

Yaroslav Mudryi National Law University

SYLLABUS OF ACADEMIC COURSE

“Transitional justice”

Level of higher education – the second (master's) level

Degree of higher education – master

Field of knowledge – 08 Law

Specialty – 081 Law

Educational program/specialization – "International Law"

Discipline status – supplementary

Recruitment year - 2022

Kharkiv 2022

Syllabus of academic course "Philosophy" for students of the second (master's) level of higher education in the field of knowledge 08 "Law"/ 29 "International Relations", specialty 081 "Law". Kharkiv: Yaroslav Mudryi National Law University , 2022.

Developer :

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Approved at a meeting of the Department of Theory and Philosophy of Law
(protocol № 11 from May 31, 2021)
updated (protocol № 4 of June 10, 2022)

Head of the department _____ Petryshyn O.V.

Information about the lecturer

The name of the academic course	Transitional justice
Type of educational discipline	supplementary
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Consultations	The teacher is at the department according to the schedule Kharkiv, Pushkinska, str. 77
Online consultations	Zoom conference ID : 361 204 1387 , access code: 488175

Abstract

The subject of the academic discipline is the concept of transitional justice, which refers to a set of practices and mechanisms that are used to overcome the consequences of violations of human rights and humanitarian law. We are talking about situations during and after : 1) armed conflicts, 2) the rule of antidemocratic regimes, 3) other situations of mass violation of human rights. As defined by the international legal framework, transitional justice is a set of judicial and non-judicial mechanisms aimed at : a) bringing to justice persons guilty of international crimes and other violations of human rights in conditions of armed conflict, b) ensuring compensation for the damage caused victims of human rights violations and international crimes, c) reconciliation and the search for truth, d) carrying out institutional reforms to prevent the repetition of practices of mass human rights violations in the future. This complex of mechanisms is implemented primarily by the state within the limits of its positive obligations in the field of human rights; within the framework of international criminal justice, in particular the International Criminal Court (hereinafter - the ICC); by the efforts of other states, international experts, business, the public sector, etc. That is why to understand the subject of the discipline “Transitional justice”, a student who has chosen this discipline should understand: human rights law (in particular, the basic provisions on the positive

obligations of the state in the field of human rights), the foundations of the state system, the basic provisions on the rule of law, the law of international organizations, international public law , international humanitarian law, international criminal law.

As part of the *introduction to the course* , the following questions are considered:

- historical origins of the concept of transitional justice;
- a modern approach to understanding transitional justice;
- international public law, international humanitarian law, international criminal law, international human rights law;
- mechanisms of transitional justice in normative legal acts of Ukraine;
- dilemmas of transitional justice (on the example of individual cases).

The substantive (main) part of the course involves consideration of the following issues:

- prosecution of persons guilty of the most serious crimes: international criminal courts and tribunals, the International Criminal Court, national mechanisms for prosecution of persons guilty of the most serious crimes, Ukraine and the International Criminal Court;

- truth-seeking, reconciliation and establishment of historical justice: the right to the truth in international documents on human rights, ways of realizing the right to the truth, reconciliation (truth and reconciliation commissions);

- provision of compensation for damages to those who suffered from violations of human rights and crimes (reparations), - the right to compensation for damages (reparations), positive obligations of the state in the context of reparations, the role of the International Criminal Court, the main principles of assigning reparations , types of reparations;

- reforming institutions as a guarantee that human rights violations will not be repeated in the future: institutional reforms , lustration measures, programs disarmament, demobilization and reintegration (DDR).

The purpose and tasks of the discipline

The purpose of the discipline - formation of a system of knowledge, as well as skills and abilities related to the protection of human rights and the restoration of the rule of law in the conditions of an armed conflict and after its end. Educational discipline " Transitional justice / Transitional justice" contributes to raising the general level of legal culture of students of higher education and increasing the sensitivity of higher legal education to the problems of armed conflict and other situations that threaten human rights and the rule of law.

Tasks :

- formation of a complex of legal competencies, which are necessary for a modern lawyer who understands and is aware of the peculiarities of the protection of human rights in conditions of threats such as armed conflict;
- formation of a system of theoretical and applied knowledge about transitional justice from the point of view of a modern approach;
- development of skills and abilities to analyze norms of international public law, international humanitarian law, international criminal law and international human rights law, as well as national policies in the field of transitional justice;
- development of the ability to analyze the application of transitional justice mechanisms based on legal norms and taking into account the specific context, including in relation to Ukraine;
- development of fluency in English-language concepts and categories that form the basis of the modern concept of transitional justice;
- improving the ability to search and process scientific and normative, historical and reference information.

