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ARTICLE

Victimization and Victim-Oriented Development of Ukrainian Doctrine of Criminal Law through European Union Dimensions

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Abstract

In the twenty-first century, one of the crucial roles of the Criminal Code is to protect the rights and interests of crime victims. Criminal law is a complex field that must balance established principles with evolving societal dynamics. This involves various stakeholders, including the state, perpetrators, victims and civil society, each with differing views and implications on criminal law. The modern era, marked by post-truth narratives and a reputational society, further complicates matters. Casuistry now prevails over systematic approaches, leading to a disconnect between criminal law's foundational principles and intended societal outcomes. Contemporary criminal law operates on multiple dimensions, addressing individual, societal and institutional levels while aiming to balance the interests of these entities. The transition from the "age of information" to the "age of reputation" underscores the importance of information subjected to external evaluation. In the context of a state of victimization and the need to harmonize Ukrainian criminal legislation with European Union and Council of Europe standards, it is vital to protect human rights. This aligns with the recommendation of the Council of Europe Committee of Ministers that crime should be recognized as a wrong against society and a violation of individual rights, emphasizing the importance of safeguarding victim rights. Approaching criminal law from a victimological perspective offers unique insights into victim participation in criminal liability, crime qualification and offender culpability. This perspective encourages assessing the efficacy of Ukrainian criminal law prohibitions and promoting victim engagement in crime control on national and international levels.

Keywords: criminal law; criminal policy; victim-oriented policy; victimology; human rights; victimization

Introduction

In the twenty-first century, the role of the Criminal Code is unequivocally intertwined with the protection of crime victims' rights and interests. However, the

path of criminal law is far from straightforward; it navigates a complex landscape where established principles must coexist with ever-changing social dynamics. The intricate dance of criminal law involves a multitude of stakeholders, each with their distinct perspectives, including the state, perpetrators, victims and civil society. These disparities even extend to European legal judgments, adding another layer of complexity. As Ukraine moves toward European integration, the protection of human rights through criminal law theory becomes paramount. This approach aligns with international recommendations, recognizing crime as both a transgression against society and a violation of individual rights, emphasizing the need to safeguard victim rights.

In this complex landscape, examining criminal law through a victimological lens provides invaluable insights into criminal liability, crime qualification and offender culpability. It encourages a comprehensive assessment of the effectiveness of criminal law prohibitions and promotes greater victim engagement in the quest for crime control.

With the potential expansion of passive citizenship principles in criminal law and a focus on fundamental rights and freedoms, the ongoing evolution of criminal law is a journey that continues to adapt to localized traditions and diverse cultural influences.

Methodology

The research methodology for this study encompasses a structured approach comprising the following: a comprehensive analysis of the intricate interrelationships between war, criminal activities and victimization, and their consequential impact on the doctrinal, legislative and law enforcement aspects of Ukrainian substantial criminal law, as well as supranational and international criminal law. The research is grounded in the sociology of deviant behaviour, utilizing general sociological dialectical methods to analyse social phenomena in their development. Additionally, the study draws on philosophical theories of activity, synergy theory, conflict systematics, general criminological theory, legal theory and lawmaking theory.

This analysis seeks to illuminate the complex nexus that exists between these phenomena within the legal framework. A critical aspect of this research involves an in-depth examination of the implementation of interpretive and approximation approaches' principles of victim-oriented development in Ukrainian criminal policy. The interpretive approach in criminal policy focuses on the implementation of laws with a primary focus on the rights, needs and interests of victims of crime. This approach recognizes the evolving understanding of the role of victims in the criminal justice system and seeks to address their problems through legislative measures. It focuses on adapting laws to provide support, protection and reparation to persons who have suffered harm as a result of criminal behaviour. Approximation of Ukrainian criminal law in the context of European Union (EU) legislative work is a complex and multidimensional process aimed at harmonizing the legal systems of Ukraine and the EU in the field of criminal justice. It involves a scientific approach that includes legal analysis, comparative studies, and borrowing best practices to

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harmonize Ukrainian legislation with EU standards and principles. This examination will provide valuable insights into the dynamics of legal reforms.

Criminal Policy and its Victim-Oriented Development

It should be axiomatic in the twenty-first century that "one of the tasks of the Criminal code is to protect the rights and interests of the victim of crime" (Baulin 2020). The evolution of criminal law is a complex endeavour, necessitating a delicate balance between its established tenets and the ever-shifting dynamics of public and social relations. This discord challenges traditional mechanisms of social control, implicating various stakeholders, including the state, perpetrators, victims and civil society, each with divergent perspectives on criminal law. Indeed, the concept of criminal law varies significantly across different segments of society, encompassing citizens, the media, social groups and law enforcement authorities. The autonomous concepts of criminal law, punishment and crime exist also in European Court of Human Rights (ECtHR) and European Court of Justice (ECJ) practice.[1]

Twenty-four years ago, the first monograph on victimology (Tuliakov 2000) was published in Ukraine. Since then, significant changes have occurred. New research on the interaction between the offender and the victim has emerged, and the concept of the safety index has become central in assessing the effectiveness of law enforcement agencies. Victimological ideas have also permeated into traditionally conservative areas of public law interpretation. Notably, modern commentaries on the Special Part of the Criminal Code of Ukraine now often begin with an analysis of the victim's characteristics rather than a Marxist-focused description of the public danger of the offence.

The world is changing, and so are law and social theories. Concepts like protectionism and the deification of state structures are giving way to social partnership and the primacy of human rights. Modernity and structuralism are being replaced by postmodernism and metamodernism. The dialectic of the general, the particular and the individual is transitioning to the metaphysics of part and whole.

Despite the pluralism of ideas and concepts, the fundamental relationship between the ideology of natural criminal law, based on the primacy of human and citizen rights, and the ideology of positive criminal law, built on the state's right to punish for violations of social conditions, remains unchanged. However, the world today is not what it once was. The right to hope and happiness aligns much more closely with the ideals of civil society than with the obligation to obey disciplinary norms. Rebellions, revolutions, acts of civil disobedience, occupation of buildings, mass protests, and the communicative dissonance in social media correspond to thousands of complaints to the ECtHR about the total victimization of citizens by individual states and governments.

