

Case Study

PUNISHABILITY IN RADIOECOLOGICAL SAFETY: CASE LAW FROM UKRAINE

Anastasiia Ternavska

ABSTRACT

Background: *The dangerous nature of illegal activities in the field of radioecological safety underscores the pressing need to prevent and deter the negative consequences of using nuclear and radioactive materials, to avert the threat of their occurrence, and to counteract criminal practices of this category, in particular through their criminalisation.*

This article aims to provide suitable analytical support for such activity, focusing primarily on identifying the most appropriate framework for punishability that aligns with the nature and degree of social danger posed by these actions and their legal consequences.

Methods: *A dialectical method of cognition was employed to investigate and substantiate the fundamental concepts examined in this article. Statistical methods were utilised to analyse judicial statistics for this category of cases and calculate the relevant indicators. A sociological method was applied to conduct a content analysis and generalise judicial practice. The logical-legal method was used to develop and substantiate ways to improve the sanctions under examination.*

Results and conclusions: *Based on official statistical data (Prosecutor General's Office and the State Judicial Administration of Ukraine), a long-term criminological analysis of the studied crimes was conducted. It determined absolute, average, and relative values, as well as indicators reflecting the ratio between recorded criminal offences, individuals whose court decisions entered into legal force during the reporting period, and convicted persons—both overall and for specific types of the studied offences.*

Key indicators of criminal conviction were determined, including conviction rates and structural composition, categorised by type of punishment and criminal offence. The research results revealed a significant gap between the types and amount of punishments provided for by the sanctions of the criminal-legal provisions under study and the factual punishability.

The findings led to the conclusion that the first parts of Articles 265 and 267¹ of the Criminal Code of Ukraine exhibit “excessive” penalisation. To construct an optimal punishability model for this category of crimes, proposals for changes to the sanctions of the studied provisions were substantiated.

1 INTRODUCTION

Humanity’s mastery over nuclear energy and its utilisation has fundamentally altered the global security environment, creating a new security paradigm for national and planetary concerns, all the while ecological pressures on the biosphere exist.

Considering the extremely high socially dangerous degree of infringements in the field of radioecological safety, the potential magnitude and irreversible nature of damages resulting from such breaches, and the global nature of nuclear hazards, the state has established and enforced the most suitable punitive measures to eradicate such conduct. These measures aim to incapacitate individuals from committing prohibited acts, facilitate correction, and promote general and special prevention.

As a result, punishment for committing criminal offences in radioecological safety remains one of the significant means of ensuring law and order—with penalisation (or establishment of punishability—serving as a key instrument of criminal law policy. The effectiveness of penalisation, particularly in this area, requires appropriate scientific support for such activities, given the complexity and multifaceted nature of determining an optimal level of criminal responsibility. This level must correspond to the nature and degree of social danger posed by the act, as well as its factual punishability.

In Ukrainian criminal law literature, the issues of criminalisation and penalisation have been the subject of research by R. Babanly, D. Balobanova, N. Gutorova, O. Knyzhenko, P. Melnyk, A. Mytrofanov, Ye. Nazymko, N. Orlovska, L. Pavlyk, Yu. Ponomarenko, P. Fris, and others. However, the specific issues related to the penalisation of criminal offences and judicial practice in the field of radioecological safety have been studied fragmentarily in domestic scientific literature.

2 DETERMINATIONS OF THE SUBJECT AND PERIOD OF RESEARCH

Several approaches to the concept of penalisation have emerged in scientific literature. A. Mitrofanov defines penalisation as the process of imposing adequate, fair, and appropriate sanctions for criminalised acts.¹ P. Fris characterises penalisation as a synthetic

1 Anatoliy A Mitrofanov, ‘General Ways of the Policy of Criminal Law in Ukraine: Forming and Realization’ (PhD (Law) thesis, VM Koretsky Institute of State and Law of National Academy of Sciences of Ukraine 2005).

process comprising the normative determination of the character of punishability of acts and the practical sentencing of a punishment for a specific crime, and other definitions.² Similar definitions are provided by other authors.³

N. Gutorova and Yu. Ponomarenko emphasise the distinction between two key features of penalisation: the legislative definition of the punishability of crimes, which establishes potential criminal responsibility applicable to anyone who may potentially commit such acts, and the sentencing of a punishment, which is carried out exclusively by the court. The latter involves determining the actual criminal responsibility of a specific person who has committed a crime.