Educational discipline in the structure of the educational and professional program. Interdisciplinary connections

Prerequisites : "Theory of law", "Constitutional law of Ukraine", "Criminal law (General part)", "Criminal law (Special part)", "International law".

Simultaneous courses: " International criminal law ".

Expected learning outcomes of a student of higher education

As a result of mastering the academic discipline, the student of higher education must demonstrate the following learning outcomes:

1. Understand the origins of the concept of transitional justice
2. Be able to carry out a comprehensive analysis of international and national legal documents and other sources that are the basis of transitional justice.
3. Be able to apply modern types of legal argumentation to the concept of transitional justice.
4. Understand the essence of criminal responsibility for international crimes as a component of transitional justice policies.
5. To understand the legal nature of the institution of amnesties and the peculiarities of their application in the context of transitional justice.
6. Understand the role of national prosecutors and judges in the investigation and administration of justice regarding international crimes.
7. To understand the nature of the right to the truth in international human rights law and to be able to analyze ways of realizing the right to the truth of a transitional society.
8. Understand the importance and role of truth and reconciliation commissions.
9. To be able to appeal to non-legal factors in the course of justifying individual policies of transitional justice.
10. Understand the main approaches to the concept of "justice" and their applicability in transitional justice policies.
11. To be able to analyze the specifics of ensuring the right to compensation for damage caused by an armed conflict.
12. Understand the importance of institutional reforms in terms of implementing transitional justice policies.

**Types of educational activities and independent work
for students of full-time higher education**

No	Lecture classes (contact)		Individual work (in hours)
	Topics of lectures	Topics practical classes	
1	Introduction to the course: origins of the concept of transitional justice, modern approach to the concept of transitional justice.	Historical origins of the concept of transitional justice. Dilemmas of transitional justice	8
2	Overview of sources and basic components (mechanisms) of transitional justice.	International acts related to transitional justice. Overview of the legislation of Ukraine.	8
3	International criminal law.	International criminal law.	8
4	Prosecution of persons guilty of the most serious crimes within the framework of national criminal law systems	Prosecution of persons guilty of the most serious crimes within the framework of national criminal law systems	8
5	The right to the truth in the context of transitional justice	The right to the truth in the context of transitional justice	8
6	Truth-seeking and Reconciliation Commissions	Truth and Reconciliation Commissions	8
7	The right to reparations in the context of transitional justice.	The right to damages (reparations) in the context of transitional justice.	6
8	Basic principles of reparation. Types of reparations	Basic principles of reparation. Types of reparations	8
9	Institutional reforms. Purification of power (lustration).	Institutional reforms. lustration	8
10	Disarmament, demobilization and reintegration (DDR).	Disarmament, demobilization and reintegration (DDR).	8

**Types of educational activities and independent work
for students of higher education in the correspondence form of education**

No	Topics of lectures	Topics of practical classes	Individual work (in hours)
1	Introduction to the course: origins of the concept of transitional justice, modern approach	Introduction to the course: origins of the concept of transitional justice, modern approach to the concept of	110

	to the concept of transitional justice.	transitional justice.	
2	International criminal law.		
3	The right to damages (reparations) in the context of transitional justice.	-	

Independent work of students

Independent work of students is carried out in the following forms:

- preparation of an individual final written work;
- development of new scientific and educational literature, generalization of practice, etc.;
- studying and working out the best-known practices of implementation of transitional justice in the world;
- preparation of annotations and summaries of books, articles, other publications, fiction and documentary films;
- performance of practical tasks, completion of online courses in educational programs;
- essay writing;
- preparation of presentations on complex and complex topics;
- preparation for practical classes, colloquiums and testing;
- preparation of theses of reports for scientific events.

Tasks and methodical recommendations for independent work are given in Methodical materials for the educational discipline " Transitional justice / Transitional justice" for students of the second (master's) level of higher education in the field of knowledge 08 "Law" specialty 081 "Law.

