

# Coronavirus and criminal law:

## paradox or expediency of the joint analysis ?! <sup>(\*)</sup>

*Introducing the authors. Covid-19 and significant global political, social, economic, legal and other problems followed by the pandemic have posed a challenge to almost all states, including Ukraine, which makes this study relevant and timely. Representatives of the prominent Streltsov's dynasty of lawyers: Doctor of Legal Sciences Professor Ye.L. Streltsov and Hon. Prof. Doc. L.Ye. Streltsov have contributed to the study of this complex global problem, which is perhaps the first in its field. They work in different legal fields doing research in different areas, but in here their research interests have coincided. It should be added that the Streltsovs have fruitfully been collaborating with the Law Herald of Ukraine, severally were ranked as top contributing authors. And again the editorial board of the weekly is pleased to provide them with the opportunity to express their vision of this complex problem.*



\* *ResearchGate* ([ukr, ru part 1](#), [ru part 2](#))



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*Climate is what we expect, whether is what we get.  
Mark Twain*

**Introduction**

Coronavirus COVID-19 today has become a global challenge. By the second half of April 2020 the number of infected people has exceeded 2 million. Nearly 150,000 people died. The peak of this disease reportedly has yet to be passed. Institutions and organizations of various profiles, both at the international level and at the level of each state, have already taken comprehensive formalized measures of permissive, stimulating, protective and prohibiting nature. At the same time, and that needs to be emphasized, these measures in terms of addressing COVID-19 must be, figuratively speaking, absolutely pragmatic and rational. All the so-called half measures, virtual-idealistic intentions are not suitable in such conditions. The same is

true about law: it is a rational, pragmatic approach that should dominate to assessing law / legislation in terms of identification and application of its capabilities.

All this as well applies to criminal law, which in the given conditions, along with administrative law, is empowered to regulate the implementation of protective and punitive measures and employ legal measures to persons violating prohibitions.

Indeed, the matter for this study is rather sad, though it provides an opportunity (as they say, “necessity is the cruelest teacher”) to really assess the possibilities of criminal law / legislation under the “microscope” of the global viral infection tragedy. Given this, a joint analysis of the problems of coronavirus and the possibilities of criminal law / legislation does not look “paradoxical”.

On the contrary, such an analysis is, firstly, necessary, and, secondly, it can even be carried out in different directions: as a direct connection and an indirect connection. The complexity of the problem, the number of questions requiring analysis, and the format of this professional weekly did not allow this study to be carried out to the extent necessary for specialized scientific publication. Therefore, this article should be considered as an initial reflection, as an attempt to distinguish from a legal point of view this complex problem, which has various manifestations and objectively deserves such analysis in social and legal terms.

### **Coronavirus: basic facts only**

Today information about this viral disease, without exaggeration, dominates the global consciousness. There is a lot of information, so we attempt to highlight only the basic facts. Coronaviruses (lat. *Coronaviridae*) are viruses (lat. *Virus* - “poison”) that cause an infectious disease and include, as of January 2020, 40 species combined into two subfamilies that infect humans and animals. Coronaviruses are named so because of their characteristic appearance (similar to the corona) of the solar corona when observed under an electron microscope. The first human coronavirus was discovered in 1965. In December 2019, an outbreak of a disease caused by a new virus in the family, Covid-19, began in China. Soon it spread to other countries. The mechanism of its action is as follows: once in human cells, the virus “seizes” control over it and forces it to constantly produce its own copies - instead of its usual proteins. The chain reaction begins. In the end, the cell dies, creating difficulties for human health and

making it the carrier of this infection, that is, making it infectious to other people. Moreover, when the disease becomes widespread throughout the world, and it turns out that most people do not have the necessary immunity against it, the World Health Organization (hereinafter - WHO) defines it as a pandemic (Greek Πανδημία - “the whole nation”). Thus, this is a disease, which spreads across countries and continents and characterizes a high degree of epidemic development (<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports>).