[1]Council of Europe/European Court of Human Rights (2022); Case C-80/86, *Criminal Proceedings against Kolpinghuis Nijmegen BV* [1987] ECR 3982; Case C-68/88, *Commission of the European Communities v. Hellenic Republic*. Failure of a Member State to fulfil its obligations – Failure to establish and make available the Community's own resources [1989] ECR 2965 (Greek maize case).

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At the same time, reverse processes exist, where the sprouts of civil society, freedom and democracy mimic the struggle for civil rights, and the abuse of the law becomes the norm, while legality is merely a façade for expediency. The substitution of meanings and double standards has given rise to the concept of post-truth in the relationship between citizen and state, where words and actions correspond not to the essence of phenomena but to manipulation.

Today, we live in a world that creates images, not essences, in a state where armed conflicts are classified as acts of terror, and prisoner exchanges occur in a quasi-legal field. On certain territories, quasi-criminal laws are in force, but real victims are being harmed. The concept of the primacy of rights is being replaced by the concept of equality, where the victim and the offender, the state and third parties (civil society) are mutually responsible for the occurrence of criminal offences.

However, even now, neophytes are trying to discover a unipolar world, which, in principle, cannot exist. The substitution of concepts and the hyperbole of "the right to . . . " lead to distortions and inefficiencies in the interaction between the state and the citizen, creating a twilight zone of quasi-right and non-right. Here, any fascination with the foundations of monotheism or the deification of law is as dangerous as the universalism of the system of human rights protection and security. The right to happiness turns out to be more important than the right to fair treatment, though no phase of modern society can provide true justice and equality, especially in the realm of crime control and criminality.

There is, however, one clarification to be made. The optimal regime may have been achieved, in part, thanks to victimological knowledge. Ideal legislation can exist in a society far from ideal, but what prospects does it offer for human happiness? This is the question we attempt to address in this work, where the classical victimological approach, described 24 years ago, is supplemented with issues of the methodology of lawmaking in criminal law.

The history of human development shows that measures to combat crime are often not associated with a well-balanced approach to its analysis. National culture, public pressure, and administrative and political processes are just a few of the factors influencing anti-crime campaigns. The grand scale and global nature of the tasks inspire immediate solutions. However, it hardly needs proving that not every global crime prevention programme, or rather, none of them, is capable of fulfilling the objectives set before it.

Crime is a complex, multifaceted phenomenon derived from the most important social characteristics of a society. In this regard, the success of crime control policies depends on many positive results achieved in smaller areas. At the same time, the effectiveness of law depends on its ability to achieve the goals of legal regulation, aimed at ensuring security and protecting the subjects of relevant legal relations. World, regional and national features of the implementation of protective and preventive legal relations lead to an inevitable differentiation in the assessment of the effectiveness of measures depending on the characteristics of the subjects, objects and needs of other participants in criminal law relations (victims, third parties, social groups, states, and international and transnational organizations).

Thus, the effectiveness of criminal law impact varies according to the complex factors and relationships involved and cannot be reduced solely to the notion of the effectiveness of criminal law as a whole within a state.

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This effectiveness is closely related to the assessment of criminal law regulation, the criminal–political environment, and the peculiarities of legal realization and legal understanding at multiple levels of social interaction.

This corresponds with the feelings of security experienced by the subjects of criminal legal relations. Years of experience demonstrate that attempts at legal control over crime are often globally uniform and largely unsuccessful. Even successful models (such as those of the USA, Canada and Japan, which had shown a standard trend of declining crime rates) expressed relative ineffectiveness by the middle of the second decade of the twenty-first century when applied to specific subcultures and the unique dynamics between civil society and law enforcement. Comparing modern Chicago gangs with Ukrainian hybrid armed formations and riots before the Russian invasion reveals differences only in the degree of cohesion within the protest movements, determined not so much by conformity, contagion and imitation, but rather by individual reflections on the significance of civil rights for each individual and their sense of protection.

Criminal law intervention today is an attempt to overcome the bifurcation shift toward the institutionalization of society, in favour of the managed distribution of resources within modern liberal democratic models.

The United Nations (UN) Sustainable Development Goals focus on the protection of human rights and freedoms, combatting inequality and discrimination, and maintaining peace and security both within and between states. However, given the active processes of societal self-organization, the non-linear nature of relationships between individuals in the information space, and the hybrid nature of legal intervention in a transnational context, these objectives are methodologically flawed.

The self-organization of the social organism, in opposition to policies ostensibly oriented toward human welfare, can play a cruel joke on its architects. The institution of law, as a sub-institutional formation of the state, demonstrates its high inefficiency in Ukraine, manifested in the non-enforcement of laws and judicial arbitrariness, which has already become a widespread and surprising practice. This phenomenon underscores that organizationally fixed institutional relationships become non-functional in the absence of resonance with self-organized legal norms. The real question is which of these have greater legitimacy.

Self-organized, parallel legal relationships eventually dominate and even subjugate those who should have resisted them, including public officials, law enforcement and government representatives. When organizational and self-organized components of legal relations coincide, the state's efforts to maintain law and order are minimized, as self-organization performs this function using cultural and psychological mechanisms that place the point of social control within the individual's internal space.

The central problem of modern global governance is that the innovations and creativity of the information society create a new environment where time and space are not fragmented by the legal families and borders of states but are subjected to new, relatively unexplored "waves" of energy impacts, media movements, capital flows and migration. These are connected (selectively but universally) by information memes that organize and direct this movement. However, everything is broken by the wars, international conflicts and human rights abuses.

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The states themselves, and the world as a whole, find themselves powerless to understand the inevitability of the primacy of individual evaluations of good and evil, cultivated by informational networks, and the retribution for actions, thoughts and behaviours of social subjects, which increasingly focus on their own (group) interpretations of good and evil rather than on norms carefully nurtured over centuries.

In this context, collective selfishness, hedonism and anomie, generated by new communicative connections, are becoming the norm of the modern world order. The concept of individual security is overtaking that of social security, and the forces of self-organization, in pursuit of expediency, are destroying the normative structure of the world order.

