APPLICATION OF THE PRINCIPLE OF INDIVIDUALIZATION OF PUNISHMENT IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

UDC 343.8; 341.1/8
DOI https://doi.org/10.32782/ehrlichsjournal-2025-13.10

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Abstract. The study highlights the problem of applying the principle of individualization of punishment in the case law of the European Court of Human Rights. It is noted that the issues of sentencing and the implementation of the individualization principle remain among the most debated in contemporary criminal law. Ensuring a balance between society's need for effective protection against crime and the observance of the defendant's rights constitutes a complex task that directly affects the level of trust in the judiciary. In this context, the principle of individualization of punishment serves as a crucial guideline, allowing the avoidance of formalism and guaranteeing fairness in each specific criminal proceeding. The principle requires courts, when imposing punishment, to take into account the gravity of the crime, the offender's personal characteristics, as well as mitigating and aggravating circumstances, thereby directing sentencing toward the goals of prevention and rehabilitation. The case law of the European Court of Human Rights convincingly demonstrates that ignoring the personalized aspects of the offender's identity contradicts the principle of justice. Conversely, excessively harsh, standardized, or «automatic» sanctions without a genuine opportunity for review are incompatible with Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The European Court of Human Rights has been consistent in affirming that the application of the principle of individualization of punishment requires judicial decisions to be based not only on the formal elements of a criminal offense but also to consider the individual's conduct, motives, and potential for resocialization. Individualization of punishment is not merely a technical-legal instrument but a fundamental guarantee of a fair trial that combines the protection of society with the affirmation of human rights. Its consistent implementation contributes to the humanization of criminal policy, compliance with European standards, and the preservation of public trust in justice.

Ukraine's national criminal policy faces a range of challenges, including disproportionality in the design of sanctions and insufficient flexibility in the choice of penalties. This underscores the need to expand the discretionary powers of courts to ensure genuine individualization. At the same time, the principle of justice serves as a methodological foundation that imbues individualization with practical meaning.

Key words: Imposition of punishment, principle of individualization of punishment, principle of justice, case-law of the European Court of Human Rights, judicial discretion.

ЗАСТОСУВАННЯ ПРИНЦИПУ ІНДИВІДУАЛІЗАЦІЇ ПОКАРАННЯ В ПРАКТИЦІ ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ

УДК 343.8; 341.1/8
DOI https://doi.org/10.32782/ehrlichsjournal-2025-13.10

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Анотація. У дослідженні актуалізується проблема застосування принципу індивідуалізації покарання в практиці Європейського суду з прав людини. Зауважено, що проблематика призначення покарання та реалізації принципу індивідуалізації залишається однією з найбільш дискусійних у сучасному кримінальному праві. Забезпечення балансу між суспільною потребою в ефективному захисті від злочинів і дотриманням прав обвинуваченого – складне завдання, яке безпосередньо впливає на рівень довіри до правосуддя. У цьому контексті принцип індивідуалізації покарання виступає ключовим орієнтиром, що дозволяє уникнути формалізму та гарантувати справедливість у кожному конкретному кримінальному провадженні. Принцип індивідуалізації покарання при призначенні покарання вимагає від суду врахування тяжкості злочину, особистих характеристик винного, а також пом'якшуючих і обтяжуючих обставин, спрямовуючи призначення покарання на досягнення цілей превенції та виправлення. Практика Європейського суду з прав людини переконливо доводить, що ігнорування персоніфікованих аспектів особи правопорушника суперечить принципу справедливості. І навпаки, надмірно суворі, шаблонні чи «автоматичні» санкції без реальної можливості перегляду покарання є несумісними зі статтею 3 Конвенції про захист прав людини та основоположних свобод. Практика Європейського суду з прав людини послідовна в питанні застосування принципу індивідуалізації покарання – судове рішення повинно ґрунтуватися не лише на формальних елементах складу злочину, але й враховувати поведінку, мотиви та потенціал ресоціалізації особи. Індивідуалізація покарання є не лише техніко-юридичним інструментом, а фундаментальною гарантією справедливого судового розгляду, що поєднує захист суспільства з утвердженням прав людини. Її послідовна реалізація сприяє гуманізації кримінальної політики, відповідності європейським стандартам та збереженню довіри до правосуддя.

