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The Issues of Interpretation of “Health”, “Pain” and “Suffering” Concepts in Modern Multidisciplinary Science

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Abstract--The research given is of great scientific value since the main task of any state is to protect natural human values, namely: life, health, will, honour, dignity, and other natural rights. Therefore, their defence and protection are carried out at the state level, especially by developing effective means aimed at systematic counteraction to criminal offences against the health of an individual. The doctrinal approaches on the limits of criminal law protection of person's health, existing today, require a detailed analysis and generalization, as well as legal drawbacks in the construction of criminal law norms on liability for various types of encroachments on health and problems arising as a result of it at criminal law assessment of relevant socially dangerous acts. However, the discussion on terminology which is not only the achievement of criminal law subjects but also medicine, forensic medicine, psychology, etc., is still taking place between the researchers in various humanitarian sciences at national and international levels. First of all, these terms and categories are the determinants, and main studies in these areas are based on them.

Keywords---criminal offence, damage to health, health, pain, suffering, torture.

Introduction

The formation and effective implementation of state policy in the field of criminal law protection of the health of an individual is a necessary condition for ensuring human rights and freedoms in Ukraine. In the process of globalization of criminal offences against the health of an individual the government of the world leading countries is focusing more and more on the creation and improvement of effective mechanisms of criminal law counteraction to encroachment on the health of an individual. Ukraine is entering a new era of the global information society which requires full provision of human rights and freedoms – an era where anthropocentrism should become a priority in the state policy. The implementation of national interests in strengthening of criminal law protection of person's health is a clear evidence that anthropocentrism is the main basis of the most important areas of such state transformation. Some aspects of the problematic issues of forming an understanding such concepts as “health”, “pain” and “suffering” in one way or another have been studied in scientific works of researchers that we will be mentioned below. However, these studies revealing some aspects of criminal offences against the health of an individual, leave a range of issues in this field that are not examined in detail ([Vasilyeva & Filatov, 2001](#)).

The collective monograph “Prevention of Tortures” ([Kovalenko et al., 2010](#)), covers international standards in prevention of tortures, inhuman treatment, lowering dignity, or punishment in detail. The classification of international documents, existing in the field of human rights is proposed: by content, scope, and legal force. Thus, [Chervyatsova \(2011\)](#), states: “... every violation of human rights contains an element of lowering human dignity and every violation leads to negative consequences, physical and spiritual suffering for injured people”. We do not agree with such statement since, firstly, pain and suffering are the consequences of tortures as it stipulated in Article 127 of the Criminal Code of Ukraine (2001) and international acts, secondly, at first the author states that torture contains elements of lowering human dignity, then – it is the form of inhuman treatment leading to severe suffering ([Kovalenko et al., 2010](#)). Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms stipulates absolute prohibition of torture or inhuman treatment, lowering human dignity, or punishment. Therefore, these concepts are independent, separate from each other, but at the same time, closely related.

In 2013 [Telesnitskyi \(2013\)](#), in his dissertation “Criminal Liability for Torture: A Comparative Legal Study” analysed the theoretical and methodological grounds for comparative legal research and genesis of criminal liability for torture. Moreover, he provided criminal law of the objective and subjective features of torture under the laws of Ukraine and foreign countries, comparative characteristic of qualifying features of torture and analysed the problems of sanctions. In her work “Criminal Law Characteristic of Torture” [Denisova \(2014\)](#),

analysed the terminology widely used in the Constitution of Ukraine as well as provided the author's definition of torture.

Grishchenko (2014), provided a comprehensive criminal law characteristic of battery and torment (objective and subjective features of the criminal offence provided in the description of Article 126 of the Criminal Code of Ukraine, and its qualifying features) and proposed to expand the content of the criminal offence object provided by the description of Article 126 of the Criminal Code of Ukraine, namely: an additional direct object can be person's honour and dignity. In our opinion, the following issues remain controversial: first, the provision that this composition of the criminal offence is formal in terms of the objective structure; second, proposals to determine the special subject among qualifying features of the criminal offence composition, as well as to determine the composition of the subject of this criminal offence composition – father, mother, stepfather, stepmother, custodian or trustee, the person authorized to upbringing or take care about him or her. Today, not only this criminal offence is often committed in family area, but also other criminal offences against the health of an individual, so, according to author's reasoning, it is necessary to separate special subject of criminal offence in each article. These suggestions aggravate this article, not considering that in case of sentencing, the court will take into account the provisions of Paragraph 6, Part 1, Article 67 "Aggravating Circumstances" of the Criminal Code of Ukraine (2001). Dissertation of Lakhova (2017), "Criminal Liability for Causing Intentional Minor Injuries, Battery, Torment" contains insufficiently justified provision of the author, the phrase "harm to health" used by the author in interpreting the concept "body injury" contradicts its content, "suffering caused to a person due to physical or mental exposure; deterioration or deprivation of opportunities to exercise his or her habits or wishes by a person.