Coronavirus, which has to date already caused a mortality rate of 3.6% of the population, is one of the most terrible mass diseases in the history of mankind, among which the most famous are: "Justinian's plague"; bubonic



plague, or as it was called at one time - "black death"; third cholera pandemic; H1N1 flu epidemic; natural or black smallpox; HIV/AIDS pandemic; malaria epidemic. Almost every time when opportunities appear, first of all, medicines, with the aid of which it is possible to cope with another disease, humanity seems to calm down. But COVID-19 has once again demonstrated the complete vulnerability of mankind to such diseases. Assessing current events and their consequences, only in very rough terms, thinking about possible prospects, we begin our analysis by establishing a direct connection between this disease and the potentialities of criminal law / legislation.

### **A direct connection**

It should be noted that along with organizational and medical measures dealt with the development of vaccines, measures aimed at direct and preventive biomedical effects; a number of other social and organizational measures exist. It is about taking action on the identification of infected individuals, their separation from healthy individuals, cessation of any activities impeding the anti-epidemic work, in particular, the dissemination of exaggerated or false information, and sometimes even outright lies; violation of the quarantine conditions, self-isolation regime, etc. In such cases,

along with measures of administrative law, measures of criminal law are applied. Moreover, very often when establishing the most dangerous violations of the rules, priority is given to criminal law measures.

It is appropriate here to recall the organization of antiviral activities in China, which allowed this country to significantly improve the situation in a fairly short time, including in the infamous Wuhan province. One of the main, most effective means of influencing the consciousness and behavior of people has become the provisions of criminal law/legislation. Thus, imprisonment for 3 to 10 years was immediately imposed, as well as life imprisonment and even the death penalty for people who do not report their obvious symptoms of the disease (cough, fever) while in public places, and as well as for hiding information about visiting Wuhan and contact with those who visited Wuhan, for not wearing a mask, not observing self-isolation, etc. Of course, the severity of the punishment is subject to the consequences of the offender's action.

It is important to note that such offences in China are considered not as crimes against public health, as, for example, in our country, but as direct criminal threats to public safety. Despite this fact, all Chinese criminal law should not be regarded as very cruel, aimed exclusively at the extreme degree of coercion. For example, unlike the criminal laws of many countries, including that of Ukraine, the Chinese criminal law / legislation provides only one, “soft” type of punishment for legal entities - a fine (Art. 31), with no confiscation of property and even the liquidation of such an entity. It can be assumed that the processes of criminalization / decriminalization of relevant actions are carried out in this country thoughtfully.

In the countries of “old” Europe much hope is placed on economic penalties. Fine rates for violation of the established quarantine rules have recently been increased. For example, in Italy, in the most dangerous epidemiological provinces - Lombardy and Bologna - the fine was raised up to 5,000 euros, alternatively even an arrest of up to 3 months is provided. In Spain, the fine has already been raised, but in recent days its rate has further been increased - from 1,500 to 10,400 euros, and if such violations involve resistance to the police, then an additional fine of up to 2,000 euros is imposed.

In France, the “initial” fine was set at 135 euros, for repeated violations of the rules - 1,500 euros, the violation of the quarantine and the regime of self-isolation four



or more times provides for imprisonment of up to six months and a fine of 3,700 euros. In Croatia, a fine of 1,500 euros is imposed for the first violation, and 15,000 euros (!) for the repeated violation.

Noteworthy is the regulation in Europe of the punishment for disseminating fake news regarding antiviral activities. For example, Lithuania was the first among the Baltic States to institute criminal proceedings for such actions. It should be added that under certain circumstances such actions could also be regarded as information terrorism. But even this rather brief information about the criminal law regulation of such prohibited acts in European states allows concluding: no matter how democratic and humane these states are the authorities in these states demonstrate that, when necessary, the resolution of a specific problem and compliance with the law will be ensured by coercive measures. This indicates that the fear of punishment is one of the main, if not the main means of building public relations in the states. This is how the potentialities of criminal law / legislation are used, and this must always be taken into account.

