Sortuz. Oñati Journal of Emergent Socio-legal Studies
Volume 13, Issue 1 (2023), 69–90
ISSN 1988-0847

Global bioethics and implementation of its principles in the criminal legislation of the countries of the continental law family

Yana Olehivna Trynova*
Mykhailo Anishchenko*
Oleg Kyrbiatiev*
Yevhen Zelenskyi*
Alexander Karpenko*

Abstract:

The current criminal law of Ukraine and some other countries families of continental law, which include some countries of the post-Soviet space (Azerbaijan, Estonia, Lithuania, Moldova and others) does not fully fulfill the tasks formulated in it, that is, it is not legal in its essence, and therefore it cannot fully and effectively implement the legal protection of the rights and freedoms of human and citizen, accordingly – it cannot fulfill the main task: legal provision of safety of society's existence. The purpose of the article is to develop and propose the use of a new approach in law-making in the field of modern criminal law of the countries of the continental law family: the formulation and introduction into scientific circulation of the principles of bioethics as the dominant branch of criminal law and their implementation in theoretical models of relevant criminal law and some other norms.

Keywords:

Bioethics, Criminal Law, criminal legislation, natural law, neo jusnaturalism, law-making, continental legal family.

* Doctor of Sciences of Law, associate professor, professor of the Department of Criminal, Criminal-Executive Law and Criminology of the State Penitentiary Service Academy (Chernihiv, Ukraine), lawyer, academician of the Ukrainian Academy of Sciences. Email address: trynovayana80@gmail.com

* Zaporizhzhia State Medical University, Ukraine. Email address: anishchenko9085@gmail.com

* Doctor of Sciences of Law, associate professor, Professor of the Department of Social Sciences and Humanities, Khortytsia National Academy, Zaporizhzhia, Ukraine. ORCID ID: https://orcid.org/0000-0002-6949-7049. Email address: olegus666666@gmail.com

* Senior lecturer of the Department of Tactical Special Training of Dnipropetrovsk State University of Internal Affairs, Dnipro, Ukraine. Email address: zelentiv22@gmail.com

* Senior lecturer of the Department of Tactical Special Training of Dnipropetrovsk State University of Internal Affairs, Dnipro, Ukraine. Email address: karpenko.dvp@gmail.com

Resumen:

El derecho penal actual de Ucrania y algunos otros países de la familia del derecho continental, que incluye a algunos países del espacio postsoviético (Azerbaiyán, Estonia, Lituania, Moldavia y otros) no cumple plenamente las tareas formuladas en el mismo, es decir, no es legal en su esencia, y por lo tanto no puede aplicar plena y eficazmente la protección jurídica de los derechos y libertades del ser humano y del ciudadano, en consecuencia – no puede cumplir la tarea principal: la provisión legal de la seguridad de la existencia de la sociedad. El propósito del artículo es desarrollar y proponer el uso de un nuevo enfoque en la elaboración de leyes en el ámbito del derecho penal moderno de los países de la familia del derecho continental: la formulación y la introducción en la circulación científica de los principios de la bioética como la rama dominante del derecho penal y su aplicación en los modelos teóricos del derecho penal pertinente y algunas otras normas.

Palabras clave:

Bioética, Derecho penal, legislación penal, derecho natural, neoiusnaturalismo, elaboración de leyes, familia jurídica continental.

1. INTRODUCTION

Today it can be stated that some criminal codes of the countries of the continental family of law (Azerbaijan, Austria, Georgia, the Netherlands, Denmark, Estonia, Canada, Lithuania, Moldova, Poland, Portugal, Serbia, Slovakia, Slovenia, Spain, Italy, Israel, France, Finland, Switzerland, Sweden) do not fully fulfill the tasks that are formulated in them, that is, they are not legal in nature, qualitative and effective, and therefore they cannot fully implement the legal protection of the rights and freedoms of a person and a citizen, and therefore cannot fulfill the main task – legal provision of the security of society's existence. Inventing a modern law-making algorithm, which would allow the creation of a legal law not only for modern needs, but also for future generations, is an urgent international task. Solving this task has both fundamental and applied importance for the development of criminal law in the countries of the continental law family in all its manifestations (law, science, legislation, educational discipline).

The purpose of the article is to develop and propose the use of a new approach in law-making in the field of modern criminal law: the formulation and introduction into scientific circulation of the principles of global bioethics as the dominant branch of criminal law, the formation of a renewed worldview (ecocentric) based on them and their implementation into theoretical models of relevant criminal legal and some other norms, to improve the quality and efficiency of the latter, focusing on the legal provision of bioethical criminal-legal dilemmas. This approach can cause a new vector of development of both criminal law and criminal legislation. It is likely that later the concept of bioethics (global), which is essentially neo jusnaturale, will replace the concept of natural law. At least in recent decades, global bioethics has received far more attention than natural law.

It should be noted that, for example, in the doctrine of criminal law of Ukraine and the post-Soviet space, scientists did not set such a goal, therefore, there are no scientific studies in this area. We have not come across any studies on the comparison of global bioethics with natural law in modern Ukrainian and foreign legal doctrine.

All of the above testifies to the novelty of this study and its relevance.