This phenomenon is especially evident during periods of social revolutions and reforms. The entropy of law, the blending of meanings, and the diversification of legal conflicts and rules of human coexistence have become the norm. The concept of law recedes into the background, while the idea of political expediency and communication-driven meaning comes to the forefront.

We have become accustomed to the notion that the stability of structures and management systems generates controllability within systemic processes of social control.

However, the world is governed by chaos – albeit a highly organized chaos. Modern perceptions of good and evil, models of what is deemed good and just, are losing their original essence and dissolving in the virtuality of evaluations and the multipolarity of approaches. Augmented realities of thought, spirit and action thrive against the backdrop of the twilight of regulation concerning civil rights and freedoms, as centuries-old postulates and values of liberty, equality and fraternity are undermined from within by the spontaneously expanding interpretations of the fundamental principles of individual, societal and state development, in favour of ensuring individual security.

The concept of the primacy of personal security and personal rights over social security has played a cruel trick on the world: Generation Z has been replaced by reflexive, self-organized masses in the virtual space, for whom capturing a Pokémon means creating new sensations and images of the world; killing a police officer means standing up for centuries-suppressed racial interests; creating a stateless society in the landscape of fundamentalist beliefs means securing a happy future for generations to come.

Modern states, law and the concept of world order are becoming increasingly virtual, with their functions often being supplanted by processes of hybrid self-organization grounded in the reflexivity of network-based attractors. The substitute for state sovereignty is now mobile groups whose extraterritorial powers are dictated by the expediency reflexively defined by social networks or the authority of the network structures themselves (ranging from the EU and transnational corporations to civic networks and terrorist organizations).

Abuse of power for personal gain, trolling on social media, misuse of freedom of speech to identify enemies through memes, and the blending of concepts within models of political, administrative and criminal responsibility are not just realities of the era but standard forms of social life today. The false principle of equality, the diversification of interpretations of fundamental rights, religious evaluations and

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moral values, the autonomy of will, and the dissolution of responsibility in network behaviours – all these phenomena, including the use of "hidden advertising" in political and legal management, characterize not only society but also the goal-oriented activities of administrative structures. For these structures, the hybrid and amorphous legal form serves as a field for realizing new possibilities.

The above points suggest the need to study the effectiveness of criminal law intervention in modern conditions from the perspective of:

- Reflexivity and interaction between the concepts of morality and wrongdoing within normative and self-organized legal systems;
- Equality of participants in primary and secondary criminal law relations, considering the ideology, principles and language of law, as well as the social (individual/network) support and approval of legal actors' rights;
- A new universal language paradigm in criminal law, based on moral support and uniform perceptions of evil, retribution, compensation and restitution for victims of crime.

The modern global community is increasingly guided by expediency and individual welfare rather than by the social interests generated by ideologists. The effectiveness of criminal law intervention is not associated with elements of criminal policy but with the efficiency of alternative approaches to justice distribution, generated by networks and informational interactions. Thus, today's criminal law regime is characterized by hybrid legality and illegality, criminally tinged abuses of the law (which may be assessed and qualified as criminal offences or borderline situations, depending on the situation's status and the political attitudes of law enforcement agencies). On the individual, societal and social levels, these processes manifest differently in terms of their visibility, but their impact is evident.

The most important aspect is that public law institutions in this hybrid setting do not fully or predictably influence social processes due to the fictitious nature of meanings, double standards and the breakdown of communicative contacts. The diversification of norms and ideas about actions and responsibility leads to the fragmentation of normative characteristics and ideas about behaviour and accountability.

The definition of crime and its punishment remains the prerogative of the state in the positivist understanding of law. However, transitioning to other levels of legal understanding opens new planes for analysis.

In criminal law, due to the dominance of hidden communicative ideas (e.g. state security *v.* personal security), we face problems of the dysfunctionality of legal meanings and the narrowing of the legal landscape. The inflation of the current model of fundamental human rights, rooted in the dysfunctionality of its protection, is growing, while the concept of criminal offence is becoming increasingly blurred. This leads to the mixing of certain elements in the institution of the hyperbolization of one phenomenon and the dominance of other forms, ultimately resulting in the violation of the homeostasis of information and energy in a world moving from stability toward entropy. The current surge in crime, cruelty, callousness, immorality and deviations is merely a reaction to the parallel coexistence of total abuses of the law and the hybridization of legal and mechanical governance mechanisms at political, social and individual levels.

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Understanding the essence of these processes opens up new prospects for further criminal law research and for the development of programmes that seek to understand both established and new elements of criminological and criminal law knowledge.

Among the programmes that have proven effective in limiting crime is the creation of a system of fair and humane treatment of crime victims and teaching potential crime victims basic strategies for responding to conflict situations. This approach underscores the fact that ensuring public safety is one of the primary responsibilities of the state. The state maintains a massive criminal justice apparatus at taxpayer expense, and if it fails to protect its citizens from criminal assaults, it should bear responsibility for the damage caused. This reflects the real expectations of the population, which is interested in effective protection of its constitutional rights and freedoms.

Improving crime victims' access to the criminal justice system and ensuring fair and humane treatment of them can help reduce citizens' fear of crime, foster their cooperation with political authorities, and enhance the democratic foundations of governance, ultimately reducing crime rates.

The relevance of this research is confirmed by the necessity to develop victimological research and improve the legal regulation of victims' rights in Ukraine's criminal justice system.

The identified problem is generally addressed in domestic science within the framework of criminal victimology, which is regarded as the study of the crime victim, a specialized criminological theory with its own subject, methods and forms of realization. It is no coincidence that, in legal sciences, "victimology" as a term is understood more narrowly. It is the study of the victim, the injured party or the one suffering from an offence, particularly from a crime. However, around the world, victimology is experiencing rapid growth as a unified science on victims of socially dangerous phenomena, becoming a subfield of sociology.

Despite the considerable number of high-quality studies produced by the aforementioned authors (Baulin 2020; Tuliakov 2000), the development of victimology as a particular theory within the broader criminological framework remains incomplete. This applies to the definition of the philosophical and social foundations for a unified victimology theory, as well as the scientific problems of defining and understanding the core concepts of criminal victimology, specialized research methodologies, and the comparative analysis of victimization processes in the unique political and legal conditions of Ukraine.

