

*ДО 100-РІЧЧЯ НАВС: ПРАДИЦІЇ ПІА СУЧАСНІ НАПРЯМИ РОЗВИТКУ
НАУКОВИХ ШКІЛ НАВС У РЕАЛІЗАЦІЇ ПРІНЦИПІВ ПУБЛІЧНОЇ БЕЗПЕКИ
ПІА ПОРЯДКУ*

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COMBATING OF BLACKMAILING IN DIFFERENT COUNTRIES

Blackmail is an act of coercion using the threat of revealing or publicizing either substantially true or false information about a person or people unless certain demands are met. It is often damaging information, and may be revealed to family members or associates rather than to the general public. It may involve using threats of physical, mental or emotional harm, or of criminal prosecution, against the victim or someone close to the victim. It is normally carried out for personal gain, most commonly of position, money, or property.

Blackmail may also be considered a form of extortion. Although the two are generally synonymous, extortion is the taking of personal property by threat of future harm. Blackmail is the use of threat to prevent another from engaging in a lawful occupation and writing libelous letters or letters that provoke a breach of the peace, as well as use of intimidation for purposes of collecting an unpaid debt.

In many jurisdictions, blackmail is a statutory offense, often criminal, carrying punitive sanctions for convicted perpetrators.

The law considers a "demand with menaces" to always be "unwarranted" (unjustified), unless the perpetrator actually believed that his/her demand had reasonable grounds, and also actually believed that the menace was a proper way to reinforce that demand. These tests relate to the actual belief of the perpetrator, not the belief of an ordinary or reasonable person. Therefore, tests related to what a "reasonable" person might think, and tests of dishonesty, are not often relevant - the matter hinges upon the actual and honest beliefs and knowledge of the perpetrator him/herself. The wording of the Act means that there is a presumption in law that demands and/or menaces are likely to be deemed unwarranted, unless the perpetrator shows evidence that they were believed not to be. However, once a perpetrator has defended him/herself by giving evidence related to the demand and menace both being believed warranted, the prosecution must overturn one or both of these claims to prove their case. The usual rule is that a criminal act, or a belief not truly held, can never be "warranted", although according to some authors, a "gray area" may exist where a very minor illegality may be honestly believed to be warranted.

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United States

The offense of blackmail is created by 18 U.S.C. 873 which provides:

"Whoever, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be fined under this title or imprisoned not more than one year, or both."

Europe

Austria

For the offense of blackmailing in Austria the punishment is imprisonment for a time from six months up to five years.

In the German Criminal Code, the offense of blackmail (Erpressung) is set to be punishable by a fine or imprisonment up to five years. Specific laws exist for continuous blackmail threats or offenses against constitutional organs or against personal freedom in case of abduction.

France

The French Penal Code considers the offense of blackmail (chantage) with a fine of up to 75 000 euros or imprisonment for 5 years in Article 312-10. Blackmailing in French law falls under the section of extortion.

Ukraine, while on the path to joining the European Union, must certainly adapt its national legislation to the realities of the European Union.

In the criminal law of other countries, the issue of the regulation of criminal liability for extortion and blackmail has received sufficient attention. Concerning criminal liability for extortion, Ukraine also has not lost its position, having in the arsenal of the Criminal Code Article 189 on criminal liability for extortion.

Analyzing the criminal law of other European countries, one follows the most clear and complete concept of blackmail as a crime.

Thus, the **French Penal Code** states that blackmail constitutes an act aimed at obtaining as a result of the threat of disclosure or attribution of such facts as may degrade honor or disrespect, or signatures, obligations or refusal of anything, or disclosure of secrecy, or the transfer of funds, valuables or any other property.

The imposition of additional types of punishment for blackmail in the Criminal Code of Ukraine would be superfluous, based on the peculiarities of the professional or public activity of persons who may be accused of blackmail. The presence of such additional types of punishment would make it possible to introduce some preventive measures in the commission of this crime.

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