I. National and Foreign Criminal Legislation: General Subjects

TEN YEARS OF THE CRIMINAL CODE OF UKRAINE: PROGRESS AND PROBLEMS OF APPLICATION

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September 1, 2011 was the 10th anniversary of the coming into effect of the new Criminal Code of Ukraine (hereinafter – CCU), having been adopted by the Verkhovna Rada of Ukraine on April 5, 2001. The adoption of the Criminal Code (hereinafter – CC) has played an important part in the political, economic and social life of Ukraine.

The necessity for its development was conditioned first and foremost, by the fact that the development and functioning of a democratic state, governed by the rule of law, cannot exist without an effective legal framework to regulate and ensure social relations in a due manner. Such a legal framework to control crime is first and foremost the CC. The significant increase in the crime rate during the first years of Ukraine's independence, the manifestation of its aggressive forms and the expansion of organized and economic crime, have led to the urgent necessity to develop criminal legislation which would meet the needs of society, take into account the achievements of criminal law and provide the possibility to control crime in a due manner.

At the same time under conditions of the formation of new social and economic relations within the country, the then CC of 1960 clearly ceased to meet not only the new needs of society and state but also the requirements of the modern theory of criminal law, namely:

1) it had a large number of significant gaps;

2) during its validity (particularly in recent years) it has been subject to numerous and not always substantiated changes and amendments, that influenced its integrity, systematics and consistency;

3) Ukraine's international obligations with regard to its entry into the Council of Europe and its becoming a party to a number of international legal treaties in the sphere of the fight against crime have not been taken into account;

4) the list and content of penal prohibitions required substantial review;

5) it had to be improved to meet current requirements and international punitive system standards, etc. [1, 355].

The adoption of the first CC of an independent Ukraine was preceded by years of long strenuous work on the development of the draft CCU, which was begun as far back as 1992 when the Task Group, including the leading legal scholars and practitioners of Ukraine was organized under a Resolution of the Cabinet of Ministers of Ukraine, who immediately began their painstaking work. During work on the draft code, in order to analyze proposals related to the improvement of criminal law, a great number of different sources were studied and used by members of the Task Group, particularly:

- scientific publications on criminal law (courses, textbooks, commentaries, monographs, scientific-practical articles from digests and periodicals, theses and other materials from research and practice conferences);
- authors' reviews of doctoral theses and master's dissertations on criminal law;
- the effective 1960 CC, particularly its provisions, which were supplemented during the period 1992–2000;
- the practice of investigative and judicial agencies and bodies of the Prosecutor's Office regarding the application of the criminal legislation of Ukraine during the total validity period of the 1960 CC, particularly its application during 1992–2000;
- the law drafting work that was conducted on previous draft CCs, particularly the CCU drafted by the Working Committee of the Presidium of the Verkhovna Rada of Ukraine;
- study of the accessible criminal law of foreign countries;
- own experience of research and practice activities of Task Group members, especially their participation in draft law works.

The draft CC was repeatedly discussed at research and practice conferences, seminars of jurists and in the mass media. At the same time, a large number of remarks were made in its regard. Thus, during the whole period of work on the draft, the scientific and educational institutions of Ukraine, Russia and Belarus, all law enforcement bodies and authorities of Ukraine and individual jurists provided their proposals for its improvement. The draft CC underwent a terminological examination by experts of the Institute of Ukrainian Language of the National Academy of Sciences of Ukraine, and was the subject of analysis by representatives of the Supreme Court of Ukraine, General Procurator's Office of Ukraine, Ministry of Justice of Ukraine, Security Service of Ukraine, Ministry of Internal Affairs of Ukraine, etc.

In 1996 and 1997 the draft CC was the subject of discussions during the working meetings of experts of the Council of Europe, the representatives of the Netherlands, Italy, Sweden, Switzerland, Portugal and other countries, who expressed a favorable opinion. It was also the subject of consideration at international research and practice conferences and seminars, held in Kharkiv, Kyiv and other cities of Ukraine*.

* For further details with regard to the progress of work on the 2001 draft CCU see author's works [2, 230–246].