In the textbook "Criminal Liability for Torture in Ukraine and foreign countries" (Savchenko, 2018), the authors identified the peculiarities of objective and subjective features of torture criminal offence composition provided by the Criminal Code of Ukraine (2001) and the Criminal Codes of other countries. Theoretical foundations and genesis of criminal liability for torture are studied, the social conditionality of criminal liability for torture is described (the following factors are distinguished: international law, national law, criminological, socio-psychological factors). The authors emphasize that torture – a criminal offence is materially defined. In the textbook considerable attention is paid to the legally defined methods of torture (battery, excruciation, and other violent acts) but the consequences being a mandatory feature of the objective part of such criminal offence composition are briefly described in the work.

Materials and Methods

To achieve the goals stated and to solve the scientific tasks a set of general scientific and special methods was used in the work. The dialectical method was used in all parts of the work, which provided an analysis of the components of area-specific (criminal law) characteristic of illegal consequences (physical pain, physical and moral suffering). Dogmatic and hermeneutic methods ensured the content interpretation of concepts and terms to clarify the categories of national criminal, international humanitarian law and other sciences to make a

comparative characteristic of the concepts ([Williams et al., 2010](#); [Tsur et al., 2017](#); [Nyandra et al., 2018](#)).

The comparative legal method allowed identifying the advantages and disadvantages inherent to the legal norms of national legislation compared with the relevant provisions of the legislation of foreign countries; the statistic method contributed to the development of the empirical base as a source of data about the subject of research; sociological methods were applied during the survey of forensic experts of general profile and judges – summary data of surveys of judges and forensic experts of general profile from different regions of Ukraine except from the Autonomous Republic of Crimea, Donetsk and Luhansk region from October 2018 to May 2019. The aim of the questionnaire is to clarify the opinion of court employees and forensic experts of general profile concerning the condition of criminal law protection of person's health from illegal encroachments in Ukraine, as well as to use the results obtained in formulating conclusions and developing practical proposals. The category of the respondents interviewed included: 114 court employees and 272 forensic experts of general profile. Questionnaire form was written one, by filling in/giving answers by respondents. The content of the proposed questions is determined by the content of the scientifically substantiated conclusions obtained in the article that can be refuted, confirmed, or clarified in the process of questioning ([Pinto et al., 2017](#); [Archana et al., 2016](#)). The peculiarity of the proposed answer options is that a simplified approach was used including the following: the respondent chose one of the three answers already formulated ("yes", "no", "difficult to define"). In the written questionnaire offered to the respondents, the questions were formulated in the way to obtain the most accurate, reasonable and logical answers. At the same time, it was important that the respondents had practical experience and relevant professional skills that is valuable in scientific terms.

Among the global objectives of sustainable development for 2015-2030 it is mentioned under number 3: Strong health and well-being (UNDP in Ukraine, 2021). However, the terminology which was used is controversial and, first of all, the prerequisite for that is that "health" as a category is studied not only in medical science but also widely used in law science. Thus, in the Special Part of the Criminal Code of Ukraine (hereinafter – the CC of Ukraine) of Section II. "Criminal offences against the life and health of an individual" contains Articles 121-128, 130, 133 in which the object is "social relations in the field of protection of human rights and freedoms against illegal encroachments that cause or may cause harm to the health of an individual" ([Katerinchuk, 2019](#)). The study of criminal law science proves that "health" as a category has not been studied in detail, and the legal acts of Ukraine do not contain its definition. For instance, in the Criminal Code of Ukraine in Article such task as "legal support of protection of rights and freedoms of a person and a citizen" is defined. This provision is supported by the Constitution of Ukraine (1996) in Articles 3, 27, 28, 35, 49, which guarantee that a person, his or her life and health, honour and dignity, inviolability and security are recognized as the highest social value. Everyone has the right to protect his or her life and health, lives and health of other people from illegal encroachment. No one can be subjected to torture, cruel or inhuman treatment or lowering human dignity, or punishment. Everyone has the right to

freedom of worldview and religion. Everyone has the right to health care, medical aid, and medical insurance.