Another challenge lies in the humanization of political consciousness in Ukraine, which requires the criminal justice system to pay real attention to crime victims. Unfortunately, the need to revise the fundamentals of criminology, which arose with the collapse of the official criminological ideology of the Soviet Union, did not allow Ukrainian criminologists to actively develop theoretical and practical approaches to the study of victimology. As a result, the crime victim has again been relegated to a forgotten figure in the state's criminological policy, as well as in efforts aimed at individual crime prevention.

Thus, the task is to deepen and further develop the foundations of criminal victimology theory, building a system of scientific knowledge about crime victims to optimize social control over crime, humanize criminological policy, and bring

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Ukrainian national legislation in line with international legal standards on the protection of crime victims' rights.

The relevance of research into the socio-legal foundations of victimology stems from several factors:

- The need to humanize the activities of social control over crime and improve their effectiveness;
- The need for philosophical and scientific reflection on the formation of criminal victimology as a specialized theory within the broader framework of victimology;
- The necessity of developing theoretical aspects of domestic victimology in line with the latest advancements in the sociology of deviant behaviour and global victimological theory. This includes reassessing existing knowledge and exploring new aspects of victimological crime prevention based on global crime control practices and comparative analysis of victimological legislation in developed countries;
- The theoretical substantiation of proposals for the development of Ukrainian victimological legislation;
- The need to promote practical victimological research and formulate scientifically sound recommendations for reducing victims' vulnerability to crime.

Emilio Viano (1992) drew attention to the requirements of self-identification in understanding the concept of "victim", not to mention the conscious parallel to the psychological understanding of a criminal offence in the works of Pitirim Sorokin (1912). The ECtHR in its judgment in the case of *Ramadan v. France*[2] unanimously declared the application inadmissible. The case concerned the applicant's conviction for disseminating information about the identity of the alleged victim of a rape for which he was on trial. The Court noted that the domestic courts had clarified the concept of "victim" for the purposes of the Press Freedom Act and confirmed that only the written permission of the person who had filed the criminal complaint and entered the proceedings as a civil party could release the applicant from criminal liability under the law, waiving the obligation of secrecy and allowing the dissemination of information about her identity. Concerning the concept of "victim", the Court noted that X had joined the proceedings as a civil party in March 2018 during the judicial investigation initiated against the applicant, thereby positioning herself as a person who had "personally suffered damage directly caused by the crime" for the purposes of Article 2 of the Code of Criminal Procedure and thus as a victim of the serious criminal acts at issue in the proceedings. The Paris Court of Appeal, and subsequently the Court of Cassation, agreed that the term "victim" "necessarily applies to anyone who considers himself or herself to be such a person". The Court therefore noted that the domestic courts had rightly considered that X should be regarded as a victim. The ECtHR also noted that the courts had taken into account the behaviour of the victim, who felt the need to discuss the

[2]ECtHR, *Ramadan v. France*, Application No. 23443/23, 1 February 2024, retrieved 29 October 2024 (https://hudoc.echr.coe.int/eng-press?i=003-7864993-10928782).

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events and thus disclosed information that allowed her to be identified. The Court concluded that, given the broad margin of appreciation of the respondent state, the challenged interference with the applicant's freedom of expression was proportionate to the legitimate aim pursued. Therefore, the ECtHR declared the application inadmissible as manifestly ill-founded. Aside from the balance of proportionality and publicity, it is interesting to note that the term "victim" "necessarily applies to anyone who considers himself or herself to be such a person". At one time, in contrast to the established understanding of the concept of a victim of a criminal offence in UN soft law (the term "victims" refers to persons who have individually or collectively suffered harm, including bodily injury or moral harm, emotional distress, material damage or substantial impairment of their fundamental rights as a result of an act or omission in violation of the applicable national criminal laws of Member States, including those prohibiting the criminal abuse of power), in international criminal law, victims under the jurisdiction of the International Criminal Court may be individuals, organizations or institutions that have suffered direct damage to any of their property dedicated to religious, educational, artistic, scientific or charitable purposes, as well as their historical monuments, hospitals and other places and objects intended for humanitarian purposes. Thus, the development of the phenomenology of the human-centred approach in criminal law continues at the level of the Council of Europe.

Victimization and Criminal Law: Lessons of the Ukrainian War

A new era needs to clarify new emergent criminal policies as part of international and state public policy in preventing deviance and treatment of victims. The development of these emergent criminal policy concepts is based on the landscape of victims' fair treatment through the protection of human rights.

However, there are huge contradictions in the way we could do it. Let us look at the Russian invasion of Ukraine. Fareed Zakaria from Cable News Network (CNN) (Zakaria 2023), discussing the 2022–2024 conflict, asked:

> More than 13 million people are displaced, about 8 million of them abroad. The war is taking place on Ukrainian soil, with its cities being bombarded to rubble, its factories razed, its people turned destitute. If the war grinds on like this for years, it will be worth asking – are we letting Ukraine get destroyed to save it?

Despite these fearful notices, to Ukrainians the only way is victory: victory to protect their European choice, their Motherland, their urge for Freedom, and decolonization from the past. With approximate war casualties since 24 February 2022 until the middle of 2024 around 120,000 and an average Ukrainian family size of 2.59, at least 310,000 Ukrainian citizens have experienced the death or wounding of direct family members (Seybolt, Aronson, and Fischhoff 2013). If we include more distant relatives, the number rises to millions. Almost every Ukrainian citizen has now felt the direct consequences of the war on their ordinary lives – economic, political and cultural. With every day that the war progresses, the questions as to what they are

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suffering for have been generated in numbers. Unfortunately, this way is accomplished with thousands of victims not in my own country Ukraine, but in our neighbourhood, beyond Ukraine. More than six million Ukrainians have become forced migrants. Their non-return will cost the economy more than $113 billion. The potential labour shortage due to the war is estimated in millions. According to experts, it could reach 4.5 million people, which is about $45 billion in lost taxes over 10 years. Failure to return forced migrants to their homeland will cost Ukraine $113 billion in lost gross domestic product (GDP) over 10 years (in 2021 prices). A probable number of Ukrainian refugees and internally displaced persons exceeds 24,000,000 persons since 24 February 2022 (Office of the United Nations High Commissioner for Refugees [UNHCR] 2023). Half the population of the country have become nomads.