Ukrainian Criminal Code in art. 325 (hereinafter - the Criminal Code) provides for criminal liability for violation of the rules established with the aim of preventing epidemic and other infectious diseases, as well as mass non-communicable diseases

(poisoning) and combating them, if such actions entail or obviously are likely to entail the spread of these diseases (part 1). If death and other grave consequences ensue as a result of such actions, then they shall be considered aggravating signs of such a crime (part 2). This article was



amended by Law No. 530-IX of March 17, 2020, which has increased penalties for that crime. The changes, especially given the limited time for their development and adoption, have on the whole met the necessary requirements, and their introduction was timely and understandable, although a detailed analysis of the new developments shows that practical implementation of the article may face certain challenges due to uncertainty of some of its provisions regarding the identification of an “authorized” persons, the designation of norms that are violated, the level of danger of the crime,

the form of guilt - intentional or unintentional (Yuriy Kolos, Dmitriy Derkach, 'Karantin: novyye shtrafy i otvetstvennost' dlya biznesa' [Quarantine: New Fines and Liability for Business] <https://vkp.ua/publication/karantin-novi-shtrafi-ta-vidpovidalnist-dlya-biznesu>)

In our opinion, the imperfection of the aforementioned article is largely due to the fact that its provisions were simply proclaimed; there was no need for their application, since we had not encountered similar problems for a long time. This article was applied only occasionally in cases of mass poisoning of people, for example, during celebrations in public places (weddings, birthdays, etc.). However, under the current circumstances when the pandemic is still ongoing and criminal law rules in this field need improvements, such an analysis must be continued. The experience of our country related to the accident at the Chernobyl nuclear power plant in 1986, which led to the mass death of people, is not "helpful" for this situation, since the vast majority of persons responsible for the tragedy were accused of the safety rules violation in the explosive enterprises (Article 220 of the CC of Ukraine of 1960), as well as for negligence (Article 167 of the CC). The investigation information is unavailable, since the materials of the main cases were classified. With regard to current violations, questions may relate to the need to establish (supplement) liability for violation of the misuse of funds contemplated for the treatment and the disease prevention (for example, the need to provide medications, disinfectants, masks etc.). For example, actions related to the smuggling of protective medical masks in "normal" times and under the force majeure circumstances can hardly be considered "identical" in terms of public danger.

We believe that the main idea behind the improvement of criminal legislation, which is designed to set prohibitions in the given conditions, should be concern that direct contamination, a threat of such contamination, deliberate violation of the established prohibitions pose a real danger not only to the life or health of a particular person or a group of persons, but to physical, mental and spiritual health, without exaggeration, of the entire population of Ukraine and other states. Therefore, it should be clarified what acts as a real object of criminal law protection - people's health, as has traditionally been considered, or, given the current circumstances, it is rather public health, which includes a whole range of measures for the treatment and

prevention of diseases with the aim of improving people's health, increasing lifespan and strengthening the social health. That is why in the field of public health the main



focus is laid on the study of a human community health: of a separate group of the population, the population of the city, region, country, the population of the entire planet. Developing this message, we believe that each state, world community as a whole must always control the real potential of public health as a measure of the quality of health and the quantity of healthy people.

