CRIMINAL CODE OF UKRAINE — NORMATIVE-LEGAL FOUNDATION OF STRUGGLE AGAINST CRIMINALITY IN UKRAINE

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The Criminal Code of Ukraine was adopted by the Verkhovna Rada of Ukraine on 5 April 2001 and entered into force on 1 September 2001. The preparation of the 2001 Code commenced back in 1992. Throughout this time the draft Criminal Code was discussed by specialists and te genera public both within and outside Ukraine. As a result of the work carried out, fundamental and conceptual provisions were elabourated and the Criminal Code was based on them, namely:

(a) legislation of Ukraine on criminal responsibility comprises solely the Criminal Code of Ukraine, which is based on the 1996 Constitution of Ukraine and generally-recognized principles and norms of international law;

(b) legislation of Ukraine on criminal responsibility should be based on generally-recognized principles of contemporary criminal law: there is no crime and no punishment without an indication thereof in a law; the application of the law on criminal responsibility by analogy is prohibited; the grounds for criminal responsibility is the commission by a person of a socially-dangerous act containing the constituent elements of a crime provided by the Criminal Code and others;

(c) consolidation in the Criminal Code of principles of personal and guilty responsibility of natural persons;

(d) expansion and detailization of normative provisions directed towards the intensification of the struggle against organized crime;

(e) expansion of the system of punishments alternative to deprivation of freedom and forming of sanctions of the Special Part of the Criminal Code from less severe to more severe punishments;

(f) final renunciation of the death penalty as an exceptional measure of punishment; establishment of deprivation of freedom for life only for crimes connected with intentional homicide of a person under aggravating circumstances;

(g) reduction of the limits of punishment in the form of deprivation of freedom for crimes of negligence;

(h) introduction into the General Part of the Criminal Code of new norms ensuring the possibility of relief from criminal responsibility and punishment;

(i) introduction into the Special Part of the Criminal Code of a number of incentive norms stimulating the positive post-criminal behaviour of a person who committed a crime, and others.

The 2001 Criminal Code of Ukraine proceeds from the need to conform criminal legislation to the Constitution of Ukraine and international legal obligations contained in international treaties in force, consent to the bindingness of which has been given by the Verkhovna Rada of Ukraine. Therefore, the Criminal Code is maximally coordinated with the 1996 Constitution of Ukraine, which has fundamental significance for the development of criminal legislation. These are the provisions of the 1996 Constitution of Ukraine on recognition and the operation in Ukraine of the principle of the supremacy of law, and also the need for the conformity of laws of Ukraine to the Constitution. Under Article 3 of the 1996 Constitution, a person and the life and health thereof, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value.

Therefore, the Criminal Code of Ukraine provides for an extensive range of crimes against these natural benefits of man, and rather severe measures of responsibility for them (up to and including deprivation of freedom for life). In accordance with Article 75 of the 1996 Constitution, only the Verkhovna Rada of Ukraine is a legislative agency in Ukraine, and only it, according to Article 92 of the 1996 Constitution, is empowered to determine in laws the acts which are crimes and establish responsibility for them. Having regard to these conceptual prescriptions, Article 3 of the Criminal Code provided that legislation of Ukraine on criminal responsibility comprises the Criminal Code of Ukraine. Individual articles of the Criminal Code establish responsibility for a violation of the rights of man and citizen provided by the Constitution, in particular, the right of a person to life (Article 27, Constitution); the right of each to respect for his dignity – no one may be subject to tortures or to cruel inhumane or demeaning treatment or punishment (Article 28, Constitution); the right to free and personal inviolability (Article 29, Constitution), and others. A violation of all these and other rights of the person proclaimed by the Constitution is deemed to be a crime (respectively, homicide, causing bodily injuries, torture, and others) and entails criminal responsibility.

Under the 1996 Constitution (Article 58), «no one may be liable for acts which at the time of their commission were not deemed by a law to be a violation», the grounds for criminal responsibility were formulated as follows in the Criminal Code (Article 2): «the commission by a person of a socially-dangerous act containing the constituent elements of a crime provided by the present Code». The Criminal Code also clarified, in accordance with the subject-matter of legislation on criminal responsibility, the constitutional provision on the operation of a law in time and on granting retroactive effect to a law if they mitigate or eliminate responsibility (Article 58, 1996 Constitution). Moreover, under the Constitution (Article 60), the exclusion of criminal responsibility is provided in the Criminal Code (Article 41) for a person who turned out to perform a clearly criminal order or instruction, and also criminal responsibility established for the performance thereof. The exclusion of criminal responsibility is provided for a refusal to give testimony or explanations about himself, family members, or close relatives, the group of which is determined by a Law (Article 63, Constitution), and so on.