Національна кримінальна політика України стикається з низкою проблем, зокрема диспропорціями в конструюванні санкцій та відсутністю достатньої гнучкості у виборі міри покарання. Це зумовлює потребу розширення дискреційних повноважень суду для забезпечення реальної індивідуалізації. Водночас принцип справедливості виступає методологічною основою, що наповнює індивідуалізацію практичним змістом.

Ключові слова: призначення покарання, принцип індивідуалізації покарання, принцип справедливості, практика Європейського суду з прав людини, дискреційні повноваження суду.

Establishing a proportionate balance between society's need for effective protection against criminal encroachments and taking into account the position of the victim when determining the liability of individuals subject to criminal prosecution remains a complex task. Attempts to identify optimal mechanisms for resolving criminal-law conflicts increasingly lead to the further humanization of criminal policy and its approximation to European standards in the system of sentencing. The case law of the European Court of Human Rights consistently demonstrates that disregarding the individual characteristics of the offender and the specific circumstances of the committed act is incompatible with the requirements of modern justice. Only a differentiated approach to assessing the criminal offense and the personality of the offender ensures the realization of the right to a fair trial. Therefore, an in-depth study of this issue is crucial for harmonizing national criminal policy with European requirements and standards.

Doctrinal approaches in the light of the legal mechanism for implementing the principle of individualization of punishment in criminal law, the development of practical recommendations regarding the consideration of individualization criteria in sentencing, the assessment of their effectiveness, efficiency, and systemic coherence, as well as the generalization of trends in the further development of the institution of sentencing in line with European standards of criminal justice, are substantiated by V. K. Hryshchuk, O. O. Kvasha, V. O. Navrotskyi, M. I. Panov, M. I. Khavroniuk, and others.

Individualization of punishment is the determination by the court of the type and specific measure of punishment based on the consideration of the individual degree of gravity of the committed criminal offense, the personalized characteristics of the offender, and a number of mitigating and aggravating circumstances, aimed at ensuring the achievement of the goals of general prevention (restoration of social justice) and special prevention (rehabilitation of the convicted person).

In accordance with the requirements of Article 65 of the Criminal Code of Ukraine, when imposing a punishment, the court shall take into account the degree of gravity of the committed offense, the personal characteristics of the offender, and the circumstances of the case that mitigate or aggravate the punishment [2]. The general principles of sentencing determine the fundamental provisions that guide the court in selecting the appropriate measure of punishment in each criminal proceeding. Despite their abstract nature, these principles acquire concrete expression depending on the elements of the committed criminal offense and the personality of the offender to whom the punishment is applied. Each of the criteria set forth in the provision on the general

principles of sentencing possesses independent significance as a distinct component, which must necessarily be taken into account in the imposition of criminal punishment.

An essential function of the individualization of punishment in criminal law is to stimulate the rehabilitation of the convicted person and to deter him or her from committing new offenses. Disregarding the requirements of individualization diminishes the effectiveness of legal liability and often becomes the source of errors in law enforcement practice (in particular, in cases of unfounded and unlawful prosecution, the imposition of unjust and disproportionately severe or overly lenient punishments). At the stage of executing a specific measure of punishment, such neglect leads to an insufficient consideration of the dynamics of rehabilitation and the degree of resocialization of the offender. In the case of Hutchinson v. the United Kingdom, the European Court of Human Rights clarified that the state must ensure a genuine possibility of reviewing the sentence, where the individualization of the sanction at subsequent stages of its execution plays a crucial role [6]. The Court emphasized that a punishment cannot be reduced to an «automatic mechanism» of deprivation of liberty, as this would contravene both the principle of proportionality and the fundamental respect for human dignity.

Contemporary social realities clearly demand the integration of effective criminal justice protection with guarantees for the observance of fundamental human rights. In such circumstances, the predominance of repressive approaches over the humanistic principles of criminal policy becomes particularly hazardous. In this context, the principle of individualization of punishment functions not only as a formal and technical instrument that helps to avoid mechanical sentencing, but also as a conceptual guide capable of ensuring fairness and proportionality in each criminal proceeding, thereby contributing to the preservation of public trust in the judiciary. The principle of individualization has gained particular significance in the practice of the European Court of Human Rights in cases concerning excessively severe sanctions. Indeed, in the case of Scoppola v. Italy, the Court emphasized that the punishment must be proportionate both to the gravity of the offense and to the personal characteristics of the defendant [7]. Failure to take mitigating circumstances into account, or their formalistic disregard, constitutes a violation of the requirements of the Convention. A similar approach is evident in the case of László Kiss v. Hungary, where the European Court of Human Rights noted that even in cases of serious offenses, courts are obliged to analyze the individual characteristics of the person, as only such a decision can meet the standards of a «fair balance» [8].