In connection with the proliferation of coronavirus, at the end of April monstrous, at least for civilized people, cases were revealed

in Spain. According to a Minister's of Spain report during the disinfection of houses some elderly people were found there deliberately abandoned, left to die in their beds (<https://www.unian.net/world/10935086-strah-mozhno-pochuvstvovat-v-vozduhe-vrachi-ispanii-rasskazali-ob-uzhasah-pandemii-koronavirusa.html>). Similar cases have occurred also in nursing homes (<https://novayagazeta.ru/articles/2020/03/27/84542-arestuyte-menya-ne-mogu-bolshe-sidet-doma-s-mamoy>). These occurrences may as well serve as illustration of the “relationship” between coronavirus and criminal law / legislation and the non-fulfillment (abuse) by persons who must counter this pandemic of their professional responsibilities

### **An indirect connection**

There may also be an indirect connection between COVID-19 and criminal law / legislation, however the consequences of a pandemic can visibly “affect” the criminal law sphere. This is largely due to the fact that the course of the disease, the implementation of appropriate measures, including quarantine, can have difficult socio-psychological consequences, primarily in human communication, which, in turn,



can indirectly relate to criminal law / legislation. For example, the closure of businesses, the limitation of working hours, temporary leave (often without pay), the dismissal of employees of the closing companies, and other similar cases have already led to negative consequences. A certain category of workers in the service sector (small trading enterprises, food markets, taxis, beauty salons, etc.), whose earnings used to depend directly on each day worked, has lost such a possibility. Small hotels, transport companies, travel agencies that earned from the constant turnover of customers have also been experiencing real difficulties. Even large, well-known companies in the service sector, for example, airlines, have not remained aloof from the problem. Although, unlike small enterprises, large companies have certain financial savings, their financial situation is getting worse. The growing trend of such events has had an impact on crime. The most striking example is the events that took place in the Republic of South Africa in the middle of April: people who had lost their jobs due to quarantine and were deprived of the necessary livelihood began to spontaneously gather in groups of 300 people, breaking into closed stores and plundering them ('Reket i massovyye besporyadki: kak prokhodit karantin v YUAR' [Racket and riots: how the quarantine is going on in South Africa] ([https://kriminal.tv/news/reket\\_i\\_massovye\\_besporjadki\\_kak\\_prohodit\\_karantin\\_v\\_juar\\_video.html](https://kriminal.tv/news/reket_i_massovye_besporjadki_kak_prohodit_karantin_v_juar_video.html))).

It is believed that the extension of quarantine, including the continuation of self-isolation, can be a direct cause, primarily, of an increase in number of property crimes, including violent ones. Given this, we believe, the authorities of many countries have been making an attempt temporarily, gradually to loosen the self-isolation regime, to permit opening of some service companies as to give to certain segments of the population the opportunity to receive at least some "legal" money. It should also be borne in mind that having "reduced" the street crime, the coronavirus at the same time has significantly "expanded" the so-called "remote" crime, and namely computer fraud, related, for example, to the trade of masks, gloves and disinfectants. According to the Europol, the increased demand for certain goods, the reduced mobility of citizens, staying at home, limited public life and the increased anxiety and fears against the backdrop of the pandemic have become supplementary factors that further facilitate certain types of crime (<https://www.rbc.ua/rus/news/evrope-uvelichilas-prestupnost-fone-pandemii-1585327487.html>). Recently there has also been a slight

revival of fraud, especially computer fraud in Ukraine (<https://www.segodnya.ua/ukraine/snizilsya-po-vsem-statyam-kak-karantin-povliyal-na-uroven-prestupnosti-v-ukraine-1422892.html>).

It should be noted that first studies of the impact of Covid-19 on crime were focused on economic determinants of crime. However after a certain time the emphasis was placed on the coronavirus affect on human nature, namely, the human



community. Prof. Michael Tomasello, director of the Max Planck Institute for Evolutionary Anthropology in Leipzig, believes that humanity has gained its high status in the evolutionary hierarchy precisely because of two abilities - ability to create joint intentions and to implement them through joint actions. That is why people have managed to change the planet, other biological species that inhabit the Earth, and themselves so dramatically (Tomasello Maykl, 'Istoki chelovecheskogo obshcheniya' [Sources of human communication]. Perevodchiki: Falikman M.V., Pechenkova Ye, Sinitsyna N. Izd-vo: Yazyki slavyanskikh kul'tur, 2011 Seriya: razumnoye povedeniye i yazyk). However nowadays all that is being undergone significant changes. Understanding the possibility of the social negativity growth, the US President Donald Trump at one of his first briefings on this issue predicted "tremendous death" and "suicide by the thousands" if the country isn't "opened for business" etc.