2. MATERIALS AND METHODS

Taking into account the originality of the research topic and the worldview positions of the authors, an unconventional research methodology was chosen. The conceptual foundations of the research are: first, the unification of the concept of juridical-positivist and natural-legal types of legal understanding in the phenomenon of "bioethics" with the dominance of the natural-legal type of legal understanding in this synthesis; secondly, a change in worldview positions from anthropocentrism to ecocentrism.

The choice of the research topic was influenced by the method of "tragic dialectics" as an approach to understanding reality, which consists in focusing attention on its negative aspects, in particular on the results of scientific and technical progress in the form of dangerous knowledge, the use of which often leads to unpredictable consequences (Aron 1968, Plato 1968). A logical continuation of the use of this method of cognition, alternative to the materialistic dialectic, was the use of the "idealistic dialectic", which makes it possible to develop a model of safe social existence. The use of such a method in the study of the implementation of the principles of bioethics in the criminal law of Ukraine is productive, provided that the researcher defends the worldview positions of ecocentrism as an idea against the background of today's dominant anthropocentrism. Knowledge of the phenomenon of bioethics, determination of its relationship with other phenomena, in particular law, criminal law, morality, was carried out using the historical method and the gestalt approach as the newest means of knowing reality. In the process of learning the essence and content of bioethics, a number of unsolved problems of a bioethical nature were identified, which need to be solved by criminal legal means.

The expediency of changing the concept of worldview is justified by the clear negative consequences of following the anthropocentric paradigm of reflecting reality and the dominance of positivism. Being guided and cultivating a consumerist attitude towards the environment, humanity has put itself on the verge of self-destruction. This was confirmed by the appearance of the so-called "dangerous knowledge" – knowledge that is significantly ahead of existing human knowledge, tested by practice, which causes a destructive socio-legal imbalance. Such knowledge gives rise to bioethical problems, among them the work singles out: determination of the initial moment of legal (including criminal law) protection of human life; determining the admissibility of absolutizing the right to human life; determination of proper presumption in transplantology; admissibility of human cloning and other experiments on its genome; expediency of production and use of nanomaterials.

In order to ensure the comprehensiveness of the research, a three-level methodology was used, consisting of fundamental, general scientific and special levels. In addition to the methods of researching criminal-legal phenomena, such methods of scientific knowledge

as: idealization, abstraction, generalization, experiment, which are broader in relation to the methods and means of scientific knowledge, were used (Trynova 2021).

Global bioethics, as an interdisciplinary post-nonclassical science, appeared in the 20th century as a reflection on the invention by mankind as a result of scientific and technical progress of dangerous knowledge, the use of which began to threaten the existence of not only humanity, but the entire ecosystem of the planet Earth.

It is believed that this term was first used and proposed to the scientific community at that time. One of its "fathers" is considered F. Yager, who in 1926 published the book "Bioethics: a review of the ethical attitude of man to animals and plants", devoted to the moral principles of the use of laboratory animals and plants (Goldim 2009).

Later, in 1971, the American biochemist and humanist scientist Van Rensselaer Potter (V.R. Potter) published his book "Bioethics: Bridge to the Future", which became, according to many, the "Bible" of bioethics (Potter 1971). In 1988, another book of his "Global Bioethics" was published, which introduced the concept of "global bioethics" (Potter 1988). The researcher calls acceptable survival the main goal of global bioethics. "Acceptable", according to V.R. Potter, means not just the survival of man as a biological species, but the presence of social stability, stable development of society, and the presence of a healthy environment. In general, global bioethics combines medical and environmental ethics.

Therefore, the global bioethics of V.R. Potter understood as: 1) new knowledge about the use of knowledge that a person already possesses; 2) a certain comprehensive beginning, which provides an algorithm, a system of fundamental ethical principles and values, which performs the functions of metaethics, which integrates various spheres of human activity; 3) with the name of V.R. Potter is associated with a view of bioethics as a science of survival. In this, he made significant progress in clarifying the essence of this science, in comparison with his teacher and the founder of ecological ethics – L. Leopoldo. By the way, the "science of survival" V.R. Potter is not known, the Russian scientist M. Roerich expressed similar opinions before him (Rerih 1999). But there is nothing surprising, because similar thoughts about the universe, the rules of human coexistence were the subject of more than one folk epic, reflected in religious texts starting with Ayurveda.

Later, the basic principles of bioethics were enshrined in international documents: the Convention on the Protection of Human Rights and Dignity in the Application of Biology and Medicine: the Convention on Human Rights and Biomedicine and its Protocols (1997), the Universal Declaration on Bioethics and Human Rights (2005), the General Declaration on the Human Genome and Human Rights (1997), the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (2002), the International Declaration on Human Genetic Data (2003), etc.

It should be noted that the definition of the concept of "bioethics" has not been provided at the legislative level. In addition, a trend has emerged, including at the international level, for a narrow interpretation of this concept, reducing the subject of its research only to medical deontology. Such an approach clearly dissonates with the original meaning, which was invested in this concept by its founders and especially V.R. Potter.

