THE UKRAINIAN STATE AND LEGAL SYSTEM IN THE EARLY TWENTY-FIRST CENTURY: CHALLENGES FOR LEGAL SCIENCE

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Since the 1970s the world has entered into a systemic crisis as a consequence of the exacerbation of global problems. A food crisis commences after the world energy crisis. Only in the 1980s were common approaches found to the use of the World Ocean, but the regime of significant territorial expanses such as the Arctic, Antarctic, and Caspian remains frozen. The problem of the movement of people is exceedingly urgent, reflected in flows of migrants unprecedented in world history, especially to wealthy States of Europe and America. The number of refugees in the world exceeds 20 million. The process of overcoming ecological problems is moving forward slowly.

The world community has not succeeded in overcoming basic crisis phenomena, although their pace has slowed somewhat. The third Millennium inherited the entire negative legacy of the twentieth century; however, this is not a legacy with which one can live or coexist. Global problems must be overcome through the common efforts of the entire world community. For many States an awareness of this fact is already commonplace, but for Ukraine these are challenges to the stability of a young State that will verify its capacity to realistically evaluate the modern threats to world civilization and effectively collabourate in overcoming them.

Ukraine facts the priority task of finding and taking its place in the modern world. After Ukraine acquired her independence, precise foreign policy priorities were lacking for an extended period, which caused significant damage to the State and levelled the diplomatic the diplomatic orientation points which should have been taken advantage of individually from the former Soviet republics. It should be emphasized that these priorities have not only political importance, but also legal since this is

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linked with the State entering into a series of respective international treaties whose norms will be needed for internal development. Here are several examples: Ukraine became a Member of the Council of Europe in 1995; however, fully-fledged integration into the principal mechanisms of that international organization continued for nearly seven years. The adaptation of Ukrainian legislation to the United Nations Convention on Refugees lasted almost ten years. The implementation of the anti-corruption conventions of the Council of Europe is proving to be exceedingly complex.

Among the more significant challenges for Ukraine is the energy problem, the resolution of which must proceed primarily in the political and economic context. But one should not overlook the legal levers with the assistance of which the State seeks to overcome the actions of energy monopolies. For example, one of these levers for Europe is the Energy Charter, whose principles should underlie relations with the suppliers of energy resources. World experience in reducing the energy capacity of industry and the legal mechanisms applied should be immediately investigated and the results introduced into Ukrainian practice.

Of vital importance for Ukraine remains the problem of the legal uncertainty of its territory. The existence of territory is axiomatic for a State. But Ukraine is among the few States with partially undelimited boundaries. The legal indefiniteness of the boundary line is simultaneously the indefiniteness of significant territorial expanses such as the Sea of Azov and the Kerchensk Strait. Ukraine has no territorial claims, but the indefiniteness of the State boundaries of Ukraine is linked with the territorial interests of neighbouring States.

The legal indefiniteness and transparency of boundaries is facilitated by the fact that Ukraine, in the view of influential international organizations, is becoming one of the basic transit States for illegal migration into Central and Western Europe. The problem of illegal migration and related human trafficking is among the lamentable challenges to the modern world community. It is evident that this challenged is for Ukraine not an abstract one and that Ukraine must provide an answer to it.

Significant for the Ukrainian State is the issue of its place in the geopolitical distribution of roles on the Eurasian mainland. Ukraine is encircled by states who are very aware of their own national interests and exert significantly more efforts to realize them. The active involvement of Ukraine in extinguishing separatist conflicts is explicable not only by the interest in eliminating hotbeds of instability, but also her own State interests. The ability of a State to lead in the performance of these functions testifies to its capacity to guarantee the preservation of stability at least on its own frontiers.

The world has long since discussed the crisis of parliamentarianism. Although this has been an urgent issue for decades, it is crucial today with the strengthening of integration processes. The crisis of parliamentarianism became central to European political systems when politicians and scholars comprehended that collegial representative institutions were incapable of resolving urgent problems of State administration.

