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Conflict between morality and law in criminal proceedings: theoretical aspects and practical examples

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Abstract

Criminal law, like other branches of law, is subject to the same moral principles, however, it is in criminal cases that a judge often resorts to ethical categories, since the type of punishment imposed may affect not only the restriction of the accused's fundamental rights and freedoms, but also the future security of society. The purpose of the Article is to analyse the phenomena of morality and law as related categories in the administration of justice in criminal cases, and the importance of maintaining a balance between them when assessing evidence and imposing punishment in order to render a fair and impartial court decision. Given the peculiarities of the goal, the author has chosen a systematic approach based on general scientific and special scientific research methods, including systemic and structural, formal legal, comparative legal and other methods. Based on the legal analysis of current Ukrainian case law, the author identifies the real ethical challenges, which a judge faces when considering criminal cases and how to overcome them, resulting in a moral and fair decision supported by the law. The author also focusses on the insufficient coverage of numerous moral challenges in criminal cases among Ukrainian judges and provides suggestions on possible measures to improve educational activities in this area.

Keywords

criminal law • moral challenges • court • justice

INTRODUCTION

For centuries, morality and law have been closely related concepts, united by a common goal—maintaining order in society by regulating the behaviour of both individuals and entire social groups. While it is quite understandable and natural for a judge to apply legal norms in criminal cases, the use of moral categories can sometimes cause misunderstanding, condemnation and even accusations of arbitrariness. At the same time, sometimes, the application of moral norms is more justified for the implementation of the principle of justice, protection of the interests of the victim, law and order in society and the adequacy of the sentence of the convicted person. This is due to the fact that, in the presence of outdated legal norms that do not keep pace with rapid changes in society, blind adherence to the law can cause more harm than good. In such circumstances, a judge hearing a criminal case may often face a difficult ethical choice between applying a rule of law or moral categories in order to make a fair decision in the case.

The purpose of this Article is to analyse the related phenomena of morality and law in the process of consideration of criminal cases by a judge, to identify the conflict between these categories when assessing evidence in a case and making a court decision, the importance of maintaining a balance between the application of moral categories and the rule of law, to maintain an appropriate level of awareness of Ukrainian judges regarding the issues of application of these categories in criminal cases and to make their own proposals in this regard.

In the course of the study, the author applied a systematic approach of general scientific and special scientific research methods, including: systemic and structural, formal legal, comparative legal and other methods. The use of these methods contributed to the comprehensiveness, validity and conciseness of the scientific conclusions and proposals of this research.

The subject of judicial ethics, which includes moral categories, has been studied by modern Ukrainian scholars such as Barabash Y., Horodovenko V., Melikhova Y., Loginova N., Ovcharenko O., Pidzharenko O., Prylutskyi S., Prytyka D., Samsin I., Skomorokha L., Tatsiy L., Frolov V. and others. At the same time, the phenomenon of conflict between the judge's application of morality and law in the course of criminal proceedings remains relevant given the rapid changes taking place in the Ukrainian society, the ongoing crisis of the national judicial system and its radical reboot in accordance with the requirements of the European community.

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RESEARCH RESULTS AND DISCUSSION

Morality and law as related phenomena in the context of judicial consideration of criminal cases

Considering morality as a phenomenon, it should be noted first of all that it is a social phenomenon which arose as a result of humanity's desire to organise and regulate the behaviour of individuals with the help of both personal and social consciousness.

In the sphere of everyday human activity, certain forms of human relations are formed that contain moral characteristics, and it is on the basis of the dominance and significance of the latter that human activity is qualified as being determined by the criteria of humanity. Morality appears where there is at least an attitude to another person as an equal to me, related to me by belonging to the human race (Panchenko, 2014).

According to Lozovoy (2019), morality 'expresses universal ideas of what is right and just and performs important social functions, primarily regulatory, which ensures the regulation of human behaviour, acts as an internal regulator of human activity and behaviour and is based on feelings of duty, conscience, justice, etc.'