The 2001 Criminal Code proceeds from the need to ensure priority criminal law protection of the rights and freedoms of man and citizen. The sections which contain crimes against health, freedom, honor, and dignity of man not only have been placed in the Special Part immediately after the crimes against the foundations of national security of Ukraine and significantly expanded by the inclusion of new types of infringements on these benefits. These include «Violation of the Rights of a Patient» (Article 141); «Legal Conducting of Experiments on a Person» (Article 142); «Violation of the Procedure Established by a Law for the Transplanting of Organs or Tissue of a Person» (Article 143); «Forcible Donorship» (Article 144); «Exploitation of Children» (Article 150), and others.

Fundamental for the 2001 Criminal Code is ensuring the succession of provisions that have withstood the test of time and meet civilized norms of criminal law. Therefore, provisions have been retained therein on the grounds for criminal responsibility, limits of operation of a criminal law, forms of guilt, responsibility for an uncompleted crime, and others. The approach to the systematization of the articles of the Special Part of the Criminal Code and its sections relating to the generic object of an infringement have proved themselves and demonstrated their effectiveness. Many definitions of crimes have been retained which, as practice has shown, were successfully formulated in the 1960 Criminal Code of the Ukrainian SSR.

However, the lessons of applying and reforming the 2001 Criminal Code, and also the eight years of experience with preparing the draft 2001 Criminal Code forced the architects of that Code to reject a number of provisions from the 1960 Code. First, the 2001 Criminal Code proceeded from the need to deideologize criminal legislation, which meant an awareness of the need and possibility to resolve with the assistance of the Criminal Code profoundly practical, utilitarian tasks. To expect the Criminal Code to re-educate criminals, eradicate criminality, nurture citizens in the spirit of being law-abiding, and the like would be naïve. Second, criminal legislation must be demythologized. History has repeatedly shown that one should not count upon criminal-law means as a panacea for resolving complex economic and social problems of the development of Ukraine. One should proceed from the fact that criminal legislation is the last

extreme measure of struggle against negative phenomena in the economy and social life. Therefore, the popular idea in the usual legal consciousness of intensifying criminal repression is not to be extolled. Third, the Criminal Code proceeds from the need for extensive decriminalization; that is, exceptions from the number of criminal act which do not represent a social danger; that is, do not cause material damage to economic, political, social, or other interests of a person, society, or the State. At the time of the enactment of the Special Part of the 2001 Criminal Code more than thirty acts were decriminalized that in the 1960 Criminal Code were deemed to be crimes. This was the result of certain acts under new social conditions losing their danger or not requiring measures of criminal-law pressure to cope with them, or representing special acts relating to more general ones, responsibility for which was provided by other Articles of the 2001 Criminal Code.

For some crimes, if one compares with the 1960 Criminal Code, the age was raised from 14 to 16 years, upon the attainment of which persons may be subject to criminal responsibility. For individual crimes, on the contrary, the age of criminal responsibility was lower to 14 years.

Sections of the General Part of the Criminal Code were structured according to a system whose essence came down to the following. At the beginning are provisions which are of principle and common for the entire Criminal Code (tasks of the Criminal Code, grounds of criminal responsibility, legislation on criminal responsibility); then – prescriptions characterizing material law grounds of criminal responsibility (concept of crime, types and stages thereof, subject of crime and guilt, complicity in a crime and multiple crimes, and also circumstances excluding the criminality of an act). Third is Section IX «Relief from Criminal Responsibility» (general provisions and individual grounds for such relief). This Section is placed ahead of punishment because relief from criminal responsibility is possible only before the entry of a judgment of conviction of a court into legal force, and the assignment of punishment always is preceded by such a judgment. Therefore, fourth are the sections of the Criminal Code on the concept and types of punishment, assignment of punishment, relief from punishment and the serving thereof, and also a record of conviction. Then the section on compulsory measures of a medical character and compulsory treatment, and completing the General Part – Section XV «Peculiarities of Criminal Responsibility and Punishment of a Minor».

The General Part of the 2001 Criminal Code in comparison with the General Part of the 1960 Criminal Code has virtually doubled in size. Whereas the 1960 Criminal Code included six section, the 2001 Criminal Code contains fifteen sections. The increase is explained by the fact that the more than 35-year period of operation of the 1960 Criminal Code showed, and scientific studies and trends of judicial practice confirmed, the need for further detailization of the General Part in order to fill in gaps therein. New institutes emerged which require special regulation (for example, the institute of multiple crimes), and the need arose to formulate new norms (for example, recording the legal consequences of the judgment of a court of a foreign State, fictitious defense, justified risk, voluntary renunciation of co-participants, and others). A further differentiation thus occurred of the system of the General Part of the Criminal Code. Individual sections

appeared devoted, for example, to repetition, aggregate, and recidivism, relief from criminal responsibility, compulsory and other measures of a medical character, peculiarities of criminal responsibility of minors and so on. The system of the General Part of the Criminal Code is structured as a whole in accordance with the stages of the realization of criminal responsibitliy and became more definite and understandable, which was very important when applying the articles in practice incorporated therein. Familiarization with the system of the General Part of the Criminal Code not only gives the practical worker, but also any citizen, the possibility to find the norm of interest to him in the Criminal Code.