There is no doubt that many Ukrainian refugees in Europe have experienced hardship and challenges, including discrimination and xenophobia; the level of victimization can vary greatly depending on the individual's circumstances and the host country's policies and attitudes towards refugees. Despite their primary victimization due to the war and their need to flee their homes, Ukrainian refugees in Europe are at great risk of falling victim to organized crime, sexual exploitation, human trafficking and illegal supply chains, as well as classic crimes such as theft, burglary and fraud, etc. (EUROPOL 2022).

While Ukrainian refugees can be targeted at different stages of their journey, EUROPOL (2022) said the highest risks concern the targeting of victims under the presence of promising transportation, free accommodation, employment or other sorts of support. These numbers of Ukrainian people, stressed from war and being victimized before and in the process of their travel, need some extra explanation (Sánchez Nicolás 2022). Approximately 3,000,000 of them are so-called pendulum migrants who came to the United Kingdom and Europe every year to work seasonally after the opening up the Schengen Area to Ukrainian citizens. Nearly 5,000,000 refugees from Ukraine registered for Temporary Protection or similar national protection schemes in Europe. Among the 11,000,000 who have returned to Ukraine, we find a huge amount of seasonal workers who have returned for three to six months to Ukraine and then will arrive again in Europe in order not to violate Temporary Protection Directive conditions, and mothers with children fleeing from the hostilities of war for a couple of spring months and then returning.

Those who are not familiar with the language and professions are staying for a couple of months in neighbouring countries that are part of the Ukrainian Crisis Response Plan (Romania, Poland, Hungary, etc.). Those who have previous arrangements or specialties are finding success in the West's ongoing work in European neighbourhoods, formatting their cultural alliances and assimilating into European ones (Tuliakov 2023c, 2023d).

Furthermore, secondary victimization depends on a lack of services, the implication of different kinds of state bureaucracy, negative attitudes, fear of migrants, and hate speech. There are some cases when Ukrainian citizens fled for material help to EU countries, renting out their estates to internally displaced Ukrainian persons who came from the east, primarily influenced by armed aggression, and then returned to Ukraine, living as renters and receiving EU help. We also know that some borderline ethnic groups with double passports, living

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legally in one country, moved to another asking for material help from neighbouring governments and social services as Ukrainian refugees. Thus, in some neighbouring EU countries the system of an obligatory periodical registration of Ukrainian migrants who received material help from the state was created.

There is a gap, influenced by victims' marginalization from one side, and states' interests to use migrants' resources. In a country with a high level of migration, one of the leading Ukrainian economists in a local media interview notes:

> The war is only a trigger that continues to force Ukrainians to go abroad and they would return to their homeland, but some host countries have been preparing for their arrival for years ... In nominal terms, each Ukrainian in Poland additionally created almost 5.8 thousand dollars of GDP, while a Pole – only about 1.9 thousand dollars of GDP. When the Polish government announced in March 2022 the allocation of $1.7 billion to support 1.2 million Ukrainian refugees, it deliberately went to such costs to "hook" them in Poland, because they understand the additional income each Ukrainian will bring to the Polish economy ... 30% of those who left after February 24 are already working in Poland (Samaieva 2022).

The European Central Bank expects that the participation rate of Ukrainian refugees of working age in the labour force of the Eurozone countries will be between 25% and 55% in the medium term. Estimates of the potential growth of the labour force in the EU are 0.2–0.8%, or 0.3–1.3 million people (Tucha et al. 2022).

In any case, victims of war in Ukraine are ready to spend huge sums of money in the European neighbourhood. After the outbreak of war, Ukrainians transferred abroad seven times more money from their bank accounts than in peacetime. Surely, migration has its positive economic background. However, migrants and internally displaced persons must deal with huge psychological trauma. Stress, fear, anger, hate, anxiety, nostalgia and frustration are everyday companions of Ukrainian forced migrants. Before the full-scale war, 4% of Ukrainian people had nightmares all the time; now it is a third of the population. Surely people's minds are flexible, but under constant stress there is a tremendous amount of negative impact.

Therefore, the primary and secondary victimization of victims of aggression against Ukraine is to be considered as direct victimization of genocide, war crimes, crimes against humanity and the limitation of the rights to compensate and redress in national criminal and civil law as well as in international humanitarian law.

Due to UN soft law and international humanitarian law there exist different forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.[3] The right to redress, rehabilitation and compensation comes close to violations of Articles 1, 2, 3, 5 and 8 of the Protocol to the Convention

[3]Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted 16 December 2005 by UN General Assembly Resolution 60/147. Retrieved 29 October 2024 (https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation).

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for the Protection of Human Rights and Fundamental Freedoms (European Court of Human Rights 2021).

More than 300 billion US dollars that belong to the Russian Federation and their oligarchs have been frozen. However, usage of this money to compensate and repair Ukrainian victims and their damaged economy is restricted, because compensation needs confiscation. A complex holistic approach based on mutual recognition of all parties' rights and obligations should give a positive effect in combatting war crime and constructing new law as the result of new security paradigms based on the internationalization of domestic laws. The shift towards criminalizing non-obeying of sanctions at the EU level is a strict argument for the above-named proposal (European Commission 2022).

Tertiary victimization in Ukrainian society is influencing not only families of victims, or even witnesses of Russian terror, but is also connected with the promotion of Russian-oriented ideology and narratives, and certain treatment of victims. Since the Odesa Massacre in 2014, hate and fear, misuse of narratives of Nazi ideology and the promotion of immortal stereotypes of the international Slavonic role in a bipolar world leads to "evil empire thinking". While the potential diffuse victims may not be the intended victims or primary target, they have still been victimized because of the crimes and violations of international law committed in contradiction of Articles 8–13 of the European Convention on Human Rights (hate crimes and narratives of dehumanization through the idea of the denazification of Ukrainians) (European Court of Human Rights 2021).