O. Knyzhenko offers a slightly different perspective, viewing lawmaking and law-enforcement penalisation as sequential stages and noting that the process of penalisation of criminal offences is inextricably linked with the process of establishing criminal legal sanctions. The latter is primarily a formal reflection of the penalisation process. P. Melnyk concurs with this view.

The foundation for the penalisation of criminal offences in the field of radioecological safety lies in objectively dangerous forms of conduct related to the use of nuclear energy, handling of radioactive materials, and other sources of ionising radiation, which are declared criminally unlawful by the legislator and for which a specific type and measure of punishment are defined. Criminal law sanctions related to radioecological safety offences constitute a fundamental benchmark for the criminal law activity of the judicial system.

While improving criminal law provisions in the field of radioecological safety—which by their nature perceive the existence of law in the dimension of the proper, potential, and necessary—does not automatically lead to an increase in their effectiveness, the results of applying these legal prescriptions are found in actual practice. These results can not be acquired from the text of the law or through its interpretation. The only feasible approach is to conduct empirical research, a representative analysis that meets the requirements of both the reliability of the indicators being studied and the sufficiency of the number of indicators for selected analysis.

Through this research, the author has identified distinguishing features that enable the isolation of criminal offences in the field of radioecological safety into a relatively independent group. An element-structural analysis of the relevant criminal law provisions

2 Pavlo L Fris, *Criminal Law Policy of the Ukrainian State: Theoretical, Historical and Legal Problems* (Atika 2005) 332.

3 YeS Nazymko, 'General Overview of Political and Legal Processes of Establishment of the Measure of Punishment in Criminal Law Sanctions' (2012) 1 Bulletin of the Ministry of Justice of Ukraine 67; LV Pavlyk, 'Differentiation of the Criminal Responsibility, Punishment and Implementation of Punishment: Features of the Concepts Delimitation' (2015) 2 Scientific Journal of Lviv State University of Internal Affairs: Legal series 256; Dar'ya O Balobanova, 'Dynamics of the Criminal Law of Ukraine (Theoretical and Applied Research)' (DPhil (Law) thesis, National University "Odesa Law Academy" 2021).

has enabled us to delineate the scope of criminal offences in the field of radioecological safety. Based on the features of the object of infringement, the researched provisions can be separated into those, with the direct primary object being public relations in the field of radioecological safety and those where radioecological safety serves as an additional object of infringement. The first category, which encompasses criminal offences directly related to radioecological safety, includes Articles 265, 265¹, 266, 267¹, 274, and 327 of the Criminal Code of Ukraine. All other relevant articles fall under the second category.⁴

When researching the law-enforcement penalisation of criminal offences in the field of radioecological safety, the subject of our review will be the activity of law-enforcement agencies and the court regarding the application of criminal law provisions that establish responsibility for committing criminal offences in the field of radioecological safety in the narrow sense. The empirical basis of this study consists of official data contained in statistical reports such as Form No. 1 of the Office of the Prosecutor General (Uniform Report on Criminal Offenses)⁵ as well as Form No. 6 of the State Judicial Administration of Ukraine “Report on Persons Held to Criminal Responsibility and Types of Criminal Punishment”.⁶

2002 is a logical starting point for analysing the recording of criminal offences in the field of radioecological safety, as it represents the first full year following the enactment of the Criminal Code of Ukraine,⁷ which defines the system of criminal offences under study.

For a comparative analysis of law-enforcement practice indicators, the period from 2004 to 2023 has been selected, taking into account the specific features of how judicial statistics are recorded and reflected.

3 CRIMINOLOGICAL ANALYSIS OF CRIMINALITY IN THE FIELD OF RADIOECOLOGICAL SAFETY

A statistical analysis of the data from OPG Form No. 1, “Uniform Report on Criminal Offenses,” indicates a low level of recorded criminal offences falling under the scope of this study. Specifically, over the 22-year period from 2002 to 2023, a cumulative total of 760 criminal offences were documented under Articles 265, 265¹, 266, 267¹, 274, and 327 of

4 Anastasiia A Ternavska, ‘Doctrinal Approaches to the Systematization of Criminal Offenses in the Field of Radioecological Safety’ (2024) 31(1) Bulletin of Criminological Association of Ukraine 87, doi:10.32631/vca.2024.1.06.

5 ‘Statistics of the Office of the Prosecutor General: Annual Reporting’ (*Prosecutor General’s Office of Ukraine*, 2024) <<https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultativ-yih-dosudovogo-rozsliduvannya-2>> accessed 1 September 2024.