Provisions new in principle underlying the achievements of the modern science of criminal law and stable practice in the application of criminal-law norms are contained in every Section of the General Part of the Criminal Code of Ukraine. In Section I, «General Provisions», for example, the tasks of the Criminal Code have been redefined — legal provision for the protection of the rights and freedoms of man and citizen, ownership, public order, and public security, environment, and constitutional system of Ukraine against criminal infringements (Article 1). Here the legislator precisely determined the material and procedural grounds for such responsibility. Under Article 2, the sole material-legal ground for criminal responsibility is the commission by a person of a socially-dangerous act containing the constituent elements of the crime provided by the Criminal Code. The material-legal ground of criminal responsibility includes a double grounds: the actual grounds (commission by a person of a socially-dangerous act) and the legal grounds (presence in the act committed of the constituent element of a crime provided by the Criminal Code). For the first time the Criminal Code legalized the concept of the constituent element of a crime as legal grounds for criminal responsibility. In turn, the judgment of conviction of a court is deemed to be the procedural grounds for criminal responsibility: «A person shall be considered to be innocent in the commission of a crime and may not be subjected to criminal punishment so long as the guilt thereof is not proved in a legal procedure and established by the judgment of conviction of a court».

Section II of the «Law on Criminal Responsibility» consolidated the principle of monism of criminal legislation traditional for the countries of the former Soviet Union. The principle of legality in criminal law is fully reflected in this same Section. It is established that the criminality of an act, and also the punishability thereof and other criminal-law consequences, are determined only by the Criminal Code of Ukraine (Article 3). In so doing, the «criminality and punishability of an act, and also other criminal-law consequences of an act, are determined by the law on criminal responsibility in force at the time of commission of this act» (Article 4). Next, «the time of commission by a person of an action or failure to act provided by the law on criminal responsibility shall be deemed to be the time of the commission of the crime» (Article 4).

The principle of legality also prohibits the retroactivity of the law on criminal responsibility establishing the criminality of an act intensifying criminal responsibility or otherwise worsening the position of the person (Article 5). This means that not only does the law which criminalizes the act and strengthens its punishability not have retroactive force, but the law which reduces the grounds and

conditions of relief from criminal responsibility and punishment of the serving thereof worsen the conditions of cancellation or removal of the record of conviction, and so on. On the other hand, not only does a law eliminating the criminality of an act have retroactive operation, so too does a law mitigating criminal responsibility (and not only punishability, as provided by article 6(2) of the 1960 Criminal Code). This means that laws which decriminalize an act and mitigate punishment, expand the grounds and conditions for relief from criminal responsibility and punishment or the serving thereof, improve the conditions for the cancellation and removal of the record of conviction, and so on, have retroactive effect.

Finally, having regard to the principle of legality, the 2001 Criminal Code prohibits the application of a law on criminal responsibility by analogy (Article 3). Any behaviour of a person which does not correspond to the indicia of a specific type of crime provided by the Criminal Code may not be deemed to be criminal and punishable.

Other major issues were resolved in a different way in Section II. The Criminal Code (Article 8) provided for the first time the so-called real or national principle of the operation of a criminal law in space. In accordance with this principle, foreigners or stateless persons not residing permanently in Ukraine are subject to criminal responsibility under the 2001 Criminal Code if they committed grave or especially grave crimes beyond the limits of Ukraine against the rights and freedoms of citizens of Ukraine or the interests of Ukraine.

The 2001 Criminal Code contains a provision on the extradition of criminals. It proceeds from the provision of principle that «citizens of Ukraine and stateless persons residing permanently in Ukraine who have committed crimes beyond the limits of Ukraine may not be extradited to a foreign State for bringing to criminal responsibility or trial» (Article 10).

Finally, the 2001 Criminal Code provided (Article 9) for the first time the taking the judgment of a court of a foreign court into account when qualifying the new crime, assignment of punishment, and relief from criminal responsibility or punishment.

Section III, «Crime, Types and Stages Thereof», opens a block of norms regulating the legal grounds for criminal responsibility, namely, the constituent elements of a crime. It is defined from the outset that a crime is. The Criminal Code (Article 11) defined anew one of the central categories of criminal law – a crime as provided by the Criminal Code is a socially dangerous guilty act (action or failure to act) committed by a subject of the crime. Continuing the tradition of the 1960 Criminal Code, the 2001 Criminal Code consolidated the formal-material determination of the concept of a crime. The fact that an act specifically provided for, and not prohibited by the Criminal Code attracts attention. This gives grounds to assert that the hypotheses of criminal-law norms provided for in the Criminal Code do not prohibit other acts, but contain indicia of a certain constituent element of a crime. One may conclude that the criminal unlawfulness of an act should be interpreted as provided for this act in the Criminal Code. Moreover, a guilty socially-dangerous act is deemed to be a crime, that is, social danger as an indicator of a crime has not only objective, but also subjective characteristics. The indicator of guilt characterizes the subjective aspect of the social danger of this act. The 2001 Criminal Code in general for the first time enables the material indicator of a crime to be determined – its

social danger, which may be done by analyzing the concept of the insignificance of the act provided by Article 11 of the Criminal Code. Unless an insignificant act represents a social danger inherent in the crime, on the contrary only such a socially-dangerous act is deemed to be a crime which caused or might cause material harm to a natural or juridical person, society, or the State. Finally, the 2001 Criminal Code (Article 11) indicates that the proper subject thereof is an obligatory indicator of a crime.