Finally, the EU initial intelligence analysis of different criminal threats has identified crime patterns in several areas including human trafficking, online fraud, cybercrime and firearms trafficking. Thus, according to some experts' opinion, the evolution of the situation in Ukraine may potentially lead to an increase in criminal activities (and primary, secondary and tertiary victimization) in all 10 European Multidisciplinary Platform Against Criminal Threats (EMPACT) priority crime areas (European Council 2021).

To resist this trend, it is important to use human rights law as the basis for the development of criminal law and the scientific foundations of criminalization, considering victimological knowledge. The security of the state depends on the vector of development, ideology of victimizing society (victim-lamb, victim-hero), absolutization of human rights and harmonious (proportional and legal) responsibility for their violation. Therefore, the security of the individual cannot be secondary to the security of society or the state.

Victim-Oriented Policy and Criminal Law

In the context of the approximation of EU acquis and Council of Europe norms to Ukrainian criminal legislation, it becomes evident that contemporary criminal law serves as a fundamental tool for safeguarding human rights. This theoretical framework aligns with Recommendation CM/Rec(2023)2 of the Committee of Ministers of the European Council, which underscores the paramount importance of protecting individual human rights:

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> Crime is a wrong against society and a violation of the individual rights of victims. Member States should, therefore, ensure the effective recognition of, and respect for, the rights of victims regarding their human rights; they should, in particular, respect the liberty, security, property, dignity, private and family life of victims and recognise the negative effects of crime on victims (Council of Europe Committee of Ministers 2023).

This statement pertains to the development of criminal law theory, specifically in the context of victim rights and the recognition of crime as a violation of both societal norms and individual rights. Let us break down the key points and elaborate on their implications within criminal law theory.

Crime as a Wrong against Society and Violation of Individual Rights

This foundational principle underscores the dual nature of criminal acts. Crimes are seen as offences not only against the state or society but also as violations of the rights of individual victims. This perspective acknowledges that crimes cause harm not only to the social order but also to the individuals who suffer as a result.

We should consider this dual nature of crimes when developing punishment, deterrence, and rehabilitation theories. The justice system should aim to address both societal interests and the rights and needs of individual victims.

Respect for the Rights of Victims

Member States are encouraged to respect and protect the human rights of victims. This includes safeguarding their liberty, security, property, dignity, and various aspects of their private and family life. It recognizes that the consequences of crime extend beyond physical harm and can affect victims in various ways. Criminal law theorists should incorporate victim-centric approaches into their theories. This means not only focusing on the offender but also considering the impact of criminal acts on victims. Theories of restorative justice, for instance, emphasize the need to repair the harm done to victims and restore their dignity and well-being.

Non-Discrimination

Member States are urged to ensure that the measures designed to protect victim rights are applied without discrimination based on various factors such as sex, gender, race, religion and others. This underscores the importance of equal treatment and access to justice for all victims, regardless of their background or circumstances. Criminal law theorists should examine how discrimination and bias can affect both victims and offenders within the criminal justice system. This can lead to discussions about fairness, equity, and the need to eliminate bias in law enforcement, prosecution and sentencing.

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Inclusion of Vulnerable Individuals

The Recommendation suggests extending these rights to victims with a criminal record and those suspected of committing a crime, to the extent possible. This recognizes that these individuals may also be victims of crime or may have unique needs. Criminal law theorists should explore the complexities of victimhood and offender status, particularly when individuals occupy both roles simultaneously. This may lead to discussions on diversion programmes and alternative sentencing approaches that consider the underlying reasons for criminal behaviour while addressing the needs of victims.

In summary, the Recommendation highlights the evolving understanding of crime and its impact on society and individuals. It calls for a more holistic approach to criminal law theory, one that not only considers the punishment of offenders but also emphasizes the protection of victim rights, non-discrimination and inclusivity within the criminal justice system. These principles can inform the development of more comprehensive and equitable criminal law theories and practices.

The overarching goal is to develop a theoretical model of the Criminal Code, with a parallel objective of enhancing awareness of criminal policy in transitional countries. It is crucial to underscore that crime represents not only a transgression against society but also a violation of individual rights, underscoring the paramount importance of safeguarding individual human rights.

This theoretical approach constitutes a groundbreaking development in intergovernmental communication, particularly within the context of the Ukrainian conflict and its path toward European integration. It highlights the fragility of conventional legal instruments and the necessity for innovative approaches to aquis approximation and international and local human rights protection. Member States are strongly urged to recognize and respect the rights of victims, particularly concerning their human rights.

Considering these evolving circumstances, the utilization of human rights law as a foundational element for criminal law theory and harmonization with EU law is of paramount significance. However, the pursuit of justice and equity necessitates mandatory victimization and criminological assessments in draft laws and criminalization processes.

The security of the state is contingent upon its developmental trajectory, societal ideology, the primacy accorded to human rights, and the establishment of equitable responsibility for rights violations. The methodology for aquis approximation includes the examination of current EU legislation, ECJ case law, European Commission decisions, and European Community directives on criminal policy, spanning substantive, procedural, penitentiary and preventive dimensions (Tuliakov 2023a).

Pragmatical Development of Holistic Methodology

Approaching criminal law from a victimological perspective offers multifaceted insights. Pragmatically, it entails an exploration of the role of victims in criminal liability and their integration into the Special Part of criminal legislation. Criminal law, transitioning from its historical repressive functions to contemporary preventive principles within democratic states, plays an instrumental role in fostering social justice and curbing crime. This transition has led to an intricate

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regulation of the victim's physical and social characteristics, behaviour, status and the harm inflicted upon them, significantly influencing crime qualification and the offender's culpability.

In navigating these regulatory provisions, it becomes imperative to discern how victimization knowledge applies to criminal law relations and the broader process of criminalization. This encompasses various issues, including victimization in criminalization, the role of victims in criminal law, their impact on the doctrine of crime, the doctrine of punishment, and the classification of criminal offences.

Victimology affords a unique lens through which to scrutinize the alignment between formal legal norms and public perceptions of crime. The examination of these correlations facilitates an assessment of the efficacy of criminal law prohibitions and the identification of measures to promote prosocial victim engagement in crime control (Tuliakov 2023b).