***Educational, methodical and information background
of academic course***

Normative and legal acts

1. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987 URL : https://zakon.rada.gov.ua/laws/show/995_068#Text
2. European Convention on the Non-Application of Statutes of Limitations to Crimes Against Humanity and War Crimes of November 26, 1968 URL : https://zakon.rada.gov.ua/laws/show/995_168#Text
3. Universal Declaration of Human Rights of December 10, 1948 URL : https://zakon.rada.gov.ua/laws/show/995_015#Text
4. Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948 r. URL: https://zakon.rada.gov.ua/laws/show/995_155#Text
5. Convention on the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 and Protocols to it. URL: https://zakon.rada.gov.ua/laws/show/995_004#Text
6. UN Convention on the Elimination of All Forms of Discrimination against Women of October 6, 1979 URL : https://zakon.rada.gov.ua/laws/show/995_207#Text
7. UN Convention on the Rights of the Child of November 20, 1989 URL : https://zakon.rada.gov.ua/laws/show/995_021 # Text
8. UN Convention on the Suppression of the Crime of Apartheid and its Punishment of November 30, 1973 URL : https://zakon.rada.gov.ua/laws/show/995_149#Text
9. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984 r. URL: https://zakon.rada.gov.ua/laws/show/995_085#Text

10. International Convention on the Protection of All Persons from Enforced Disappearances of December 20, 2006 URL : https://zakon.rada.gov.ua/laws/show/995_154#Text

11. International Convention on the Elimination of All Forms of Racial Discrimination of December 21, 1965 URL : https://zakon.rada.gov.ua/laws/show/995_105#Text

12. Basic principles and guidelines relating to the right to legal protection and compensation for victims of gross violations of international human rights norms and serious violations of international humanitarian law. UN, dated 07/25/2005 . URL: https://zakon.rada.gov.ua/laws/show/995_e53/card2#Card

13. Rome Statute of the International Criminal Court of July 17, 1998 r. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text

14. Optional Protocol to the Convention on the Rights of the Child on the Participation of Children in Armed Conflicts of May 25, 2000 URL : https://zakon.rada.gov.ua/laws/show/995_795#Text

15. Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice (2010). URL: <https://www.un.org/ruleoflaw/blog/document/guidance-note-of-the-secretary-general-united-nations-approach-to-transitional-justice/>

16. The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General (2004). URL: <https://digitallibrary.un.org/record/527647>

Basic literature

1. Basic research on the application of transitional justice in Ukraine / by general ed.: A.P. Bushchenko, M.M. Hnatovsky, 2017. URL: <https://helsinki.org.ua/wp-content/uploads/2017/05/Tekst-monografiji-perehidne-pravosuddya.pdf>

2. Brunova-Kalisetska I., Kiselyova T., Martynenko O. Dialogue in the transitional justice model: features and functions. 2020. URL: <http://www.ucipr.org.ua/publicdocs/dialogue20201.pdf>
3. Buriakovska K. Human rights obligations of private security and military companies: an overview of the current legal framework and practices. *Philosophy of law and general theory of law* . 2021. No 1. S. 262 - 278.
4. The gender dimension of internal displacement: legal instruments of protection. Methodical guidance / Kateryna Buryakovska, Olena Uvarova, Maria Yasenovska. Kharkiv, 2020. <https://rm.coe.int/pub-alter-gender-legal-instruments/16809f2b01>
5. Korynevich A., Korotky T. Transitional justice for Ukraine: Per Aspera ad Astra. *Law of Ukraine* . 2020. No. 12. P. 129 – 149.
6. Makarova A.I. Gender-based violence in the context of transitional justice. Actual problems of the influence of the armed conflict in the East of Ukraine on the emergence and spread of gender-based violence and ensuring access to justice. Kyiv: “BAITE”, 2020. 440 - 444.
7. National judicial practice on issues of internal displacement: application of the standards of the Council of Europe / G. Hristova, Yu. Tralo, K. Buryakovska. Council of Europe project "Internal displacement in Ukraine: development of durable solutions", 2019. 292 with. <https://rm.coe.int/national-court-practice-2020-ukr/1680a0a3da>
8. Senatorova O. V. Human rights and armed conflicts: educational method. manual Kyiv: Publishing House "FOP Golembovska O.O.", 2018. 208 p. URL: https://nlu.edu.ua/wp-content/uploads/2021/05/msc_6_copy.pdf
9. Satohina N.I. The experience of truth and reconciliation commissions / Basic research on the application of transitional justice in Ukraine: according to general ed.: A.P. Bushchenko, M.M. Hnatovsky, 2017 . P. 88 – 102.
10. Satohina N.I. Philosophical dimension of transitional justice / Basic research on the application of transitional justice in Ukraine: according to general ed.: A.P. Bushchenko, M.M. Hnatovsky, 2017 . P. 18 – 27.