(<https://fakty.com.ua/ua/svit/20200402-nasylstvo-narkotyky-ta-suyitsydy-tramp-rozpoviv-yak-karantyn-vplyne-na-amerykantsiv/>).

This has already been confirmed by the facts of domestic violence in France, England and other European countries. People might have probably lost the ability to spend time with families, other private communities and groups in the closed premises and limited spaces. Perhaps, relatively speaking, "new loneliness" appears (a new form of manifestation of this feeling), which is not so much connected with the breakdown of existing social ties, rather with a departure from the traditional state of affairs, with the emergence of a new spectrum of feelings, including certain vulnerability, which in

turn may provoke aggression between people whose joint life has proceeded quite normally. For example, as the Austrian newspaper Kronen Zeitung reported, the ex-Minister of Foreign Affairs of Austria made an official statement to the police that during a conflict between her and her husband, which arose largely due to their joint enforced stay in house, he inflicted two slaps on her. In turn, the man explained that he did not beat her, but tried to calm her down because of her aggressive behavior ([https://lb.ua/world/2020/04/06/454577\\_eksglava\\_mid\\_avstrii\\_svadbe.html](https://lb.ua/world/2020/04/06/454577_eksglava_mid_avstrii_svadbe.html)). If that happens between people of a high social level, then probably this form of loneliness is critical indeed.

It worth noting that coronavirus can also lead to mentally depressing effects, one of manifestations of which is that the fear of this disease may dominate in the psyche. Moreover, such fear can arise not only on the basis of real medical confirmation of the disease, but also in relation to the “alleged” result of the analysis, often provoking tragic consequences, for example, in the form of suicides, which have already reached a sufficient number. Moreover, such actions are being performed not only by “simple” people, but also by “socially” advanced individuals, which represent certain social strata in different states, whose mental state, in any case, according to formal indicators, should be stable. This was, for example, the Minister of Finance of the Federal State of Hessen in Germany; doctor, professor of gynecology and obstetrics from Poland; Reims football club doctor from France; two nurses from Italy. In Ukraine, as TSN reported, a senior nurse of a medical institution in the Poltava region was found hanged in her own apartment. Relatives say she committed suicide because her hospital was not ready to receive patients with coronavirus, and she was afraid of getting infected from her patients (<https://www.rbc.ua/rus/stylar/poltavoy-glavnaya-medsestra-bolnitsy-sovershila-1585841473.html>).

Against the background of the virus, mental disorders are being manifested in different ways. For example, in European countries some apartment owners refuse to extend rental contract with medical personnel who are being enforced to work with infected patients; in other cases, doctors working with infected patients are being obstructed by their neighbors. Thus, the events that have taken place in the town of Novi Sanzhary (Poltava region of Ukraine) in February indicate that we are generally moving in a modern ideological trend.

## Understanding of the future

For today, by the second half of April, there is still no clear understanding of the further development of coronavirus infection COVID-19. Everything is more at the level of assumptions. Mankind does not know whether, on the whole, the peak of this disease has been passed, whether the number of infected people



and the number of deaths are actually increasing or decreasing, both at the level of a specific country and globally. But even those data that are being announced require real perception. First, a pandemic can have a wave-like nature, allowing re-infection of people. Secondly, statistics in different countries may differ, for example, due to a different approach to testing the population, the availability of necessary instruments. It will be possible to talk about victory over a disease, or at least a real effect on this disease, only when a vaccine that provides the human body with the necessary activation of acquired immunity to the corresponding disease appears. It is such a vaccine that UN Secretary-General António Guterres calls the “global public domain.”