All these values and other ones are enshrined in the provisions of the Basic Law of Ukraine, as well as they meet the provisions of international treaties ratified by Ukraine, but do not contain the definition of “health”. Only in the preamble of the Charter of the World Health Organization (hereinafter – WHO) the definition of “health” is given, which was later reflected in the Law of Ukraine “Fundamentals of Ukrainian legislation on health care” (1992). Thus, “health” is the condition of complete physical, mental and social well-being and not merely the absence of diseases or infirmity (Statute (Constitution)..., 1946). The definition of “health” mentioned which is contained in the preamble of the WHO Charter and the Law of Ukraine “Fundamentals of Ukrainian legislation on health care” is controversial to some extent. First, the concept of social well-being is subjective, too broad, and requires, above all, a clear definition. Second, a person’s full social value is not always characterized by quantitative criteria and his or her biological condition. Third, according to this definition, it is almost impossible to find a healthy person (MedicLab, 2012).

Results and Discussion

As a result of the study of “health” definition, scientists in the field of criminal law have concluded that this concept has been studied in the medical aspect more thoroughly. At the same time, there are some discussions concerning this issue at present, since “health” is a dynamic category, which definition is constantly improving. Moreover, “person’s health has been under criminal law protection from the moment of starting the child-birth to the onset of biological death” (Yatsenko, 2006), so, taking into account this definition, from the very beginning of life not considering other mandatory components. From birth, a live-born, viable person possesses health, therefore, these categories of “life” and “health” have the same initial stage of formation, development and both are dynamic. That is why “life” and “health” categories are inseparable and complement each other.

There is no unified view among scientists on the definition of health covering all the possible features that are inherent in it. Scientists in a medical field Razumov & Bobrovnytsky (2002), note that the health of an individual is a dynamic condition (process) of preservation and development of its biological, physiological and mental functions, optimal working ability and social commitment with maximum prolongation of active life. Later, in co-authorship with another scientist, Razumov & Ponomarenko (2007), present more improved definition of health: health as a biological category reflects the body’s ability to maintain and restore sufficient functional reserves to ensure adaptation to changing conditions of environment and activity. Lishchiuk (2010), provided a socially adapted definition of health – the ability for adaptation, self-preservation and self-development, the ability to resist degradation and aging, the ability to prevent diseases and overcome them.

Fedko (2009), noted that “a holistic view of “health” is presented in the form of three-component pyramidal model which is expressed by the trinity of such components as physical, mental and spiritual”. Some authors among these three

components also distinguish social or spiritual components of health, for example WHO. However, most authors emphasize the four mandatory components of this category. Spiritual health is an element of personality; therefore, it is a human social nature. [Naumenko \(2012\)](#), notes that the spiritual health of personality exactly is “the person’s desire to master universal human values: truth, verity, good; the ability to feel as a part of the world around us, the desire to make it better and actively contribute to it and in connection with it to be able to empathize, sympathize, help others, build relationships with people, to treat themselves and their lives responsibly. A materialistic person cannot be healthy”. This way, the components of health cannot be considered alone, it is not just combination, but preservation of a balance social, spiritual, mental and physical health, which is under the constant influence of external and internal factors ([Grandt & Titenkova, 2013](#)).

Thus, [Vasilieva & Filatov \(2001\)](#), distinguish the following approaches to understanding the category of “health”:

- Normo-centric (health as the optimal level of functioning of person’s body);
- Phenomenological (health as an indirect experience of physical illness, the greater this experience, the more multidimensional and wider the ideas about health become);
- Holistic (health as a whole that is acquired by a person throughout life and involves personal maturity, life experience integration, synthesis of fundamental contradictions of human existence or intrapsychic polarities, etc);
- Axiological (health as a universal human value influenced by value orientations and their dominance, reassessment of values, as well as the crisis in person’s life);
- Cross-cultural (health is considered through a set of characteristics determined by specific social conditions, cultural context, originality of lifestyle and image of the world);
- Discursive (health as a product of a certain discourse with its own internal logic of constructing or conceptualizing social and mental reality);
- Integrative (integration of the above-mentioned models and schemes on a unified conceptual basis, in accordance with the principles of systems theory).

However, studying these four components of “health”, scientists hold an opinion that these components are interconnected and balanced. However, in some cases a person can only have a physical component and be healthy at the same time, this is the case of the birth of a child who has not had a range of spiritual and social components yet. First of all, the problem is in the fact that every person perceives the term “health” by analysing the peculiarities of his or her body or acquired knowledge. For instance, a person with certain physical disabilities will initially focus on the absence of such defects in the definition ([Somers et al., 2015](#); [Thomsen et al., 2000](#)). The acquired knowledge will also have an impact on understanding of this category. Sociology, as a science studying various aspects of society and a person, interpreting the term of “health” uses social factors, phenomena (socialization of a person in society, namely, self-fulfilment – education, work, marital status, etc.). Scientists [Kotsan et al. \(2011\)](#), distinguish

“health” at three rather specific levels of life activities in the field of psychology. At the biological level health implies a dynamic balance of functions of all internal organs and their adequate response to environmental influence. At the psychological level mental health is some way or other related to the personality context within which a person appears as the mental whole. The main task of this level is to understand the main thing: what a healthy personality is.