Expanding the application of passive citizenship principles within the ambit of criminal law could hold the potential to enhance justice. This expansion entails extending jurisdiction to encompass crimes committed by foreign citizens against the rights and freedoms of Ukrainian citizens or the interests of Ukraine abroad. Enacting real citizenship principles for crimes committed outside Ukraine against Ukrainian citizens could further fortify the cause of social justice.

Prioritizing the protection of fundamental rights and freedoms necessitates revisiting select aspects of modern criminal law theory, including the recognition of specific individuals, legal entities and social groups as objects of crime. The amplification of victim protection within criminal law relations, with a concentrated focus on compensation and restitution, constitutes an intrinsic and ongoing process in alignment with societal expectations (Tuliakov 2023e, 2023f).

The next step should be the implementation of the bilateral Ljubljana–the Hague Convention on Mutual Legal Assistance and Extradition (MLA).[4] This document as a milestone step in mutual legal assistance and prosecution of international crimes after the Rome Statute represents a significant development in the realm of international legal assistance and extradition, addressing crucial gaps in this field. The Convention underscores a victim-centric perspective within international criminal law while upholding the principles of equitable justice for those accused of criminal wrongdoing. Central to its mandate is the elucidation of procedural intricacies, the delineation of substantive content, and the delimitation of the scope of legal assistance. Furthermore, the Convention categorically prohibits the provision of amnesty in cases involving international crimes. Due to conventional understanding and rules "victims" means natural persons who have suffered harm because of the commission of any crime to which this Convention applies. Also, according to Article 81 of the Convention, "victims" may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art, science or charitable purposes, or their historic

[4]Ljubljana–The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes, MLA Diplomatic Conference, Ljubljana, Slovenia, 15–26 May 2023, retrieved 30 October 2024 (https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/The-Ljubljana-The-Hague-MLA-Convention-English-v6.pdf).

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monuments, hospitals, and other places and objects for humanitarian purposes. According to Article 82, each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation, including ill-treatment, to victims and witnesses and, as appropriate, their relatives or representatives, experts as well as any other persons participating in or cooperating with any investigation, prosecution, or other proceedings within the scope of this Convention. In Article 83 it is stated that each State Party shall, subject to its domestic law, ensure that the victims of a crime to which the State Party applies this Convention have the right to reparation for harm consisting of but not limited to, as appropriate, restitution, compensation or rehabilitation insofar as either: the crime has been committed in any territory under the jurisdiction of that State Party, or that State Party is exercising its jurisdiction over the crime. Each State Party shall, subject to its domestic law, establish procedures, as appropriate, to permit victims to participate in and enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against alleged offenders in a manner not prejudicial to the rights of the defendant. Each State Party shall, to the extent provided for in its domestic law and if so requested, give effect to a judgment or order in criminal proceedings, issued by the domestic law of the requesting State Party, to provide restitution, compensation or rehabilitation to victims of crimes to which they apply this Convention.[5]

Of note is the Convention's commitment to streamlining various aspects of asset management. It introduces simplifications in the processes associated with the freezing, seizure, confiscation and conversion of assets. Additionally, the Convention contains explicit provisions concerning the disposal of such assets, with a specific emphasis on the interests of victims of international crimes. It also addresses identifying and tracing property or proceeds linked to criminal activities. Importantly, the treaty acts as a consolidating force, transforming established practices in asset management into a comprehensive legal framework. This framework fills a void that has persisted for an extended period, enabling individual states and associations to circumvent asset confiscation based on its prior absence.

Mostly it will give a new theoretical landscape to criminalize unified crimes against humanity and war crimes in national substantial criminal legislation.

Conclusion

As the landscape of criminal law continues to evolve, principles such as equality, legal certainty, proportionality, predictability, subsidiarity and legality must be reframed within the context of human rights and the security of victims. Striking a balance between coercion and compensation, restitution, rehabilitation and the prevention of future harm to victims becomes a pivotal endeavour. In addition, the development of the European Strategy on Criminal Justice (Council of Europe Committee of Ministers 2023) envisages consideration of issues related to combatting family violence, environmental crimes and corruption offences, as well as cooperation in the field of justice through mutual recognition and protection of the rights of victims of crime. This is linked to the developments (e.g. amending the

[5]Ljubljana–the Hague Convention, ibid., arts 81–83.

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Victims' Rights Directive; European Commission 2023) in justice (child-friendly and victim-centred justice), society (e.g. increased need for a coordinated approach to ensure the constant availability of victims' support services during crises, such as health crises) and technology (digitalization, and availability of new technologies to victims' support, protection and access to justice).

The future trajectory of criminal law will be substantially influenced by localized traditions and the convergence of coercive measures drawn from diverse cultures based on a human rights victim-oriented approach and secure policy of the state.

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Translated Abstracts

Abstracto

En el siglo XXI, una de las funciones cruciales del Código Penal es proteger los derechos e intereses de las víctimas de delitos. El derecho penal es un campo complejo que debe equilibrar los principios establecidos con la dinámica social en evolución. Esto involucra a diversas partes interesadas, incluido el Estado, los perpetradores, las víctimas y la sociedad civil, cada una con diferentes puntos de vista e implicaciones sobre el derecho penal. La era moderna, marcada por las narrativas de posverdad y una sociedad reputacional, complica aún más las cosas. La casuística ahora prevalece sobre los enfoques sistemáticos, lo que lleva a una desconexión entre los principios fundamentales del derecho penal y los resultados sociales previstos. El derecho penal contemporáneo opera en múltiples dimensiones, abordando los niveles individual, social e institucional al tiempo que apunta a equilibrar los intereses de estas entidades. La transición de la "era de la información" a la "era de la reputación" subraya la importancia de la información sujeta a evaluación externa. En el contexto de un estado de victimización y la necesidad de armonizar la legislación penal ucraniana con las leyes de la Unión Europea y del Consejo de Europa, es vital proteger los derechos humanos. Esto coincide con la recomendación del Comité de Ministros del Consejo de Europa de que el delito debe reconocerse como un agravio contra la sociedad y una violación de los derechos individuales, haciendo hincapié en la importancia de salvaguardar los derechos de las víctimas. El abordaje del derecho penal desde una perspectiva victimológica ofrece perspectivas únicas sobre la participación de las víctimas en la responsabilidad penal, la calificación del delito y la culpabilidad del infractor. Esta perspectiva alienta a evaluar la eficacia de las prohibiciones del derecho penal ucraniano y a promover la participación de las víctimas en el control del delito a nivel nacional e internacional.

