

UDC 343.2

DOI <https://doi.org/10.24144/2788-6018.2024.04.99>

## PENAL SYSTEMS IN THE CRIMINAL LAW OF UKRAINE AND THE USA: COMPARATIVE LEGAL ANALYSIS

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### **Shyshenko A. Penal systems in the criminal law of Ukraine and the USA: comparative legal analysis.**

This scientific article carefully examines the differences in the penal systems of the criminal law of Ukraine and the United States. The content of the article is focused on the comparison of different approaches to criminal liability, various types of punishments, their application in practice and general consequences for the criminal himself and society as a whole. The main goal of the study is to identify features and propose potential improvements to the Ukrainian penal system based on the experience of other countries, namely the US penal system.

In general, the Ukrainian penal system focuses on three main aspects: compensation for harm caused by criminal offences, correction of the offender's deviant behaviour, and prevention of recidivism through rehabilitation measures. Moreover, the criteria for classifying such measures of state coercion and the characteristic features of each group are highlighted.

The US system, especially at the federal level, is characterised by a complex and diverse range of punishments. This structure is a result of long historical development and the accumulation of practical experience over centuries. In the context of our research, it was revealed that the US places greater emphasis on maintaining public order, preventing crime, and rehabilitating offenders. Despite this, some US states retain the practice of capital punishment for particularly serious crimes. However, this type of punishment is used extremely rarely and only in exceptional circumstances, confirming its exceptional nature.

The comparative legal analysis allows us to identify advantages and disadvantages in both systems, as well as to establish effective methods of punishment, which can contribute to the further improvement of the system of punishment for criminal offences in both legal systems. The significance of this article lies in its analytical and comparative approach, which facilitates the identification of effective ways to

improve Ukraine's national legislation, taking into account best international practices and generally recognized standards.

**Key words:** criminal law, punishment system, comparative legal analysis, criminal liability, types of punishments, international standards.

### **Шищенко А.А. Система покарань у кримінальному праві України та США: порівняльно-правовий аналіз.**

Наукова стаття ретельно досліджує відмінності у системах покарань кримінального права України та США, зміст якої зосереджений на порівнянні різних підходів до кримінальної відповідальності, різноманітних типів покарань, їх застосуванні на практиці та загальних наслідках для самого суб'єкта кримінального правопорушення та суспільства в цілому. Головною метою дослідження є виявлення особливостей та висунення можливих пропозицій для покращення української системи покарань на досвіді інших країн, а саме системи покарань США.

Загалом, українська система покарань зосереджується на трьох основних аспектах: компенсації завданої кримінальним правопорушенням шкоди, корекції девіантної поведінки злочинця та запобіганні повторенню кримінального правопорушення шляхом реабілітаційних заходів. Особливо висвітлено критерії, за якими здійснюється класифікація таких заходів державного примусу, та характерні ознаки тієї чи іншої групи.

Система США, особливо на федеральному рівні, характеризується розгалуженістю та різноманітністю видів покарань. Така структура є результатом тривалого історичного розвитку та накопичення практичного досвіду протягом століть. У контексті нашого дослідження було виявлено, що в США більше акцентується увага на підтримці громадського порядку, запобіганні злочинності та реабілітації злочинців. Попри це, у деяких штатах США зберігається практика застосування смертної кари за особливо тяжкі злочини. Проте, даний вид покарання використовується вкрай рідко та лише за виняткових

обставин, що підтверджує його виключний характер.

Проведений порівняльно-правовий аналіз дає змогу виявити переваги та недоліки в обох системах, а також встановити ефективні методи покарань, що може сприяти подальшому вдосконаленню системи покарань за кримінальні правопорушення в обох правових системах. Значимість даної статті обумовлена її аналітико-порівняльним підходом, який сприяє ідентифікації ефективних шляхів удосконалення національного законодавства України з урахуванням передового міжнародного досвіду та загальноновизнаних стандартів.

**Ключові слова:** кримінальне право, система покарань, порівняльно-правовий аналіз, кримінальна відповідальність, види покарань, міжнародні стандарти.

**Statement of the problem:** The modern world, in particular its societies, are constantly faced with the need to improve their criminal justice systems, namely punishment systems. Ukraine and the USA are examples of countries that have different approaches to this problem. It is crucially important to study the differences between the penal systems of these countries in order to identify effective methods of improvement.