The crisis generated another phenomenon inherent to modern European constitutionalism — delegated lawmaking. One of the effective means of resolving this issue is so-called «rationalized parliamentarianism), perhaps consolidated for the first time in the 1958 French Constitution. A state of affairs when the Government not only decrees a decision

instead of parliament but also determined the agenda for the Government (about 90% of draft laws adopted are prepared and submitted by a governmental team) is now common in the European democracies. But does this model resolve all the problems arising as a consequence of parliamentary inefficiency? French scholars have frequently pointed out that with the enhanced effectiveness of State administration the leading role of parliament as the national representative institution and its authority in society have gradually declined, so it is doubtful that a parliament under any conditions should remain the «forum of nations», an organ capable of consolidating all the leading political forces thanks to guaranteed democratic triumphs and the affirmation of the supremacy of law. A way out has been suggested by Finnish legislators, who when adopting a new Constitution in 1999 enhanced the importance of parliament by strengthening its control and foreign policy functions. The conclusion is that today the development of statehood should concentrate efforts on drafting legislative proposals relating to the preservation and development of the potential for the control and foreign policy components in the activity of the Ukrainian parliament.

The constitutional process commenced in Ukraine placed on the agenda a number of urgent issues, the answer to which must be given not only by politicians and the general public, but also by expert legal scholars. The experience of European constitutionalism and practice of Ukrainian State construction demonstrate the need to take account of and combine in the machinery for the adoption and drafting of a new or a new version of the Fundamental Law of Ukraine two important principles, professionalism and legitimacy. The first must be provided by drafting and giving prior approval to a new Constitution by experts and parliamentarians, and the second by confirming the new Basic Law in a national referendum.

One of the key issues in this contest is the structure of State institutions, especially the national representative organ — the Verkhovna Rada of Ukraine. A qualitative break-through in building a genuinely democratic State order is linked chronologically with the development of parliamentarianism in Ukraine. The reasons for the crisis of the Ukrainian parliamentary system lies not in the erroneousness of the idea of parliamentarianism, but in the inadequacy of the approaches to the structure of parliament itself and the means by which it is formed, and these lie in the weakness and «adolescent state» of the party system. The strategic orientation of improving Ukrainian parliamentarianism may become a movement towards bi-cameralism, which, on one hand, would ensure the proper representation in the Verkhovna Rada of Ukraine of the interests of the regions of Ukraine, and, on the other, the specialization of chambers in the activity of parliament and the grown of professionalism in lawmaking.

The next issue which needs resolution in the course of constitutional form is to develop effective machinery for constitutional-law responsibility. It also is essential to address the proper interaction of various branches of the State in order to ensure the principle of unity in the realization of public authority. In this context the long-discussed issue in specialist doctrinal writings of relegating a number of control institutions to a particular branch of the State should be resolved. We speak of the State Prosecution, the Ombudsman and the Counting Chamber; their functions

should be combined into a single section of the Constitution.

Local self-government is a relatively new object of constitutional regulation. A century ago constitutional texts confined themselves to regulating the forms of the State and the fundamental principles of the legal status of the individual, leaving issues of local importance to the domain of legislation or to subordinate legal acts. However, the strengthening of local self-government and expansion of its competence has forced the legislator to reconsider the position. Therefore, constitutions which were adopted after the Second World War (so-called «third generation» constitutions) contain a section or chapter devoted to the foundations of local self-government. The 1996 Constitution of Ukraine is no exception. Nonetheless, at the time it was adopted many issues of principle remained unresolved with regard to the organization and activity of municipal power. Accordingly, the section devoted to these problems turned out to be more general and incomplete; there are no answers in it to many important questions defining the system and functioning of local self-government.

In the period which has elapsed since the 1996 Constitution of Ukraine was enacted many events have transpired which materially changed the status of local self-government and, indeed, the very attitude of the State authorities and the public to this institution: ratification of the 1985 European Charter of Local Self-Government; adoption of a Law «On Local Self-Government in Ukraine»; and other laws relating to the organization and exercise of municipal power; the legal, territorial, land material-financial foundations of local self-government have been formed. A situation has come into being when the constitutional foundations of local self-government has begun to lag behind the true state of affairs in this subsystem of public power, the further development thereof has slowed down, and the dissatisfaction of territorial communities caused by this is entirely justified. As a result, the forming of the existing system of local self-government in Ukraine is an organic component of constitutional reform and an adequate reaction to the challenges of the modern day.

