

UDC 343.4(477)(045)

DOI: 10.54477/legalhorizons.2021.14(3-4).9-17

## On Some Issues Concerning Section 4.5. “Crimes Against Human Will and Dignity” of the Draft Criminal Code of Ukraine

Anna S. Politova<sup>1\*</sup>, Mykhailo O. Akimov<sup>2</sup>

<sup>1</sup>Donetsk State University of Management  
87513, 58 Karpinskyi Str., Mariupol, Ukraine

<sup>2</sup>National Academy of Internal Affairs  
03035, 1 Solomyanska Sq., Kyiv, Ukraine

### Article's History:

Submitted: 15.06.2021  
Revised: 17.07.2021  
Accepted: 20.08.2021

### Abstract

The socio-political and economic situation in the state determines the improvement of the national legal system, considering modern challenges and needs of a democratic society. The Criminal Code of Ukraine, the draft of which is currently under development, is no exception. The purpose of this study is to analyse approaches to the proposed wording of articles of the draft Criminal Code of Ukraine concerning liability for crimes against human will and dignity, identify shortcomings and determine ways to eliminate the latter. To fulfill this purpose, the authors employed the following methods: logical-semantic, comparative, hermeneutical, dogmatic (Aristotelian) and system analysis. The study uses current Ukrainian and foreign legislation, works of researchers from Canada, United Kingdom, Switzerland, Uganda, Ukraine, and the USA, as well as materials of judicial practice. The study proves that Section 4.5. “Crimes Against Human Will and Dignity” of the draft Criminal Code of Ukraine protects the right to freedom and personal integrity. The authors establish that the term “freedom” better corresponds to the object of encroachment and thus is more appropriate. This study offers original definitions of the terms “right to freedom” and “right to personal integrity”. It is argued that the term “representative of a foreign state” in Article 4.5.1. “Meaning of the terms used in this Section” is worded inaccurately. Comments are made on the wording of Article 4.5.4. “Illegal deprivation of person’s liberty” concerning the debatable nature of combining acts differing in terms of the primary direct object in one norm – illegal detention, compulsory attendance, house arrest or detention, illegal placement in a psychiatric care institution, kidnapping and illegal deprivation of liberty; the study provides an author's version of Paragraph “b”, Article 4.5.4. The practical value of this study is to highlight scientific opinions on some matters concerning the regulation of crimes against the person's will and dignity in the draft Criminal Code of Ukraine and formulate proposals in this regard, which can be considered by the developer of this project – the Working Group on criminal law development

**Keywords:** right to liberty, right to personal integrity, crimes against human will and dignity, placement in a psychiatric care facility, unlawful deprivation of liberty, kidnapping

### Suggested Citation:

Politova, A.S., & Akimov, M.O. (2021). On some issues concerning section 4.5. “Crimes Against Human Will and Dignity” of the Draft Criminal Code of Ukraine. *Legal Horizons*, 14(3-4), 9-17.



\*Corresponding author

Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

## Introduction

For more than two decades after the adoption of the Criminal Code of Ukraine on April 5, 2001, it has undergone essential changes, the adoption of which was conditioned upon the processes taking place in society, the state, and the world. As noted by V.V. Cherniei and A.A. Vozniuk, some of these changes have substantially complicated the application of criminal law norms, namely leading to the emergence of duplicate norms, unjustified competition, and the loss of certain criminal law instruments of influence on persons who commit socially dangerous acts. Ever since the Criminal Code of Ukraine has been enforced, its certain provisions remained "dead" norms. Law enforcement activities have clearly demonstrated other critical shortcomings, the elimination of which is now possible only under the condition of a comprehensive reform of criminal legislation [1, p. 7].

Decree of the President of Ukraine No. 584/2019 of August 7, 2019, "Matters of the Commission on Legal Reform"<sup>1</sup> approved the Regulations on the Commission on Legal Reform and its personnel; a Working Group on the development of criminal law has been formed within the Commission. Leading forensic scientists who have been involved in this Working Group took an active part in the development of the draft Criminal Code of Ukraine (hereinafter referred to as the "CCU"); as of July 25, 2021, the result of their work was published at the official website of the New Criminal Code [2].

Section 4.5. "Crimes Against Human Will and Dignity" of Book 4 "Crimes and Misdemeanors against a Person and Citizen" of the special part of the draft CCU contains the following norms:

- Article 4.5.1. "Definition of the Terms used in this Section";
- Article 4.5.2. "Essential Elements of Offence that Reduce the Gravity of Offence Provisioned in this Section by Two Degrees";
- Article 4.5.3. "Essential Elements of Offence that Reduce the Gravity of Offence Provisioned in this Section by One Degree";
- Article 4.5.4. "Illegal Deprivation of Liberty";
- Article 4.5.5. "Enforced Disappearance";
- Article 4.5.6. "Connivance of Enforced Disappearance";
- Article 4.5.7. "Human Trafficking";
- Article 4.5.8. "Coercion";
- Article 4.5.9. "Forced Marriage";
- Article 4.5.10. "Coercion as a Condition for the Release of a Hostage".