Taking into account the historical significance of bioethics, and the general reflection of its principles in international documents, taking advantage of the lack of a clear official definition at the international level and relying on the Concept of State Policy in the Field of Bioethics, approved by the Resolution of the Presidium of the National Academy of Sciences of Ukraine of October 3, 2002 No. 259 "On the Results of the First National congress on bioethics", the author's concept of "bioethics" is proposed (2002). Therefore, *global bioethics is a direction of philosophy, interdisciplinary knowledge, a certain outlook on the rules of human coexistence with other elements of the ecosystem.* Of course, the purpose of formulating these rules is to follow the human instinct of self-preservation (a sign of natural law). Given the realities of today, human self-preservation is directly proportional to a person's adherence to the concept of ecocentrism as a certain type of worldview. Therefore, the object of the latter is new knowledge that humanity has received, receives or will receive as a result of the achievements of scientific and technological progress. Accordingly, the subject of bioethics are specific dilemmas that will arise from the fact of the existence of new knowledge. At the current stage of the development of society, the latter can include: the collection and use of human biometric data, euthanasia, abortion, the use of in vitro fertilization, surrogate motherhood, the use of xenografts, genetic engineering, nanotechnology, the development of artificial intelligence, unsupervised cryptocurrency mining, experiments using the hadron collider, etc.

At first glance, this definition is too broad, and it is not accidental. Global bioethics should become not only a science, but also a unique form of worldview that reflects a person's moral attitude to the surrounding world, his idea of it and his place in it. The main task of a person is not to conflict with the environment: other living beings, flora, ecosystems, etc. The purpose of bioethics is precisely in striving to establish such harmony.

Its principles reflect the essence of bioethics. As mentioned, some principles of bioethics are generally reflected in international normative acts. However, firstly, based on the genesis of the essence of bioethics, they are not fully reflected, and secondly, their interpretation is too abstract. Because of this, there is quite a large number of interpretations of these principles at the scientific level.

This study provides an author's interpretation of the principles of bioethics, which is based on the adaptation of the essence and the very language of the presentation of these principles in a form convenient for application in practical activities, in particular in law enforcement activities in the field of criminal law.

3. RESULTS AND DISCUSSION

3.1. PRINCIPLES OF GLOBAL BIOETHICS

Based on the essence of bioethics, its main principle is the principle of *ecocentrism.* This principle means that humanity adheres to an ecocentric philosophy. This principle is end-to-end, it runs through all other bioethical principles. The same principle can be seen in the works of B. Kuzin (1999), A. Leopold (1970), T. Mishatkina (with Melnov 2015; Mishatkina *et al.* 2018), H.M. Sass (2007); and also in Art. 17 of the Universal Declaration on Bioethics and Human Rights (2005); Aarhus Convention (1998); to the Cartagena Protocol (2000).

The principle of *altruism* assumes the priority of the interests of all people and, moreover, of all living things on earth. This principle is based on love. Love is all-encompassing, and love for people is only a part of this general love and is subordinate to it, as subordinate to the whole. This principle is mainly presented in the works of K. Tsiolkovsky (1986), P. Kropotkin (1991), V.R. Potter (1971), S. Pustovit (2009; 2013), A. Leopold (1970), A. Schweitzer (1973); in Art. 12 of the Universal Declaration on Bioethics and Human Rights (2005).

The principle of *transparency* provides for an open national and international discussion of projects for the discovery of "dangerous knowledge" in order to provide an opportunity for society to prepare morally and materially, to create appropriate legal support for the application of new knowledge. In addition to the mentioned above, M. Umov (1916) and T. Mishatkina (2015; 2018) observed about the openness of science; it is also followed in the Oviedo Convention (1997) and its protocols.

The principle of *rationalism* is reflected in a reasonable, balanced approach to assessing the potential and prospects of the phenomenon. For example, the possibility of taking the life of living beings is not absolute, but limited by certain reasonable limits (norms, jus naturale law): for the purpose of necessary defense, in conditions of extreme necessity, euthanasia, etc. The reflection of this principle can be traced in the works of M. Umov (1916), T. Mishatkina (2015; 2018), S. Pustovit (2009; 2013), and, of course, Potter (1971); Aarhus Convention (1998); Cartagena Protocol (2000).

The principle of *balance* involves maintaining the established balance in nature (the development of reproductive technologies must be restrained at the expense of mortality control: allowing euthanasia, physician-assisted suicide (PAS), taking life out of pity, performing abortions). This principle is also present in the works cited above by M. Umov (1916), T. Mishatkina (2015; 2018) and V.R. Potter (1971).

The principle of *restrictions* should be applied when discovering new dangerous knowledge and will consist in: 1) giving it publicity; 2) if necessary, conduct long-term research that will correspond to the essence of new knowledge (if necessary, it can last several generations); 3) reporting to society possible negative consequences of the discovery of dangerous knowledge. If the negative potential of knowledge is detected, its production or use must be stopped. The principle of *safety* of life activities – everything that is safe for the environment, even for future generations, has the right to exist. Self-preservation is the main principle of Nature. As mentioned above, M. Umov (1916) and B. Kuzin (1999) wrote about this; Article 16 of the Universal Declaration on Bioethics and Human Rights (2005); in the Oviedo Convention and its protocols (1997); General Declaration on the Human Genome and Human Rights (1997), International Declaration on Human Genetic Data (2003); Aarhus Convention (1998); Cartagena Protocol (2000). The principle of *realism* is a restraining principle that balances some of the above principles. Thus, the principle of realism is a restraining factor of the principle of ecocentrism, rationalism, and balance. His balance of the principle of ecocentrism is manifested in the fact that the equality of all living beings is not ideal (for the killing of an insect – the person who killed it will not be subject to legal responsibility). In the principle of rationalism, realism is manifested in the absence in certain cases of legal or, in particular, criminal legal consequences for killing another living being (insect, vertebrate). In the principle of balance, realism is followed in preventing

the establishment of an automatic balance between certain categories (for example, the number of births and the number of deaths).