In the scientific literature, morality is usually characterised as a phenomenon that performs the functions of culture and, of course, a related philosophical concept. It covers a wide range of social phenomena and types of human activity, and aims to change the worldview and social relations of both individuals and society as a whole.

The definition of the term morality has a long history, but despite many ideas and hypotheses, the question of what exactly constitutes its specificity still remains without a universally accepted solution, as well as there is no single view on the definition of the term morality.

According to some dictionaries, morality is a form of social consciousness, a social institution; the main, informal way of regulating human life in society and its relations with other people; and the subject of philosophical analysis of ethics. Morality differs from other methods of regulation (law, production and administrative norms, government regulations, traditions and customs, etc.) by a special way of justifying and implementing its requirements (norms and principles)—it is an assessment of behaviour in terms of moral values and, above all, the concepts of good and evil (Kozyrev, 2018).

Considering the phenomenon of morality in the context of a judge's professional activity in criminal cases, it should be noted that it directly depends on the national level of morality inherent in society at a certain period of history.

Unfortunately, modern Ukrainian youth is more prone to materialistic views, so it is quite expected that personal interests prevail over public ones. In such circumstances, the topic of maintaining a high level of morality among judges and the importance of their reference to moral categories in the process of considering criminal cases is quite relevant, which directly affects their professionalism.

The same opinion is shared by Skomorokha (2019), who believes that 'one of the elements of a judge's professionalism is a professional duty associated with professional honour, ethics, morality, continuous improvement of skills, and fostering respect for the law among people. A special place in judicial activity is occupied by judicial conscience, which is formed on the basis of legal and ethical requirements. Judicial conscience makes a judge act in accordance with his/her moral convictions and professional duties'.

Focussing on the importance of the moral aspect in the consideration of criminal cases by a judge, it should be emphasised that criminal law itself does not differ from other branches of law in terms of subordination to certain special moral principles. They are common to the entire national legal system. At the same time, it is the only branch of law where a decision can directly affect the restriction of fundamental constitutional human rights, such as the right to free movement (for the purpose of restraint or deprivation of liberty). Given that such decisions have a significant impact on a person's future life, a judge usually decides on the guilt or innocence of the accused, as well as on the punishment, based not only on the law, but also on moral concepts.

It is worth noting that morality and law have always been closely related phenomena, constantly influencing each other. In a modern society, a legal norm should not contradict moral principles, so when national moral views change, the law also undergoes certain transformations to meet social needs. Moral norms are more flexible in nature and are more likely to reflect the real views of society on justice, which sometimes creates a conflict with existing, albeit outdated, legal norms. Such outdated rules of law, which the legislator failed to change in time, must still be enforced, given their validity, which creates an internal conflict for the judge making the relevant decision.

Imposition and individualisation of punishment

For a more systematic consideration of the issues of this Article, it is necessary to refer to the direct provision of part 1 of Article 65 of the Criminal Code of Ukraine (Criminal Code, 2001), which contains the general principles of sentencing in criminal proceedings. Thus, according to these provisions, the court imposes punishment (1) within the limits established in the sanction of the Article (sanction of the part of the Article) of the Special Part of this Code providing for liability for the committed criminal offence, except for the cases provided for in part two of Article 53 of this Code; (2) in accordance with the provisions of the General Part of this Code; (3) taking into account the gravity of the committed criminal offence, the

personality of the perpetrator and the circumstances mitigating and aggravating the punishment.

Separately, Article 65(2) of the Criminal Code of Ukraine (Criminal Code, 2001) specifies the criteria for selecting the punishment to be imposed, taking into account the discreditable nature of the sanctions of the articles of the Criminal Code of Ukraine, namely: a person who has committed a criminal offence must be sentenced to a punishment that is necessary and sufficient for his or her correction and prevention of new criminal offences. A more severe type of punishment from among those provided for a criminal offence shall be imposed only if a less severe type of punishment is insufficient to reform the person and prevent him/her from committing new criminal offences.