6 ‘Judicial Statistics: Annual Reporting’ (*Judicial Power of Ukraine*, 2024) <https://court.gov.ua/inshe/sudova_statystyka/> accessed 1 September 2024.

7 Criminal Code of Ukraine no 2341-III of 5 April 2001 (amended 20 August 2024) <<https://zakon.rada.gov.ua/laws/show/2341-14#Text>> accessed 7 September 2024.

the Criminal Code of Ukraine. Using the simple arithmetic mean, the average annual value of the absolute number of registered (recorded) criminal offences in the field of radioecological safety during this period is calculated to be 35.⁸

A structural analysis provided further insights into the nature of these offences, examining them as systemic objects under criminal law. This analysis also allowed us to determine their distribution (Fig. 1).

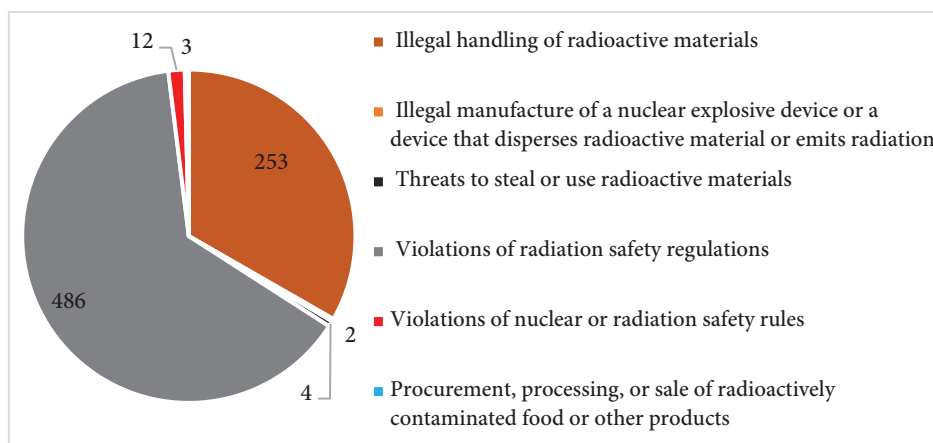


Figure 1. Structure of criminal offences in the field of radioecological safety in Ukraine during 2002-2023

As previous studies have shown,⁹ the dominant types of criminal offences in the field of radioecological safety are the illegal handling of radioactive materials (Article 265 of the Criminal Code of Ukraine), which accounts for 33.3% of cases, and violations of radiation safety regulations (Article 267¹ of the Criminal Code of Ukraine) representing 63.9% of offences. Other violations are significantly less frequent, with breaches of nuclear or radiation safety rules (Article 274 of the Criminal Code of Ukraine) constituting only 1.6%; threats to steal or use radioactive materials (Article 266 of the Criminal Code of Ukraine) at 0.5%; the procurement, processing, or sale of radioactively contaminated food or other products (Article 327 of the Criminal Code of Ukraine) at 0.4%; and the illegal manufacture of a nuclear explosive device or a device that disperses radioactive material or emits radiation at 0.3%. The analysis of the dynamic indicators (Fig. 2) suggests a wave-like pattern in the number of recorded criminal offences.

8 'Statistics of the Office of the Prosecutor General (n 5).

9 Yuliya Turlova and others, 'Criminological Analysis of Crimes in the Field of Nuclear and Radiation Safety' (2024) 1 Nuclear and Radiation Safety 9, doi:10.32918/nrs.2024.1(101).01.

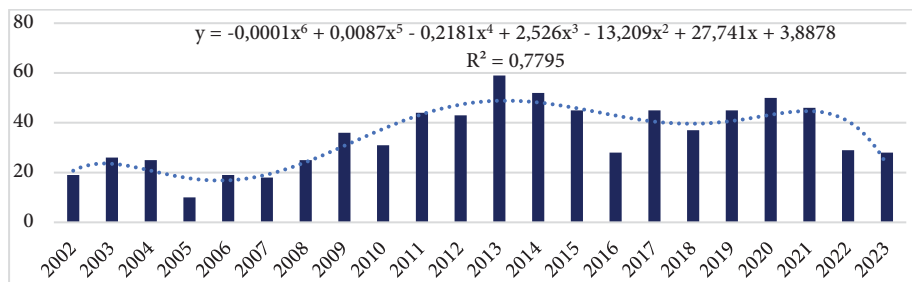


Figure 2. Dynamic in criminal offences related to radioecological safety in Ukraine from 2002 to 2023

To model the trend that describes the dynamics of the studied criminal offences, the author employed a 6th-ordered polynomial function ($y = -0,0001x^6 + 0,0087x^5 - 0,2181x^4 + 2,526x^3 - 13,209x^2 + 27,741x + 3,8878$). According to the constructed trend, the last period (2022–2023) shows a rapid decline in the number of recorded criminal offences: 29 in 2022 and 28 in 2023. This is due to objective factors related to armed aggression, intense hostilities, and partial dysfunction of the criminal justice system caused by its structural and functional imbalance.