The years of persistent and painstaking work of legal scholars and practitioners brought deserving results. The draft CCU prepared by the Task Group of the Cabinet of Ministers of Ukraine was approved in its first reading by the Verkhovna Rada. During that reading, an alternative draft CC introduced by People's Deputy I. Pylypchuk was also considered, but rejected. The Cobinet's draft was approved by the Verkhovna Rada in its second reading in September 2000. The third reading to pass the new CCU took place on April 5, 2001. It should, however, be noted that the rejection of the alternative draft CC does not mean that none of its proposals and achievements were included in the draft that has become the law. The new CC embodies all the useful provisions of this alternative draft, which concerned, for instance, establishing liability for certain environmental crimes, crimes against public security, etc.

As a result of the measures taken, certain core, conceptual provisions (ideas) were developed, which were not only implemented in the new CCU, but also became the basis of Ukraine's criminal policy and determined the development of the state's criminal legislation for years to come [3, 278–290]

Among the conceptual provisions of the new CCU the following should be mentioned:

1. Article 3 of the CC stipulates that Ukraine's legislature on criminal liability is exclusively determined by the CC, which is based on the Constitution of Ukraine and the generally accepted principles and norms of international law. The effective CCU proceeds from the necessity that criminal law should comply with the Constitution of Ukraine and its international legal obligations. In accordance with the principle of constitutional compliance, the CC cannot contradict the Constitution both in its general and special norms. Thus, the CC shall be considered as being in maximum compliance with the Constitutional provisions, which have priority significance for the development of criminal law. First and foremost, these are the Constitutional provisions on the implementation of the principle of the Rule of Law and the recognition of the human being, his/her life and health, honour and dignity, inviolability and security as the highest social value. Therefore, the CCU provides for a somewhat extensive list of crimes against the above as well as severe penalties for such violations.

Special provisions of the CC provide for liability for the violation of the constitutionally declared rights of the individual and citizen, particularly the right of a person to life (Article 27 of the Constitution), the right to respect human dignity, the right to freedom from torture, cruel, inhuman or degrading treatment or punishment that violates human dignity (Article 28 of the Constitution), the right to freedom and personal inviolability (Article 29 of the Constitution), etc. It should be stressed that the CCU is governed by the necessity that the protection of rights and freedoms of the individual and citizen from crime is of the highest priority. With this fact taken into consideration the parts of the Code containing norms on criminal liability in crimes against a person, life and health, honour and dignity, are located in the special part of the Code immediately following the norms on criminal liability for crimes against the fundamentals of the national security of Ukraine. Moreover, these parts have been significantly expanded by means of the inclusion of new types of infringements of the rights mentioned above. In particular, these include «Illegal experimentation on a human being»

(Article 142 of the CC), «Violation of procedures prescribed by law with regard to human organs or tissue transplantsation» (Article 143 of the CC), «Forcible donation of blood» (Article 144 of the CC), «Exploitation of children» (Article 150 of the CC), etc. Thus, it can be stated that the 2001 CC not only declares, but also complies with the principle of constitutional conformity. It's articles are extensively reflect constitutional provisions with regard to the necessity to protect the rights and freedoms of an individual and citizen, public interests and the interests of the state.

2. It is significant for the 2001 CC to ensure the continuity of provisions that have survived the test of time and comply with the civilized norms of criminal law. For this reason the Code has indeed preserved all basic provisions that have been developed by criminal legal science over many decades, which were known in previous valid criminal legislation. More specifically, these are norms pertaining to grounds for criminal liability, limits of the scope of criminal law, forms of guilt, liability for an inchoate offence, aiding and abetting, etc.

The division of the CC into General and Special parts and the systemization of articles in the Special part by subsumer of criminal protection has been preserved as a construction which survived the test of time and proved its effectiveness. The General part of the CC has been build in accordance with a certain system, which can be summarized as follows: at the beginning of its text the CC provides for those provisions which are of a principal and general nature for the entire CC, followed by exigencies, which characterize criminal liability and its substantive grounds. The third section determines general provisions which and individual grounds for exemption from criminal liability. This precedes the section on punishment/penalties, since such exemption is only possible prior to a court decision coming into effect, while the infliction of punishment precedes the determination of such verdict. Therefore, the fourth section of the CC provides for the classification, infliction and exemption from punishment, as well as conviction. The section on coercive measures of a medical nature and the specific features of criminal liability and punishment of juveniles concludes the General part of the Code. Many provisions of the General part have been set forth in great detail, moreover, new institutions have emerged, requiring independent regulation, and new norms have been formulated. Thus, the General Part underwent further differentiation, and now corresponds to the realization of the stages of criminal liability. It is clear and easy to comprehend, which is very important on the practical application of the relevant articles.