Judicial practice demonstrates that general legislative principles for selecting and imposing the most appropriate type and measure of punishment are insufficient. Consequently, when addressing issues related to sentencing, courts face certain problems that sometimes do not have straightforward solutions. Judges examining the materials of a criminal proceeding continually encounter numerous practical questions regarding the determination of a specific punishment.

In circumstances where the criminal law contains generalized and abstract formulations of criminal offenses and, as a result, is of a general nature, while the acts themselves and the offender are concrete and individualized, the question of the appropriateness of judicial discretion in such proceedings becomes evident.

Taking into account that the individualization of punishment entails a certain degree of judicial discretion, permissible within the limits established by law (within the sanctions of the articles of the Special Part of the Criminal Code and within the framework provided by the provisions of the General Part regulating sentencing), when determining the differentiation of punishment within statutory sanctions, the legislator must follow the rule that the limits of criminal law sanctions can be considered optimal when the range of choice they establish for the type and measure of punishment allows the court to maximize the individualization of the sentence at the time of its imposition. This requirement is clearly reflected in the decision of Kafkaris v. Cyprus, in which the Court considered the issue of life imprisonment and emphasized that the principle of proportionality presupposes the existence of mechanisms for mitigation or review of the punishment, as a severe sanction applied automatically, without regard to the specifics of the case, is incompatible with Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms [9].

The law should guide judicial practice not towards uniform punishments for similar offenses, but rather ensure a consistent approach in applying the criteria for determining the measures of punishment. Accordingly, within this framework, the issue extends not only to the breadth of statutory sanctions but also to the prevention of violations in the implementation of the principle of individualization of punishment. At the same time, an analysis of the legislative design of the sanctions in the articles of the Special Part of the Criminal Code of Ukraine from the perspective of ensuring individualization of punishment reveals a number of disproportions and problematic aspects, among which the following are particularly significant:

Firstly, the limits of sanctions in the criminal law do not always depend on the category of the criminal offense. A comparison of offenses of the same category within the basic and aggravated elements, yet with different degrees of social danger, demonstrates a violation of proportionality between the limits of the sanction and the gravity of the criminal offense;

Secondly, from the perspective of individualization of punishment and the achievement of the objectives of criminal liability, it is entirely unjustified to establish only a single type of punishment for a criminal offense that does not pose significant social danger. In other words, the legislator often fails to observe, and sometimes completely ignores, the principle that the less dangerous the offense, the greater the range of punishments that the sanction of an article in the Special Part of the Criminal Code of Ukraine should provide for the offender.

Thirdly, the design of the sanctions in certain articles of the Special Part of the Criminal Code of Ukraine, from the standpoint of individualization of punishment, places the court in a difficult position: the legislative model of certain sanctions does not ensure a smooth transition from one type of punishment to another, thereby violating the harmonious connection between punishments within the sanction. In situations of obvious imbalance within the system of sanctioning provisions, the court, when implementing the principle of individualization of punishment at the time of sentencing, is forced to move abruptly from one type of punishment to another.

Sentencing within the limits of the article's sanction (or part of an article's sanction) of the Special Part of the Criminal Code of Ukraine, as a principle of sentencing, is the most complex to apply. On one hand, this principle imposes on the court only the obligation not to exceed the limits of the sanction and to ensure the selection of such a type and measure of punishment as provided by the respective sanction. At the same time, it is complex because the majority of articles (or parts of articles) in the Special Part of the Criminal Code of Ukraine provide liability for the commission of alternative acts, specifying alternative types of punishment without establishing clear criteria according to which the judge should choose one type and/or measure of punishment in accordance with one or another alternative act [1, c. 86].