The Plenum of the Supreme Court of Ukraine (Plenum of the Supreme Court, 2003) has repeatedly emphasised the strict observance of Article 65 of the Criminal Code of Ukraine, noting that this is the only way to 'implement the principles of legality, justice, reasonableness and individualisation of punishment'.

Thus, the legislator in this Article enshrines the principle of individualisation of punishment, which means that, when imposing a sentence, the specific circumstances of the criminal case and the individual characteristics of the accused person are taken into account, which often determine the correction of the defendant and the prevention of new criminal offences. In its turn, punishment is not intended to cause physical suffering or humiliation of human dignity (Article 50(3) of the Criminal Code of Ukraine).

Problems of applying moral categories

In view of the above, a judge is limited by the applicable law when passing a sentence in a criminal case, but is guided by certain value orientations. An average citizen not involved in the legal profession might object to this statement, pointing out that a judge is obliged to be guided only by the law and render an impartial judgement. This was also the opinion of a respected Ukrainian professor of engineering with whom I had a discussion a few years ago. In his opinion, there should be no variability in sentencing for the same crime during a trial, and judges' decisions should be the same across the country, which was what he understood to be justice. He interpreted the possibility of a judge applying subjective judgements as arbitrariness and a basis for biased decisions. Instead, as a way to improve the judicial system, the scholar considered it quite possible to create an automated system of justice that would make impartial, uniform decisions depending on the nature of the crime and the evidence in the case

I completely disagree with this position, because each criminal case has an individual personality of the accused, including social characteristics, previous criminal offences, plea or no plea, effective remorse, the position of the injured party and many other things that cannot be assessed without resorting to moral categories. In addition, the case file has a different evidentiary basis, including those with procedural flaws, which must be assessed by the court 'according to its internal conviction'. Today, the concept of evaluation of evidence by a judge 'according to his/her inner conviction' is a clear reality for the legal community, however, in 2012, before the adoption of the current Criminal Procedure Code of Ukraine (2013), such a concept did not exist. Therefore, the Criminal Procedure Code of Ukraine of 2012 introduced a novelty that made the process of evaluation of evidence by the court in criminal proceedings purely subjective to the judge's judgement (Filipenko and Barbash, 2022).

We also agree with Loginova (2016), who distinguishes judicial discretion from internal conviction as a separate element of evidence assessment and considers it not only as an element of procedural proof, but also as a more capacious categorical concept that covers the choice of possible alternatives when conducting various procedural actions and making procedural decisions.

Very often, when considering criminal cases, a judge is faced with a conflict between the duty to uphold justice and the application of the law. Earlier, I pointed out that the evidence in a case often has procedural flaws that arise at the pre-trial investigation stage. In such a case, the evidence is considered inadmissible and cannot be used in making procedural decisions, and cannot be relied upon by the court in making a judgement (Article 86(2) of the Criminal Procedure Code).

It seems that everything is fair, there are requirements for evidence in criminal proceedings and the procedure for their collection, in case of violation of which such evidence cannot be used by the court, but such, in particular, procedural violations committed by another official in the collection of evidence in the case may put the judge in a very difficult situation, when justice will not be achieved if a particular piece of evidence is declared inadmissible. For example, let's imagine a situation where a search of a suspect's home has revealed irrefutable evidence of a serious crime, which is presented to the court in the criminal proceedings. At the same time, during the court hearing, the defence files a motion to declare this evidence inadmissible on the basis of Article 87(3)(4) of the Criminal Procedure Code of Ukraine, because when the investigating judge issued a ruling on permission to search the accused's home, he did not fully record the court hearing.

It should be noted that consideration of a search warrant is an urgent procedural action and is considered in court on the day it is received (Article 234(4) of the Criminal Procedure Code). At the same time, the current realities of life and administration of justice in Ukraine under martial law, with constant power outages and air raids that paralyse the work of courts day in and day out, sometimes make it impossible to either consider cases and motions within the established

procedural timeframes or to comply with all provisions for full technical recording. Moreover, even a completed recording can be damaged if the storage is interrupted due to a power outage, cyber attack on the server or a technical error.