As regards the Special part of the CC its development has been specified by the resolution of a number of theoretical and practical issues, related to the necessity to allocate and arrange the norms in a certain order that provide penalties for specific crimes. After all, in many respects, the apt placement of norms in the Special part influences their practical application, theoretical comprehension of the indications of corpus delicti, as well as the awareness of their interdependence and specific features. The system of the Special part as implemented in the 2001 CC reflects not only specific theoretical groundwork on the issues of its development, but, above all, determines the system of social relations and values developed in Ukraine during the first decade of its formation as an independent and democratic state, which are subject to legal protection from crime.

3. The determination of the indications of the subject of a crime became fundamental in the 2001 CC. As is well-known, the modern criminal law science and some jurisdictions admit the existence of dualism with regard to the subject of crimes and recognize not only private individuals, but also legal entities as such subjects. A propos, the alternative draft of the CC prepared by I. Pylypchuk and put up for consideration before the Verkhovna Rada of Ukraine, also provided for the possibility to recognize a legal entity as the subject of a number of crimes. The CC has set forth the fundamental provision that «the subject of a crime shall be a private individual, of sound mind, who has committed a criminal offence under this Code at an age at which, according to the Code, he/she can be criminally liable» (Chapter 1, Article 18 of the CC). Therefore, when defining the subject of a crime, the CC supports the monistic principle: only a private individual can be such a subject and this fully corresponds to the principle of personal guilt and liability for damages inflicted on the objects of such protection. In addition, for the first time the CC legally differentiates the notion of a special subject of a crime category, thereby recognizing that only a specific private individual, who is of sound mind, who has committed a criminal offence at an age at which he/she can be criminally liable (Chapter 2, Article 18 of the CC). Such a conclusion regarding a specific private individual can be made both on the basis of the indications of a subject of a crime, which is provided for in the relevant Article of the Special part and on the basis of the relevant interpretation of the law.

4. The application and reform of the 1960 CCU has led to the removal of a number of provisions from the new CC. The valid CCU is governed by the necessity to de-ideologize and de-mythologize criminal legislation, which means the awareness of the necessity and possibility of solving purely practical utilitarian tasks with the help of said Code. It is naive to expect that the application of the CC will result in the rehabilitation of criminals, the rooting-out of criminality, and teaching people to respect the law, etc. History has repeatedly demonstrated that one should not count on crime prevention measures to be a panacea for the complex economic and social problems of the state and society. One should bear in mind that criminal law is the final, ultimate measure of the fight against negative phenomena in economic and social life. For this very reason one should not be absorbed by the rather popular idea, existing in everyday legal awareness, to strengthen punitive measures, but on the contrary, to take the course of the further humanization of criminal liability.

At the present time, the issue of the humanization of criminal law is the special focus of not only experts in legal science and law enforcement but also lawmakers. How is it possible to achieve positive results in the battle against crime with minimal losses to society and without excessive cruelty, using which humane means? There is no doubt, that a whole range of the provisions of the 2001 CCU have become the obvious manifestation of the humanization of criminal legislation. Thus, more than 30 actions have been decriminalized in the 2001 CC and its Special part, that had recognized as crimes in accordance with the 1960 CC. They include: «Profiteering», «Violation of trade regulations», «Criminally negligent use and maintenance of agricultural equipment» etc. The reason for this is that under new social relations the aforesaid actions are no longer of a dangerous nature or no longer

require legal preventive measures, or are special actions, liability for which is provided for in accordance with the provisions of specific Articles in the 2001 CC. For some crimes the age at which someone is criminally liable has been increased from 14 to 16 years, for instance, premeditated murder, excessive self-defense, manslaughter, etc. Decriminalized actions include: failure to report reliable information on a crime being prepared or in progress, also the actions of family members and close relatives of a person who has committed a crime, regarding preliminarily unpromised concealment of a crime that has been committed by a family member or close relative.

The increase in the number of norms, under which showing remorse for committing an offence is encouraged, has become a distinctive feature of the new CC in its Special part. The possibility of exemption from criminal liability after a person has committing an offence is provided for in 17 norms of the Special part. There is no doubt that the development of such an institute corresponds with the idea of the humanization of criminal legislation and has prospects for expansion.