At the social level health is understood rather conventionally because the psychological features of the personality simply do not exist outside the system of social relations in which it is included. At this level a person appears, first of all, as a social being. So, the scientists in different fields (medical, sociological, legal, etc.) perceive the term “health” in different ways, that is why there are problems with its interpretation. For instance, law scientists define health as “the normal functioning of the whole body” (Gurevich, 1950). Nikiforov (1959), understands health as a normal condition of the human body in general, or “a normal functioning of human tissues or organs” (Dubovets, 1964). Petrovsky (1976), defines person’s health as body integrity and normal functioning of human body organs (Krieger et al., 1971). Chefranova (1975), notes that health as a personal well-being is one of the most important conditions for normal life activity of a certain person of all his or her parts, organs and systems, it is such a condition of a person that ensures the performance of various biological and sociological functions. Manaenkov (1991), defines health as integrity, normal functioning of the most important organs and systems of the human body, without which it is inconceivable to ensure its normal life activities. Or “normal functioning of tissues and organs of human body” (Stashis & Bazhanov, 1996).

Analysing the definition of “health” in scientific studies, a certain tendency can be observed. Scientists of the earlier period in the definition of “health” talked about the “organism” without separating its components – organs (Gurevich, 1950; Nikiforov, 1959). In further studies of the scientists (Dubovets, 1964), such specification has been already present in the definition of “health”. By the end of the twentieth century, the following mandatory components had appeared in the definition: social, so, the scientists talked not only about the physical structural elements of a person, but also the actualization of a person in the world as a social being. Manaenkov (1991), in his definition of “health” is referred to “the most important organs and systems of the human body”. However, it should be taken into account that the human body is constructed in such a way that each organ performs a certain function, therefore, all organs and systems are important because they are all connected anatomically and topographically and perform certain functions. Therefore, the definition of “health” in law science requires clarification.

There are a lot of definitions of such category, which remain relevant today. However, in our opinion, it is necessary to use the term “a person” along with this term because this category is studied in a person exactly, as a biological category that determines the affiliation of a living being to humanity according to certain anatomical peculiarities and physiological functions with his or her transformation into socially significant category of “a person”, and later on – “a citizen”. At the same time, the term “individual” is used in the legislation in the establishment of the object of a criminal offence and the title of Section II.

“Criminal offences against life and health of an individual” of the Criminal Code of Ukraine, not considering the fact that the term “a person” includes all sociological categories ([Mathias et al., 1996](#); [Engel et al., 1996](#)).

Analysis of the Basic Law of Ukraine as the basis for criminal legislation which defines this term as a key term stating that: “A person, his or her life and health, honour and dignity, inviolability and security are recognized as the highest social value in Ukraine. Human rights and freedoms and their guarantees determine the content and direction of the state activity. The state is responsible to a person for its activity. The establishment and protection of human rights and freedoms are the main duty of the state (Article 3). As for criminal law, then the legislator does not always approach the use of terminology consistently, as evidenced by the titles of Sections II-V. of a special part of the Criminal Code of Ukraine (2001), in which the legislator mainly uses the term “individual” concerning the life, health, will, honour, dignity, sexual freedom, sexual integrity, electoral, labour and other personal rights and freedoms.

The collapse of the Soviet socialist system at the verge of the twentieth and twenty-first centuries and transition to market relations, not taking into account economic, social, political, and other difficulties and crisis phenomena on the way to young democracy, the criminal law in Ukraine is directed in anthropocentric dimension. Anthropocentrism should be at the heart of our legislation and law enforcement practice, although criminal law contains different terminology “an individual”, “a person”, “a citizen”. In recent years there have been discussions on the use of such social categories as: “an individual”, “a person”, “a citizen”, describing peculiarities of their status and opportunities for protection of subjective interests ([Oldenkamp et al., 2016](#); [van Zelm et al., 2008](#)).