It was established that the specified principles function among themselves simultaneously according to the rules of coordination and subordination. Thus, the principles of altruism-rationalism, altruism-realism exist in subordinate relationships; altruism-restriction; altruism – safety of life; in coordinating relationships, all principles are among themselves. All the listed principles of bioethics are important, and their arrangement by numbering is conditional.

In turn, the principle of ecocentrism is a "red thread" that runs through the entire set of bioethical principles. The restraining levers of the totality are the principle of realism, which balances the principle of ecocentrism, rationalism, and equilibrium.

The compliance of bioethical principles with the principles of criminal law policy can be demonstrated through the interaction of the principle of expediency of criminal law policy with the bioethical principles of rationalism, balance and limitations; the principle of the inevitability of responding to a committed crime with the bioethical principles of ecocentrism, balance, limitations, and realism.

Formulated principles are not mutually exclusive, they complement each other – according to the principle of complementarity. However, they may not be applied in a complex way, but one at a time.

The principles of bioethics contain a reflection of universal human values and at the same time are aimed at ensuring their protection. The peculiarity of bioethical principles lies in their dispersion in international acts and the diversity of their doctrinal definitions. In addition, depending on the type of bioethics (global or sectoral), its principles also differ: they are more general or "specialized".

3.2. BIOETHICS AND NATURAL LAW

The concept of determining the essence of natural law was raised by Ulpian (Asmus 1999) and H. Grotius (Tuck 1999). Modern philosophers and theoreticians of law define jus naturale as a set of universal norms and principles that are at the basis of all legal systems of world civilization. It is eternal and unchanging, just as human nature and mind are eternal and unchanging (Bachinin 2000, 2006; Onischenko 2013). Probably, this interpretation of this concept stems from the teachings of H. Grotius, his definition of the essence of jus naturale.

Polyakov A., comparing natural legal and positivist approaches to understanding law, notes that they (approaches) point to different sides of legal reality, while believing that their approach is the only correct one. With regard to jus naturale, this is an indication of the connection of law with the value world of the subject, the need for his "included" participation in the life of law due to its high significance for everyone and everyone. In this case, the law finds itself in the sphere of "significance", fundamentally related to the entire value universe and therefore blurred and uncertain, unclear, not proven by formal and logical means (Polyakov 2009).

That is why, when familiarizing with international legal acts, it is sometimes too difficult to understand their provisions. Their text is designed for different approaches to legal understanding, including different legal systems. However, when interpreting and applying them, it is important to feel their essence (the spirit of the law), which is the right – jus naturale. This spirit of the law should be reflected in national legislation in their traditional forms.

The natural-law type of legal consciousness involves a thinking lawyer who is not limited in his consciousness by the letter of the law, but one who observes in law enforcement activities the highest justice established by nature, the dictates of common sense and the conformity of this or that action (both his own and that of other persons) to reasonable nature , and therefore assesses the necessity of committing a certain act, while not forgetting the existence of the ancient instinct of human self-preservation.

The question of how to understand the principles and dictates of natural law and how to apply them in law enforcement activities is quite logical.

In our opinion, the answer to this question can be provided by bioethics. The latter began to form almost with the beginning of writing in human civilization through customary law. Of course, this term was not used at that time. Separate bioethical principles can be found in various religious texts in the form of spiritual instructions (in Christianity, these are the commandments of God, in Ayurveda, the Vedas, etc.) – all of them are aimed at a harmonious, orderly, reasonable human existence.

It was found that the two concepts of "bioethics" and "jus naturale" are essentially similar, however, taking into account the official establishment of the concept of "bioethics" and its general principles in international documents, it is quite appropriate to use the term "bioethics" to denote the essence of natural law. The new development of global bioethics is proposed to be called neo jus naturale. The prefix "neo" covers internationally defined principles of modern global bioethics, which classical natural law lacked (Trynova 2014).

Bioethics is the result of the synthesis of two concepts of legal understanding: the natural-legal one, which embodies the essence of bioethics, its worldview positions, the essence of its principles, and the positivist one, which is reflected in the formalization and definition of bioethical principles. Such a synthesized approach to legal understanding is called integrative or dual. It testifies to the development of the culture of legal knowledge, the evolution of scientific thought. Adherence to this concept of legal understanding allows you to shift the emphasis towards the natural-legal concept of law, taking at the same time the positive properties of positivism.

Taking into account the rational aspiration of a progressive legislator to create a legal law, checking each potential idea of the legislator for its compliance with the principles of global bioethics (neo jus naturale), will allow to qualitatively increase the substantive level of legislation.

Bioethical principles should become a toolkit in rule-making activities, particularly in the field of criminal law. All proposals for improving the provisions of the criminal law should be passed through bioethical principles. If the proposed ideas violate at least one principle

of bioethics – they must be recognized as threatening the safety of the existence of the ecosystem as a whole and, in particular, the safety of the existence of society, respectively – they must be sent for revision. If these projects comply with bioethical principles, they may be acceptable. Ideally, the law is an external form of expression of law. In this case, we can note that such a law is inherently legal.