With all this information, the judge may face a difficult choice when the application of a direct procedural rule will deprive the case file of the main evidence, which in turn will lead to a finding of not guilty on the grounds of lack of proof. This decision, although compliant with the procedural law, openly contradicts the internal understanding of justice of both the judge and the victim, who came to court for protection and with the last hope of punishing his offender.

When faced with such morally difficult situations, the judge refers to the categories of good and evil, justice and public interest. Good unites all positive social norms and is a formative element of morality. Evil, on the contrary, contains negative social phenomena. Only by forming an inner conviction about good and evil can a judge make a balanced moral decision that is in the public interest and justice.

Analysis of current court practice

Despite the internal confidence in making a fair and lawful decision, every judge must be prepared for the possibility that it may not be accepted and appreciated by society. An example is the verdict of one of the Ukrainian courts (Volovets District Court of Zakarpattia Region, 2023), which at one time caused a wave of outrage in Ukrainian society regarding the punishment of three underage defendants for committing a crime under Article 153(3) of the Criminal Code of Ukraine—sexual violence committed by a group of persons or against a minor. Thus, according to the court's decision, the underage defendants invited their underage acquaintance (the victim) to the basement. The victim, given her friendly relations with the defendants, agreed to go to the room, not realising their criminal intentions. Once inside, one of the defendants, in order to prevent the girl's expected resistance and intimidate her, struck her in the stomach, after which the second defendant, bending the victim over, squeezed the latter's head between his legs. At this time, when the girl was deprived of the opportunity to physically resist, and fearing for her health, the third defendant, against her will, took off her clothes and underwear, committed sexual acts not related to penetration of the victim's body, using his genitals and fingers in the area of her genitals, causing her physical pain. After that, the other defendants took turns, with a single intent aimed at violent gratification of sexual desire, without the victim's voluntary consent, each directly committed identical acts of a sexual nature. In addition, the defendants filmed the entire process of the abuse on their phones, and the video was distributed among the school's students.

As a result of the trial, the defendants were found guilty of committing sexual violence and sentenced to 5 years' imprisonment. At the same time, the court released the convicts from serving their sentences with a probationary period of 2 years.

Given the high-profile nature of the case, this verdict caused strong outrage among citizens who did not consider release from serving a sentence with probation to be a sufficient measure of punishment for such a crime. Numerous posts on social media and articles on news portals criticised the prosecutor and the judge, and called the decision unfair.

For example, one of the waves of dissatisfaction concerned the change in the qualification of the charges during the trial. Initially, the indictment contained a charge under Article 152(3) of the Criminal Code of Ukraine (rape committed by a group of persons or against a minor), but during the trial, the prosecutor changed the indictment to Article 153(3) of the Criminal Code of Ukraine (sexual violence committed by a group of persons or against a minor). Even without being a party to the criminal proceedings and without having access to the case file, we can find the answer to the need for such a change in the qualification of the crime in the court verdict, which is freely available on the Internet. It is clear from the text of the verdict that the examination report did not confirm vaginal, anal or oral penetration of the body, which in itself excludes the criminal offence under Article 152(3) of the Criminal Code of Ukraine. Thus, if the prosecutor had not amended the indictment, the judge would most likely have acquitted the defendants for lack of proof of guilt in committing rape, which would have been contrary to the principle of justice. In my opinion, in this case, the change in the qualification of the crime from rape to sexual violence contributed primarily to the protection of the interests of the victim and society, and also made it possible to bring the perpetrators to justice.

When imposing the sentence, the court took into account the nature and degree of public danger of the crime, namely, his actions were classified under Article 153(3) of the Criminal Code of Ukraine—committing any violent acts of a sexual nature, not involving penetration of the body of another person, without the voluntary consent of the victim (sexual violence), committed by a group of persons against a minor. This criminal offence is punishable by imprisonment for a term of 5–7 years, and therefore, according to Article 12 of the Criminal Code of Ukraine, is a serious crime.