The given structure of Section 4.5. "Crimes Against Human Will and Dignity" of the draft CCU is controversial, since the norms in question, in their structure and content, contradict certain provisions of international regulations ratified by Ukraine.

Crimes against human will and dignity have been the subject of studies for many researchers. Thus, a comprehensive study of the problems of criminal liability for these encroachments at the level of dissertation theses was conducted by A.S. Politova [3], O.S. Naumova [4], V.A. Bortnyk [5], O.S. Subbotenko [6], A.V. Andrushko [7].

Other dissertations addressed the specific features of criminal liability for certain socially dangerous encroachments against the human will and dignity, namely criminal liability for kidnapping (O.O. Volodina [8], V.G. Kundeus [9], L.V. Kabanets [10]), hostage-taking (M.O. Akimov [11]), child exploitation (I.M. Dolyanovska [12] and D.O. Kalmykov [13]), exploitation of a minor for beggary (I. V. Dehtiarova [14]). Experts in criminal law paid special attention to the issues of responsibility for human trafficking. among the dissertations covering this subject, the authors of the present study highlight the works of such researchers as V.O. Ivashchenko [15], V.A. Kozak [16], Ya.G. Lyzohub [17], A.M. Orlean [18; 19], V.M. Pidhorodynskiy [20]. Therewith, as A.V. Andrushko notes, as of today, not a single dissertation has been defended on the specific features of criminal liability for enforced disappearance (Article 146-1), illegal placement in a psychiatric care institution (Article 151), and forced marriage (Article 151-2) [7, p. 46-47].

The originality of the present paper is that the above-mentioned studies concern the liability for criminal offences against the will, honour, and dignity of a person under the CCU of 2001, and the norms proposed in the draft CCU essentially differ from them. This indicates the relevance of this study.

*The purpose of this study* is to investigate the opinions of criminologists (researchers and practitioners) regarding the wording of articles on responsibility for crimes against human will and dignity formulated by the developers of the draft CCU, identifying the shortcomings of the latter and justifying promising areas for their elimination.

## Materials and Methods

The paper analyses the current Ukrainian and foreign criminal legislation, studies by researchers from the USA, Great Britain, Canada, Switzerland, Uganda, Ukraine on the problems of criminal liability in general and crimes against human will and dignity in particular, analytical materials, judicial practice to determine gaps in the current criminal legislation, and shortcomings in the draft CCU.

The study employed logical-semantic, comparative, hermeneutical, dogmatic (Aristotelian) methods, and the method of system analysis. The logical-semantic method was used to analyse terms that reveal the essence of such concepts as "right to freedom", "right

<sup>1</sup>Decree of the President of Ukraine No. 584/2019 "Matters of the Commission on Legal Reform". (2019, August). Retrieved from <https://zakon.rada.gov.ua/laws/show/584/2019#Text>.

to personal integrity”, “freedom”, “will”, “representative of a foreign state”. The comparative method is used to examine foreign practices regarding criminal liability for illegal placement in a psychiatric care institution, as well as kidnapping and illegal deprivation of liberty. Hermeneutical method – for analysing the understanding of the grounds for placement in a psychiatric care institution. Dogmatic (Aristotelian) method – for the analysis and interpretation of the provisions of criminal law and legislation on criminal liability upon the characterisation of certain types of criminal offences against human will, honor, and dignity, and also allowed developing proposals for improving the draft CCU on liability for crimes against human will and dignity. The method of system analysis was used to cover the elements and features of Articles 4.5.1, 4.5.4 of Section 4.5. of the draft CCU.

## **Results and Discussion**

### ***The right to liberty and security of person as an object of crimes against human will and dignity***

Crimes against human will and dignity pose a great public danger since they encroach on freedom and personal integrity, as well as on the life and health of the victim, cause considerable material damage to the state, legal entities, and individuals, are committed mainly in complicity (in particular by organised groups whose activities are transnational in nature), and have a high level of latency.

Article 29 of the Constitution of Ukraine establishes the right of every person to freedom and personal integrity. Internationally, the right to liberty is provisioned together with the right to life and personal integrity. Thus, Universal Declaration of Human Rights<sup>1</sup> proclaims that all people are born free and equal in dignity and rights (Article 1) and every human has the right to life, liberty, and personal integrity (Article 3). These provisions are embodied and further developed in other international regulations. For example, in Paragraph 1, Article 9 of The International Covenant on Public and Political Rights<sup>2</sup>.