The concept for the humanization of the punitive system was set forth in the initial phase of the drafting of the CC and was reflected in the norms and sanctions of the Special part. Firstly, all sanctions of the Special part of the valid CC are construed in accordance with the following: from less severe penalties to more severe ones. The sense of such a structure lies in the fact that a court refusing to inflict a less severe penalty shall put forward reasons as to the necessity to recourse to a more severe penalty. Taking into account the fact that sanctions, as a rule, alternatively provide for not two, but three and even more kinds of punishments, it becomes clear that a movement towards the most severe punishment requires that quite well thought out and substantiated arguments are found. Secondly, the decrease in the amount of incarcerations for the majority of criminal offences and the introduction of an alternative to imprisonment, has become a distinctive feature of the Special Part of the CC. Thus, amount of punishments for economic, military and reckless offences has been significantly decreased. As a rule, imprisonment for a term of up to 15 years is provided for offences associated with attempted murder and also for mercenary and violent offences.

The trend to humanize the criminal law initiated in the 2001 CC has been further developed in Law of Ukraine No. 270-VI adopted as of April 15, 2008 «On the Introduction of Changes to the CC and Code of Criminal Procedure of Ukraine Regarding the Humanization of Criminal Liability», which came into effect as of May 7, 2008 and which brought amendments and additions to more than 90 Articles of the CC.

The task of humanisation in the aforementioned Law has been achieved in a number of directions, which include issues of the effect of the law on criminal liability in time (Article 5 of the CCU); expansion of the limits to apply the institute of exemption from criminal liability (Articles 45 and 46 of the CCU); reduction of criminal measures of influence with respect to minors (Articles 97, 102 and 104 of the CCU); changes to a number of sanctions of the Special Part of CC Articles by means of adding to them the types of punishment which do not include imprisonment, since during the process of the application of the 2001 CC, it was determined that the sanctions of norms, which determine criminal liability for petty and moderate offenses did not adequately provide for new types

of punishment – community service and detention.

The said Law contains many innovations referring to the application of CC norms, which are directly connected with determination of a punishment (Articles 53, 65, 66, 68 and 691 of the CCU). These norms form the real practice for the meting out of punishment and thereby define, to a certain extent, whether it meets the requirements of modern society and affirm the humane approaches that the state uses in the sector of the fight against crime by way of legal protection measures against crime. Thus, for instance, in accordance with the innovations formulated in the Parts 2 and 3 of Articles 68 and 691 of the CC, the special rules to determine punishment are established, to be more precise, its limits defined if a person intends, but does not commit a crime (Parts 2 and 3 of Article 68 of the CCU), and also if there are any specific mitigating circumstances (Article 691 of the CCU). We can see that on a legislative level, punishability is limited on actions with regard to the maximum limit of the heaviest punishment provided for in the sanction, given that the crime was not commited in full: preparation (Article 14 of the CC) and attempt (Article 15 of the CC). It is clear that the lawmaker strives to reflect that an uncommitted crime is less socially dangerous than one that has been committed, by reducing the punishment accordingly.

At the same time it follows from the dictates of Parts 2 and 3 of Article 68 of the CCU, that the application of punishment procedures provided therein shall not be the right but the duty of the court, regardless of the degree of gravity of uncommitted crime and the reasons, no matter what the offender's purpose was, for which this offence was not completed. In our opinion such an approach significantly simplifies and in some ways groundlessly formalizes the settling of this issue. That is why it would be appropriate not to impose this duty on the court but authorize it to specify the punishment within the limits determined in the Parts 2 and 3 of Article 68 of the CCU, subject to the degree of gravity of the action committed, the level of criminal intent and reasons, due to which the criminal offence has not been committed, i.e. taking into account the circumstances, which, a propos, are clearly stipulated in Part 1 of Article 68 of the CCU[1].

Therefore, an analysis of the norms, by which the CCU has been supplemented under the Law of Ukraine as of April 15, 2008, determine that the provisions specified therein, introduce significant adjustments to established approaches, which prior to the implementation of these innovations existed both in legislature and the practice for determining punishment. This demonstrates clearly and unequivocally the tendency in lawmaking and law enforcement activities for the further humanization of criminal liability.