On the constitutional level, municipal reform in Ukraine should be regarded, on one hand, as an element of improving the territorial organization of power and, on the other, as a reflection of modern political and legal trends in its development. One must bear in mind that local self-government is one of the most dynamically developing institutes of constitutional law. The basic content of the reforms being introduced is the further strengthening of local self-government and a reinforcement of its autonomy in resolving a broader range of question and, when possible, the fullest use of its democratic potential to more fully ensure the rights, freedoms, and legal interests of the members of territorial communities.

While reforming local self-government, a number of complex tasks connected with the need for a structural reorganization of public authority must be resolved, among them the diversification and decentralization thereof, the implementation of administrative-territorial reforms, the creation of proper conditions for encouraging the development of local self-government, and improving the material-financial provision for local and regional development.

The successful resolution of the financial problems of local self-government and increasing the economic prosperity of the inhabitants of the city, village, or settlement are impossible without

improving actively the legislative regulation of socio-economic transformations, changing the procedure for the normative determination of capital investments and budget transfers, facilitating the increase of the revenue component of local budgets by strengthening the system of local taxes and charges, equalizing the possibilities for the realization throughout the territory of the State of the minimum level of social standards, and creating conditions for the origin and development of innovation activity of agencies of local self-government.

No less important in municipal reform is the restoration of the regional level of local self-government, the forming of executive agencies of regional and district soviets, granting them respective powers and essential material and financial resources, as the European Charter of Local Self-Government requires. It is essential to make a precise distribution of competence between local agencies of public power on the basis of the principle of subsidiary and to complete the redistribution of powers between agencies of local self-government and local State administrations and self-governing agencies of various territorial levels.

Realization of the reform requires not only improvement of the legislative foundation of the activities of local agencies of State power and agencies of local self-government, but also the adoption of new laws («On the Administrative-Territorial Structure»; «On Municipal Property»; «On Conducting State-Law Experiments with Regard to Local and Regional Development»; and others). In addition, the creation of analytical structures for investigating problems of territorial development is necessary, forming State and regional information systems on the regions, their potential and needs, and the organization of permanent scientific support for proposals and the implementation of regional and municipal reform.

Yet another issue which we fact in the twenty-first century is preserving national originality and a determinative principle of every democratic system — power of the people. This issue may be formulated otherwise: how to avert the dissolving of popular sovereignty within world integration processes? A reliable guarantee should be the consolidation at the constitutional level and in international agreements of a precise list of questions with regard to which powers are transferred to supranational agencies (together with a substantiation of the need for granting this extent of competence), ensuring the extensive participation of national representative agencies in working out and adopting decisions at the respective integration level, establishing the exclusivity of the application of the institution of referendum when deciding major issues of the activity of supranational subjects of the international community.

The twenty-first century confronts the problem of restraining separatist trends and structures. Indicative in this context is the governmental crisis in Belgium, the basis of which is a national-religious issue. Ukraine is capable of resolving this type of question «around the table». However, these moods are capable of forming themselves into movements, including political ones. Here the question may arise of a threat to the integrity of the country. To avert this situation from arising the adoption of a Law «On the Foundations of Regional Policy» is an urgent task that would enable not only the orientations of regional policy to be determined, but also for an extended period consolidated specific socio-economic measures to balance the development of regions by tak-

ing into account the distinctive features of each.

Time is flying by more rapidly in the twenty-first century. Entire stages of social, scientific, and economic development are accommodated in insignificant intervals of time. This requires the generating of ideas that would enable Ukraine to take a worthy place in the world. The most important are innovative advanced which scholars and specialists are capable of making. A cardinal revision is essential to make provision for these processes through economic, administrative, and legal reforms. The most important, without which changes of principle cannot be expected, is that the intellectual should become the key figure, productive of ideas around which an infrastructure will form. Competition, which stimulates the need for particular innovative changes in goods, work, and services, must be the pivotal point for intellectual resources to be activated.

