior in the circumstances of the case could entail the creation of a situation associated with the event. On an objective side, this act may be expressed, in particular, that the participant of the traffic accident has disappeared from his place before: a) his presence made it possible to establish his identity, the ownership of the vehicle and the degree of his participation in the event, take testimony to other participants of the event; b) he waited for the time necessary for the competent person to be ready to establish the circumstances of the event. Criminal liability is excluded if the participant of the road transport event in the shortest time passed all necessary information about himself to the nearest police station. The court can mitigate the punishment and even abandon it in relation to the disappeared from the scene of the event of its participant, if: its result was only minor property damage and this event participant still within 24 hours voluntarily made it possible to find out all of the above circumstances.

In the Criminal Code of Sweden (chapter 13) it is established responsibility for: seizing the air or sea vessel and sabotaging the sea or air traffic (Article 5-a); airport sabotage (Article 5-b).

Article 240 of the Criminal Code of San Marino, which provides for liability for the impediment of street traffic, contains an exception, worded "except when it comes to exercise of the right to hold public meetings."

6. Criminal acts in the area of ​​the circulation of narcotic drugs, psychotropic substances, their analogues or precursors and other criminal acts against the health of the population.

Among Ukrainian scientists, criminal acts against the health of the population, as they are defined in the criminal laws of other states, but more - in international law, - to some extent, touch AA Music and E.V. Fesenko, as well as other Ukrainian criminologists. ,

The bases of criminal liability for crimes in the sphere of circulation of narcotic drugs under the legislation of the Netherlands, Denmark, Spain, France and Russia were considered by A.V. Savchenko3. YAWL. Gilinsky came to the conclusion that the modern European tendency is to realize the ineffectiveness of prohibitionist (prohibitive) policies on drug use, the gradual legalization of "light." Drugs (cannabis derivatives), the priority of social, medical and psychological assistance to drug addicts; The most "advanced" in this is the Netherlands, Switzerland and the United Kingdom.