4 ANALYSIS OF THE STATE OF CRIMINAL LAW-ENFORCEMENT PENALISATION OF CRIMINAL OFFENCES IN THE FIELD OF RADIOECOLOGICAL SAFETY

Attempts to assess the conformity of criminal punishment and its factual application (law-enforcement penalisation) with the conceptual tasks of combating criminality must rely on an empirical basis, particularly on a statistical analysis of law-enforcement practice.¹⁰

As the diagram illustrates, judicial practice in cases of this category was virtually non-existent before 2007. This changed with the criminalisation of offences such as the illegal manufacture of nuclear explosive devices or devices that disperse radioactive material or emit radiation (Article cr. 265¹ of the Criminal Code of Ukraine) and violations of radiation safety requirements (Article 267¹ of the Criminal Code of Ukraine). While the application of Article 265¹ had little impact on the situation with convictions in the field of radioecological safety (2 convicted persons or 0.4% over the analysis period), the number of persons convicted under Article 267¹ accounted for 92.2% of all total convictions. The remaining convictions were for the illegal handling of radioactive materials (Article 265) at 7.1% and threats to steal or use radioactive materials (Article 266) at 0.2%.

10 Judicial Statistics (n 6); Stanislav Mozol, Hennadii Polishchuk and Anastasiia Ternavska, 'Perspectives for the Imposition of Individual Types of Punishment in Ukraine' (2021) 9 Entrepreneurship, Management and Law 131, doi:10.32849/2663-5313/2021.9.19.

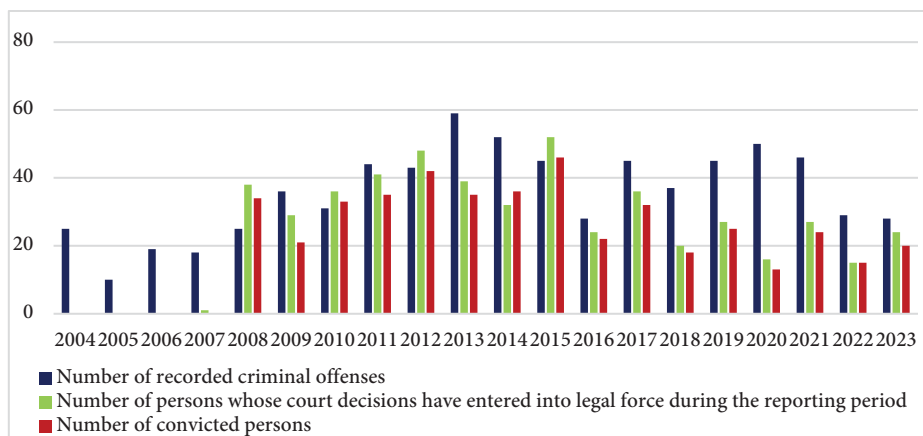


Figure 3. Correlation of indicators reflecting law-enforcement practice in the field of radioecological safety in Ukraine during 2004-2023

No convictions were recorded for violations of nuclear or radiation safety rules (Article 274) or for preparing, processing, or selling radioactively contaminated food or other products (Article 327). It should be noted that two persons were brought to criminal responsibility under Article 274, but the court closed both cases in 2007 (Part 2 of Article 274) in connection with amnesty and in 2011 (Part 1 of Article 274) on other grounds.

When considering the studied criminal offences, the ratio between the number of recorded criminal offences and the number of persons with court decisions that entered into force during the reporting period is 1.4:1, while the ratio between recorded criminal offences and convicted persons is 1.6:1. However, depending on the type of criminal offence, this ratio varies significantly. For instance, for Article 265, these indicators are 4.2:1 and 6.7:1; for Article 265¹, it is 1:1 for both. Under Article 267¹, these indicators are 1.1:1 and 1.2:1, whereas under Article 274, the ratio between the number of recorded criminal offences and the number of persons whose court decisions have entered into legal force during the reporting period is 6:1. In the case of Article 327, only one criminal offence was recorded (in 2013), but no court decisions or convictions followed.