As already noted, by the court's verdict of 16 March 2023, the court sentenced the defendants to 5 years' imprisonment, which is the minimum sentence provided for by the sanction of Article 153(3) of the Criminal Code of Ukraine, and therefore in compliance with the requirements of Article 65(1)(1) of the Criminal Code of Ukraine regarding the limits of punishment. In addition, the court decided to release the convicts from serving their sentences with probation for 2 years.

In justifying the sentence, the court noted that it had taken into account, among other things, the identity of the perpetrators,

who had no previous convictions, was positively characterised at their place of residence and study, were brought up in families with both parents, and lived in good material and living conditions. The court also took into account the absence of aggravating circumstances in the case and, on the contrary, the presence of mitigating circumstances, such as sincere repentance, committing a criminal offence by a minor and partial compensation of the victim for the damage caused (Article 66(1)(1), (2), (3) of the Criminal Code of Ukraine).

In addition, the court took into account the information contained in the pre-trial reports of the Probation Centre regarding the personality characteristics of the juvenile defendants, their lifestyles, history of offences, criminogenic factors affecting the defendants' behaviour as well as the low risk of reoffending. The probation authority believed that the correction of minors without imprisonment or restriction of liberty for a certain period of time was possible and did not pose a high risk to society.

Thus, having analysed the text of the court's verdict, one can clearly see the conflict situation faced by the judge when sentencing the juvenile for a serious crime. On the one hand, the victim was an underage girl who had experienced abuse of her body and suffered psychological trauma (multi-trauma), which undoubtedly affected her emotional, cognitive and behavioural spheres, and the victim also showed signs of experiencing a traumatic situation related to the traumatic event. The girl experienced physical and psychological suffering, fear and shame, which undoubtedly evokes sympathy and an ethical desire to protect the victim by punishing the accused in the most cruel way.

On the other hand, the juvenile defendants, who have a positive characteristic from their place of residence and study, have not been brought to criminal responsibility, have no aggravating circumstances, are sincerely sorry, have partially compensated the victim for moral damage and, in the opinion of the competent probation authority, can be reformed without restriction or imprisonment and do not pose a great danger to society.

A judge, as a person who implements the law within the framework provided by such law, cannot arbitrarily disregard the principles of sentencing established by the current Criminal Code and not take into account, for example, the personality of the accused and their repentance. At the same time, when imposing punishment, in this case, the judge weighs the moral categories of good and evil, assessing the degree of benefit or harm from the decision taken both in terms of society as a whole and for the accused and the victim separately. It should not be forgotten that, in this case, both the victim and the defendants are minors who are just going through the process of forming their personalities. As a result of the criminal actions of the defendants, the victim has already suffered sensory negative psychological consequences, while the sentencing of the same minors to, for example, imprisonment for 5–7 years actually isolates them from ordinary society, placing them in a criminal environment, which will likely have a negative impact on their criminal orientation. Such a punishment for juveniles, in the presence of positive characteristics and the absence of a previous violation of the law, will have the opposite effect on the correction and prevention of new criminal offences, namely, it will create several new persons prone to commit a crime, who, after serving their sentence, will pose a much greater threat to society than before imprisonment.

Thus, this analysis of the court's verdict clearly demonstrates the entire process of a difficult conflict between protecting the interests of the victim and avoiding excessive punishment for the accused, between the benefits of harsh punishment as a tool to prevent a sense of permissiveness in society and the future hypothetical harm to society of juvenile convicts if they are placed in a criminal environment of a prison for a long period of time. This is reinforced by the current legal provisions that make it impossible for a judge to prosecute defendants without sufficient evidence, and require that both aggravating and mitigating circumstances be taken into account when sentencing.