It is well-known what legal significance the classification of crimes has. Various criteria for such a classification have been suggested in doctrinal writings. Crimes are divided in the 2001 Criminal Code (Article 12) into four groups (petty crimes, crimes of average gravity, grave crimes, and especially grave crimes), depending on the degree of their gravity, a formal indicator of which is the sanction of an Article of the Special Part of the Criminal Code. This classification is used in virtually all institutes of the Criminal Code, namely: when determining responsibility for the preparation for a crime; for a crime committed by a criminal organization; when relieving from criminal responsibility; when assigning punishment for the aggregate of crimes and aggregate of judgments; when assigning a milder punishment when provided by a law; when relieving from serving punishment; in the event of conditional-early relief from serving punishment, record of conviction, and others.

The concept of a completed crime was formulated for the first time in the 2001 Criminal Code (Article 13) as an act containing all the indicia of the constituent elements of the crime provided for by the respective Article of the Special Part of the Criminal Code. Thus, it should be stressed once more that only the respective Article of the Special Part of the Criminal Code provides for the constituent elements of a completed crime. However, the indicia of this constituent element of a crime finds its place not only in an Article of the Special Part, but also in the Articles of the General Part of the Criminal Code, and some indicia (for example, blanket dispositions of individual Articles of the Special Part of the Code) – and in other normative-legal acts.

When defining an uncompleted crime, the 2001 Criminal Code only mentions the types thereof – preparation for a crime and an attempted crime (Article 13). It is evident that one is referring to preparation for the commission of a completed crime and attempt to commit a completed crime. An uncompleted crime may be defined as a socially-dangerous act of a subject containing the indicia of the constituent elements of preparation for a crime or attempted crime provided by Article 14 or 15 and the respective Article of the Special Part of the 2001 Criminal Code.

A mixed approach is observed in the 2001 Criminal Code under which the preparation is deemed to be criminally-punishable not for all crimes, but only for crimes of three categories: intentional crimes of average gravity, grave crimes, and especially grave crimes. Under Article 14 of the 2001 Code, «preparation of a crime of small gravity shall not entail criminal responsibility». A law proceeds from the fact that preparation for such a crime is an insignificant act and therefore, on the basis of Article 11 of the Criminal Code, is not a crime.

The definition of an attempted crime is significantly improved. It is deemed to be «the commission by a person of an act (action or failure to act) with direct intent expressly directed towards the commission of a crime provided by the

respective Article of the Special Part of the present Code unless this crime was not brought to an end for reasons beyond his will». In addition, Article 15 of the 2001 Code provides for two types of attempted crime – completed and uncompleted; of the criteria for this distinction proposed in doctrinal writings, the law chose the subjective. According to this, «at attempt to comit a crime shall be completed if the person performed all actions which he considered to be necessary to bring a crime to the end, but the crime was not completed for reasons beyond his will». On the other hand, an attempt to commit a crime is uncompleted «if the person for reasons beyond his will did not commit all the actions which he considered to be necessary to bring a crime to the end». The legislative definition of types of attempt obliged law enforcement agencies in each instance of establishing an attempted crime to prove the type thereof which should be reflected in the qualification of the act of the guilty person (Article 15, Criminal Code), and the court is obliged to take this into account when assigning punishment should the commission, for example, of a completed attempted crime testify to the great degree of effectuating the criminal intention provided by Article 68 of the 2001 Criminal Code as a circumstance that should be taken into account by the court when assigning punishment.

Section IV is new, «Person Subject to Criminal Responsibility (Subject of Crime)». It is noteworthy that the 2001 Criminal Code considers the subject of a crime and a subject to be brought to criminal responsibility to be the same; this is justified because one of the elements of the grounds of criminal responsibility is the subject of the crime. The resolution in the Criminal Code with regard to defining this subject is one of principle. Modern criminal law doctrine and legislation of some countries permits dualism with regard to the subject of the crime: not only natural persons, but also juridical persons, are recognized to be such. The 2001 Criminal Code consolidated the provision of principle that «a natural putable person who has committed a crime at the age from which in accordance with the present Code criminal responsibility may ensue shall be the subject of a crime» (Article 18). The 2001 Criminal Code thus proceeds from the principle of monism in defining the subject of a crime: it may only be a natural person, and this fully corresponds to the principle of personal and guilty responsibility of a person for harm caused to objects of criminal-law protection. The Criminal Code for the first time legally separates out from the concept of the subject of a crime one category – the special subject of a crime. This is deemed to be a certain natural putable person who committed a crime at an age from which criminal responsibility may ensue (Article 18).