As the calculated indicators show, the smallest gap between the number of recorded criminal offences, court decisions, and convicted persons is characteristic of violations of radiation safety requirements (Article 267¹). This is largely due to the obvious nature of such violations and their relatively low level of social danger, which facilitates their detection and prosecution. The majority of convicted persons (52.2%) were held accountable under Part 1 of Article 267¹ of the Criminal Code of Ukraine, which criminalises unauthorised movement beyond exclusion zones or zones of unconditional (mandatory) resettlement

without obtaining the permit provided for by law or conducting dosimetry control of food products of plant and animal origin, industrial or other products, animals, fish, plants, or any other objects. Part 3 of the same article, which applies to similar actions committed with the purpose of sale or involving the sale of such objects, accounts for 42.3% of convictions. Part 4, which targets more severe violations, such as repeated offences, actions committed by officials, or those resulting in fatalities or other grave consequences, represents 4.1% of convictions. Convictions under Part 2, which deals with the acquisition, use, or sale of objects with prior knowledge of their origin from the exclusion zone or the zone of unconditional (mandatory) resettlement, are rare, with only 0.5% of convicted persons (two individuals) being sentenced under this provision in 2012.

A typical example of a violation under Part 1 of Article 267¹ is case No. 1-кп/366/157/24, which occurred on 12 August 2023. In this case, the accused, without the permission required by law, bypassed the police checkpoints located around the perimeter of the exclusion zone, gained unauthorised access by cutting through the wire fence marking the boundary of the exclusion zone, and entered the 171-forest quarter of the Dityatkovske forestry, part of the State-Owned Specialized Enterprise “Pivnichna Pushcha”. During their unauthorised access, the accused collected six kilograms of “Chanterelle” mushrooms. While attempting to leave, they were detected and detained by police officers patrolling the territory of the exclusion zone.¹¹

Regarding the unlawful handling of radioactive materials under Article 265 of the Criminal Code of Ukraine, one-third (33.3%) of the total number of persons convicted of crimes in the field of radioecological safety were found guilty under this provision. Among 32 convicted of crimes under this article, only three persons were held accountable under Part 2, which pertains to committing the offence with the intent to entail the perishing of people, bodily injury, significant property damage, or substantial environmental pollution. The remaining convictions were under Parts 1 and 3. Notably, judicial decisions under Part 3 applied the aggravating circumstance of committing the offence in a prior arrangement by a group of persons. The subject matter of these offences included radioactive materials (depleted metallic uranium, caesium, strontium, radium) and devices containing sources of ionising radiation, radioactive substances, or nuclear materials, including radioisotope smoke detectors, radioisotope freeze alarms, aviation clock chronometers, emanation apparatus for saturating drinking water with radioactive radon-222 gas, and transport containers like the “Gammarid,” designed for transporting sources of ionising radiation.

Proceedings regarding violations of nuclear or radiation safety rules (Article 274 of the Criminal Code of Ukraine) have demonstrated the lowest likelihood of conviction,

11 Case no 1-кп/366/157/24 (Ivankiv District Court of Kyiv Oblast, 3 April 2024) <<https://reyestr.court.gov.ua/Review/118104400>> accessed 20 August 2024.

attributable to the complexity of such cases. These cases typically involve specially licensed persons operating in the nuclear energy sector, where they handle radioactive materials and other ionising radiation sources. Investigating and adjudicating such cases demands that law enforcement and judicial bodies grapple with a vast array of nuclear and radiation safety laws and regulations, requiring expert input and assessments.

Criminal proceedings under Article 274 have been initiated in cases where personnel at nuclear power plant personnel were alleged to have violated safety protocols and emergency response procedures, thereby creating a risk of severe consequences. Furthermore, investigations were launched under Article 274 following railway reports of radioactively contaminated scrap metal with gamma radiation levels significantly exceeding safety standards, posing a threat to life or serious harm.¹² The complexity and potential severity of such cases make them challenging to investigate and prosecute.

5 MAIN INDICATORS OF CONVICTIONS IN THE FIELD OF RADIO-ENVIRONMENTAL SAFETY (BY TYPES OF PUNISHMENT AND CRIMINAL OFFENSES)

Considering the types of sentences imposed on the convicted, a fine was the most frequently applied punishment, constituting 60.9% of all sentences. The limitation of freedom was imposed on 8.5%, while deprivation of freedom for a determined period was applied to 7.9% of those convicted. Only one convicted person was sentenced to arrest under Part 4 of Article 267.¹

A notable proportion of the conviction structure in the sphere of radioecological safety involves relief from punishment (22.2%). The most common form of relief from punishment was probation, applied in 88.9% of all exemptions. Amnesty accounted for 10.1% of cases, with other grounds accounting for the remaining 1.0%. Furthermore, 15 persons (3.4% of the total number of convicted) were sentenced under Article 69 of the Criminal Code of Ukraine, resulting in a less severe punishment than provided for by law.