Article 5, Paragraph 1 of the European Convention on Human Rights<sup>3</sup> provides that everyone has the right to liberty and personal integrity. No one may be deprived of their liberty except the following cases and according to the legally established procedure:

(a) lawful imprisonment of a person after conviction by a competent court;

(b) lawful arrest or detention of a person for failure to comply with a lawful order of a court or to ensure the fulfillment of any legally established duty;

(c) lawful arrest or detention of a person carried out for the purpose of bringing them to the competent judicial authority in the presence of a reasonable suspicion that they have committed an offence, or if it is reasonably considered necessary to prevent them from committing an offence or absconding after such offence has been committed;

(d) detention of a minor based on a lawful decision for the purpose of applying surveillance measures of an educational nature or lawful detention of a minor for the purpose of bringing them to the competent authority;

f) lawful detention of persons to prevent the spread of infectious diseases, lawful detention of the mentally ill, alcoholics, or drug addicts, or vagrants;

(f) lawful arrest or detention of a person to prevent their unauthorised entry into the country or of the person being deported or extradited.

As for mentally ill people, S.D. Guillot notes that pursuant to Article 14 of the UN Convention on the Rights of Persons with disabilities<sup>4</sup>, Member States should repeal the legislative provisions on the application of a preventive measure in the form of detention based on a mental disorder (both in itself and in combination with other factors such as possible danger or need for treatment), which effectively means the annulment of the legislation on psychiatric care. At the same time, certain UN Human Rights Institutions (including the Human Rights Committee) continue to claim that deprivation of liberty according to the legislatively established procedure on psychiatric care shall be considered lawful under certain circumstances [21].

Despite some controversial issues of detaining certain categories of people, the authors believe that the right to freedom is a natural right of everyone to exercise their freedom of expression and activity without any restrictions. The only thing that is laid down in it is the restriction of other people's freedom, especially of officials who can use coercion. Proceeding from this, the right to freedom is defined as the natural ability of a person guaranteed by the state to choose their place of residence at their own request, move freely on the territory of the state and beyond, and perform any actions regardless of the internal beliefs (will) of others.

As for the right to personal integrity, it should be defined as the main personal incorporeal right, which

<sup>1</sup>Universal Declaration of Human Rights. Adopted and proclaimed by UN General Assembly resolution 217 A (III). (1948, December). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_015#Text](https://zakon.rada.gov.ua/laws/show/995_015#Text).

<sup>2</sup>International Covenant on Civil and Political Rights; Adopted by the UN General Assembly. (1966, December). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_043#Text](https://zakon.rada.gov.ua/laws/show/995_043#Text).

<sup>3</sup>European Convention on Human Rights as amended by Protocols Nos. 11, 14, and 15. (2021). Retrieved from [https://www.echr.coe.int/Documents/Convention\\_UKR.pdf](https://www.echr.coe.int/Documents/Convention_UKR.pdf).

<sup>4</sup>UN Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly. (2006, December). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_g71#Text](https://zakon.rada.gov.ua/laws/show/995_g71#Text).

defines the personal integrity of a person, a human person as such (as a living physical being). Personal integrity should include physical, mental, and moral integrity. However, correlation of the right to personal integrity with crimes against human will and dignity reveals that not all articles of Section 4.5. "Crimes Against Human Will and Dignity" of the draft CCU refer to violations of physical, sexual, or mental integrity. Such approach to the interpretation of the right to personal integrity suggests that the right to personal integrity is a natural possibility of a person's free existence guaranteed by the state without any interference or influence on their freedom and dignity.

Summarising the above, the generic object of crimes against human will and dignity is social relations that ensure the right to freedom and personal integrity. Consequently the use of the term "will" in the title of Section 4.5. is unjustified, since the concept of will is clarified through recognition of freedom, while freedom is a recognised vital necessity. The will allows a person to act within a certain social space, which gives grounds to consider the concept of freedom broader than the concept of will [22, p. 177]. Therefore, it is correct to state that the categorisation of offences entails a critical loss of information, since offences are committed through a complex combination of behavioral and situational motives, most of which do not fit into simple classification categories [23]. That is why the term "freedom" (not "will") should be used in the title of Section 4.5. of the draft CCU, and it will correspond to the object of encroachment.

### ***State representatives and foreign state representatives as subjects of crimes against human will and dignity***

Article 4.5.1. "Definition of the Terms used in this Section" of the draft CCU<sup>1</sup> contains explanations of the terms used, including "state representative" and "foreign state representative". A state representative is an official or a person acting with the permission, support, or consent of the state, while a foreign state representative is a person who:

- a) acts as a civil servant of a foreign state;
- b) performs military service in the armed forces, police bodies, state security bodies, intelligence agencies;
- c) holds a position in the specified or any other state bodies or local self-government bodies of a foreign state formed in accordance with its legislation;
- d) acts on the order of the persons specified in paragraphs (a) to (b) of this paragraph of the note;
- e) is a representative of irregular illegal armed groups, armed gangs or groups of mercenaries created, subordinate, managed, or financed by the Russian Federation,

f) is a representative of the occupation administration of the Russian Federation, which constitute its state bodies or other structures functionally responsible for the management of the temporarily occupied territories, or

g) is a representative of the self-proclaimed bodies controlled by the Russian Federation, which usurped the power functions in the temporarily occupied territories of Ukraine.