Global bioethics, its main principles (principles of bioethics) are a natural human right, which must be formally enshrined in criminal law norms in order to take the form of law. We believe that only in this form can a criminal law in particular become a legal law and, accordingly, fully reflect all the needs and ensure the protection of the rights of modern society.

Examples of subjects of global bioethics were given above. Taking into account that some of the mentioned phenomena are the subject of new legal relations in modern society, and can create a danger to the existence of the main objects of criminal law protection, the norms of criminal law should be involved in the regulation of these new legal relations. Such problems of bioethics, which require their regulation by criminal-legal measures, we called bioethical criminal-legal dilemmas, because they involve two options for their solution – "pro" or "contra".

According to our research, the modern CCs described above have a number of gaps in the field of legal protection of new dangerous knowledge. Such gaps were identified and a law-making algorithm was developed, which would not only allow us to fill these gaps, but also work to prevent such gaps in the future, which is an urgent task of modern science. We believe that the screening of criminal legislation for compliance with the principles of bioethics will become the "sieve" that is able to "sift" the provisions of the criminal legislation, and reject such provisions that do not correspond to the principles of bioethics, and therefore should be changed, or viceversa – will provide an understanding of which provisions should be added.

The conducted research showed that all bioethical principles were reflected in general legal principles and principles of criminal law, although with certain caveats. Since the principles of criminal law determine the most essential features and peculiarities of all norms and institutions in the field of criminal law (*Velyka ukrayins'ka yurydychna entsyklopediya* 2017, T.17, p. 824), we come to the conclusion that "because of" the principles of the branch, the norms of criminal law also meet the requirements of the principles of bioethics.

However, then the question arises, what new principles of bioethics bring to criminal law in the broad sense of this concept. In general, these principles make it possible to create a new coordinate system necessary for modern needs, to set a new bioethical vector according to which criminal law and legislation should develop. With the help of the principles of bioethics, in contrast to the traditional theory of criminalization, it is possible to determine the necessary range of socially dangerous acts that deserve to be criminalized not only at the time of solving this issue, but also in the future, as well as to offer commensurate means of criminal-legal response to them. With the help of the principles of bioethics, it is possible to find out whether the current criminal legislation meets the modern needs of society, and therefore whether it fulfills its main task. Under the existing system of coordinates, existing general legal principles, it is impossible to do this, because it is based on a completely different understanding of law, the basis of which is positivism and anthropocentrism, which

does not correspond to the modern level of legal understanding. It is impossible to understand this by testing the legal system and its components, one of which is criminal law in all its manifestations, with the methods and means inherent in this system itself. This requires the intervention of a third-party system, in our case – bioethics with its tools, the basis of which is the principles of bioethics. H. Heine noted that each new era, receiving new knowledge, also needs new "eyes".

The "eyes" of the modern information age should become bioethics and its principles as the embodiment of a synthesized (integrative) concept of legal understanding, the embodiment of the duality of law (natural and positive). The principles of bioethics, simultaneously acting as updated general legal principles, should be considered, as noted above, as the source of modern criminal law. In general, the entire system of national law should be bioethicized, that is, rebuilt in accordance with the principles of bioethics. Academician O. Kostenko, one of the leading Ukrainian experts in criminology, takes a position close to the one expressed, insisting on the need to obey the laws of "social nature". (Kostenko 2003a, 2003b, pp. 296–299).

Summarizing what has been said, we come to the conclusion that bioethization, or that is the same thing, naturalization of criminal law and its form, criminal legislation, should become a modern trend of their development.

3.3. IMPLEMENTATION OF THE PRINCIPLES OF BIOETHICS IN THE GENERAL PART OF CRIMINAL CODES

Adhering to the method of deduction, let's move from the general concepts outlined above to a specific analysis of the current CC of the countries of the continental law family (Azerbaijan, Austria, Belgium, Georgia, Greece, the Netherlands, Denmark, Estonia, Canada, Korea (southern), Lithuania, Moldova, Poland , Portugal, Serbia, Spain, Italy, Israel, Uruguay, Ukraine, France, Finland, Germany, Switzerland, Sweden), of their General part, on compliance with the principles of bioethics. It is especially important to conduct such an analysis before the appropriate screening of the Special Part of these CCs. After all, these two parts of the codes are related, and it is impossible to try to solve bioethical criminal-legal dilemmas with criminal-legal response measures, which are also in the Special part, without relying on the foundation – the General part of the codes.

As mentioned, one of the fundamental principles of bioethics is the principle of life safety, because bioethics itself was born as a response to the danger created by man to the entire environment, including to man himself.

Criminal law, like no other branch of law, is responsible for the criminal law ensuring the security of society's existence. All articles of the criminal legal are aimed at achieving this goal. Criminal legal, as one of the tools of bioethics, ensures, thanks to its arsenal of legal measures, the safety of the existence of the ecosystem.