However, unfortunately, there is no legal definition of “a person” at present. This way, we consider it is necessary to provide a legal definition of such terminology which would be the result of the work of specialists in various branches of law (civil, criminal, labour, etc.). Today it is reasonable to use the term that is most common in current legislation – an individual. The lawmaker establishes physical pain (severe physical pain) as one of the consequences of criminal offences against the health of an individual in Article 126 “Battery and Torment” and 127 “Torture” of the Criminal Code of Ukraine ([Raymond et al., 2009](#); [Fracasso et al., 2009](#)). The survey of judges and forensic experts concerning the presence of evaluative concepts in the Criminal Code of Ukraine (physical pain, severe physical pain, physical or moral suffering) allows summarizing that 54% (judges) out of the total number of respondents said that the provision of the Criminal Code should have evaluative concepts (Figure 1).

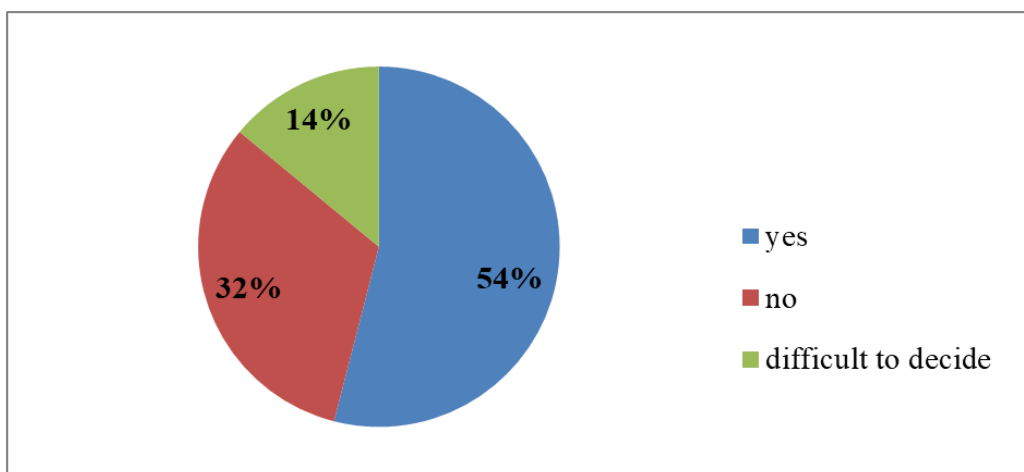


Figure 1. Survey results for jungles

The forensic experts gave less percentage of positive answers (44.3%) to the same question (Figure 2).

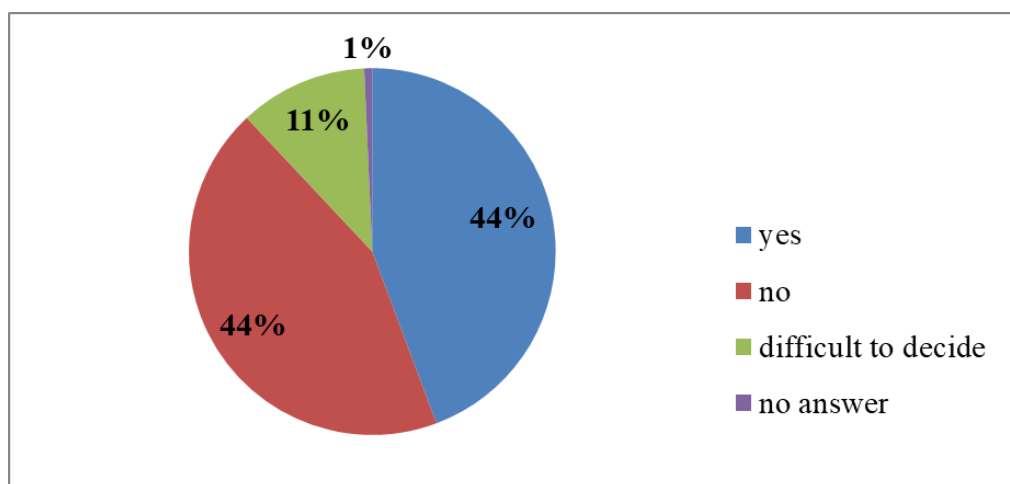


Figure 2. Survey results for forensic experts

Thus, the analysis of questionnaire data allows stating that despite the controversial peculiarity of such terminology in practice, as well as disputes that arise among scientists, the articles of the Criminal Code of Ukraine (2001) enable the existence of such terminology that hardly promotes the unity of understanding of relevant concepts. At the same time there is no legal definition of physical pain, and the unified view of such concept definition is not provided by law science.