Undoubtedly, in the current conditions of implementation of national policy regarding national security, solving the issue of restoring the territorial integrity of Ukraine remains one of the strategic vectors, as well as measures aimed at de-occupation and integration of certain areas of Donetska and Luhanska Oblasts where state authorities do not exercise their powers. After all, armed conflict is always associated with violence, internal migration of people, causes harm to health and life and, unfortunately, is a common phenomenon in the world [24; 25].

However, firstly, is there a need to indicate representatives of a particular foreign state, namely the Russian Federation, in the CCU? Theoretically, it is impossible to exclude the possibility that Poland, Romania, Slovakia, or Hungary may also hold an illegal referendum and declare the annexation of a certain territory or contribute to the creation of self-proclaimed republics on the territory of Ukraine. Secondly, is the definition of the term "foreign state representative" proposed in the draft appropriate? It is common knowledge that this term is not included in the legislation of Ukraine, but it is used in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons<sup>2</sup>, namely diplomatic agents (ratified by the Supreme Soviet of the USSR on December 26, 1975; entered into force on February 20, 1977). Pursuant to Part 1, Article 1 of the said Convention<sup>3</sup> a person enjoying international protection is:

a) the head of state, including every member of a collegial body performing the functions of the head of state according to the Constitution of the state concerned, the head of government or the minister of foreign affairs who is in a foreign state, as well as accompanying members of his/her family;

b) any representative or official of a state, or any official or other agent of an intergovernmental international organisation, when an offence has been committed against them, their official premises, their living quarters or their vehicles, is entitled under international law to special protection against any attack on their rights, freedoms, and dignity, as well as family members residing with them.

<sup>1</sup>Draft Criminal Code of Ukraine. (2021, July). Retrieved from <https://newcriminalcode.org.ua/upload/media/2021/07/28/1-kontrolnyj-tekst-proektu-kk-25-07-2021.pdf>.

<sup>2</sup>Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. (1973, December). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_389#Text](https://zakon.rada.gov.ua/laws/show/995_389#Text).

<sup>3</sup>*Ibidem*, 1973.



In the current CCU, Article 44<sup>3</sup> makes provision for liability for an attack on the life of a foreign state representative, consisting in the murder or attempted murder of a foreign state representative or other person with international protection, with the purpose of influencing the nature of their activities or the activities of states or organisations they represent, or with the purpose of provoking war or international complications.

The analysis of scientific developments on this subject allows identifying the features that describe the concept of a foreign state representative in the CCU:

a) a foreign state representative should be considered a representative of any foreign state, regardless of the social and state system and ideology;

b) a foreign state representative is a person of foreign citizenship. They cannot be a citizen of Ukraine;

c) it is a person who is on an official visit to Ukraine;

d) a foreign state representative is a person who enjoys the right to represent and protect the interests of their state, the right to negotiate with the highest state authorities in Ukraine, as well as other persons with international protection [26, p. 578].

Given the above and considering the provisions, Article 1 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, namely diplomatic agents<sup>2</sup>, foreign state representatives include heads of state and representative offices, heads and members of government delegations, ministers, diplomatic representatives – that is, persons who can act on behalf of a foreign state or in its service.

As for Article 4.5.1. of the draft, these categories of persons do not meet the characteristics of foreign state representatives, given at least that they are located in the occupied territory of Donetsk and Luhansk Oblasts, without having the status of persons specified in Article 1 of the specified Convention<sup>3</sup>. Furthermore, the list of persons and their actions resemble “collaboration” in the sense of voluntary or forced cooperation of citizens of the country with the occupation administration, as well as resemble “mercenaries”<sup>4</sup>, that is, persons who:

a) were specially recruited in Ukraine or abroad to take part in armed conflict, military, or violent actions aimed at forcibly changing or overthrowing the constitutional order, seizing state power, obstructing the activities of state authorities or violating territorial integrity;

b) take part in military or violent actions for the purpose of obtaining any personal gain;

c) are neither citizens (subjects) of a party in conflict, nor persons who permanently legally reside in the territory controlled by the party in conflict;

d) are not part of the personnel of the armed forces of the state on the territory of which such actions are performed;

e) are not sent by a state that is not a party to the conflict to perform official duties as persons who are part of its armed forces.

These arguments indicate inaccuracy in the wording and interpretation of the terms specified in Article 4.5.1. “Definition of the Terms Used in this Section” of the draft CCU. Furthermore, Part 1, Article 1.2.8. “Conscientious Performance of International Obligations” of Section 1.2. “Principles of the Criminal Code” of the draft CCU states that the Code must comply with current international treaties, the consent to be bound by which was granted by the Verkhovna Rada of Ukraine.