Therefore, it seems quite logical to start the analysis of the General Part of the Criminal Code from Article 1 on the compliance of its provisions with bioethical principles. However, it should probably be noted that since no scientist has proposed an approach to the bioethicization of law, in particular criminal law, it is not rational to require the current

legislation to comply with something that does not even exist in the theory of law. However, it was noted above that bioethics is inherently a natural right, and this category has been known to the scientific community for a long time. In this way, the implementation of the principles of bioethics in criminal law can be evaluated through compliance with the principle of the rule of law. And by "supremacy" is meant the priority of natural law over positive law.

So, the general object of criminal legal protection, usually set forth in Article 1 of the codes from the standpoint of anthropocentrism. In the concept of a new bioethicized criminal code (as an ideal criminal code of the future), following the logical sequence, it is advisable to set out the general object of criminal law protection in accordance with the ecocentric concept, in the following wording: "The Criminal Code has as its task the legal assurance of compliance with the safety of the existence of the ecosystem."

In addition to such cross-cutting bioethical principles in criminal law as the principles of ecocentrism and safety of life, it is necessary to pay special attention to the principle of transparency. This principle is the basis of general prevention, and therefore plays not the least role in the criminal law enforcement of crime prevention. So, for example, taking into account the proposals of the members of the working group on the development of criminal law in the working version of the Concept of reforming the Criminal Code of Ukraine and other acts of legislation on responsibility for offenses in the public sphere, paragraph 5 of it stated the creation of a model of a "small but tough" Criminal Code of Ukraine, and this means the direct effect of the principle of transparency. After all, such a model of the regulatory act will be easier to perceive and familiarize with, and therefore will achieve the goal of general prevention much more effectively than in the case of creating a voluminous act.

As for the article of the codes, which defines the grounds for imposing criminal liability on a person, its compliance with the principles of transparency, rationalism and safety of life is beyond doubt.

The definition in the codes of the concept of legislation on criminal responsibility, its amendments, the definition of criminality and the punishment of an act, the impossibility of applying the analogy of the law, and the defined rules of law-making in the field of criminal law are evidence of the compliance of this article with the principle of transparency.

They correspond to the provisions of this article and the principle of life safety, since such transparent "rules of the game" laid out at the beginning allow law enforcement officers to orientate themselves and not make illegal decisions that will contradict the norms of material law and, accordingly, provoke the commission of new socially dangerous acts.

As for the jurisdictions of the criminal law in time, space, by the number of persons, they also follow the implementation of the principle of transparency.

The relevance of the principle of altruism is especially clear when implementing the principle of the law on criminal responsibility over time. Thus, in the criminal codes of the countries of the continental law family, it is established that criminality and punishment, as

well as other criminal-legal consequences of an act, are determined by the law on criminal liability that was in force at the time of the commission of this act. This provision corresponds to the principle of rationalism.

The retroactive effect of the law in terms of improving the situation of a person subject to criminal liability is also an example of the implementation of the bioethical principle of altruism. The same principle of bioethics is implemented in the international principle of *non bis in idem* criminal law, so if persons who have committed criminal offenses have been punished outside the country of their citizenship, they cannot be held criminally responsible for these acts in their country.

The international principle "we do not give away our own", formulated in many CCs, also includes the implementation of the bioethical principle of altruism.

We should also note that all the provisions of the Criminal Code are an example of the implementation of the bioethical principle of life safety in criminal law, since only due to the transparency of the provisions of the legislation, the exclusion of brutality (the principle of altruism) is it possible to ensure the order of public life, and therefore ensure its safety of existence.

Having decided on the general principles of criminal legislation, let's move on to the analysis of compliance with the principles of bioethics of a more specific institution – the institution of a criminal offense.

We believe that the material and formal signs of a crime, which are included in the modern definition of the concept of a crime, correspond to the bioethical principle of transparency, because they contain signs that allow an average citizen to understand what a "criminal offense" is; the principle of altruism, because they allow an innocent person to avoid criminal liability. The economy of criminal repression, the absence of stigmatization of a person who has committed an insignificant act, allow the rational use of state legal resources in the field of criminal justice, which corresponds to the principle of rationalism. All of the above testifies to the implementation of the bioethical principle of life safety.

Stratification of crimes by degree of severity and stages of crime commission and responsibility for them is an example of implementation in criminal law of bioethical principles of transparency, altruism, rationalism, realism and safety of life.

Thus, the principle of transparency, as in other cases, is manifested in the transparent provisions of the criminal legislation regarding the definition of the concept of a criminal offense, its types according to the degree of severity, stages of commission. This information enables the average citizen to understand which act can be considered a criminal offense and of what degree of severity, at what stage it is possible to refuse to complete such an act and under what conditions it is possible to avoid criminal responsibility for preparing for a criminal offense.

All of the above includes compliance with the principles of rationalism and altruism, since in the case of refusing to bring a criminal offense to an end, say, a minor one, and stopping a criminally illegal activity at the stage of preparation, such actions do not entail criminal

liability. In addition, the same principles are followed in the conditions of voluntary refusal in the case of an unfinished criminal offense, for which a person is subject to criminal liability only if the act actually committed by him contains the composition of another criminal offense.

The principles of realism and rationalism are also implemented in the definitions of completed and unfinished criminal offenses and types of attempted criminal offenses.

Such anti-entropy in the system of criminal legislation allows to effectively fulfill the main task of the latter – to ensure the safety of the existence of society, which is considered by us as a consequence of the overall observance of bioethical principles in the provisions of the Criminal Code, and is the observance of the bioethical principle – the safety of life.