Placing intellect in the epicentre of an innovation model requires adequate changes in the system of education, science, financing, and industry. The intellectual must be cultivated and nurtured at the level of mastering the achievements of European and world science. Cardinal changes should be introduced in the system of education scientific-technical activity, and institutes of intellectual property. A productive intellectual must be provided with the managerial services and financing necessary for the generation of ideas. Production must be so arranged that innovative proposals are perceived in a timely manner and their rapid introduction secured.

The need for a change in the constitutional foundations of innovation policy in Ukraine is evident with adequate provision for the legal apparatus thereof. This is an enormous work, but without this major advances should not be anticipated. Movement towards the European community, the desire for cardinal changes, will not enjoy success in a legal milieu where obsolete schemes of the past period are retained together with a modern approach towards introducing new legal models.

Nonetheless, it should be stressed that no modifications and changes in legislation should disturb integral categories which are immutable. One cannot make reference to justness and the supremacy of law while violating the law and legal fundamental principles. The normative-legal base and legal milieu must be carefully devised with a view to bringing order to economic and intellectual activity as priority factors in the development of Ukraine. Such activity in the legal domain must be orientated towards restoring confidence in law and the social machinery for its application.

The modern state of the natural environment causes disquiet for the entire world and for Ukraine. Despite measures being taken, it continues to deteriorate. We refer to changes in the qualitative state of individual natural resources and to the environment as a whole. Under these circumstances, the realization of the right of each of us to a safe environment is becoming more complicated. Ecological conditions under the impact of anthropogenic activity always experienced changes brought by ecological crises of various dimensions. However, under modern conditions the scientific-technical revolution has materially expanded in extent and possibilities, and the intensity of the influence of society both on the natural environment and on profound properties and structures of the earth has increased.

A specific feature of the modern ecological situation is that the crisis points are becoming greater for Ukraine and elsewhere. As a result, an ecological ten-

sion is actually arising which is creating a danger directly to the existence of mankind. A priority task is the need to transform the preservation and regeneration of the natural environment as a common system for human life.

When natural processes cannot secure support for the dynamic functioning of the «nature-society-nature» system, only society itself can perform the respective function of regulator. Society must act as the decisive factor in preserving the earth's biosphere and the plant as a whole. A moral and aesthetic re-evaluation of the relationship of each person and society as a whole to the environment is required. We refer to the need for the gradual formation of an ecological consciousness.

In representing the interests of society and performing an ecological function, the State must determine the legal forms for regulating social relations which arise in the process of determining affiliation to nature objects and their use, reproduction, and protection of the natural environment and ensure ecological security. This social activity should further the strengthening of the interaction of society and nature on a scientifically-substantiated level, and also facilitate the real reflection of their interaction. The modern ecological-legal prescriptions which are being formed on a new basis in principle and founded on the doctrine of human rights are absolutely needed in an adequate codification of legislation.

The Conception of National Ecological Policy of Ukraine for the Period to 2020 calls for the adoption of an Ecological Code of Ukraine and compliance with its basic requirements as a major instrument of national ecological policy. Completion of the codification of ecological legislation of Ukraine would enable the necessary conditions to be created for its constant development and for participation in international cooperation in the sphere of protection of the natural environment.

It should be emphasized that the nature and dynamics of the development of contemporary ecological relations which require not only a regional but a global reach. Since a high degree of the ecological interdependence of States within individual regions and between them is leading to the headlong escalation of many national and international ecological problems, their resolution in the twenty-first century is possible solely at the international level. The integration of Ukraine and the European Union may be realized by means of the systemic improvement and bringing Ukrainian legislation into conformity with European legal, normative-methodological, and institutional base of ecological management and ecological security.

The twenty-first century is an era of globalization which is influencing national criminal-law doctrines. The challenge to the international community is terrorism and transnational criminality. Human trafficking, crimes connected with narcotics, smuggling, and other types of socially-dangerous acts transcending national boundaries represent a danger not only for individual countries, but mankind as a whole. Under these conditions the combining of the efforts of States is essential to wage a common effective struggle with criminality.