11. Chervyakova O. V. Responsibility for war crimes: through transitional justice to sustainable peace and security of Ukraine. *Problems of legality* . Kharkiv. 2020. Issue 150. P. 161 – 172.
12. Buriakovska K. Transitional Justice and Human Rights Obligations of Business. *Legal scientific journal* . 2022. No 7.
13. From Justice for the Past to Peace and Inclusion for the Future: A Development Approach to Transitional Justice. Lessons Learned from UNDP Policy and Practice. 2020. URL: <https://www.undp.org/sites/g/files/zskgke326/files/publications/UNDP-From-Justice-for-the-Past-to-Peace-and-Inclusion.pdf>
14. Haider, H. Transitional justice: Topic guide. Birmingham, UK: GSDRC, University of Birmingham , 2016. URL: http://www.gsdrc.org/wp-content/uploads/2016/08/TransitionalJustice_GSDRC.pdf
15. Moving Beyond Transitions to Transformation: Interactions between Transitional Justice and Constitution-Building. *International IDEA Policy Paper* No. 22. URL: <https://www.idea.int/sites/default/files/publications/moving-beyond-transitions-to-transformation.pdf>
16. Study on transitional justice and human and people's rights in Africa. URL: https://www.achpr.org/public/Document/file/English/ACHPR%20Transitional%20Justice_ENG.pdf
17. The EU's Policy Framework on support to transitional justice. URL: https://eeas.europa.eu/archives/docs/top_stories/pdf/the_eus_policy_framework_on_support_to_transitional_justice.pdf
18. The International Criminal Court: a commentary on the Rome Statute / William A. Schabas. Oxford University Press, 2016.
19. The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General , 23.8.2004, S/2004/616 .
20. Transitional justice and economic, social and cultural rights. UNCHR, 2014. URL: <https://www.ohchr.org/Documents/Publications/HR-PUB-13-05.pdf>

21. Transitional Justice Policy. Adopted February 2019. African Union.
URL: https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf
22. Transitional Justice and Prevention: Summary Findings from Five Country Case Studies. ICTJ, 2021. URL: https://www.ictj.org/sites/default/files/ICTJ_Report_Overview_TJ_Prevention.pdf
23. Ukraina po Rewolucji Godności. Prawa człowieka – tożsamość narodowa / ed.: T. Lachowski, V. Mazurenko. 2017.

Additional literature

1. Albertson Fineman, Martha, and Estelle Zinsstag, eds. *Feminist Perspectives on Transitional Justice: From International and Criminal to Alternative Forms of Justice*. Intersentia, 2013.
2. Arthur, Paige. “How ‘Transitions’ Reshaped Human Rights: A Conceptual History of Transitional Justice.” *Human Rights Quarterly* 31, no. 2 (2009): 321 – 367.
3. Borer, Tristan Anne, ed. *Telling the Truths: Truth-telling and Peace Building in Post-Conflict Societies*. Notre Dame: University of Notre Dame Press, 2006.
4. Capone, Francesca. *Reparations for Child Victims of Armed Conflict: State of the Field and Current Challenges*. Vol. 22. Intersentia, 2017.
5. Claire , de Than, Shorts , Edwin. *International Criminal Law and Human Rights*. London: Sweet & Maxwell Limited , 2003.
6. Mani, R. (2008). Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development. *International Journal of Transitional Justice* . 2(3), 253–265 .
7. Pietropaoli, Irene. *Business, Human Rights and Transitional Justice*. Routledge, 2020.
8. Sarkin, Jeremy, ed. *The Global Impact and Legacy of Truth Commissions*. Intersentia, 2019. Vol. 24.