**Purpose of the study:** The main purpose of this study is to analyse and compare the penal systems of the criminal law of Ukraine and the USA in order to identify their features, advantages and disadvantages. This study is aimed at finding out possible ways to improve the Ukrainian system of punishments based on international experience.

**State of development of the problem:** The issue of the difference in the punishment systems in Ukraine and the USA is being actively examined in scientific research. There is a sufficient amount of literature and analytical materials concerning this topic, but further, broader analysis is still needed for a deeper understanding of the identified problems and prospects for further research.

**Main material:** It is a well-known fact that each legal system has its own peculiarities not only in the field of criminal law, but in general in every part of it. Learning about such features is educational because with the help of this knowledge there is an opportunity to improve the domestic legal system, which is the main task of each state. Through the knowledge of the features of different legal systems, which includes history, experience, positive and negative consequences of the application of innovations in different legal systems can help in creating a balanced and correct system of legal regulation of the country. The purpose of this article is to compare the criminal legal systems of Ukraine and the USA, which will help to outline their features and

reveal characteristics that can be borrowed from the penal system of the USA to improve criminal legislation of Ukraine.

Ukraine is a fairly young independent state that gained its independence in 1991. From that time, it began to build its legal system and looked at the experience of neighbouring countries. The first Constitution of Independent Ukraine appeared in 1996, and the Criminal Code in 2001. The fact that these and not only these documents were adopted a long time ago does not mean that they are outdated and no longer meet modern standards. In this way, official documents that support the existence of the state and the regulation of all kinds of relations are amended almost daily, which makes it possible to use only such sources that are adapted to modern conditions and meet international standards.

The United States differs in its legal system from Ukraine. It is built on the principles of federalism, which means power is shared between the federal government and the rest of the states, where each of them has its own laws and jurisdiction. The USA has its own constitution, which was adopted in 1787, and which is the oldest and one of the most brutal constitutions in force [1, p. 59]. The American legal system is a common law system. The United States has Title 18, also known as the Federal Criminal Code, which is an act of Congress revised in 1948. This document defines responsibilities for different types of crimes and systematises the criminal process within the borders of the federal territory of the United States [2, p. 124].

In general, punishment is not physical suffering of the convicted person or humiliation of his human dignity, punishment is a measure that the state applies forcibly, in connection with the commission of a criminal offence by a person, which is clearly stated in the legislative documents of each state, since the application of the law on criminal liability for analogy is prohibited [3, p. 21].

Ukrainian scientist O.I. Yushchik notes that punishment is a necessary tool, which is a negative sanction with the help of which the previously broken integrity of interpersonal ties and social relations is restored [4, p. 425].

The purpose of punishment in the Ukrainian jurisdiction is to pay for the crime by the criminal for the damage he caused to an individual, his property or society in general. Correction of the criminal is also a key goal of punishment. This is done in order for the criminal to return to society as a safe and harmless person. Recidivism prevention by a criminal is to prevent a person from committing any offence, even if they really wanted to. And also preventing the commission of a crime by other persons is the purpose of punishment, to show those who want to commit a

criminal offence by the example of those who have already committed such a crime [5, p. 193].

In the US jurisdiction, criminal law and punishment for criminal offences are aimed at preserving public order, the stability of solving illegal behaviour that has the potential to harm the interests of the state and society. For example, the Texas Penal Code regulates penalties and establishes corrective measures to address such behaviour. New York has various goals, such as preventing harm to both individuals and society at large, deterring wrongdoing, clearly defining crimes, imposing appropriate punishments for certain crimes, and ensuring that the community has a voice in the judicial process and sentencing [6, p. 3].

The goal is common, both in the jurisdiction of the USA and in Ukraine – this is to ensure justice and responsibility for the offence committed. Both systems are aimed at preserving public order and protecting the interests of citizens. But systems focus on different aspects. The US penal system focuses more on restoring public order and preventing recidivism, while Ukraine's focuses more on restitution and correction of the offender.