The concept of putability of a subject of a crime is defined in the Criminal Code for the first time, two types of putability being distinguished: full (Article 19) and limited (Article 20) putability. In the second instance the person as a consequence of mental illness is not capable of fully being aware of his actions or failure to act and/or direct them. This state at the time of the commission of a crime is not uncommon and therefore has long since achieved factual and legal recognition. Limited putability of a person should be taken into account by a court when assigning punishment, and also may be grounds for the application of compulsory measures of a medical character (Article 20).

Section V, «Guilt and its Forms», is based on a psychological theory of guilt,

it being defined as the «mental attitude of a person towards the action committed or failure to act provided by the present Code and the consequences thereof expressed in the form of intent or negligence» (Article 23). The law does not formulate general concepts of intent and negligence, but determines the types thereof (direct or indirect intent, criminal arrogation, and criminal neglect). This obliged law enforcement agencies in each criminal case to establish and prove the presence of a determined type of intent or negligence in crimes with a material constituent element.

So-called complex (mixed, dual, combined, and so on) forms of guilt are not provided for in the 2001 Criminal Code, but in any event in the constituent elements of crimes with proximate and derivative consequences, and also connected with a violation of certain rules, deeming the subject to be guilty in the commission of such crimes may be based only on establishing the indicia of guilt determined in Article 23 of the Criminal Code. Thus, although the Criminal Code does not contain a definition of an instance (or cause), which has been repeatedly criticized by some scholars, the issue should be resolved of the absence of guilt. The provisions of principle in the Code that only a guilty act is deemed to be a crime, and the concept of guilt is defined in the 2001 Code (Article 23), does not enable one to say under what conditions the constituent element of a crime is in a socially-dangerous act unless the mental attitude to this act and the consequences thereof in the form of a determined type of intent or negligence are established. Finally, the definition of the concept of guilt and its forms in the 2001 Criminal Code makes it possible to decide a controversial issue in criminal law doctrine concerning the establishment of guilt in the so-called formal constituent elements of crimes. It is evident that when alleging direct intent in the commission of crimes with such a constituent element, it is enough that the subject was aware of the socially-dangerous character of the action committed or failure to act and wished to commit it.

Section VI, «Complicity in Crime», contains significant innovations. First, changes were made in the concept of complicity. Second, the indicia of individual types of co-participants were elabourated. Third, four forms of the commission of a crime in complicity were legally defined for the first time. Fourth, Articles 29 and 30 of the 2001 Code, adopted by having regard to the achievements of criminal law doctrine and judicial practice, provide for rules of criminal responsibility of individual co-participants, including organizations and participants of an organized group or criminal organization. Finally, fifth, the 2001 Code makes provision for the first time for the voluntary refusal of co-participants. When formulating the norms of this Section, it was taken into account that the provisions incorporated thereof are well established in the theory of criminal law, endorsed by many years of practice, and enable various interpretations to be avoided when deciding questions of responsibility for crimes committed in complicity.

Section VII, «Repetition, Aggregate, and Recidivism of Crimes», formulated a legal definition of repetition as the repetition of identical crimes, namely: the commission of two or more crimes provided by the same Article or paragraph of an Article of the Special Part of the Criminal Code. In so doing, one exception was made: repetition may be deemed also when committing two or more crimes provided by different Articles of the 2001 Criminal Code, but

only in those instances provided in the Special Part of the Criminal Code (repetition of homogeneous crimes). The definition of the aggregate of crimes is traditional: «the commission by a person of two or more crimes provided by different Articles or different paragraphs of one Article of the Special Part of the present Code, for all of which he was convicted» (Article 33). Article 34 of the Criminal Code defined the legal recidivism of crimes, which is deemed to be the commission of a new intentional crime by a person having a record of conviction for an intentional crime.

The new Section VIII, «Circumstances Excluding Criminality of an Act», completed the block of norms relating to the doctrine on crime. This Section provides for seven such circumstances. Among them – three circumstances which were known to the 1960 Criminal Code (necessary defense, detention of a criminal, and extreme necessity), and four new ones: physical or mental coercion; execution of an order or instruction; act committed; an act connected with risk; fulfillment of a special task for the prevention or revealing of criminal activity by an organized group or criminal organization. This Section completes the system of norms on crime. The circumstances specified therein extend also to an uncompleted crime, and to complicity in a crime, and to other institutes of the doctrine on crime.

One should bear in mind that in Section VIII the list of circumstances excluding the criminality of an act should not be regarded as exhaustive. First, certain circumstances are contained in other Section of the Criminal Code (for example, Article 11 relating to the insignificance of an act). Second, circumstances excluding the criminality of an act are provided not only in the 2001 Criminal Code, but also in other normative-legal acts (for example, the lawful application of force, special means, and weapons regulated by the Law of Ukraine «On Police», and others). One may thus conclude that the Criminal Code proceeds from the principle of dualism in the legislative regulation of circumstances excluding the criminality of an act which for long has been substantiated by Ukrainian criminal law doctrine.