The strengthening of interdepartmental cooperation of law enforcement agencies of member countries is occurred at the level of the European Union and the formation of special supranational structures (Eurojust, Europol) whose task is to combat organized crime and establish direct contacts between them and member countries.

The intentions of Ukraine with regard to European integration require standardization of the forms and methods of combating organized crime pursuant to the approaches of the European Union and the Council of Europe and also in adopting common procedures for counteracting organized crime and other dangerous crimes. In accordance with the 2000 European Convention on Mutual Assistance in Criminal Matters, active measures are being taken to increase the efficiency and effectiveness of various forms of legal assistance when investigating crimes committed on the territories of various countries; common investigative groups are being formed that include representatives of law enforcement agencies of the respective countries. On the territory of the European Union the institute of extradition of offenders is receding into the past and a new form of criminal procedural compulsion is being introduced — a European order for arrest, in accordance with which a judicial authorization to detain an offender issued in one country of the European Union operates on the territory of all member countries.

Counteracting organized crime is one orientation of the cooperation of Ukraine with members of the European Union pursuant to a new EU/Ukraine Action Plan adopted 2 February 2005. The participation of Ukraine in general measures of the European Union in combating trans-boundary organized groups and criminal organizations is important. The creation of a legal base for the accession of Ukraine to new forms of international cooperation in criminal matters is urgent. It is essential to establish contacts with European law enforcement structures — Europol and Eurojust — and to work out agreements with them on cooperation. The adaptation of criminal and criminal procedure legislation to European standards also is vital.

Ukraine needs to develop an adequate strategy for counteracting organized crime that is based on an analysis of the modern state of organized crime and corruption and takes foreign experience into account. Underlying international cooperation in the domain of counteracting criminality is the legal provision thereof, which is especially vital for law enforcement agencies since it is necessary to create an evidentiary base for the consideration of cases in court. Bearing in mind the absence of legal regulation of the relations of Ukraine and European supranational law enforcement structures, a draft law «On Organizational-Legal Foundations for the Participation of Ukraine in European Law Enforcement Structures» needs to be prepared. The preparation and adoption of an International Criminal Code which would provide responsibility for the most dangerous international crimes having a global nature is timely (terrorism, information crimes, transnational crimes, and others).

The aspiration of Ukraine to join the European Union is affecting the study and use in the doctrine of criminal law and criminal legislation of the best and most useful scientific achievements of various countries of the world. This work requires targeted joint research by scholars of various States, including Ukraine.

The criminal-law aspect of the development of legal doctrine is under discussion. Sometimes reference is made to the crisis of criminal-law science in publications and in papers at conferences or seminars. This is not so much a crisis as a challenge of modern times concerning the need to be aware of the problems arising and the determination of the directions in which science should devel-

op. Society needs an answer to the traditional but always urgent question for every science: the object and methodology of criminal law studies, the organization of such studies, and an evaluation of their effectiveness and usefulness for society and the State.

Society and the State are interested especially in the stability of criminal legislation, which would bear witness to the steady and predictable criminal-law policy of the State. The foundation of stability is the quality of criminal law secured by the Criminal Code, which by its content and legal form meets modern requirements of society in counteracting criminality by criminal-law means. Ensuring the quality of the criminal law and elabourating criteria for evaluating legislation and its application with a view to enhancing the effectiveness of the prescriptions of the Criminal Code and raising the professional standard of judges and personnel of law enforcement agencies remains one of the major strategic orientations of the development of the science of criminal law.

The dynamics of criminal law are conditioned by many factors, among them changes in the socio-economic and political conditions of the development of Ukraine; the emergence of new types of socially-dangerous behaviour and the need to study them; the elabouration and inclusion in the Criminal Code of prescriptions concerning the punishability of a particular type of socially-dangerous act; the need for society to decriminalize certain acts, that is, renounce deeming a particular type of behaviour to be a crime; the need to clarify individual provisions, and also eliminate certain «gaps» and «conflicts» of the Criminal Code in force identified by the practice of its application; the need to take account the recent achievements of the science of criminal law, and others. The dynamism of the science of criminal law is secured not only by reacting in a timely manner to the objective requirements of society, but also in foreseeing them.