5. Due to the fact that the 2001 CCU should have been based on generally recognized principles and norms of international law, much work has been done to bring its norms in conformity with international treaties, the mandatory nature of which has been recognized by the Verkhovna Rada of Ukraine. Due to this fact such norms as torture (Article 127), money laundering (Article 209), the willful failure of an official to comply with a judgment of the European Court of Human Rights (Part 4 of Article 382) and many others have been

[1] For further details see the article by V. Tiutiugin «The issues of criminal liability humanisation and their implementation in some legal innovations» («Питання гуманізації кримінальної відповідальності та їх реалізація в деяких законодавчих новелах») [4, 313–323].

included in the Special Part of the CC. During the ten years of the validity of the CC, the tendencies defined in the 2001 CCU with regard to the implementation of generally recognized international standards on the rights of the individual and citizen, and also the awareness of basic principles to ensure international law and order, became ones of the key directions of the development of national criminal law. However, there is considerable concern is caused that no proper and equally authoritative implementation algorithm has yet been developed in criminal law science, which could be used by legislative initiators and lawmakers when deciding to introduce any provisions from international treaties to national laws [5, 13]. A practical example of this is the adoption by the Verkhovna Rada of three anti-corruption laws on June 11, 2009, namely: «On Principles for Preventing and Counteracting Corruption» (No. 1506-VI), «On the Responsibility of Legal Entities for Corruption» (No. 1507-VI) and «On Amending Some Legislative Acts of Ukraine Regarding Responsibility for Corruption» (No. 1508-VI). The provisions of international treaties, particularly the United Nations Convention against Corruption (2003) and the European Union Convention on the Fight against Corruption (1999) the mandatory nature of which was recognized by the Verkhovna Rada on October 18, 2006, should have been implemented in national legislation with the help of these Laws. This has been done in such an ineffective manner, that the Verkhovna Rada had to postpone the date of enactment twice, and in January 2011 the above-mentioned laws were cancelled. This was no coincidence, since even a quick analysis of the amendments introduced, particularly, into the CCU, shows that on the application of many innovations, which were contained in the aforesaid laws, investigative and judicial agencies would face a range of difficulties and issues, for which, unfortunately, there is no undisputed and clear solution in these new norms. Moreover, some of these novelties did not conform with many effective provisions of the CC with regard to criminal liability for corruption, and individual provisions lacked clarity and sometimes even clearly incorrect both in terms of their content and their legislative and technical formulation, wording and structure. It is sufficient to draw an example according to which the mentioned innovations to the CC provided for the criminal liability of officials, private legal entities, for the receipt of unlawful remuneration, whereas the officials of public legal entities, should be liable separately for the receipt of such remuneration and the receipt of a bribe.

Unfortunately, the decision to adopt the above-mentioned anti-corruption laws has been finalized, regardless of the fact that the responsible Committees of the Verkhovna Rada, which were involved in the preparation of these draft laws were repeatedly notified of the necessity to make essential revisions to them, bringing them in line with the principles of national laws on criminal liability. It appears that the authors of the aforementioned innovations, having disregarded useful comments, chose the path of least resistance, and ensured implementation by means of copy-pasting the text of the provisions of the 1999 and 2003 Anti-Corruption Conventions too close to the source, and thus created relevant criminal liability norms, using general international recommendations and propositions which required further discussion, completely ignoring the national doctrine of criminal law with regard to the specifics of criminally-

liable behaviour of the persons concerned [6, 6–7].

As a result, it should be stressed that in order to eliminate conflicts between laws, which may occur after ratification by the Verkhovna Rada of any international acts (treaties, conventions), there should be a system-level basis and possible changes to criminal law and other sectors of Ukrainian legislation which are needed for such ratification and related to crimes covered by relevant conventions shall be introduced in advance, in order to bring them as fully as possible in line with not only the terms and definitions provided by international law but also fundamental principles of national law. It should also be noted that amendments to be introduced to the Special Part of the CCU and which pertain to the specified types of criminal offences and their punishability, should be brought into accord with the provisions of the General Part of the CC. Prior to the ratification of any international documents, diverse issues which pertain to Ukraine's obligations in the sphere of international legal cooperation (for example, the development of effective mechanisms for data exchange between law enforcement agencies) and consistency of terminology should be resolved.

In the fight against transnational crime, the unanimity of the principle of the inevitability of punishment plays an important part. European integration processes require that our state observes so called minimal harmonization, which means the determination of minimal requirements with regard to criminal liability for relevant criminal offences in EU Member States, although each country, within its own territory, has the unilateral right to establish more severe types of punishment.