The Ukrainian system of punishments provides for 12 types of punishments, which are classified according to certain features established in the criminal law. Such a system is very convenient for the correct application of certain types of punishments, which ensures their individualization. The classification of punishments is as follows: by the method of appointment, by the subject, by the possibility of determining the term of punishment, etc [7, p. 348]. According to the first classification, Article 52 of the Criminal Code of Ukraine, all punishments are divided into 3 groups: primary, additional and those that are assigned as both primary and additional. If we talk about the primary punishments, then they can be characterised as those that are prescribed only as independent measures of influence and in no case can be applied as an addition to the punishment. The peculiarity of the primary punishment is that it can be imposed only once, as provided for in the sanction of the article of the Special Part of the Criminal Code. The main types of primary punishments include: community service, correctional labour, service restrictions for military servants, probation supervision, arrest, restriction of liberty, custody of military servants in a penal battalion, imprisonment for a determinate term, and life imprisonment. As for additional punishments, this is a type of punishment that is assigned as an addition to the main one and cannot be applied independently. It is possible to assign several additional punishments at once, when only one is the primary one. Revocation of a military or special title, rank, grade or qualification

class and confiscation of property are examples of additional punishments. Regarding the types of punishments that can be applied both as primary and additional, so-called mixed, examples can be a fine and deprivation of the right to hold certain positions or engage in certain activities [7, p. 348-349].

According to the Criminal Code of Ukraine, punishments are also divided into general and special. General punishments are universal measures of influence, as they can be applied to any offender. It can be a fine, community service, correctional labour, confiscation of property, arrest, restriction of liberty, imprisonment for a certain period or life imprisonment. Special punishments are those that cannot be applied to every offender and are assigned only to a certain circle of persons. Custody of military servants in a penal battalion can be assigned only to conscript servicemen, revocation of a military or special title, rank, grade or qualification class, deprivation of the right to hold certain positions or engage in certain activities, and service restrictions for military servants – all these are examples of special punishments in the Ukrainian penal system. There is also a division into fixed-term and indefinite sentences. Fixed-term punishments are those that are limited to a certain period of time (from minimum to maximum) for a certain type of offence. For example, imprisonment for a certain period is applied in cases for a period of one to fifteen years, and deprivation of the right to hold certain positions or engage in certain activities can be applied as a primary punishment from two to five years and as an additional punishment for a period from one to three years. Indefinite penalties are applied in cases where the law does not establish a time frame for their effect. A fine, revocation of a military or special title, rank, grade or qualification class, confiscation of property and life imprisonment – all these are examples of indefinite punishment. Also, some punishments from this list, such as a fine and confiscation of property, are called single-act, because the execution of the sentence is carried out at once [7, p. 350].

The USA has its own peculiarities regarding the punishment system. First of all, it should be emphasised that at the federal level, crimes in the USA are divided into 3 types. The first is felonies, which are the most dangerous crimes that are most often punishable by the death penalty or imprisonment for a term of more than one year. The second is misdemeanours, which are less serious offences than felonies, punishable by up to one year in prison. The last category is minor criminal offences punishable by imprisonment for up to 6 months or a fine of five to ten thousand dollars [3, p. 124]. The current Federal Criminal

Code of the country (Chapter 18 of the US Code of Laws) contains a wide variety of articles that are described in a certain sequence: criminal offences involving the use of aircraft or motor vehicles; offences against animals, birds, fish and plants; offences such as arson, physical assault and violence; illegal actions in case of bankruptcy; development or use of biological or chemical weapons; bribery, corruption and conflicts of interest; payment of child support; protection of society from discrimination or denial of rights; offences during civil disturbances; fraud that affects the government system or its services [8].

As for the types of punishments, the following are used: fines (an alternative or additional form of punishment), imprisonment (in local or federal prisons, depending on the term), probation (provides for the suspension of the sentence in places of deprivation of liberty with the conditions of reporting to the probation officer and complying certain rules of personal behaviour). Probation also requires psychiatric treatment or attendance at drug or alcohol abuse programs in certain cases. Probation conditions must necessarily be related to the rehabilitation of the offender for his return to society. Another type of punishment is intermediate sanctions. This type of punishment can include house arrest with electronic monitoring, and short-term "shock" imprisonment, community service and restitution. Intermediate sanctions may be imposed as the main punishment, as a condition of probation, after deprivation of liberty or as an additional punishment to the fine.