Moral component of judicial ethics

Given such a complex range of internal dilemmas faced by a judge in criminal cases, it is quite appropriate to assert by Lozovoy (2017) that the professional maturity of participants, for example, of justice, in particular judges, cannot be characterised by a certain amount of legal knowledge, skills and abilities. It includes an appropriate level of moral development of the individual and his or her possession of moral requirements for the profession of a judge. It is about having a belief in justice and the need to comply with moral requirements under any circumstances. Otherwise, there is a danger of a gap between knowledge and actions, i.e. the emergence of double morality—ostentatious and true, which is typical for some holders of judicial power in Ukraine. Justice for the parties disputing in court should be determined regardless of their status, nationality, gender or religious beliefs, so as not to offend the moral sense of both the participants and the social community.

At the same time, according to Ovsyannikova (2016), we should now talk about the existence of the so-called moral component of judicial ethics (relations of a judge with participants in the trial, with colleagues, with court visitors and with anyone outside the official activity), which, in turn, requires judges to comply with the rules of conduct, which include both generally recognised moral norms existing in society and standards governing official activities, i.e. the requirements established by law for the profession and standards relating to off-duty behaviour and other permitted activities. At the same time, a judge must demonstrate such moral qualities as

honesty, objectivity, impartiality, impartiality, tolerance, good faith, fairness, balance, reasonableness, prudence, restraint, attentiveness, courtesy and respect for others.

Thus, the essence of a judge's official duties is high moral behaviour and appropriate recourse to moral categories in case of procedural necessity, in order to achieve the main goal of the judicial process—justice. This maintains the authority of the judiciary and contributes to the increase in public trust.

In accordance with the Law of Ukraine 'On the Judiciary and the Status of Judges' (2013), the Code of Judicial Ethics, approved by the Congress of Judges of Ukraine, defines the ethics of judges.

This document, adopted by the XI Regular Congress of Judges of Ukraine on 22 February 2013, contains a number of recommendations for judges during their tenure of office regarding proper behaviour, both on and off duty.

It is interesting that the provision of Article 69 of the Law of Ukraine 'On the Judiciary and the Status of Judges', which contains requirements for a candidate for the position of a judge, does not set any criteria for the moral qualities of a candidate for the position of a judge, instead, a citizen of Ukraine may be appointed to the position of a judge, not younger than 30 and not older than 65 years of age, who has a higher legal education and at least 5 years of professional experience in the field of law, is competent, honest and speaks the state language in accordance with the level determined by the National Commission on State Language Standards.

At the same time, the qualification examination conducted by the High Qualification Commission of Judges of Ukraine still checks, not only the level of general theoretical knowledge of the candidate for the position of a judge in the field of law, his/her command of the state language, but also the candidate's personal, moral and psychological qualities (Article 73(1) of the Law of Ukraine 'On the Judicial System and Status of Judges').

Further, advanced knowledge of judicial ethics is acquired by the candidate in the course of special training at the National School of Judges of Ukraine. Thus, during the special course 'Judicial Ethics. Integrity' developed by the National School of Judges of Ukraine (National School of Judges of Ukraine, 2023), future judges, in particular, acquire skills in detecting violations of the basic principles of judicial ethics, building their behaviour in accordance with the principles and standards of judicial ethics and the ability to resolve ethical dilemmas (Mulák, 2020).

Given the numerous moral challenges that judges face in the performance of their professional duties, the inclusion of a whole section on ethics and confrontation of moral dilemmas in the training programme for Ukrainian judges is, in my opinion, absolutely appropriate. At the same time, this issue is still quite underestimated.

Practical recommendations

In today's realities, the Ukrainian judicial system is experiencing a severe crisis, including functioning under martial law, a significant shortage of judges and an excessive workload for each judge, etc. Nevertheless, they are still obliged by Article 89(2) of the Law of Ukraine 'On the Judiciary and the Status of Judges' to undergo mandatory professional development at least once every 3 years, during which both mandatory and optional trainings are held. At the same time, this frequency, in my opinion, is designed to cover a significant share of self-education carried out by a judge in the course of his or her professional duties, which is objectively almost impossible given all the challenges facing the judiciary today. Acting judges are usually forced to concentrate on performing their professional duties to the fullest extent possible, without having time for additional self-education, including in moral categories when considering criminal cases.