9. Sriram, CL, Garcia-Godos, J., Herman, J., & Martin-Ortega, O. *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants* . London and New York: Routledge , 2012.
10. Teitel, R. *Transitional Justice* . Oxford: Oxford University Press. 2000

Internet resources

1. of Yaroslav the Wise National University of Law - <https://library.nlu.edu.ua>
2. The UN website is <https://www.un.org>
3. Council of Europe website – <https://www.coe.int/en/web/portal/home>
4. United Nations Children's Fund (UNICEF) - <https://www.unicef.org>
5. Geneva appeal (Geneva Call) – <http://www.genevacall.org>
6. Red Cross and Red Crescent Magazine - <https://www.rcrcmagazine.org>
7. Customary international humanitarian law – <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>
8. Médecins Sans Frontières – <https://www.msf.org/>
9. (Amnesty International) – <http://www.amnesty.org>
10. International Federation of Red Cross and Red Crescent Societies - <https://www.ifrc.org>
11. International Committee of the Red Cross . International Red Cross and Red Crescent Movement - <https://www.icrc.org>
12. International Criminal Court - <http://www.icc-cpi.int>
13. International Court of the United Nations - <https://www.icj-cij.org/>
14. International Tribunal for the former Yugoslavia - <https://www.icty.org>
15. International Tribunal for Rwanda – <https://unictr.irmct.org/en/tribunal>
16. Red Cross Society of Ukraine - <http://redcross.org.ua>
17. Office of the United Nations High Commissioner for Human Rights (OHCHR) - <https://www.rcrcmagazine.org/>
18. Office of the United Nations High Commissioner for Refugees (UNHCR) - <http://www.unhcr.org>

19. Coalition for the International Criminal Court – <http://www.iccnw.org/index.php?mod=home>
20. Human Rights Watch – <http://www.hrw.org>
21. International Center for Transitional Justice – <https://www.ictj.org/>
22. International Institute of Humanitarian Law – <http://iihl.org/>

SENMK

Standardized electronic educational and methodological complex of the Department of Theory and Philosophy of Law . URL: <https://library.nlu.edu.ua/senmk/item/206-perekhidne-pravosuddia-transitional-justice.html>

Professor`s requirements

Applicants of higher education *must*: regularly attend lectures and practical classes; systematically and actively work on them; convincingly present arguments when solving tasks; qualitatively perform written and practical tasks, control and independent work, etc. Practical classes missed for valid reasons can be made up after prior agreement with the teacher.

Applicants of higher education *are recommended* to: participate in thematic scientific and expert events, scientific and creative competitions, legal film clubs, take distance courses on educational platforms.

A *mandatory requirement* is for students of higher education to comply with the norms of **the** " Code of Academic Ethics of the Yaroslav the Wise National Law University" https://nlu.edu.ua/wp-content/uploads/2020/02/kodeks_academichnoyi_etyky.pdf

During classes, it is allowed to use gadgets only for educational purposes (for example, to view lecture presentations). It is allowed to use laptops and tablets for keeping lecture notes and tracking the necessary information.

Control measures

Evaluation of the results of mastering the educational discipline " Transitional justice / Transitional justice" provides for ongoing and final control and is carried out on the basis of a cumulative point-rating system.

Current knowledge control includes:

- quality control of students' assimilation of the program material of the educational discipline in practical classes using the following means: oral, written or express survey, solving practical tasks or tasks, participation in case development, writing and presenting essays, etc. The current control is aimed at checking the level of the student's preparation in studying the current material. In the course of the practical session, the student can receive an assessment on a four-point scale (0, 3, 4, 5);
- quality control of the students' assimilation of the program material of the

educational discipline, which is conducted at the end of the modules in the form of colloquiums.

The mandatory form of independent work of students is the preparation of an individual final written work. The maximum number of points based on the results of the defense of an individual final written work is 20 points.

The form of final control of the knowledge of higher education students in an academic discipline is a differentiated assessment. The minimum number of points to receive a differentiated credit is 60.

Scale of final control

Rating according to the ECTS scale	Definition	Rating on a base of national scale for credit	Rating according to the 100-point scale used at NYU
A	Excellent - Excellent execution, with only a small number of errors	credited	90 - 100
B	Very good - above average with a few errors		80-89
C	Good - generally correct work with a number of minor errors		75-79
D	Satisfactory - not bad, but with a significant number of shortcomings		70-74
E	Sufficient – performance meets minimum criteria		60-69
Fx	Unsatisfactory - work needs to be done before rewriting	non-credited	35-59
F	Unsatisfactory - serious further work is required, a mandatory repeat course		0 - 34