The contemporary trends of criminality in Ukraine, although they testify to a reduced level thereof and positive advances in structure, all the same do not give grounds for equanimity with regard to the cause of the transformation of quantitative changes in the indicia of criminality into qualitatively new forms of criminal behaviour, such as raiding, illegal migration, human trafficking, smuggling, and corruption. In 2010, 500.1 thousand crimes were registered (in 2009, 434.7 thousand). The dynamics of criminality grew at the expense of the growth of crimes against ownership. Whereas in 2009 243,000 thefts were registered, in 2010, there were 318,000, which is partly to be explained by legislative vacillation in determining the amount of criminally-punishable stealing of property.

The transition from an administrative-command system of management to a market model in Ukraine was introduced rather abruptly; the embryonic market relations in the early stage confronted the strong influence of agencies of power on economic and social processes. As a result, the process of the primary accumulation of capital was accompanied by mass violations of legislation in force. Property transactions were entered into not for production purposes, but speculative, when enterprises were taken over for their expensive immoveables. Raiding also could be explained by the regime of rising prices for immoveables and land.

The complex influence of this socially-dangerous phenomenon was affected by the lack of legal responsibility for raiding and a precise orientation for combating it. This also helps explain

guarantees of compliance with the law of ownership being ignored and the ineffectiveness of the courts and law enforcement agencies in this respect. Among the urgent measures to counteract raiding is the need to draft and adopt legislative acts to strengthen responsibility and eliminate «gaps» in economic and civil legislation.

Without systemic changes in society, restructuring the principles of the operation and interaction of all branches of power to overcome corruption will be impossible. The present state of legislation regulating corruption will not enable the negative image of Ukraine as one of the most corrupt countries of the world to be altered. Having provided administrative responsibility in 1995 by the Law of Ukraine «On the Struggle Against Corruption»[1] for the commission of corruption violations without taking into account that international-legal norms regard many of them as criminally-punishable acts, the legislator thereby artificially lowered the perception of the danger of corruption as an extremely negative phenomenon for society.

In 2007 the activity was terminated of sixteen organized criminal groups which engaged in human trafficking. 366 victims were returned to Ukraine, of whom 55 were minors. During 2009–2010, 279 and 257 crimes were registered respectively connected with human trafficking, and 23 organized groups and criminal organizations identified in this connection. In all about 400 organized groups and criminal organizations were discovered in 2010, including forty with international links and sixteen operating on an ethnic basis which committed more than 3,000 crimes, 80% of which were grave or especially grave crimes (homicide, banditry, assault with intent to rob, theft on an especially large scale, and others).

The first seekers of asylum appeared in Ukraine even before independence was acquired in 1991. Refugees from the Azerbaidzhan SSR and Armenian SSR arrived in Ukraine during the so-called «Karabakh» Conflict in 1988 and 1989. The second wave of refugees comprised Meskhetian Turks who arrived in Ukraine after sanguinary pogroms in the Uzbek SSR during the summer of 1989. The largest number of refugees came to independent Ukraine in 1992 as a result of the armed conflict in the Transdniester — a region in the neighbouring Republic Moldova. Although at the time Ukrainian State agencies did not carry out a targeted registration of those who sought asylum, according to United Nations data of 1999 about 62,000 persons crossed the Ukrainian-Moldovan border in order to obtain temporary protection against the war.

A tense humanitarian situation was created by the tens of thousands of persons in the regions of neighbouring Moldova — Vinnitsa, Odessa, Chernovits, and Nikolaev Regions, where the first steps were taken to legally regulate the status of refugees in Ukraine and persuaded the legislator to adopt the first version of the Law of Ukraine «On Refugees» in 1993. Ukrainian legislation as a whole met the spirit of international standards for the protection of refugees, although elements remained that were contrary to the international obligations of Ukraine. The regulation of the acquisition, loss, and deprivation of the status of refugee and the legal and social guarantees for refugees and seekers of asylum were consolidated in the Law of Ukraine «On Refugees».