Physical pain is understood as a mental state of an individual characterized by suffering caused by physical impact on his or her body (Melnyk & Havronyuk, 2012). Pain (in the medical sense) is not only a human sense but also an indicator of the onset of negative changes for health: any painful senses are accompanied by changes in the body related to various human functional systems (respiration,

blood circulation, body statics and kinetics provision, etc.) (Petrovsky, 1976). The following is stated in the medical literature: “pain is the sense of not only physical suffering, but a sense of sadness, hurt, sorrow” (Zavalnyuk, 2016). Sharapov (2001), emphasizes that a specific form of physical pain is physical suffering – a consequence of violence indicating the manifestation of special cruelty to the victim by a guilty person. In the Scientific and Practical Commentary of the Criminal Code of Ukraine edited by Melnyk & Havronyuk (2012), it is stated that physical suffering is such suffering that occurs because of a negative influence on the physical area of an individual, so physical pain is a certain mental condition of a person defined by a set of physiological processes of the central nervous system caused by excessively strong or destructive stimuli. Physical pain is of depressing severe nature. If a person is healthy in mental terms, physical suffering inevitably causes moral suffering, which may manifest itself in the form of hurt, shame, grief, depression, sense of irreversible loss, etc. Thus, not all scientists distinguish between the concepts of physical pain and physical suffering.

Analysing Article 127 “Torture” of the Criminal Code of Ukraine, the law-maker emphasizes the “severe physical pain”, “since during torture an individual suffers from not just pain but excruciating pain, pain of the “highest quality”. It depends on the subjective (personality) peculiarities of a victim, objective conditions of the criminal offence, the severity of bodily injuries. Moreover, this very term is in accordance with international practice” (Maradina, 2013). At present, it is not possible to establish the criterion of physical pain (intensity) in practice. Questionnaire data according to the results of a survey of forensic experts on identifying signs of physical pain, severe physical pain, physical or moral suffering give an opportunity to make a conclusion that only 29.6% of forensic experts had to conduct examinations to establish illegal consequences defined by a lawmaker in Article 126, 127 of the Criminal Code of Ukraine (2001). It is caused by the fact that there is no such term in medicine, namely, there is no specification that “pain” must be physical. At present, it is possible to define the qualitative criterion of pain due to the subjective reaction of an individual – verbal rating scale of pain (verbal descriptive scale of pain, facial pain scale, modified facial pain scale visual analogue scale, numerical pain scale, Bloechle pain scale, pain scale assessment in the ICU based on observation (Portnov, 2020). However, every individual has different pain sensitivity (perception), that is, under physical impact to individual’s body different people will assess the sense of pain differently: from no pain at all to excruciating pain. Moreover, it is possible to determine the following characteristics of pain: origin, location (localization), duration, attribute (acute, burning), and factors aggravating or alleviating pain. Therefore, in accordance with the above mentioned, it is not possible to measure the strength of pain (qualitative). So, it is unreasonable to separate the fact that pain must be physical and severe in Article 127 of the Criminal Code of Ukraine (2001).

In the questionnaire 57% of judges gave a positive answer to the question whether changes and amendments were necessary in the articles of the Criminal Code of Ukraine (Figure 3).

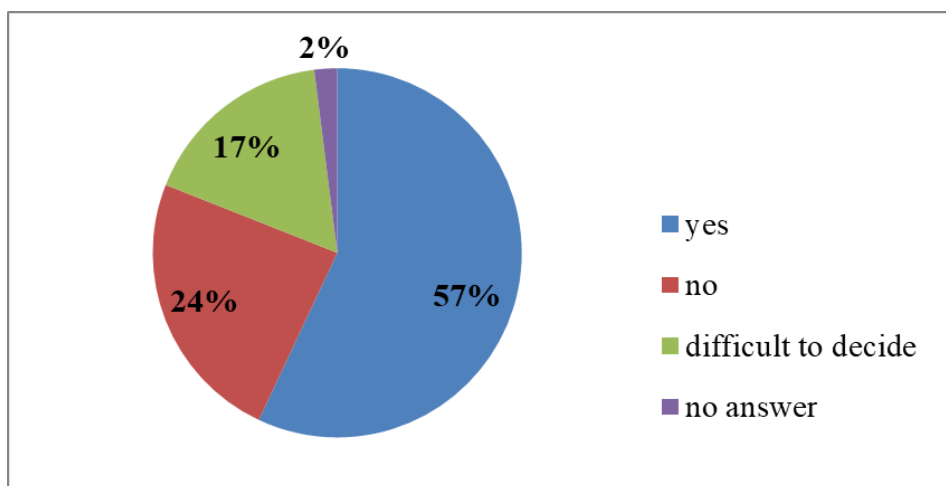


Figure 3. Survey results for jungles

Forensic experts 44.3% supported such judges' initiative (Figure 4).