### On the issue of the socio-economic impact

The IMF's view, at the beginning of quarantine, that the current recession is much worse than during the 2008-2009 crisis was far too optimistic (<https://belsat.eu/ua/news/totalnyj-karantyn-vryatuye-zhyttya-ale-znyshhyt-biznes/>).

Today the prospects remain bleak. For instance, it is believed that the service sector as a whole, as well as a number of industries, agriculture simply will not reach the current level of development in the visible future and it's likely that will affect the development of the economy as a whole, and the implementation of many social projects (<https://www.ukrinform.ua/rubric-world/2891243-zitta-pisla-koronavirusu-svit-vze-ne-bude-takim-ak-ranise.html>). But on the other hand the current situation is



considered not so much as tragic, but rather as, figuratively speaking, the “starter” of the long overdue changes in the globalist worldview of modern civilization (<https://politobzor.net/212596-antiglobalistskaya-bolezn-smi-ssha-o-buduschem-civilizacii-posle-koronavirusa.html>).



Once again, a pandemic is not the best reason for research. However the emergence of any social problem, especially the significant one and that of having an objective character, is a sufficient occasion for reflection. It worth mentioning the well-known statement that permissive and prohibited means have traditionally been used to overcome this and other similar difficulties. They have, in various combinations, laid the foundation of many international and national programs. For example, it is in this combination that they are encompassed in the International Health Regulations 2005 (WHO), WHO, ([https://zakon.rada.gov.ua/laws/show/897\\_007](https://zakon.rada.gov.ua/laws/show/897_007)) adopted at 58- the first assembly of this organization in Geneva on May 23, 2005, and which, incidentally, is not being so often mentioned today. These Rules contain many provisions related to the actions of the health system in the event of various public health emergencies.

If permissive measures allow and even encourage the necessary positive behavior, prohibitive measures are implemented in cases where the relevant events, processes, actions have a negative character and in some cases directly impede implementation of the necessary actions, which, in turn, requires appropriate protective measures, including those that directly prohibit specific human behavior. For example, the Internet, a worldwide system of computer networks from the very beginning has been envisioned as a significant qualitative method (means) of universal social development. In this area as well as in any other, various kinds of social and legal violations causing various negative consequences can occur (Streltsov Lev, ‘The System of Cybersecurity in Ukraine: Principles, Actors, Challenges, Accomplishments’. *European Journal for Security Research* 2, 147-184; 2017; Springer Intern. Publishing AG.) Understanding this, the legislator, by creating rules of

law / legislation regulates social processes, creates conditions for the state and its structures to apply officially existing methods for resolving social conflicts, and for other participants in such relations - the opportunity to take appropriate (protective) measures. In this regard, the emergence and existence of criminal law / legislation “is a reaction of society to the danger posed by its members” (Bentam I, ‘Osnovnyye nachala ugolovnogo kodeksa’ [Basic principles of the criminal code] // Izbrannyye sochineniya Iyeremii Bentama: v 3-kh t. SPb .: izd-vo rus. kn. Torgovli, 1867. T.1, s.122)

These reflection make us again “look more closely” at the essence of this branch of law / legislation, try to “clear” it as much as possible from everything, figuratively speaking, “superficial” that is consciously or unconsciously attributed to it. Of course, this is largely due to our general or professional legal consciousness, because, whether we like it or not, real objective circumstances of various kinds, as a rule, do not directly affect the creation of legal requirements (provisions), but are processed, mediated by ideological and mental factors (Neno Nenov, ‘Pravo i tsennosti’ [Law and Values] / per. s bolg. / Vstup. st. i per. V.M. Safonova; Pod red. V.D. Zor'kina. - M .: Progress, 1987, s. 19-20) that, in turn, requires in each case the establishment of the maximum possible causes and "motives" of criminalization / decriminalization of the relevant actions and the assessment of the real potentiality of criminal law / legislation to regulate a set of measures aimed at combating crimes.