[1] Repealed by Law of Ukraine No. 1506-IV, 11 June 2009. Відомості Верховної Ради України (2009), no. 45, item 691, as amended.

As official statistics of the State Border Service of Ukraine testify, about 3,000 illegal migrants were detained by the border guards throughout 2004. Far from all knew their rights and duties, in particular, their right to asylum. The great majority detained in Ukraine were economic and labour migrants using Ukraine as a transit route to Western Europe. Among these people are potential refugees who have the right to international protection. The State should create an effective system for identifying these persons.

Nonetheless, criminal manifestations among migrants are not uncommon. During 2006 and 2007, foreign citizens committed 3,800 crimes, of which 74 were intentional homicides, 79 grave bodily injuries, 116 assults with intent to rob, 285 open stealing, 1,300 thefts, and 68 illegal taking possession of motor vehicle transport. During the last two years the unlawful activities of fifteen organized groups created on an ethnic basis were shut down. Criminality of foreign citizens in connection with migration is not decreasing.

Ukraine, having ratified the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, assumed under Article 4 of this Convention obligations to declare punishable under the law as a crime «...all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, ... acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin ...», and also declare illegal and prohibit organizations which promote and incite racial discrimination. Criminal responsibility for infringement on the rights of man and citizen on the basic of racial, nationality, and religious intolerance was significantly strengthened in changes to the Criminal Code of 17 November 2009 pursuant to these obligations.

Although happily criminality on the basis of racial, nationality, or religious enmity is not so widespread in Ukraine, one cannot ignore the great social danger of such manifestations. During 2006 and 2007, 1,430 crimes were registered relating to foreigners, 33 of them intentional homicides, 36 intentional grave bodily injuries, 52 assaults with intent to rob, 188 open stealing, 539 thefts, and 138 illegal taking possession of motor vehicle transport. In 2010 2,269 foreigners were deemed to be victims of the said crimes, of which 71 perished, that is, criminal infringements against foreigners doubled in three years.

The data cited show the need for a more detailed analysis of the results of increasing responsibility for violations of law committed for racial, nationality, or religious reasons and continuing work on improving the legislation of Ukraine (criminal, civil, administrative) to prevent these manifestations. In addition, the administrative and disciplinary responsibility of officials should be provided for manifestations of racial, nationality, or religious discrimination which are a consequence of their thoughtless actions.

The practice of internal affairs agencies of Ukraine in dealing with crimes in the domain of industry shows that criminal elements have recently concentrated attention of strategic enterprises with a view to obtaining significant profits. In order to ensure the energy security of the State, attention should be devoted to the legality of the use by enterprises of State means allotted for the introduction of alternative energy sources, restructuring State enterprises, installing gas supply in population centers, and the calculations for consumer energy carriers, and compliance with license conditions when

financial and economic activity of structural subdivisions and subsidiary enterprises of State joint-stock companies is undertaken.

In 2007 about 3,000 crimes were discovered at TEK objects, including 421 crimes causing damage in excess of 100,000 hrivnas. By 2010 677 crimes were registered at these same objects, of which 149 caused damage exceeding 100,000 hrivnas. Among the documented crimes, 60% were committed in the energy sphere, 23% in the coal industry, about 22% in the fuel, oil refining, and gas spheres. Although the number of registered crimes decreases each year, a high level of latency remains.

About 153,000 consumers of narcotics are registered in Ukraine, nearly 33.3 per 10,000 population. 90% are narcotics addicts, persons up to 30 years of age. During the past three years, a positive trend towards reducing narcotics addiction can be observed. However, the quantity of seized narcotic means, psychotropic substances, and precursors is increasing and international channels for receiving narcotics in Ukraine are being closed. Regrettably, the predictions for the spread of narcotics addition are depressing, the more so as narcotics addiction is more fashionable among the young and is being feminized. The non-medical consumption of narcotics is expanding in all social spheres (workers, employees, unemployed, businessmen), and the preponderance of grave forms of narcotics addition, including poly-addiction, is growing.