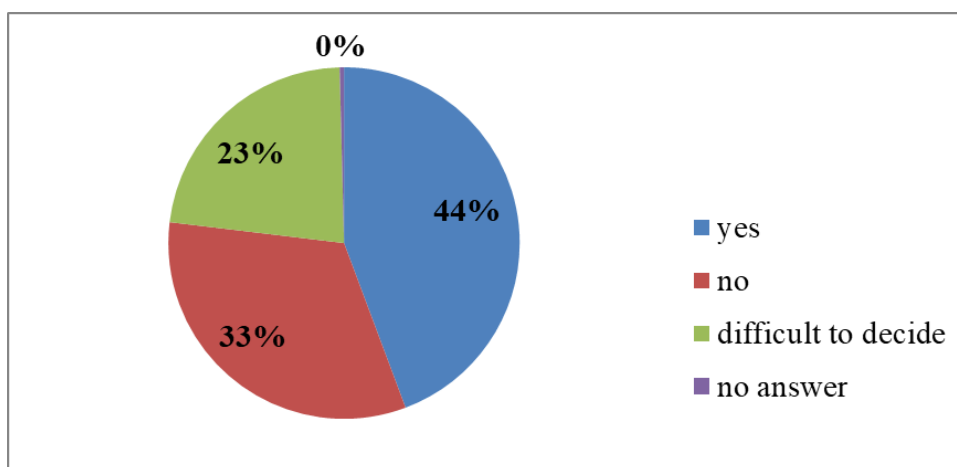


Figure 4. Survey results for forensic experts

Carrying out a comparative law characteristic of criminal legislation (Israel, Georgia, Kyrgyzstan and Lithuania, as well as the Republic of Tajikistan and the Russian Federation), it was found that some articles contained the terminology of “physical pain”. At the federal level, American criminal law does not clearly distinguish between groups of criminal offences against individual’s life and health and their separate subgroups (Offences against personality in USA..., 2001), and criminal offences against health include injuries and battery (Savchenko, 2007). It distinguishes “bodily injuries”, namely: physical pain, illness or any other deterioration of physical condition; “grave bodily injury” means a bodily injury posing a significant risk of death or an injury causing severe permanent mutilation or prolonged loss or impairment of the function of any body part or organ. These terms are used by the US lawmaker as consequences of an attack.

The judgments of the European Court of Human Rights give criteria for determining cruel forms of treatment of a person, including through inflicting severe physical pain on him or her: inflicting hits on feet (Case of *Salman v. Turkey*, 2000); physical violence, the so-called “Palestinian hanging” (Case of *Aksoy v. Turkey*, 1996); applying electricity to a person is the most serious form of a bad treatment that may cause severe pain and severe suffering and, therefore, should be considered torture, even if it does not lead to any long-term health problems (Case of *Polonskiy v. Russia*, 2009) and a number of other judgments. Thus, the criminal law of some countries contains the terminology of “physical pain”. However, there are some exceptions, namely: criminal legislation of Austria, Australia, Sweden, Norway, the Republic of Belarus, Bulgaria does not mention that pain must be physical, this way the understanding of this terminology is simplified.

The problems in understanding and applying some provisions of the Criminal Code of Ukraine, namely “physical pain” and “physical suffering” lead to irreversible mistakes in practice. [Kirenko \(2002\)](#), notes that it hardly makes sense to separate the concepts “severe physical pain” and “physical suffering” at defining torture (as well as torment), because they are interrelated: when a person experiences severe physical pain, he or she suffers. It is better to use only “physical suffering” concept by which severe physical pain can be characterized. [Denisova \(2014\)](#), does not agree to the above mentioned and notes that suffering is not pain, although these words are used as synonyms in everyday language. To determine the content of this term, we will define the terms of “physical suffering” and “moral suffering” that will allow us to separate the terms “pain” and “suffering”.