Fig. 4 illustrates the structure of convictions by type of punishment in the field of radioecological safety in Ukraine for the period 2004-2023.

12 Turlova and others (n 9) 15.

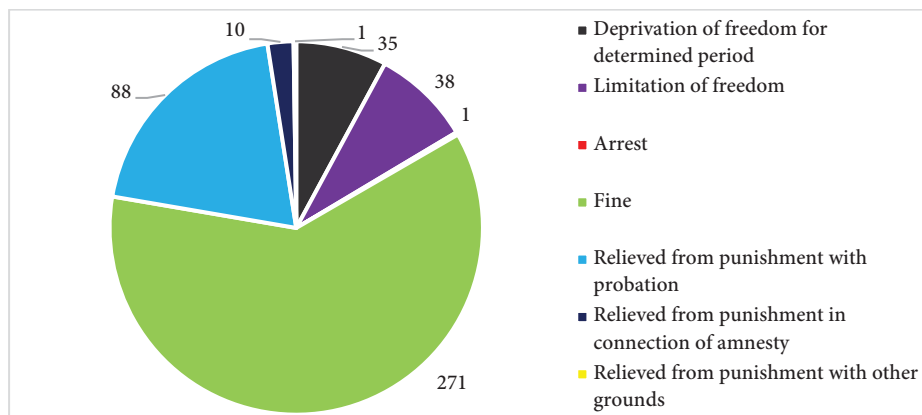


Figure 4. Structure of convictions in the field of radioecological safety for the period 2004-2023 in Ukraine

Sentencing for radioecological crimes exhibits a particular specificity. Despite a significant part of the non-alternative sanctions (due to the gravity of criminal offences)¹³ which provide for only one type of punishment due to the seriousness of the offences—typically in the form of deprivation of freedom for a determined period (as specified in Articles 265, Part 2 and 3, 265¹, 266, Part 4, 267¹, Part 2, and 327 of the Criminal Code of Ukraine)—this punishment constitutes approximately half of the total number of convictions. Even under Article 265, where all three parts prescribe deprivation of freedom, it was applied in just 25% of cases, with Part 3 of Article 265 accounting for 87.5% of those sentences. The remaining cases resulted in relief from punishment with probation (46.9%) or amnesty (25.0%).

For offences under Article 267,¹ punishment in the form of limitation of freedom was exclusively imposed, with 44.7% of sentences under Part 1¹ and 55.3% under Part 3.¹

The most common punishment for the commission of radioecological crimes is a fine, accounting for 60.9% of all sentences. The use of a fine has advantages over punitive measures involving the isolation of convicted persons from society, aligning with Ukraine's overall penal policy. Most often, fines were imposed for violations of radiation safety requirements (Part 1 of Article 267¹ of the Criminal Code of Ukraine) at a rate of 63.8%. For more qualified types of this crime, a fine was applied less frequently: Part 2 — 0.8%; Part 3 — 35.0%; Part 4 — 0.4%.

An analysis of judicial statistics allows us to conclude that the presence of alternatives to deprivation of freedom in the studied sanctions leads to the choice of alternative

13 Natalya A Orlovska, 'The Sanction of Criminal Law Norms: Fundamentals and Principles of Construction' (DPhil (Law) thesis, National University "Odesa Law Academy" 2012).

punishments (most often, a fine and limitation of liberty). However, in cases where the criminal offence is deemed by the legislator to have a higher level of social danger, and the sanction is alternative-free punishment (i.e. deprivation of liberty for a determined period), the court often opts to relieve the convicted person from punishment.

This phenomenon is not unique to sentencing in Ukraine; it is also in other categories of criminal offences. In the scientific literature, it is argued that the widespread application of provisions on relief from punishment in general and with probation, in particular, is explained by the stricter sanctions of certain articles of the Special Part of the Criminal Code of Ukraine, the lack of alternative punishments to deprivation of liberty, prison overcrowding, and excessive liberal judicial practice, which may indicate judicial corruption.¹⁴ Despite the significant improvements in prison overcrowding, the general statement still holds some validity.