Analyzing, in particular, the Criminal Code of Ukraine in the context of the creation and discussion in academic circles of the Concept of reforming the Criminal Code of Ukraine and other acts of legislation on responsibility for offenses in the public sphere, one cannot fail to mention the proposal to distinguish a criminal misdemeanor as a separate type of criminal offense along with a crime. The working group on the development of criminal law – the authors of the said Concept propose to develop the Code of Ukraine on liability for misdemeanors, which will provide for such acts for which a person is held liable only by a court, but this liability is not connected with a guilty verdict and a criminal record.

Will such a decision correspond to bioethical principles? We believe that such stratification, which entails greater individualization of the state's response to the committed act in the form of punishment, the absence of stigmatization of a person in the form of a criminal record, which can be a separate determinant of the commission of a new criminal offense, corresponds to the principle of transparency, due to the very fact of discussing the proposal to create a new normative act. The principles of altruism, rationalism and realism are met through the proposal of the developers of the new code to abandon the use of criminal convictions for misdemeanors. Therefore, a person who has committed a criminal offense and repented of it will be able to return to a normal life faster without experiencing restrictions on his rights. As a result, such a person will not show aggression towards the law enforcement system, society, and therefore will not pose a potential danger to others. This is the implementation of the bioethical principle of life safety.

In this way, it is possible to conclude that the idea of distinguishing a criminal misdemeanor corresponds to the principles of bioethics. In what way will this idea be implemented in Ukraine: a new normative act has been created, a section has been allocated in the current Code of Criminal Procedure – this is no longer related to bioethical issues, but is the competence of the legislative technique of rule-making.

Taking into account the limited scope of this article, we note that after analyzing the institute of circumstances that exclude the criminality of an act to comply with the principles of bioethics in the codes, it is established about bioethics and its provisions.

The implementation of the principles of bioethics in the institution of measures of a criminal-legal nature is mostly also observed.

Summarizing what has been said, we come to the conclusion that the provisions of the General part of the codes of the countries of the continental law family are generally observed to date with bioethical principles. However, one must always keep in mind that the CC is not created for all the times of society's existence. It is quite natural to "reformat", to create a new CC adapted to the needs of future society. By the way, the process of such a reform has already been launched in Ukraine due to the creation and development of a working group on the development of criminal law.

3.4. IMPLEMENTATION OF THE PRINCIPLES OF BIOETHICS IN THE SPECIAL PART OF CRIMINAL CODES

Having studied the Special part of the specified CC on compliance with its provisions to the principles of bioethics, it was found that the least resolved bioethical problems of such countries can be attributed to:

1) Determination of the beginning of criminal law protection of human life. In most countries of the world (Azerbaijan, Austria, Georgia, the Netherlands, Denmark, Estonia, Canada, Lithuania, Moldova, Poland, Portugal, Serbia, Slovakia, Slovenia, Spain, Italy, Israel, France, Finland, Switzerland, Sweden) traditionally provided criminal-legal protection of a person from the moment of birth, the beginning of which is established in accordance with the national doctrine of criminal law. At the same time, the legislation of Estonia, Poland, and France establishes criminal law protection of human life from the moment of conception (before birth), with the simultaneous permission of termination of pregnancy under certain conditions;

2) Partial establishment of legal support for the use of nanotechnology, which was introduced by Great Britain, Germany and the USA (2011). However, in these countries there is no criminal liability for violation of legislation in the specified area, which indicates the incomplete resolution of bioethical problems;

3) Legal regulation of the field of genetic engineering. In Europe, the only international act establishing the prohibition of human cloning has been signed today – the Additional Protocol on the Prohibition of Human Cloning (1998) to the Council of Europe Convention on the Protection of Human Rights and Dignity in the Use of Biology and Medicine (1997), which for the first time legally defined the position of the international community on the issue of human cloning and the given impetus for the further development of this prohibition at various levels of legal regulation. Only the legislation of 11 states (45%) out of 25 analyzed provided full legal regulation of this area, providing not only relevant regulatory norms, but also corresponding provisions of criminal legislation, which indicates the implementation of the principles of bioethics in the latter. According to the method of legal protection of this area, three main groups of countries can be distinguished, the legislation of which contains:

1) a special regulatory act that establishes the rules of activity in the field of genetic engineering, but there is no criminal liability for violating these rules (Austria, Belgium, Denmark, Poland);
2) a special normative act, and responsibility for its violation is provided for in criminal legislation (Georgia, Estonia, Slovenia, France, Japan);

3) criminal liability for acts in the field of genetic engineering, but there is no corresponding positive (regulatory) legislation (Azerbaijan, Serbia, Uruguay). In countries where it is allowed to carry out therapeutic cloning and experiments on embryos, there is an age limit for the last – 14 days from the moment of their formation. The exception is France, which lowered the age limit for embryos to 8 days;
4) presumption of non-consent to the collection of organ material in transplantology, which indicates the compliance of legislative provisions in this area with the principles of bioethics. Attention is paid to a conceptual problem in this area – determining the form of presumption regarding the disposal of one's organs after death (Belgium, Belarus, Israel, Spain, the Netherlands);
5) expediency of taking the life of another person upon request (euthanasia, orthanasia, physician-assisted suicide (PAS)).