The statutory establishment of upper and lower limits for evaluating certain groups of circumstances that influence the severity of punishment is entirely justified. The Criminal Code and the Criminal Procedure Code grant the judge the right, in the presence of certain circumstances specified in detail or at least in general terms, to determine the type and measure of punishment in accordance with their personal conviction and legal conscience, within the limits established by the General and Special Parts of the Criminal Code of Ukraine, so that they correspond to the objectives of punishment, in particular, the correction of the convicted person and the prevention of new crimes. The European Court of Human Rights has emphasized the impermissibility of establishing rigid frameworks that deprive judges of the possibility to individualize punishment. In particular, in the case of Murray v. the Netherlands, the Court stressed that the very opportunity for a prisoner to demonstrate changes in behavior and obtain a review of the sanction constitutes a fundamental guarantee of a democratic society [10].

The essence of the principle of individualization of punishment lies in the necessity of accurately and consistently taking into account all the distinctive features of a specific offense and its perpetrator, and selecting an appropriate measure of punishment in order to achieve optimal results in influencing the offender's consciousness and behavior, as well as preventing the commission of further offenses.

The requirement to implement the principle of individualization obliges the competent state authority or official to adopt an exclusively differentiated approach when considering a specific case, not only at the stage of sentencing but also at other stages of the development of criminal legal relations – from their inception to their termination [1, c. 88]. It excludes formalism in determining the measure of criminal liability, as it presupposes the personalization of punishment in the interest of achieving its objectives in each specific case. From this methodological standpoint, the individualization of punishment enables the assessment of an offense not only from a formal perspective but also from a substantive one, taking into account the full range of individual circumstances that characterize the crime and the offender.

In light of the above, it can be asserted that the formal aspect of justice is directly linked to the individualization of punishment and presupposes the most complete and comprehensive consideration of all criteria for sentencing to ensure that the punishment is truly proportionate to the offense committed. Just punishment can only be imposed in accordance with the requirement of its individualization, just as the individualization of punishment cannot be achieved if the punishment imposed is unjust. Moreover, individualization, grounded in the principles of justice, not only allows for the selection

of an appropriate measure of legal liability but also facilitates, at any stage of the judicial process, the termination of proceedings, provided this does not conflict with the requirements of inevitability, legality, and justification of the punishment. In this context, the statement by D.A. Shevchenko remains particularly relevant: «the principle of the justice of punishment has a decisive influence on the substantive aspect of the principle of individualization of sentencing; beyond the principle of justice, the principle of individualization loses its fundamental and practical significance» [5, c. 97]. The case law of the European Court of Human Rights consistently affirms that the principle of individualization of punishment constitutes one of the key guarantees of a fair trial. The Court emphasizes that the sentence imposed must be based not only on the formal elements of the criminal offense but also take into account the offender's personal characteristics, social background, motives, and the specific circumstances of the case. This approach is particularly evident in the case of Vinter and Others v. the United Kingdom, where the Court noted that life imprisonment without the possibility of review contravenes the requirements of Article 3 of the Convention, as it deprives the individual of the opportunity to hope for a reassessment of their situation in light of their behavior, personal development, and rehabilitative potential [11].

When imposing a sentence, there is an attributive requirement to achieve precise and proportionate accountability of the offender for the committed act, taking into account the characteristics of the internal processes that preceded the criminal offense or the differing motives that determined it. This requirement remains merely a declarative aspiration if the maximum possible individualization of the sentence is not properly realized.

Accordingly, analyzing the foregoing, the following conclusions can be drawn: the practice of the European Court of Human Rights demonstrates that the individualization of punishment is a key concept of criminal justice, combining the preventive objectives of sentencing with the protection of fundamental human rights. Consequently, the institution of individualization serves a dual function: it ensures the observance of human rights and strengthens public trust in the judiciary as an instrument of justice.

The principle of individualization of punishment constitutes an integral element of the rule of law and fair trial, and ignoring the personalized characteristics of the offender leads to violations of the European Convention on Human Rights. In European judicial practice, the determining factor is not the formal conformity of the punishment to the statutory sanction, but its proportionality to the severity of the offense and its capacity to account for the offender's potential for rehabilitation.

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Дата надходження статті: 15.06.2025
Дата прийняття статті: 15.07.2025
Опубліковано: 22.09.2025