### ***Controversial issues of illegal deprivation of human liberty***

Article 4.5.4. “Illegal Deprivation of Human Liberty” of the draft CCU is also of interest<sup>7</sup>, according to which a person who unlawfully deprived another person(s) of liberty shall be liable for the following actions:

a) detention or arrest of a person without legally established grounds;

b) illegal placement of an evidently mentally healthy person, or a person who does not require appropriate hospitalisation, in a psychiatric care institution;

c) kidnapped a person or

d) unlawfully deprived a person of liberty in any other form.

Analysis of this article in comparison with the current CCU in 2001<sup>8</sup> allows identifying several elements of criminal offences included in Article 4.5.4. of the draft CCU, namely: Article 371. “Knowingly Illegal Detentions, Compulsory Attendance, House Arrest, or Detention”, Article 151 “Illegal Placement in a Psychiatric Care Facility”, Article 146. “Illegal Deprivation of Liberty or Kidnapping”. Undoubtedly, the main direct (Articles 146, 151 of the CCU) or additional direct (Article 371 of the CCU) object is public relations in the sphere of ensuring the constitutional human right to freedom and personal integrity.

<sup>1</sup>Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>2</sup>Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. (1973, December). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_389#Text](https://zakon.rada.gov.ua/laws/show/995_389#Text).

<sup>3</sup>*Ibidem*, 1973.

<sup>4</sup>Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

<sup>5</sup>Draft Criminal Code of Ukraine. (2021, July). Retrieved from <https://newcriminalcode.org.ua/upload/media/2021/07/28/1-kontrolnyj-tekst-proektu-kk-25-07-2021.pdf>.

<sup>6</sup>Criminal Code of Ukraine, 2001.

<sup>7</sup>Draft Criminal Code of Ukraine. (2021, July). Retrieved from <https://newcriminalcode.org.ua/upload/media/2021/07/28/1-kontrolnyj-tekst-proektu-kk-25-07-2021.pdf>.

<sup>8</sup>Criminal Code of Ukraine, 2001.

But is it appropriate to combine such unlawful acts in Article 4.5.4 of the draft CCU that are not directly related to the object? The authors of the present study do not support this argument because, for example, illegal deprivation of liberty, as exemplified by the Criminal Code of Sweden<sup>1</sup>, lies in the fact that a person who captures or deprives a child or other person of their freedom with the intention of causing bodily harm or harm to their health, or forcing them to work, or for the purpose of extortion, must be convicted of kidnapping for ransom (Article 1 of Chapter 4. Crimes Against Freedom and Public Peace<sup>2</sup>). Article 2 of the same chapter establishes liability when a person who, in cases other than those provided for in Article 1, kidnaps, holds in captivity or deprives them of their liberty. This approach, proposed by the Swedish legislator, allows distinguishing the following forms of illegal deprivation of liberty: kidnapping and illegal deprivation of liberty.

As for para. b) (a person who illegally placed a deliberately mentally healthy person in a psychiatric care institution, or one that does not require hospitalisation in such an institution), Article 4.5.4. of the draft, the theory of criminal law lacks a unified approach to the qualification of such offences, since placement in a psychiatric care institution is governed by the Law of Ukraine of February 22, 2000 No. 1489-III "On Psychiatric Care"<sup>3</sup>. This is explained by the fact that, firstly, the issue of the term "placement in a psychiatric institution" is debatable. Thus, I.M. Tyazhkova believes that placement in a psychiatric institution is factually hospitalisation, which is performed from the moment of completion of registration of documents in the emergency room [27, p. 52]. The second such aspect is precisely the unlawfulness of such placement. The Law of Ukraine No. 1489-III of February 22, 2000 "On Psychiatric Care"<sup>4</sup> Part 1, Article 13 states that a person who has reached the age of 14 can be hospitalised in a psychiatric care facility at their personal request or with their informed written consent. A person under the age of 14 (a minor) can be hospitalised in a psychiatric care facility at the request or with the written consent of their parents or other legal representative. In case of disagreement of one of the parents or in the absence of parents, a person under the age of 14 (a minor) is hospitalised in a psychiatric care institution by decision (consent) of the guardianship and custodianship authority, which is taken no later than 24 hours from the moment of application of another legal representative of the

specified person to this body and can be appealed in accordance with the law, including in court. A person who is recognised as legally incompetent is hospitalised in a psychiatric care facility voluntarily – at their request or with their informed written consent. The legal representative of a person recognised as legally incompetent notifies the guardianship and custodianship authority at the place of residence of the person under care of the consent of such person to hospitalisation in a psychiatric care institution no later than the day following the day of granting such consent. A person recognised as incapable according to the legally established procedure, who, due to their health condition, is unable to express a request or provide informed written consent, shall be hospitalised in a psychiatric care institution by a decision (consent) of the guardianship and custodianship authority, which is taken no later than 24 hours from the moment the legal representative of the specified person applies to the said authority and can be appealed in accordance with the law, including in court. Consent to hospitalisation is recorded in the medical documentation signed by the person or their legal representative and a psychiatrist. Furthermore, pursuant to Article 14. "Grounds for Hospitalisation of a Person in a Compulsory Psychiatric Care Institution" of this Law, *a person suffering from a mental disorder* (highlighted by the authors), may be hospitalised in a psychiatric care facility without their informed written consent or without the written consent of their legal representative, provided that their examination or treatment is possible only in an inpatient setting, and if a person has a severe mental disorder, as a result of which they commit or express real intentions to commit actions that pose an immediate danger to them or others, or is incapable of unassisted meeting its basic life needs at the level that ensures their vital activity<sup>5</sup>.