Section IX, «Relief from Criminal Responsibility», is included in the 2001 Criminal Code for the first time as an autonomous section. It commences with an Article on the legal grounds and procedure for reliving from criminal responsibility in which two basic provisions are formulated: (1) the list of legal grounds for relieving a person from criminal responsibility is exhaustive: a person who has committed a crime is relieved from criminal responsibility in the instances provided by the Criminal Code and on the basis of a law of Ukraine on amnesty or an act of pardon; (2) relieving from criminal responsibility in the instances provided by the 2001 Criminal Code is effectuated solely by a court, and the procedure for such relief is established by a law (Article 44, Criminal Code).

The grounds for relieving from criminal responsibility also are provided for in Section IX: repentance; reconciliation of the guilty person with the victim; transfer of person on surety; change of situation, and expiry of periods of limitation. One should have in view that other grounds of relief from criminal responsibility have been provided; for example, in the provision on the voluntary refusal of a subject to bring a crime to completion, and also in the fifteen instances cited in the Special Part of the Criminal Code. Therefore, singling out the institute of relief from criminal punishment in the criminal law of Ukraine as a single entity is completely substantiated.

Section X, «Punishment and the Types Thereof», contains articles on the concept and purposes of punishment, system of punishments, classification thereof, and procedure for assignment, and individual types of punishments (Articles 50 to 64). The general concept of punishment was formulated in Article 50 as measures of coercion which are applied in the name of the State under the judgment of a court against a person deemed to be guilty in the commission of a crime and consists in a limitation of the rights and freedoms of the convicted person provided by a law. Most controversial in the doctrine of criminal law is the purposes of a criminal punishment. The discussion around this issue is extended for more than a century. Special attention has been devoted in recent years to chastisement as the purpose of punishment. The criminal codes of many countries reject this. The 2001 Criminal Code of Ukraine combined chastisement with other purposes of punishment, namely: chastisement is deemed to be the purpose of punishment, and also the reform of the convicted person and the special and general prevention of crimes. It is noted that punishment does not have the purpose of causing physical suffering or to demean human dignity.

Article 51 provides for a system of twelve types of punishments set out in the following sequence: fine; deprivation of military or special title or rank, class, or skills class; deprivation of the right to hold determined posts or to engage in a determined activity; social tasks; correctional tasks; service limitations for a military serviceman; confiscation of property; arrest; limitation of freedom; confinement in a disciplinary battalion of military servicemen; deprivation of freedom for a determined period; deprivation of freedom for life. The circumstance that the said types of punishments are placed in a sequence from severe to more severe is deserving of attention, being reflected in alternative sanctions of norms of the Special Part of the Criminal Code. In Article 51 all types of punishment, unlike the 1960 Criminal Code, are placed within a single system irrespective of whether they appertain to basic or supplementary, general or special. The issue of which punishments are basic and which supplementary and what the sequence of their application consists of is addressed in Article 52 of the 2001 Code, which did not exist in the 1960 Criminal Code. This Article resolves basic issues connected with the legislative classification of all types of punishments into basic and supplementary and notes the distinctive procedure for the assignment of basic and supplementary punishments.

Section XI, «Assignment of Punishment» (Articles 65 to 73), provides for the general principles of assigning punishment and mitigating and aggravating circumstances; the distinctive features of the assignment of punishment for an uncompleted crime and for a crime committed in complicity; the rules for assigning a milder punishment than provided by law; the procedure for assigning punishment for the aggregate of crimes and the aggregate of judgments, and other provisions. The limits of assigning the final punishment for the aggregate of crimes in the form of deprivation of freedom for a determined period of up to fifteen years and, for the aggregate of judgments — up to twenty-five years of deprivation of freedom.

Section XII, «Relief from Punishment and the Serving Thereof» (Article 74 to 87), regulates these questions: relief from serving punishment with probation; relief from serving punishment with probation of pregnant women and women having children up to seven years

of age; relief from punishment in connection with the expiry of the periods of limitation for execution of a judgment of guilty; conditional-early release from serving punishment and replacement of the unserved part of punishment by a milder punishment; relief from serving punishment of pregnant women and women having children up to three years of age; relief from punishment for reasons of illness; and relief from punishment on the basis of a law of Ukraine on amnesty or an act of pardon. A distinctive feature of this Section is the introduction of a single institute of relief from serving punishment with probation instead of a conditional conviction and deferral of execution of the judgment, which was known to the 1960 Criminal Code.