For better understanding of these terms, we offer to study suffering as a criminal law category. Thus, considering the objective criteria of suffering, it is necessary to distinguish time indicator as a main one, and the nature of the impact on the human body as a subsidiary indicator ([Derkunsky, 2014](#)). So, analysing suffering, it is necessary to note regularity, although scientists understand even this term differently. Thus, regularity is the same bodily injury more or less often caused by different objects ([Chitlov, 1974](#)); not less than three times ([Pogrebnyak, 1969](#)); physical violence, consisting of at least two socially dangerous acts, interrupted in time, at establishing the intent to commit a certain number of them in the future ([Simonov, 1983](#)); the main legal criterion for assessing the consequences such as mental suffering is not the depth of negative mental reactions but the time of their implementation. However, it is necessary to consider not only quantitative but also qualitative characteristic of the act, taking into account all the circumstances of the case when characterizing the regularity ([Derkunsky, 2014](#)). In medical terms, a typical feature of this condition is a stretch in time (up to several days, months or even years), “during which a more or less prolonged psycho-traumatic situation, protracted psychogenesis develops causing accumulation” of negative emotions in the victim ([Safuanov, 1998](#)).

The definition of physical and moral suffering is not provided by the Criminal Code of Ukraine (2001) that creates prerequisites for discussions related to understanding of such terms. Some scientists do not separate them and do not see any sense in their “dual” existence. “Physical suffering” has no clear criteria

for its definition and cannot have them because unlike trauma it is not a disease, pathological condition and pain, medical term defining harm to health (Veklenko & Galyukova, 2007). Suffering which is either pain with constant expectation of the possibility of its reoccurrence or especially severe pain or a specific form of pain has no definite legal framework (Simonov, 1983). In his research Yarmish (1992), notes that one and the same actions can affect a person both physically and morally at the same time. Thus, it is quite possible to state that physical torture of a person, as a rule, is accompanied by moral suffering. The same point of view is supported by other scientists who note that physical impact on a person is often combined with mental one, and vice versa (Dovgan, 2010). There is also a belief that it is difficult to assess unambiguously the appropriateness of introducing these socially dangerous consequences into the criminal offence composition of torture (Maradina, 2013).

Mikolenko (2005), notes that the concept of moral damage contains both moral experiences and moral suffering. Moral experiences are more likely to be involved in all cases of a criminal offence where there is a victim. To understand moral suffering the author gives an example of theft of property that has been not only money but also “an ideal value” for the owner (for instance, the theft of rare photographs, family jewellery, etc.) In this case, one should consider not only the moral experiences suffered by the victim in relation to the theft of property but also the moral suffering to be indemnified within civil proceedings (Part 3, Article 23, of the Civil Code of Ukraine). In our opinion, the author studied suffering only in the context of loss of a certain thing being of some value to the victim but without considering one of possible consequences of Article 127 of the Criminal Code of Ukraine (2001), namely: moral suffering. At the same time in his research Mikolenko (2005), notes that moral suffering is the only consequence of Article 127 of the Criminal Code of Ukraine, and this does not actually correspond to reality.

Some legal acts of Ukraine have combined the terms “pain” and “suffering” into one “moral damage”. Thus, according to Article 23 of the Civil Code of Ukraine, moral damage is in the following:

- physical pain and suffering that an individual has experienced in connection with a mutilation or other damage to health;
- mental suffering that an individual has experienced in connection with illegal behaviour towards him- or herself, their family members or close relatives;
- mental suffering that an individual has experienced in connection with the destruction or damage to his or her property;
- lowering of honour, dignity as well as business reputation of an individual or a legal entity.

Therefore, a lawmaker both in the Civil Code of Ukraine and in the Criminal Code of Ukraine distinguishes physical pain and suffering as well as uses terminology “mental suffering” (Paragraph 2, 3, Part 23 Article 23 of the Civil Code of Ukraine) that is also controversial (Suprpto et al., 2021; Fanani et al., 2021).

Conclusion

The health of an individual, being determinative and controversial category, remains one of the fundamental natural values (benefits) protected not only by criminal legislation of all countries of the world. Its theoretical content is still of debatable nature in the various fields of science (medicine, forensic medicine, psychology, law science, etc.) Along with the definition of “health”, its component (components) model (categories, levels) remains controversial, too. We believe that it should be used in the basis of our legislation and law enforcement practice in administration of law, therefore, it is reasonable to develop legal definition of the term “a person” using the knowledge of specialists from various fields of law.

The terminology which is widely used in criminal law such as “physical pain”, “physical and moral suffering”, as consequences from criminal offences provided by Articles 126 (Battery and Torment), 127 (Torture) of the criminal Code of Ukraine is problematic both in administration of law and understanding. Current legislation does not provide definitions of such terminology. Scientists sometimes substitute these terms in their research without separating them from each other. Certain scientific studies on the issues mentioned had been conducted and published before the adoption of the Criminal Code of Ukraine in 2001, so as for the content of Section II of the Special Part of the Criminal Code of Ukraine, it was remained without any significant changes in terms of criminal offences against the health of an individual. However, there are still many issues not studied in detail at present.

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