The most severe form of punishment is the death penalty [6, p. 57]. In Ukraine, this type of punishment is prohibited, but in the USA, in some states, is still used for serious crimes. The death penalty in the United States is an extraordinary way of influencing crime and its use is prescribed by law for the most dangerous felonies with aggravating circumstances. Federal legislation provides for up to 70 types of crimes punishable by the death penalty [9, p. 66]. All of this is written in Chapter 228 "Death Sentence" of Chapter 18 "Crimes and Criminal Procedure" of the US Code [8]. There are also circumstances that aggravate and mitigate punishment and can change the sentence and not apply the death penalty. Some of the mitigating examples are coercion, serious mental or emotional disorder; consent of the victim and any other factors. If we talk about aggravating circumstances when imposing the death penalty, they are divided into several groups: circumstances that aggravate the punishment in the case of espionage or treason; circumstances aggravating the punishment in case of intentional murder; circumstances aggravating the punishment in case of committing an offence related to illegal drug trafficking [10, p. 93-96].

In general, the death penalty is imposed for serious murder or murder committed in the course of another serious crime. Also, US legislation does not exclude the possibility of this type of punishment until the age of adulthood. Different states have different ages, but in general it can range from 10 to 19 [11, p. 409]. In addition, there is no judicial precedent that prohibits the use of the death penalty as punishment for a minor. Federal legislation prohibits the use of this type of punishment for the mentally ill. The death penalty can also be applied to women. If a woman is pregnant, the sentence will be executed only after giving birth. Death penalty shall be carried out in the territory of the state where it was imposed and in the manner prescribed by the laws of that state.

The USA is a country where the death penalty as a type of punishment for the most dangerous crimes is legitimate. This is the result of a well-developed legal model of the penal system, but it is worth remembering that this model is far from perfect and also has a large number of shortcomings [12, p. 252].

Quite an interesting question about the fine as a form of punishment in the USA. A strict tariff system of fines is applied, i.e. the amount of the fine depends on the severity of the criminal offence and on the person who committed it. Currently, there is almost no discrimination in the USA. The court observes the principle of equality of citizens before the law and applies the same punishment for the same offence according to the law. But before this was a controversial issue, discrimination had a strong influence on the verdict. A fine can be applied for the commission of a misdemeanour, that is, a crime of minor gravity, as the main type of punishment [13, p. 13-21]. In other types of criminal offences, this type of punishment is additional to the main one. It is important that the fine imposed by the court is collected by the same court. It should be noted that if the fine is not paid, then it is a defeat for the American justice system, because it will smear its system as a whole, so it is closely monitored [14, p. 91-94].

In Ukraine, there is also such a punishment as a fine. It can be both primary and additional. A fine is a monetary penalty established by law and corresponds to the cases and amounts specified in the Special Part of the Criminal Code [7, p. 360]. In turn, V.O. Popras establishes that "a fine is a coercive measure used by the state based on a court verdict against a certain person who has committed a minor criminal offence, which entails the collection of a certain amount of monetary units from him". The amount of the fine is determined in the tax-free minimum incomes of citizens and can vary from 30 to 50000 such minimums, but in certain cases the amount can be much higher. One of the features

of the fine in the Ukrainian jurisdiction is that this type of punishment takes into account the severity of the criminal offence and the property status of the offender. If the offender cannot pay the fine, the court may order community service, correctional labour or imprisonment at the rate of one hour of community service for one tax-free minimum income, one month of correctional labour for twenty such minimums or one day of imprisonment for eight tax-free minimums [15, p. 10–13].

**Conclusion:** From all of the above, it can be concluded that a comparison of the criminal legal systems (penalty systems) of Ukraine and the USA revealed differences in the approaches and applications of various types of punishments. Although the goal of both systems is the same, namely to ensure justice and maintain public order, their methods, approaches to punishments and choices of strategies are different.

If we talk about the Ukrainian system of punishment, it should be noted that it focuses its attention on compensation for the damage caused, correction of the behaviour of the offender and prevention of the repetition of the criminal offence. The Ukrainian penal system has a variety of punishments, such as community service, correctional labour, restriction of liberty, etc. taking into account the gravity of the criminal offence and the circumstances of the offender.

The US, particularly at the federal level, has a wider range of penalties, such as fines, imprisonment, probation and intermediate sanctions. The US penal system emphasises the maintenance of public order, the prevention of criminal offences, and the rehabilitation of criminals. Also, in some US states, the death penalty still exists as a legalised method of punishment for the most dangerous crimes.

Both systems have certain advantages and disadvantages. Such a comparative analysis provides an opportunity to analyse information and find means that can improve the penal system in any country. Ukraine, in turn, can develop alternative methods of punishment and add elements of rehabilitation and reintegration into its approach. The United States should consider ways to ensure justice and equity in punishment and continue to evaluate the effectiveness and ethical implications of the death penalty.

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