Palabras clave: derecho penal; política criminal; política orientada a las víctimas; victimología; derechos humanos; victimización

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Abstrait
Au XXIe siècle, l'un des rôles cruciaux du Code criminel est de protéger les droits et les intérêts des victimes d'actes criminels. Le droit criminel est un domaine complexe qui doit concilier les principes établis avec l'évolution de la dynamique sociétale. Cela implique diverses parties prenantes, dont l'État, les auteurs d'actes criminels, les victimes et la société civile, chacune ayant des points de vue et des implications différents sur le droit criminel. L'ère moderne, marquée par des récits post-vérité et une société de la réputation, complique encore davantage les choses. La casuistique l'emporte désormais sur les approches systématiques, ce qui conduit à un décalage entre les principes fondamentaux du droit criminel et les résultats sociétaux escomptés. Le droit pénal contemporain opère sur de multiples dimensions, abordant les niveaux individuel, sociétal et institutionnel tout en cherchant à équilibrer les intérêts de ces entités. Le passage de « l'ère de l'information » à « l'ère de la réputation » souligne l'importance de l'information soumise à une évaluation externe. Dans le contexte d'une situation de victimisation et de la nécessité d'harmoniser la législation pénale ukrainienne avec les normes de l'Union européenne et du Conseil de l'Europe, il est essentiel de protéger les droits de l'homme. Cela correspond à la recommandation du Comité des Ministres du Conseil de l'Europe selon laquelle le crime doit être reconnu comme un tort causé à la société et une violation des droits individuels, soulignant l'importance de la protection des droits des victimes. Aborder le droit pénal dans une perspective victimologique offre des perspectives uniques sur la participation des victimes à la responsabilité pénale, à la qualification du crime et à la culpabilité du délinquant. Cette perspective encourage à évaluer l'efficacité des interdictions du droit pénal ukrainien et à promouvoir l'engagement des victimes dans la lutte contre la criminalité aux niveaux national et international.

Mots-clés: droit pénal; politique pénale; politique axée sur les victimes; victimologie; droits de l'homme; victimisation

摘要
在 21 世纪，刑法的一个关键作用是保护犯罪受害者的权利和利益。刑法是一个复杂的领域，必须在既定原则与不断发展的社会动态之间取得平衡。这涉及到各种利益相关者，包括国家、犯罪者、受害者和民间社会，每个利益相关者对刑法都有不同的看法和影响。现代时代以后真相叙事和声誉社会为标志，使问题更加复杂。现在，决疑法胜过系统方法，导致刑法的基本原则与预期的社会结果脱节。当代刑法在多个维度上运作，涉及个人、社会和机构层面，同时旨在平衡这些实体的利益。从“信息时代”到“声誉时代”的过渡凸显了信息受到外部评估的重要性。在受害状态和需要使乌克兰刑事立法与欧盟和欧洲理事会协调一致的背景下，保护人权至关重要。这符合 COE 部长委员会的建议，即犯罪应被视为对社会的错误和对个人权利的侵犯，强调保护受害者权利的重要性。从受害者学的角度看待刑法，可以对受害者参与刑事责任、犯罪资格和罪犯罪责提供独特的见解。这种观点鼓励评估 UA 刑法禁令的有效性，并在国家和国际层面促进受害者参与犯罪控制。

关键词： 刑法、刑事政策、受害者导向政策、受害者学、人权、受害

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ملخص

في القرن الحادي والعشرين، يعد حماية حقوق ومصالح ضحايا الجريمة أحد الأدوار الحاسمة للقانون الجنائي. القانون الجنائي مجال معقد يجب أن يوازن بين المبادئ الراسخة والديناميكيات المجتمعية المتطورة. ويشمل هذا أصحاب المصلحة المختلفين، بما في ذلك الدولة والجناة والضحايا والمجتمع المدني، ولكل منهم وجهات نظر وتداعيات مختلفة على القانون الجنائي. إن العصر الحديث، الذي يتميز برواياتما بعد الحقيقة والمجتمع السمعي، يزيد الأمور تعقيدا. تسود الآن المحاكمة على الأساليب المنهجية، مما يؤدي إلى انقطاع بين المبادئ الأساسية للقانون الجنائي والنتائج المجتمعية المقصودة. يعمل القانون الجنائي المعاصر على أبعاد متعددة، ويعالج المستويات الفردية والمجتمعية والمؤسسية بينما يهدف إلى تحقيق التوازن بين مصالح هذه الكيانات. يؤكد الانتقال من "عصر المعلومات" إلى "عصر السمعة" على أهمية المعلومات الخاضعة للتقييم الخارجي. في سياق حالة الضحية والحاجة إلى مواءمة التشريعات الجنائية الأوكرانية مع الاتحاد الأوروبي ومجلس أوروبا، من الأهمية بمكان حماية حقوق الإنسان. ويتماشى هذا مع توصية لجنة وزراء مجلس أوروبا بضرورة الاعتراف بالجريمة باعتبارها خطأ في حق المجتمع وانتهاكا لحقوق الأفراد، مع التأكيد على أهمية حماية حقوق الضحايا. إن التعامل مع القانون الجنائي من منظور الضحايا يوفر رؤى فريدة حول مشاركة الضحايا في المسؤولية الجنائية، وتأهيل الجريمة، ومسؤولية الجاني. ويشجع هذا المنظور تقييم فعالية حظر القانون الجنائي في أوكرانيا وتعزيز مشاركة الضحايا في مكافحة الجريمة على المستويين الوطني والدولي

الكلمات المفتاحية: القانون الجنائي، السياسة الجنائية، السياسة الموجهة نحو الضحايا، علم الضحايا، حقوق الإنسان، الضحايا.

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