Given the importance of this topic, the judiciary should devote more time to educational processes among sitting judges, providing institutional support and methodological materials addressing general principles of morality and ethics, moral values necessary for judicial work, ethical challenges faced by judges in the performance of their professional duties and ways to address them.

In practice, institutional activities can be implemented in the following ways:

Introduce a system of professional development among judges that includes advanced training courses on ethics and morality. These courses should be aimed at updating judges' knowledge in the field of ethics and morality, as well as at developing their moral qualities. In addition, it will be effective to involve practicing judges who have experience in resolving conflicts between the application of a rule of law or morality in certain cases (Katarzyna, 2022).

Develop training materials on ethics and morality for judges. These materials should be adapted to the needs of judges hearing criminal cases.

Creating an information platform for judges, within which current judges can share their experiences. Given the expected significant increase in the number of new judges in Ukraine, this event will help newly appointed judges acquire practical skills and receive advice from senior colleagues on how to deal with moral challenges in criminal cases.

CONCLUSIONS

The moral component is an integral part of every society and combines the general ideas of good and evil, the concepts of justice, conscience and duty. It is an internal regulator that is complemented by prohibitions and penalties for

violations of the law. Thus, morality and law are closely related categories that share a common goal of ensuring order in society by regulating the behaviour of individuals and social groups.

At the same time, conflicts often arise between these two categories, given the rapid reaction of the phenomenon of morality to changes in society and, conversely, the stable institutional nature of the implemented rules of law, which change more slowly in accordance with the needs of society. In such circumstances, the judge faces a conflict whether to blindly apply a rule of law that contradicts the internal moral concept of justice or to resort to moral categories.

Such conflicts are most pronounced when judges consider criminal cases, as this is the only area of law where fundamental constitutional rights and freedoms can be seriously restricted by punishment. In such circumstances, recourse to moral categories is not only permissible, but also necessary, which is indirectly confirmed by the legislator, who has made the assessment of evidence 'according to internal conviction' subjective to the judge's judgement. This opens up opportunities for the use of judicial discretion, which is formed, in particular, taking into account the moral views and beliefs of the judge.

In addition, when considering criminal cases, the judge is faced with information that cannot be assessed without resorting to moral categories, namely: the personality of the accused, his or her social characteristics, behaviour in the courtroom during the trial, the existence of previous criminal offences, whether or not he or she has admitted guilt, the existence of effective remorse, the position of the injured party and much more. When assessing them, the judge subconsciously refers to the categories of good and evil, justice and public interest, because only if the judge shares the relevant values and has the necessary skills can he or she make a fair and lawful decision.

The main conflicts are the moral choice between protecting the interests of the injured party and avoiding excessive punishment for the accused, between the benefits of harsh punishment as a tool to prevent a sense of permissiveness in society and the future hypothetical harm to society if the convicted person is not reformed by the punishment imposed.

A separate conflict between morality and law can also be identified when deciding whether to acquit a person of guilt due to the failure to prove guilt by declaring evidence inadmissible due to procedural shortcomings at the pre-trial investigation stage. The content of such evidence, however, is not devalued in the process of establishing the truth, but the court cannot objectively refer to it directly when making a decision. As a result of these circumstances, both the injured party and society as a whole suffer damage, because the court decision, although procedurally justified, cannot be considered fair in the general moral sense.

Given the relevance of this issue in the current Ukrainian reality, given the rapid changes in the judicial system through reform, including the expected increase in the number of new judges, the judiciary should provide enhanced institutional support and methodological materials in the area of application of moral categories in judicial activity, with particular attention to conflicts of morality and law arising in criminal cases. This support can be implemented through the development of new training materials on ethics and morality for judges, the creation of an information platform for the exchange of experience among judges and the introduction of a professional development system.

This will not only help newly appointed judges acquire the necessary practical knowledge, but also raise the level of awareness of existing judges on this issue, which will to some extent lead to an improvement in the quality of judgements, strengthening the authority and trust in the judiciary among the population and the establishment of a law-based Ukrainian society.

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