Harmonization of national criminal law shall have to cover international standards for the qualification of a crime, observe unified approaches to criminal prosecution and punishment of the guilty and fair indemnity to the victims.

6. The decade-long practice of CC application proves that not only the quality but also the stability of the law on criminal liability remains the principal problem of today. It is no coincidence that President Yanukovych has drawn attention to it in his message to the Ukrainian people having indicated that the stability of law shall be an important factor in ensuring effective law enforcement activities.

Indeed, stability, basic principal provisions and the consistency of regulations is a reflection of the high qualitative level of criminal liability legislation. A fairly stable, purposeful and predictable state policy in the fight against crime can only be built under a relatively stable legal system [7, 224–238]. The stability of laws, on the one hand, creates conditions for law enforcement agency officials to duly gain proficiency in their principal provisions and thereupon form an appropriate practice to apply legal provisions. On the other hand, it allows each citizen to become acquainted with the substance of the law, thus, be aware of those means of criminal prosecution that are applied to ensure his/ her safety, protections of his/ her rights, freedoms and lawful interests.

At the same time, to maintain the stability of its principal provisions, criminal liability legislation shall have to effectively respond to those changes which take place in political, social and economic conditions of society and state, and duly respond to any new socially dangerous challenges on the part of the criminal environment. It certainly has to be improved, renewed, continuously developed and be dynamic. However, it is only through the well thought out and

sensible combination of stability and dynamics of the criminal liability law based on an analysis of the actual needs of society that the high efficiency of the provisions of law can be achieved [8, 12–13].

How can the present day situation be characterized? If one looks at the existing lawmaking activities in the sector of criminal law, their explosive impetus and scope of recent years are astonishing. Let us, for example, examine some figures. Since September 1, 2001, that is 10 years after the date on which the CC came into force, different provisions have become the subject of changes more than 300 times*. During this period of time, 10 Articles were been excluded from the CC (Articles 188, 230, 235[1],235[2], 235[3], 235[4], 235[5], 331, 368[1], 369[1]), moreover 7 of these were initially introduced to the CC, then excluded from it. The CC was supplemented by 47 new Articles, of which 7, as mentioned above, were excluded. Thus, whereas at the date of the CCU coming into force there were 447 Articles, they have now increased to 482**. In general 213 Articles of the CC have been amended, which is more than 47.6% of the Articles which existed at the date of its coming into force. By the way, 32 Articles have already undergone two changes, 18 — three changes, and 2 (Articles 364 and 365) have been changed four times. Amendments have been introduced (several times) to even those Articles of the Code, which were added after its coming into force (Articles 194[1], 209[1], 212[1], 232[1], 258[3], 258[4]).

Simple arithmetic with regard to the above figures testifies that from the moment when the CCU came into force in 2001, amendments have been introduced to more than 28 of its norms that is at least 2–3 Articles of the CC were updated per month. Thus, a completely logical question arises:

How then, can one speak about the stability of criminal law if its provisions are updated at such a rapid rate? It is evident, that under conditions when not only laymen but also professional jurists are by no means always able not only to gain proficiency in the new provisions of the CC but follow its changes, it is difficult to plan any long-term measures directed towards an effective battle against crime and on the basis of this, form a stable and, above all, faultless investigative and judicial practice. Moreover in many of the recent legislative acts on amending the effective CC one can see the wish to resolve the urgent issues facing the modern Ukrainian society by means of criminal law. It is a shame, but the Verkhovna Rada seems to be under the influence of everyday social legal awareness but is not critical of it. For example, the Law of Ukraine from February 19, 2009 strengthened criminal liability for the non-payment of salaries and wages, study allowances, pensions and other payments provided by the law (Article 175 of the CC). On the one hand such acts indeed violate the constitutional rights of citizens. But on the other hand, legal prohibition and the strengthening of repression can hardly solve social and economic problems. Such prohibition can be considered as an addition to economic, financial and other means of influence. But if these means were effective, there would be no need for legal prohibition itself.

* Calculations were made as of July 1, 2011, it being known that the basis of the figures drawn was made not by the quantity of laws by which the CC regulatory provisions have been supplemented, but the general quantity of those amendments made to the effective CCU as a result of their adoption.

** A propos, the CC of the Russian Federation, which came into effect as far back as of June 13, 1996 (that is five years prior to the CCU), at that time, numbered only 360 Articles, and as of November 1, 2010 — 397 Articles.