### **Preliminary “calculations” are needed**

In order that the analysis of the provisions of criminal law / legislation be theoretically and practically justified, one should refer to specific figures that more clearly illustrate the real nature of the application of this legislation and will act as certain “forerunners” for formulating important conclusions. For example, in a number of European countries, as has already been known today, - in France, Great Britain (at the metropolitan level) and Belgium, in connection with the prevention of the COVID-19 expansion a decision was made to release some of those sentenced to imprisonment from places of serving sentences, or, as they say in these states, from prisons. Of course, the reasons for the release from prison in connection with the coronavirus, of course, differ from that under normal conditions, but this information has made it

possible to obtain data that, perhaps, externally is not so noticeable, but is extremely important for the assessment of the criminal justice system functioning.

The essence of the “calculation” was, first, to establish a correlation between the total population in these states and the number of people (in percentage terms) who are sentenced to imprisonment and are in prison, and only then, to compare these data with Ukrainian data. The first to apply the measures for the liberation was France. A total number of people sentenced to imprisonment in France is 66,309



(<https://hvylya.net/news/204047-vo-francii-osvobodili-tysyachi-zaklyuchennyh-iz-za-koronavirusa>), and a total population is 66 0120 908. Thus, “arithmetic” allows establishing that as of April 2020 the number of persons sentenced to imprisonment in relation to the entire population is 0.1004485 percent, or roughly 0.1 percent. In the UK, the total number of such convicts is 84,000 (<https://zona.media/article/2020/03/27/prisons>), and the total population is almost 670,000 ([https://countrysimeters.info/en/United\\_Kingdom\\_\(UK\)](https://countrysimeters.info/en/United_Kingdom_(UK))), hence, this ratio is 0, 125 percent. Belgium, which has almost 11,000 people sentenced to imprisonment, by the way, with only 9,500 places for “comfortable” serving this type of punishment, the total population is 11,665,585 people, (<https://countrysimeters.info/en/Belgium>), therefore, this percentage is 0.94, that is the ratio between the total population and the number of people convicted and serving a sentence of imprisonment is roughly 1 percent. According to the Ukrainian Penitentiary Service, at the end of last year, slightly more than 50,000 people were in prison ([https://censor.net.ua/news/3151769/v\\_koloniyah\\_i\\_izolyatorah\\_ukrainy\\_nahoditsya\\_bole\\_50\\_tysyach\\_chelovek\\_ugolovnoispolnitelnaya\\_slujba](https://censor.net.ua/news/3151769/v_koloniyah_i_izolyatorah_ukrainy_nahoditsya_bole_50_tysyach_chelovek_ugolovnoispolnitelnaya_slujba)), the population at the same time, according to the State Statistics Service, was 42 198 483 people, that is, this percentage is 0, 118, or rounding this figure - 0.12 percent. In brief, the information summarized here demonstrates that the percentage ratio between persons sentenced to imprisonment and actually imprisoned, and the total population is: in

Belgium - 0.94, in France - 0.1, in Ukraine - 0.12, in Great Britain - 0, 125 percent. Thus, according to these indicators, our state is on average at the level of developed European countries, and even ahead of the UK.

The presented figure, regardless their conventional character, allow us to draw a conclusion and raise relevant questions. The conclusion is that there is no need to dramatize the situation and blame criminal law / legislation for all our current social problems. It should also not be thought that by changing it, we would “simply” overcome our present difficulties, although in many ways existing political, socio-economic and other factors “directly” determine them. The obtained "figures" really show that in these countries (perhaps this situation is generally characteristic of other developed countries), where, along with the punishment the probation system also functions, and in general the existing criminal justice system is "positioned" as effective, productive, humane, the situation in the field of criminal justice is almost the same as ours, although we ourselves often evaluate our own indicators as the worst of all possible.