Researchers also comment on the qualification of actions of a perpetrator that keeps a person in a psychiatric institution, which was placed in such psychiatric care institution legally, but has been cured of a mental disorder or is subject to transfer to outpatient treatment. Such actions, in the opinion of some researchers, are covered by the concept of placement in a psychiatric institution. According to others, such detention of a person in a psychiatric institution should be qualified as illegal deprivation of liberty or abuse of official position [28, p. 201].

To resolve this debatable issue regarding the qualification of the actions of the guilty person, it is

<sup>1</sup>Criminal Code of Sweden. (1962, December). Retrieved from [https://www.lotin.se/Fallor/Pdf/Brottsbalken\\_\(1962\\_700\).pdf](https://www.lotin.se/Fallor/Pdf/Brottsbalken_(1962_700).pdf).

<sup>2</sup>*Ibidem*, 1962.

<sup>3</sup>Law of Ukraine No. 1489-III "On Psychiatric Care". (2000, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/1489-14#Text>.

<sup>4</sup>*Ibidem*, 2000.

<sup>5</sup>*Ibidem*, 2000.

necessary to conduct a comparative analysis of the words “placement” and “detention”. Thus, “placement” is an action, a location, etc., where someone or something is placed [29, p. 857]. The word “detention” can be interpreted as follows: “1. Hold someone something without letting them fall; 2. Hinder someone's movement, slow down, decelerate the progress of someone, something, or stop it altogether; 3. Ask or force someone to stay somewhere without letting them out; 4. Do not give the enemy any position, any line, military facility, etc.; 5. Keep something the same, unchanged; 6. Deducting a certain part of any amount, not giving it away for any reason” [29, p. 1309].

Thus, based on the meaning of the words “placement” and “detention”, it can be concluded that they have different meanings and do not complement or exclude each other. Therefore, the opinion of those researchers who believe that placement in a psychiatric care institution is also covered by detention in it is erroneous.

Summarising the above, paragraph b), Article 4.5.4. of the draft CCU should be set out in the following wording: “placement in a psychiatric care institution of a deliberately mentally healthy person or illegal detention in such an institution”. It is in the similar wording that the norms in the Criminal Code of Georgia are set out<sup>1</sup> (Part 1, Article 149), Criminal Code of the Republic of Tajikistan<sup>2</sup> (Part 1, Article 133), Criminal Code of the Republic of Kazakhstan<sup>3</sup> (Part 1, Article 127), Criminal

Code of the Republic of Armenia<sup>4</sup> (Part 1, Article 134).

## Conclusions

Ultimately, the criminalisation of socially dangerous acts that take place in society undoubtedly plays a leading role among the means of influencing crime. The practice of developing the legislation of Ukraine on criminal responsibility knows many cases when previously non-criminally punishable acts were then recognised by the legislator as an offence. Therewith, the analysis of Section 4.5. “Crimes Against Human Will and Dignity” of the draft CCU suggests that it is necessary to draw the attention of members of the Working Group on the development of criminal law to the inconsistency of certain provisions with international regulations. In particular, according to the results of this study, it is proposed to change wording of para. b), Article 4.5.4. “Illegal Deprivation of Human Liberty” of the draft CCU as follows: “Placement in a psychiatric care institution of a deliberately mentally healthy person or illegal detention in such an institution”, as well as to correct the title of Section 4.5. of the draft by replacing the word “will” with the word “freedom”, which would correspond to the natural right to freedom and personal integrity of a person as an object of encroachment. The authors consider it appropriate to conduct further research of Section 4.5. “Crimes Against Human Will and Dignity” of the draft CCU and pay attention to other articles of this Section.