All norms connected with a record of conviction and its legal consequences are concentrated in Section XIII, «Record of Conviction» (Articles 88 to 91). The 2001 Criminal Code differentiates the cancellation and the removal of a record of conviction. Cancellation of a record of conviction occurs automatically after serving punishment upon the expiry of determined periods, and the removal of a record of conviction is effectuated by a court. The periods for cancellation of a record of conviction are differentiated not so much on the type of punishment assigned as on the classification (or gravity) of the crimes established in the 2001 Criminal Code (Article 12), cancellation of a record of conviction, unlike under the 1960 Criminal Code, being permitted also when a convicted person serves punishment of more than ten years deprivation of freedom (Article 89, 2001 Criminal Code).

In comparison with the 1960 Criminal Code, a separate Section XIV, «Compulsory Measures of a Medical Character and Compulsory Treatment», was separated out n the 2001 Criminal Code and contains articles on compulsory measures of a medical character (Articles 92 to 96, 2001 Criminal Code). The very definition of the concept and purposes of compulsory measures of a medical character is new. This purpose not only enables these measures to be demarcated from types of punishment, but also reflect the peculiarity of their purpose in comparison with the purposes of punishment (Article 92). The group of persons is enlarged to whom compulsory measures of a medical character may be applied at the expense of those whose putability is limited. A new type of compulsory measures of a medical character is introduced – rendering outpatient mental assistance in a compulsory procedure. However, the group of persons to whom compulsory treatment may be applied is narrowed: namely, to persons who committed crimes and having an illness representing a danger to the health of other persons.

Section XV, «Peculiarities of Criminal Responsibility and Punishment of Minors» (Article 97 to 108), concentrates all articles concerning the peculiarities of responsibility of minors, which makes it possible to accentuate attention of law enforcement agencies on the differentiation and individualization of criminal responsibility and punishment of minors, having regard to their age. These provisions are the most recent: (a) the group of types of punishments (up to five) which may be applied to minor criminals is narrowed, namely: fine, social tasks, correctional tasks, arrest, and deprivation of freedom for a determined period; (b) privileges conditions have been established for the application of the said punishments to minors; (c) the relief from punishment is provided with the application of five types of compulsory measures of an educational character; (d) the periods of limitation

have been reduced, and also the periods for cancellation of a record of conviction, in comparison with adult criminals, and so on.

The system of the Special Part of the Criminal Code is structured as a whole with regard to a generic object. The names of the sections reflecting this system have been formulated with the use of word combinations: «Crimes against ...», or «Crimes in the sphere of ...». The arrangement of the sections of the Special Part of the 2001 Criminal Code is subordinated also to a certain inner logic. The architects of the system of the Special Part predetermined by a resolution of a number of theoretical and practical issues connected with the need to divide and arrange in a certain sequence the norms providing responsibility for specific types of crimes. Much depends upon the proper placement of norms of the Special Part with regard to their practical application and theoretical contemplation of individual constituent elements of crimes and an awareness of their interconnecton and peculiarities. The system of the Special Part in the 2001 Criminal Code reflected not only certain theoretical accomplishments with regard to structure, but als the system of social relations and social values formed in Ukraine during the first decade of its creation as an independent, democratic State which is subject to criminal-law protection.

Section I, «Crimes against the Foundations of National Security of Ukraine», are placed at the front of the system of the Special Part of the Criminal Code. This decision was preceded by a very tense discussion. Some scholars, people's deputies of Ukraine, and practitioners opposed placing this section at the front of the Special Part, suggesting that it be moved to the block of sections protecting the interests of the State. The architects of the draft Criminal Code were quite principled on the placement of this Section, The purpose of this Section was more significant than merely the defense of the interests of the State. Reference was being made to the defense of Ukraine as a certain historically-formed community of Ukrainian people and other nationalities who reside on a single territory and are interested in its sovereignty, retaining the forms of State rule, chosen path of development, integrity, and inviolability of Ukraine. These values are integral parts of the concept of «foundations of national security of Ukraine». They are proclaimed in the 1996 Constitution of Ukraine (Articles 1 and 2). Moreover, it should be noted that only in a society where public order and security are ensured is it possible to have the real ensuring of the defense of personal, physical, and spiritual rights of man and citizen, the fundamental one sof which are consolidated in the 1996 Constitution of Ukraine (Article 3) and whose defense is provided for by Section II to IV of the Special Part of the 2001 Criminal Code.

As regards the other eighteen sections of the Special Part (II–XIX), they are grouped consecutively in three tentative blocks. The first block includes sections by which the legal interests of the person, the rights of man and citizen, are protected, namely: crimes against life and health of the person; against the freedoms, honor, and dignity thereof, against sexual freedom and sexual inviolability of the person, and others. The second block consists of crimes against society (or public interests), namely: against ownership; in the sphere of economic activity; against the environment; against public security, and others. Finally, the third block consists of crimes against the State (or State interests), namely: in the sphere of the protection of

State secrecy, inviolability of State boundaries; ensuring call-up and mobilization; against the authority of agencies of State power, agencies of local self-government, and associations of citizens; in the sphere of employment activity; against the administration of justice; against the established procedure for performing military service.