Indeed, the dynamic social development, especially of countries in transition, to which Ukraine belongs to, needs criminal law / legislation improvements. Suffice it to recall that the changes that took place in the early 90-s of the last century and were directly related to fundamental



changes in the political system and economic model of functioning, primarily in socialist states, led to the adoption of new Criminal codes in more than fifty of such countries, including Ukraine. But what measures regarding the amendments to the current Criminal code of Ukraine has to be taken: fundamental changes (meaning the entire content change of the Criminal Code); significant partial changes, for example, clarification (supplement) of some institutes of the General part of the CC; or significant changes in the Special part of the CC etc.?

Next question arises: How can we carry out these tasks and what steps must be taken for this purpose? In particular, what considerations or circumstances may



impact a general decision? Here some options are possible. For example, the western countries' experience is relevant to be learnt given their social development background, to which we are just starting to adopt. Speaking of borrowing foreign experience: to what extent should this happen? Should it be in the form of "blind" copying, partial "borrowing" or the reasonable use of fundamental provisions? An additional question also arises: which states can serve as an "example", especially given the fact that, figuratively speaking, violators are prosecuted roughly the same everywhere? Will we turn to the experience of the "best" by our subjective criteria? But who is authorized to determine criminal law / legislation of which state is better, or / and which "piece" (section, chapter, institution) will better suit our needs? Only the above brief information regarding those sentenced to imprisonment in three European countries shows that in fact these countries cannot be called leading in terms of the perfection of the criminal law and those whose experience in this matter deserves to be used. Therefore, one of the authors of this publication has constantly been defending the idea: changes in criminal law / legislation should be objectively necessary in content and scope, be reasoned, based on a thoughtful combination of national legal traditions and foreign innovations (Strel'tsov Ye L, 'Reforma kryminal'noho zakonodavstva Ukrayiny: osinni rozdumy' [Reform of criminal legislation of Ukraine: autumn reflection]. Kherson: Vydavnychy dim «Hel'vetika», 2019.100 s.

### **Conclusion**

Today the COVID-19 has been a dangerous viral (infectious) disease and a complex socially negative problem of a planetary scale, the counteraction that is a priority for every state and the world community as a whole. To address this phenomenon, along with the measures taken, the constant development and implementation of a set of new, phased measures are required. That concerns directly the establishment of a number of mandatory medical and social "taboos" that of the direct prohibition of actions undermining / destroying the whole complex of such measures. Awareness of this makes paying grater attention to the essence of criminal law / legislation, its main social purpose and functions, etc. This is especially important in view of the Covid-19 situation, which shows that the criminal law

(provision) sets direct prohibition for a particular human behavior, followed by, in case of its violation, direct punishment that may have irreversible negative consequences (for example, death penalty in China).

It is noteworthy that in case of violation of quarantine and other similar rules forms of punishment vary from imprisonment to fines. In other words, any mitigation, postponements and changes are not permitted. In short - no compromise: if you break the law - be responsible! This is a principle that should be borne in mind while applying the provisions of criminal law / legislation, as well as setting appropriate criminal law prohibitions, etc. Thus, if it is established that a conduct is socially dangerous and violates / undermines the social action it must be banned and its commission shall entail criminal punishment. This is not about the “bloodthirstiness” of criminal law / legislation. In what cases, for example, does a surgeon amputate a body part or organ? The answer is clear: when this is the only way of treatment left and it is impossible to postpone treatment, to continue treatment with pills. You need to intervene promptly - and that’s it!

It should also been taken into account that towards conducts, though as well violating social processes, but not posing such a danger like criminal offences a legal alternative of punitive measures, including mitigation, postponement or even cancellation of responsibility / punishment may be applied. Other branches of law should regulate such acts, and only forbidden acts should be the subject of criminal law. It is this idea that should underlie the assessment of the current and future possibilities of criminal law / legislation, based on a number of mandatory components: a) legal patriotism; b) the adoption of the latest ideas necessary for the development of criminal law; c) rationality in assessing its role in social development; d) the correlation of the subject of its regulation with national and international areas of legal regulation of social processes.