In foreign doctrine, there are three main approaches to determining the legal nature of this act (mainly the states of the continental legal family) by: 1) supplementing the criminal legislation with a privileged composition of a criminal offense with reduced responsibility for taking the life of another person at the request; 2) legalization of euthanasia, orthanasia or PAS with the simultaneous addition of criminal legislation with relevant provisions that provide for responsibility for violations in this area, which is also evidence of the implementation of the principles of bioethics in the criminal legislation of these states; 3) inclusion in the number of murders without mitigating circumstances (Trynova 2021).

Thus, there are gaps in the current criminal justice system due to the lack of criminal law measures capable of regulating relations in the field of new dangerous knowledge (human cloning, other experiments on the human genome, use of nanotechnology, etc.).

Keeping in mind the principle of criminal law "ultima ratio", we note that measures of a criminal legal nature to solve bioethical problems are applied due to the special nature of the values that are encroached upon (human life, environmental safety, human safety as a biological species, etc.). However, the main emphasis should be placed on the development of positive legislation in the field of legal support for the creation and use of dangerous knowledge. And only after the regulation of new relations in society by the norms of positive legislation, it is possible to propose corresponding norms of criminal law, which will provide for criminal liability for violation of the norms of positive law. The analysis of special parts of the CC of the countries of law continental family made it possible to discover that some of them lack number of measures of a criminal-legal nature regarding the settlement of a number of bioethical criminal-legal dilemmas.

4. Conclusion

Taking into account the requirements for the amount of material, and summarizing what has been stated, in this article we will limit ourselves to a list of relevant legislative proposals to fill the relevant gaps of the Code of Criminal Procedure and related normative acts in the field of solving current bioethical criminal law dilemmas. So, as an example, it is advisable to make the following changes to the specified CC:

1) Taking into account the development of medicine and technical sciences, to establish criminal law protection of human life from the 15th day of the development of the human zygote, that is, from the moment of the formation of a person as a living organism. A similar norm should be placed in the law (on the example of Ukraine) "Basics of the legislation of Ukraine on health care"; Article 3 of this Law shall be supplemented with the paragraph: "the beginning of a person's life is determined from the 15th day of the formation of the zygote." Corresponding changes regarding the maximum period of admissibility of termination of pregnancy should also be made in Article 50 of this Law. Accordingly, such a novel will result in a change in legal qualifications in the field of crimes against human life (Trynova and Kuts 2017).
2) Harmonize the law "On the Prohibition of Human Reproductive Cloning" with criminal legislation, in particular, make the following changes to the Criminal Code. Taking into account the threat to the security of the existence of humanity from this type of dangerous knowledge, to the Section of the Criminal Code (criminal offenses against the security of humanity) add the articles "Conducting human reproductive cloning", "Creating hybrid species of living beings (chimeras)", "Conducting any experiments on cloned people or chimeras", "Movement of cloned embryos across the customs border". The main elements of the listed crimes must be classified as serious crimes, and qualified crimes as particularly serious (Trynova 2017a, 2017b).
3) Make changes to the "positive legislation" (code of labor laws, pension legislation, adopt the law "On the legal foundations of bioethics" (in countries where it is absent), create by-laws: Hygienic standards in the field of use or production of nanomaterials, Sanitary standards regarding the determination of the presence of permissible doses of the content of nanoparticles in the air; Methodical recommendations for the handling of nanomaterials; work at similar enterprises should be included in the List of work with increased danger). These proposals can serve as a vector of scientific developments in other areas of law.
4) On the basis of the previous point, make changes to the CC, which can be divided into two groups. The first one contains entirely new provisions that provide for liability for violations of norms in the field of nanotechnology. The second group contains a new, improved interpretation of the existing norms of the Criminal Code, taking into account the provisions of the "positive" law from the position of de lege ferenda.

The first group: to the section of the Criminal Code – criminal offenses against public safety, add the article: "Violation of the rules of handling nanomaterials", to the section of the Criminal Code – criminal offenses against production safety, add the article "Violation of the rules of nanosafety". According to the classification, the acts provided for in part 1 of these crimes are proposed to be classified as crimes of medium severity. Actions provided for in Part 2 are particularly serious crimes (Trynova 2017a, 2017b).

The second group provides for the improvement of already existing provisions of the Criminal Code through a new (expanded) interpretation of their dispositions. Such articles include "Gross violation of labor legislation", "Gross violation of the labor agreement", "Violation of environmental safety rules", "Use of weapons of mass destruction").

Summarizing what has been said, we note that, in general, the principles of bioethics in the criminal legal of the analyzed states are respected. At the same time, there are certain gaps

in criminal legislation that need to be eliminated for the safety of society. In order to create a law that is flexible in form and legal in content, effective and high-quality, and therefore a law capable of meeting the modern needs of modern society with the help of appropriate means of criminal law, it is necessary to adhere to the given algorithm of modern law-making – bioethical principles. The latter should become the dominant source of criminal law, a tool for harmonizing national criminal law with the criminal legislation of the European Union. The implementation of these principles in criminal law should begin the formation of a new model of modern criminal law doctrine and legislation – bioethicized criminal law/legal. This concept can be used as a basis for the creation of new CCs of the countries of the continental law family.

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