Even now the flow of law-making initiatives does not recede. For example, every year, the Criminal Law Department of the National University «Yaroslav Mudriy Law Academy of Ukraine» receives 35–40 draft laws for discussion. Moreover, the majority of these do not meet with the approval of experts and this can be explained not so much by the level of the drafts (which is sometimes poor), but the systemic inconsistency of innovations proposed with the effective provisions of the CC, as well as the flaws in legal procedures to develop them.

Attention has to paid to the appearance of a number of draft laws, which, in our opinion, has been determined not so much by an urgent necessity to bring criminal liability laws into compliance with the requirements of the rapidly changing conditions of modern society and state, but the desire to respond, to react to every more or less «high-profile» event or case by creating a new norm for the CC.

As an illustration, one can mention the notorious case of Judge Zvarych, which «gave birth» to the draft law on strengthening criminal liability for bribery, which proposed the establishment of clearly defined sanctions by means of life imprisonment with the irrevocable forfeiture of property when an investigator, prosecutor or judge has taken a bribe, as specified in Articles 371, 372 and 375 of the CCU. Strange though it may appear but this draft was passed by the Verkhovna Rada as a law, which the President of Ukraine vetoed in time. But even after this, the draft has twice been considered by relevant Committees of the Verkhovna Rada.

Another typical example is the refusal to pay out money to citizens, who had deposit accounts in banks, which occurred, but were first and foremost due to the economic crisis, which immediately gave rise to the appearance of a draft law on the establishment of criminal liability for such acts.

The impression is, that lawmakers are trying to settle the majority of difficult real-life situations, the reasons for which are unstable social and economic conditions in the country, by way of least resistance, i.e. with the help of criminal punitive measures. However, this is not the correct course of action, which has proved to be inadequate in many instances.

In our opinion, a typical example of the unsubstantiated deviation from the principle of criminal liability stability, would be for lawmakers to settle the issue of the protection of property rights. It is well known, that in order to recognize one or other infringement of ownership relations, a criminal offence (for example, stealing another's property) depends largely on the amount of damage caused to the property by the offender. In the last six years the adoption of fundamentally opposite legislative decisions on this issue have been seen, which can be explained by the fact, that recognition of an infringement against property is a criminal or administrative offence and also their qualification started to be defined firstly in accordance with the provisions of the Law of Ukraine «On Personal Income Tax», dated May 22, 2003 and as of today it is subject to the Tax Code of Ukraine. There is every reason to asume that the artificial decriminalization of a number of specific, nevertheless, diverse types of infringements against property (thefts, frauds, etc.) has been put into practice in this manner. This happened due the annual increase in the amount of the tax-free allowance of citizens, which has been determined by lawmakers as the basis for calculate the amount of property damage qualified

as the stealing of another's property. Thus, if in 2003 «the limit of criminalization» (the amount of the property stolen under which the action shall be considered to be a criminal offence) totaled UAH 51, then in 2006 it already reached UAH 525, in 2007 this amount increased to UAH 600, in 2008 – UAH 772.50 and in 2009 this limit reached UAH 907.50. In other words, from 2003 to 2009 the criminalisation limit for such types of infringement increased almost 20 times. Such state policy in the sphere of property rights protection has given rise to misunderstandings among the majority of victims due to such infringement. Obviously, on June 4, 2009 the Verkhovna Rada reversed its policy on maximum criminalization for stealing another's property by lowering the criminalization limit of such actions from 3 to 0.2 times the tax-free allowance, i.e. almost 15 times as a result of the considerations of the populace as well as applications from the public and scientists. But this premature legislative decision resulted in another excess, for today (in accordance with the provisions of the Tax Code of Ukraine, which came into effect as of January 1, 2011) it is sufficient to steal property in the amount of UAH 94.10 in order for the action to be classified as a crime with relevant consequences. It is obvious, that the aforementioned decision by no means improves property rights protection, moreover it provides for the risk of corruption due to relevant norms of the law, it creates conditions for possible abuse on the part of dishonest individuals, law enforcement agencies and judicial bodies when they apply the law.

It should be added that settling the issue of the criminality of an action and the qualification of infringements against property under the Tax Code of Ukraine and provisions of other laws, in which the minimal amount of wages is determined, has resulted in the violation of one of the basic principles of criminal law, in accordance to which, the criminality of any action, as well as punishment thereto and other criminal consequences shall be determined exclusively by the CCU (Part 3 of Article 3).