## References

- [1] Cherniei, V.V., & Vozniuk, A.A. (2021). Draft of the new Criminal Code of Ukraine: Certain suggestions on improvement. In *Reformation of criminal legislation through a prism of historical heritage: Abstracts of interagency scientific and practical round table* (pp. 7-13). Kyiv: National Academy of Internal Affairs.
- [2] The official website of the New Criminal Code. (n.d.). Retrieved from <https://newcriminalcode.org.ua>.
- [3] Politova, A.S. (2007). *Criminal legal characteristics of crimes against freedom of person under the legislation of Ukraine* (Candidate dissertation, Institute of State and Law named V.M. Koretsky, National Academy of Sciences of Ukraine, Kyiv, Ukraine).
- [4] Naumova, O.S. (2017). *Criminal legal counteraction to crimes against the will of the person (according to articles of Chapter III of Special Part of the Criminal Code of Ukraine)* (Candidate dissertation, Institute of State and Law named V.M. Koretsky, National Academy of Sciences of Ukraine, Kyiv, Ukraine).
- [5] Bortnyk, V.A. (2004). *Criminal legal protection of honor and dignity of person* (Candidate dissertation, National Academy of Internal Affairs of Ukraine, Kyiv, Ukraine).
- [6] Subbotenko, O.S. (2016). *Protection of honor and dignity of person by criminal legal means (experience of countries of the CIS and the EU)* (Candidate dissertation, Kharkiv National University of Internal Affairs, Kharkiv, Ukraine).
- [7] Andrushko, A.V. (2021). *Crimes against will, honor and dignity of person (criminal legal and criminological study)* (Doctoral dissertation, State Higher Educational “Uzhhorod National University”, Uzhhorod, Ukraine).

<sup>1</sup>Criminal Code of Georgia. (1999, July). Retrieved from <https://matsne.gov.ge/ru/document/view/16426?publication=229>.

<sup>2</sup>Criminal Code of the Republic of Tajikistan. (1998, May). Retrieved from [http://continent-online.com/Document/?doc\\_id=30397325&doc\\_id2=30397325#activate\\_doc=2&pos=56;-88.39999389648438&pos2=1252;-112.39999389648438](http://continent-online.com/Document/?doc_id=30397325&doc_id2=30397325#activate_doc=2&pos=56;-88.39999389648438&pos2=1252;-112.39999389648438).

<sup>3</sup>Criminal Code of the Republic of Kazakhstan. (2014, July). Retrieved from [https://online.zakon.kz/Document/?doc\\_id=31575252#pos=2007;-56](https://online.zakon.kz/Document/?doc_id=31575252#pos=2007;-56).

<sup>4</sup>Criminal Code of the Republic of Armenia. (2003, April). Retrieved from <http://www.parliament.am/legislation.php?sel=show&ID=1349&lang=rus>.

- [8] Volodina, O.O. (2003). *Criminal responsibility for kidnapping (an analysis of the body of crime)* (Candidate dissertation, Yaroslav Mudryi National Law University, Kharkiv, Ukraine).
- [9] Kundeus, V.G. (2004). *Criminal legal characteristics of abduction* (Doctoral thesis, National University of Internal Affairs, Kharkiv, Ukraine).
- [10] Kabanets, L.V. (2019). *Means of prevention of illegal deprivation of freedom or kidnapping of person: International experience* (Candidate dissertation, Higher educational institution "Interregional Academy of Personnel Management", Kyiv, Ukraine).
- [11] Akimov, M.O. (2009). *Criminal legal characteristics of hostage taking according to the legislation of Ukraine* (Doctoral thesis, Kyiv Taras Shevchenko National University, Kyiv, Ukraine).
- [12] Dolyanovska, I.M. (2008). *Criminal responsibility for children exploitation (an analysis of the body of crime)*. (Candidate dissertation, Kyiv National University of Internal Affairs, Kyiv, Ukraine).
- [13] Kalmykov, D.O. (2010). *Criminal responsibility for children exploitation* (Candidate dissertation, Luhansk State University of Internal Affairs named after E.O. Didorenko, Luhansk, Ukraine).
- [14] Degtyariova, I.V. (2012). *Use of minors for begging: Criminal legal and criminological characteristics and prevention* (Candidate dissertation, Kharkiv National University of Internal Affairs, Kharkiv, Ukraine).
- [15] Ivashchenko, V.O. (2000). *Criminological and criminal legal aspects of trafficking in women and children counteraction* (Candidate dissertation, National Academy of Internal Affairs of Ukraine, Kyiv, Ukraine).
- [16] Kozak, V.A. (2002). *Criminal responsibility for human trafficking (an analysis of the body of crime)* (Candidate dissertation, Yaroslav Mudryi National Law University, Kharkiv, Ukraine).
- [17] Lyzohub, Ya.G. (2003). *Criminal responsibility for human trafficking or other illegal agreement regarding the transfer of a person (criminal legal study)* (Doctoral thesis, Kyiv Taras Shevchenko National University, Kyiv, Ukraine).
- [18] Orlean, A.M. (2003). *Social conditioning of criminalization and criminal legal characteristics of human trafficking* (Candidate dissertation, Kharkiv National University of Internal Affairs, Kharkiv, Ukraine).
- [19] Orlean, A.M. (2014). *Criminal legal ensuring of protection of a person from exploitation* (Doctoral dissertation, National Academy of the Prosecutor's Office of Ukraine, Kyiv, Ukraine).
- [20] Pidhorodynskiy, V.M. (2005). *Responsibility for human trafficking according to the criminal legislation of Ukraine* (Doctoral thesis, Odessa National Academy of Law, Odessa, Ukraine).
- [21] Doyle Guilloud, S. (2019). The right to liberty of persons with psychosocial disabilities at the United Nations: A tale of two interpretations. *International Journal of Law and Psychiatry*, 66, article number 101497. doi: 10.1016/j.ijlp.2019.101497.
- [22] Lupandina, R.Ye. (2010). Freedom and will as objects of crime. In *Kharkiv Students Criminal Law Readings: Abstracts of reports and scientific presentations of participants of All-Ukrainian students scientific conference* (pp. 177-178). Kharkiv.
- [23] Kuang, D., Brantingham, P.J., & Bertozzi, A.L. (2017). Crime topic modeling. *Crime Science*, 6, article number 12. doi: 10.1186/s40163-017-0074-0.
- [24] Familiar, I., Muniina, P.N., Dolan, C., Ogwal, M., Serwadda, D., Kiyangi, H., Bahinduka, C.S., Sande, E., & Hladik, W. (2021). Conflict-related violence and mental health among self-settled Democratic Republic of Congo female refugees in Kampala, Uganda – a respondent driven sampling survey. *Conflict and Health*, 15, article number 42. doi: 10.1186/s13031-021-00377-2.
- [25] Haar, R.J., Read, R., Fast, L., Blanchet, K., Rinaldi, S., Taithe, B., Wille, C., & Rubenstein, L.S. (2021). Violence against healthcare in conflict: A systematic review of the literature and agenda for future research. *Conflict and Health*, 15, article number 37. doi: 10.1186/s13031-021-00372-7.
- [26] Baulin, Yu.V., Borysov, V.I., & Tyutyuhin, V.I. (Eds.). (2010). *Criminal law of Ukraine: Special part*. (4<sup>th</sup> edition, edited and supplemented). Kharkiv: Pravo.
- [27] Tyazhkova, I. (2002). Illegal placement in a psychiatric hospital. *Criminal Law*, 3, 52-54.
- [28] Zdravomyslov, B.V., Karaulov, V.F., & Kladkov, A.V. (Eds.). (1996). *Criminal law of Russian Federation: Special part*. Moscow: Yurist.
- [29] Busel, V.T. (2001). *Large explanatory dictionary of modern Ukrainian language*. Kyiv; Irpin: Perun.
-