The system of the Special Part has been augmented by new sections: «Crimes against the Environment» (Section VIII); «Crimes in the Sphere of the Use of Electronic Computers, Systems, and Computer Networks and E-mail Networks» (Section XVI); and «Crimes against Peace, Security of Mankind, and International Legal Order» (Section XX). These sections contain a significant number of norms by which criminal responsibility was established for the first time for acts that are socially dangerous.

The large chapter of the 1960 Criminal Code on responsibility for crimes against the individual was divided into three autonomous sections: «Crimes against Life and Health of the Person» (Section II); «Crimes against Freedom, Honor, and Dignity of the Person» (Section III); and «Crimes against Sexual Freedom and Sexual Inviolability» (Section IV).

The legislator has long ago consolidated the need that had ripened and been adequately substantiated in doctrinal writings to separate out into autonomous sections of the Special Part of the Criminal Code such infringements as «Crimes against Public Security» (Section IX); «Crimes against Production Safety» (Section X); «Crimes against Traffic and Operation of Transport Safety» (Section XI); «Crimes in the Sphere of Turnover of Narcotic Means, Psychotropic Substances, Analogues and Precursors Thereof, and Other Crimes against the Health of the Population» (Section XIII). Unlike the 1960 Criminal Code, which provided separately responsibility for crime against State and collective ownership and against individual ownership, the 2001 Criminal Code provides for a single Section VI, «Crimes against Ownership». The equality of the forms of ownership proclaimed by the Constitution and other laws of Ukraine excludes the need to differentiate responsibility depending upon the affiliation of property to a particular owner.

The Special Part of the Criminal Code is completed by Section XX, «Crimes against Peace, Security of Mankind, and International Legal Order». It is assumed that the articles of this Section will be applied very rarely, and the sphere of their operation is obviously limited. Indeed, unlike similar sections or chapters of the criminal codes of other States, norms have been included in this Section directed towards protection of the international legal order. These, in particular, included Article 444, «Crimes against Persons and Institutions Having International Protection», and Article 445, «Illegal Use of Symbols of the Red Cross, Red Crescent, and Red Crystal».

The system in the 2001 Criminal Code of the Special Part is more convenient for practical application because the investigator, procurator, judge, and other persons, but jurists and non-jurists, are easily orientated in the Criminal Code at once when seeking a particular necessary Article.

In devising the dispositions of the Special Part of the Criminal Code, the most characteristic trends were reflected inhering in the development of legislation on criminal responsibility not only of Ukraine but of other countries which were previously part of the former Soviet

Union. The 2001 Criminal Code of Ukraine thus refused in the Articles of the Special Part to indicate administrative res judicata as a condition of criminal responsibility. This condition would lead to administrative offenses when committed a second time automatically being deemed to be criminal acts. This would signify unjustified criminalization of a certain portion of acts. A significant part of the norms of the Special Part of the 1960 Criminal Code that provided for the formal constituent elements of crimes (this concerns norms with administrative res judicata) were transformed into the 2001 Criminal Code as norms having the material constituent elements of crimes. This is witness to the enhanced level of social danger of the act when deeming it to be a crime. A significant expansion is observed in the Special Part of the Criminal Code in the number of blanket disposition. This is especially true of the Section on «Crimes in the Sphere of Economic Activity». A similar position is seen relative to value concepts. This is linked with their limitation, clarification, or explanation. Therefore, many Articles of the Special Part of the Criminal Code are accompanied by Notes in which concepts used in a particular Article are explained.

The conceptual position concerning the humanization of the system of punishments is reflected in the sanctions of the norms of the Special Part of the 2001 Criminal Code. First, all sanctions of the Special Part of the Criminal Code are structured as follows: from less severe punishments to more severe. The meaning of this structure is that the court, in refusing to assign a less severe punishment, must provide reasons for the need to have resource to a more severe punishment. Taking into account that sanctions provide, as a rule, in the alternative for not two, but for three or more, punishments, the transition to a more severe punishment requires a search for the more weighty and substantiated of these arguments. Second, a typical feature of the Special Part of the Criminal Code is the lowering for the majority of crimes of the periods of punishment in the form of deprivation of freedom and the introduction in a sanction of punishments alternative to deprivation of freedom. Punishments for economic, military, and negligent crimes, for example, have been material reduced. Punishment in the form of deprivation of freedom for a term of up to fifteen years has been retained, as a rule, for crimes connected with an infringement against the life of a person, and also for mercenary and violent crimes.

Thus, the characteristic cited of the basic provisions of the 2001 Criminal Code of Ukraine enables one to conclude that the Code reflects the achievements of the modern doctrine of criminal law, are based on the 1996 Constitution of Ukraine and generally-recognized principles and norms of international law, and affirm the principles of humanism and legality. Its introduction into operation improved the situation in society, created conditions for the normal administrative of justice, and the development of Ukraine as a democratic, social, and rule-of-law State.