The above-mentioned facts give reason to affirm that in recent years, lawmaking activities can, in many respects, be characterized as being unsystematic and sometimes even chaotic, and that draft laws being considered by Parliament often lack due scientific expertise. All of the above undoubtedly reduce the effectiveness of the preventative function of criminal law, negatively impact law enforcement activities and causes citizens to have a nihilistic approach to the requirements of the law.

Clearly, the time has come to discuss the idea of creating a single body, the National Council for Crime Prevention in the country, which would be comprised of scientists, members of law enforcement and judicial bodies, public institutions and experts in the field of crime prevention. Moreover, the creation of such national councils and adoption of relevant national programs is directly provided for in Recommendation No. 21 of the Committee of Ministers of the Council of Europe to Member States «On Partnership in Crime Prevention» dated September 24, 2003. It appears that one of the functions of this National Council could also have been the expert evaluation of relevant draft laws directed towards crime prevention.

To sum up the above, it should be stressed that the research of the decade-long experience of CCU application undoubtedly confirms that it has survived the test of time and has become a powerful and effective legal tool for the

implementation of Ukrainian state policy on the fight against crime. The valid CC took into consideration the achievements of modern criminal law science, it is based on the Constitution of Ukraine and generally recognized ideas and norms of international law, and confirms the principles of humanism and legality. However, at the same time, CC application practice highlighted certain problems. Thus, the inconsistency of a range of CC provisions with the Administrative Violations Code of Ukraine has resulted in a combination of the disposition of articles in these normative-legal acts. Since the CC has rejected administrative issue preclusion, the key legal tool to differentiate an administrative offence from a relevant criminal one has become the provisions of Part 2, Article 11 of the Code on minor actions. In some cases, practice has revealed an unjustified competition between the criminal norms. In practice significant difficulties emerge during the application of Article 9 of the CCU on taking into account the judgments of foreign courts, since no proper mechanism for the implemention of this norm has been provided for in the Code of Criminal Procedure of Ukraine. And finally, the decade-long experience of CCU application clearly proves that one should not make haste when amending criminal law, since it often has a negative impact on the quality of the latter, gives rise to difficulties in its application.

The problems defined by us are only part of the essential discrepancies, which continue to increase in the development of the modern criminal law of Ukraine. It is obvious, that criminal law experts should assume responsibility for closer scientific support of legislative and law enforcement processes. In many respects the increased influence of scientists on these processes, as mentioned above, could be provided by means of the regulatory determination of the role of scientific expertise in the lawmaking process. However, science must have the strongest influence on the formation of modern criminal law, using in-depth, well-grounded scientific works, the results of which are implemented in monographs, research articles, comments on laws, thesis research, speeches at conferences, etc. Textbooks and manuals play a no less influential role in the formation of legal thinking in criminal law. At this point, scientists have achieved a lot in this respect. For example, since the coming into effect of the 2001 CC, the teaching staff of the Criminal Law Department of the National University «Yaroslav Mudriy Law Academy of Ukraine» alone has published six editions of the textbook on the General and Special Parts of the Criminal Code of Ukraine, which was awarded the State Prize of Ukraine in 2006, four issues of research and practical comments on the CCU, as well as more than 30 monographs, 50 textbooks and manuals. The «Training Electronic Informational Complex (TEIC (HEIK) on the Criminal Law of Ukraine» has an important place among the innovative publications of the Criminal Law Department. The use of this complex in education allows fundamentally increased access to educational, scientific and practical sources which are required to gain significantly more in-depth and qualitative knowledge of criminal law. This complex includes the required regulatory environment, the materials from relevant textbooks, Resolutions of the Plenum of the Supreme Court of Ukraine, case materials, sections of scientific and practical comments to the CCU, module tasks for self-testing, which allows not only the possibility of gaining greater knowledge on the subject, but also the

initiation of studies via the Internet. This is why in March 2011, its authors and compilers obtained copyright registration certificate No. 37621.

At the same time the need remains to develop fundamental studies and other scientific encyclopedic publications on the modern criminal law of Ukraine, aimed at building professional legal awareness not only among students and scientists but also the broad spectrum of personnel engaged in lawmaking and law enforcement activities.

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