Particular attention should be paid to judicial practice regarding criminal offences in the field of radioecological safety, which objectively pose a high level of social danger. For instance, no convictions have been recorded for the illegal manufacture of nuclear explosive devices or devices that disperse radioactive material or emit radiation (Article 265¹ of the Criminal Code of Ukraine), nor for threatening to steal or use radioactive materials (Article 266 of the Criminal Code of Ukraine). Even in the few cases that reached the court, the convicted were relieved from punishment. In this case, the law-enforcement decriminalisation of these criminal offences can be stated.

Identified trends in the application of criminal-legal provisions in the field of radioecological safety, which characterise the current state of sentencing, must serve as a specific guideline for the legislator and be considered when constructing or optimising the sanctions for these offences.

The analysis of sanctions under Article 267¹ of the Criminal Code of Ukraine, "Violation of Requirements of Radiation Safety Regime", indicates that it is inexpedient to apply such punishments as limitation of freedom and deprivation of freedom to persons guilty of an unqualified form of violation of radiation safety requirements (Part 1 of Article 267¹). Given the relatively low social danger of such offences, it would be more appropriate to include alternative sanctions like social tasks and probation, which, according to Article 51 of the Criminal Code of Ukraine, are less severe types of punishment. Probation, as a new novel of punishment, involves restrictions on the rights and freedoms of the convicted person as defined by law and the court's judgment, but it does not involve isolation from society (Article 59¹ of the Criminal Code of Ukraine). This approach mirrors the widely applied relief from serving a punishment with probation (Article 75 of the Criminal Code of Ukraine). The proposed changes would also allow such offences to be reclassified under

14 R Babanly, *Punishment in Ukraine: Theoretical and Applied Principles* (Desna Polihraf 2019) 352.

Article 12 of the Criminal Code of Ukraine as criminal misdemeanours, which corresponds with the level of social danger of such acts.

A similar situation is observed regarding the application of sanctions under Part 1 of Article 265 of the Criminal Code of Ukraine. Although deprivation of freedom is the only possible punishment for this offence according to the alternative sanction, only one person was sentenced to deprivation of freedom during the entire analysed period. The rest (seven convicts) were relieved from serving their sentence with probation, while one convict was fined under Article 69 of the Criminal Code of Ukraine. A closer examination of both judicial statistics and the circumstances of specific criminal proceedings¹⁵ allowed the author to conclude that the social danger of offences of this category, which objectively did not cause (and could not cause) real harm to human life, health, and the environment, as provided for by the sanction of Part 1 of Article 265, does not correspond to the punishment in the form of deprivation of freedom for a term of two to five years. Therefore, as with Part 1 of Article 267¹, it is proposed that the punishment for this offence be replaced with social tasks and probation. In addition to the arguments, the choice of social tasks, rather than a fine, is further supported by the fact that the vast majority of guilty persons in this category are neither employed nor studying.

Conversely, the situation under Part 1 of Article 265¹ of the Criminal Code of Ukraine, which criminalises the illegal manufacture of nuclear explosive devices or devices that disperses radioactive material or emits radiation, is significantly different. Such actions are objectively preparatory actions for the possible use of either a nuclear explosive device or a “dirty bomb”, both of which pose a high level of social danger. Therefore, given the gravity of such offences and their severe potential consequences, punishment in the form of a fine (which is formally the least severe punishment in the system of punishments) or limitation of freedom corresponds to the social danger of this crime. Thus, it is proposed to amend the sanction of Part 1 of Article 265¹ by excluding fines and limitation of freedom as possible punishments, ensuring that the sanction matches the level of social danger associated with these crimes.

15 Case no 1-кп/89/14 (Novoselytskyi District Court of Chernivtsi Oblast, 4 July 2014) <<https://reyestr.court.gov.ua/Review/39594734>> accessed 30 August 2024; Case no 314/2581/16-к (Vilnianskyi District Court of Zaporizhzhia Oblast, 5 April 2016) <<https://reyestr.court.gov.ua/Review/57079581>> accessed 30 August 2024; Case no 354/818/15-к (Yaremchan City Court of Ivano-Frankivsk Oblast, 2 June 2016) <<https://reyestr.court.gov.ua/Review/58053539>> accessed 30 August 2024; Case no 643/5448/18 (Kharkiv District Court, 20 December 2018) <<https://reyestr.court.gov.ua/Review/78726450>> accessed 30 August 2024; Case no 359/2700/20 (Boryspil City and District Court of Kyiv Oblast, 14 April 2020) <<https://reyestr.court.gov.ua/Review/88794137>> accessed 30 August 2024; Case no 462/6675/20 (Railway District Court of Lviv, 19 September 2023) <<https://reyestr.court.gov.ua/Review/113574660>> accessed 30 August 2024.