## Деякі дискусійні питання Розділу 4.5. «Злочини проти волі і гідності людини» проекту Кримінального кодексу України

Анна Сергіївна Політова<sup>1</sup>, Михайло Олександрович Акімов<sup>2</sup>

<sup>1</sup>Донецький державний університет управління  
87513, вул. Карпінського, 58, м. Маріуполь, Україна

<sup>2</sup>Національна академія внутрішніх справ  
03035, Солом'янська площа, 1, м. Київ, Україна

---

### Анотація

Суспільно-політична та економічна ситуація в державі обумовлює вдосконалення національної правової системи з урахуванням сучасних викликів і потреб демократичного суспільства. Не є виключенням і КК України, проект якого наразі розробляється. Мета дослідження полягає в аналізі підходів до запропонованої редакції статей проекту КК України щодо відповідальності за злочини проти волі та гідності людини, виявлення недоліків і визначення шляхів їх усунення. Для реалізації поставленої мети авторами застосовувалися такі методи: логіко-семантичний, компаративістський, герменевтичний, догматичний (формально-логічний) та системного аналізу. У дослідженні використані чинне вітчизняне та зарубіжне законодавство, праці вчених із Канади, Великобританії, Швейцарії, Уганди, України та США, матеріали судової практики. Обґрунтовано, що Розділом 4.5. «Злочини проти волі і гідності людини» проекту КК України охороняється право на свободу та особисту недоторканність. Встановлено, що термін «свобода» краще відповідає об'єкту посягання і є більш прийнятним для використання. Запропоновано авторські визначення понять «право на свободу» та «право на особисту недоторканність». Аргументовано, що поняття «представник іноземної держави» у ст. 4.5.1. «Значення термінів, вжитих у цьому Розділі» містить неточності у формулюванні. Висловлено зауваження щодо редакції ст. 4.5.4. «Протиправне позбавлення волі людини» стосовно дискусійності поєднання у одній нормі різних за основним безпосереднім об'єктом діянь – незаконне затримання, привід, домашній арешт або тримання під вартою, незаконне поміщення в заклад з надання психіатричної допомоги, викрадення людини та незаконного позбавлення волі; запропоновано авторську редакцію п. «б» ст. 4.5.4. Практична цінність проведеного дослідження полягає у висвітленні наукових поглядів на деякі питання регламентації злочинів проти волі і гідності людини у проекті КК України та формулюванні власних пропозицій із зазначеної проблематики, що можуть бути взяті до уваги розробником даного проекту – робочою групою з питань розвитку кримінального права

**Ключові слова:** право на свободу, право на особисту недоторканність, злочини проти свободи і гідності людини, поміщення в заклад з надання психіатричної допомоги, протиправне позбавлення волі, викрадення людини

---