6 CONCLUSIONS

The article has provided a comprehensive analysis of judicial practice regarding criminal offences in the field of radioecological safety over the past 20 years, utilising official statistical reporting data. The author identified, generalised, analysed, and compared relevant absolute and relative indicators, assessing the level, structure, and dynamics of detecting such offences and providing a criminological interpretation of the findings. The effectiveness of the studied criminal law provisions was evaluated by determining the ratio of the recorded criminal offences of this category, persons whose court decisions entered into legal force during the reporting period, and convicted persons between 2004 and 2023. Additionally, the study explored the structure of convictions, categorising them by types of punishment and specific offences.

The analysis of judicial statistics revealed a tendency of courts to favour alternative punishments, such as fines and limitation of freedom when such options exist alongside deprivation of freedom in the studied sanctions. In cases where legislators deem a criminal offence to have a higher level of social danger and mandate an alternative-free sanction of deprivation of freedom, courts, in most cases, choose to relieve convicted individuals from punishment. This suggests an issue of “excessive” penalisation, particularly in the first parts of Articles 265 and 267¹ of the Criminal Code of Ukraine. To address this, it is proposed that the punishment in the form of deprivation of freedom in Part 1 of Article 267¹ of the Criminal Code of Ukraine—be replaced with social tasks and probation, which would allow reclassifying such acts as criminal misdemeanours and would correspond to the level of their social danger.

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AUTHOR'S INFORMATION

Anastasiia Ternavska

Cand. of Legal Science (PhD in Law), Department for Criminal Law, Criminology and Judicial System Issues, V.M. Koretsky Institute of State and Law of National Academy of Sciences of Ukraine, Kyiv, Ukraine

anastasiia.ternavskaya@gmail.com

<https://orcid.org/0000-0003-2624-7645>

Corresponding author, responsible for conceptualization, methodology, data collection, investigation and writing – original draft.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Практична нотатка

КАРАНІСТЬ У СФЕРІ РАДІОЕКОЛОГІЧНОЇ БЕЗПЕКИ: СУДОВА ПРАКТИКА УКРАЇНИ

Анастасія Тернавська

АНОТАЦІЯ

Вступ. *Небезпечний характер протиправної діяльності у сфері радіоекологічної безпеки підкреслює нагальну необхідність попередження та стримування негативних наслідків використання ядерних та радіоактивних матеріалів, запобігання загрозі їх виникнення та протидії злочинним діям цієї категорії, зокрема через їх криміналізацію.*

Ця стаття має на меті забезпечити відповідну аналітичну підтримку такої діяльності, зосередившись, насамперед, на визначенні найбільш прийнятної системи покарання, яка відповідає характеру та ступеню суспільної небезпеки цих дій та їхніх правових наслідків.

Методи. *Для дослідження та обґрунтування фундаментальних понять, розглянутих у цій статті, було використано діалектичний метод пізнання. Для аналізу судової статистики за вказаною категорією справ та розрахунком відповідних показників задіяно статистичні методи. Для проведення контент-аналізу та узагальнення судової практики застосовано соціологічний метод. Логіко-юридичним методом розроблено та обґрунтовано способи вдосконалення досліджуваних санкцій.*

Результати та висновки. *На основі офіційних статистичних даних (Генеральної прокуратури та Державної судової адміністрації України) проведено багаторічний кримінологічний аналіз досліджуваних злочинів. Визначено абсолютні, середні та відносні величини, а також показники, що відображають співвідношення між зареєстрованими кримінальними правопорушеннями, особами, судові рішення щодо яких набрали законної сили протягом звітного періоду, та засудженими особами – як у цілому, так і за окремими видами досліджуваних злочинів.*

Визначено ключові показники судимості, зокрема судимість та структурний склад за видами покарань та кримінальними правопорушеннями. Результати дослідження виявили значний розрив між видами та розмірами покарань, передбачених санкціями досліджуваних кримінально-правових положень, та фактичною караністю.

У результаті було зроблено висновок, що частиною першою статті 265 та 267¹ Кримінального кодексу України передбачено «надмірну» відповідальність. Для побудови оптимальної моделі караності цієї категорії злочинів обґрунтовано пропозиції щодо зміни санкцій досліджуваних положень.

Ключові слова: кримінальні правопорушення у сфері радіоекологічної безпеки, пеналізація, правозастосовна практика, статистичні дані, покарання, санкція.