Narcotics addiction is closely linked with criminality. Narcotics stupefication weakens human self-control, which facilitates the commission of a crime. The consumption of narcotics and living a parasitic way of life requires significant means that are most readily obtained by crime. Addicts belong to the high-risk group of crime victims. It should be borne in mind that illegal operations with narcotics are in and of themselves criminal, as is the maintenance of dens for their consumption, and so on. 62,539 crimes were registered throughout 2010 in Ukraine in the sphere of the circulation of narcotic means, psychotropic substances, analogues and precursors thereof, of which a third were categorized as grave or especially grave.

The present development of the science of criminal procedure is determined by the need of society to establish the legal regulation of social relations capable of ensuring legal order and the protection of the rights and interests of each person. Strengthening the role of the court in a criminal trial, reforming the system of pre-judicial investigation agencies, expanding adversariality and ensuring the rights of participants in a court proceeding – these are problems whose solution depends not only upon the technical legal content of Ukrainian legislation, but also on its social orientation. We have the possibility today, by relying on historical and international experience and using all of the acquired positive potential, to accelerate the processes of reform in this domain by creating an effective legislative base. As a legal form of resolving social conflicts arising in connection with the commission of crimes, a criminal trial is called upon to become a procedure which reliably defends all of the participants thereof against illegal influence on them.

Enlarging the jurisdiction of the court in a pre-judicial proceedings in a criminal case is where the science of criminal procedure is making efforts, in order to ensure the constitutional right of each to judicial defense; differentiate criminal-procedural forms, introduce simplified procedures capable of effectively achieving the purposes of a crimi-

nal proceeding within reasonable periods; introducing right-protective machinery with whose assistance the participants of a trial might uphold their legal interests, and improving the system of reviewing judicial decisions and correcting judicial errors.

For modern penal law the primary task is the theoretical substantiation of recommendations to improve penal legislation, the activity of agencies and institutions to execute punishments and to implement the right-limitations inherent in punishment. Scientific studies in penal law as a sphere, the process of forming which has only commenced, must be fundamental. Only on this basis can one elabourate the applied research on individual specific problems of the activity of agencies and institutions which implement punishments and develop theoretically-substantiated recommendations for the improvement and reform thereof.

The science of penal law on the basis of a comparison of theoretical propositions with verified practice in implementing punishments in the actual practice of penal agencies and institutions makes it possible to research law enforcement activity as a principal orientation in the activity of penal agencies and institutions and help draw attention to the substantiation of the realization of right-limitations inherent in punishment. Ultimately this will lead to an improved knowledge and fuller understanding of the processes of penal policies.

The development of the science of penal law is based on new requirements, having regard to the effectiveness of the activity of penal agencies and institutions to research divergences between the theoretical model of «reform and resocialization of all convicted persons» and social reality. Issues of the real possibility of implementing punishments are major cognitive problems of penal law.

More profound study of the functioning of the penal service will make possible not only a characterization of various orientations of its activity, but also a determination of whether with the assistance of legal and relevant means the tasks put to a penal system can actually be resolved, and if so, how the purposes of penal agencies and institutions can be achieved and what the social purpose of a penal system is. This all requires an improvement of the legislative base and a continuation and deepening of the reform of the organizational-legal foundations of the activity of the penal service. The principal aim of the reform should be the qualitative change and enhanced effectiveness of the penal agencies and institutions.

A primary objective of scientific research in penal law is elabourating the theoretical-legal provision for reforming the penal service. This means that on the basis of an integrated analysis of the functions of the penal system, scientifically-substantiated proposals are made to the draft Conception of the reform of the penal service along these orientations: improvement of the legislative base; organizational measures; reorganization of the procedure for and conditions of serving punishment; improvement of work with personnel.

Combating crime is one of the priority tasks of State criminal-law policy, and integral part of which is criminological policies. The States of the world have been preoccupied with this for centuries; however, cardinal success has not been achieved, notwithstanding energetic, multi-dimensional, substantiated, real, specific, and not declaratory, preventive measures, well-resources, have produced noteworthy positive results.

The platitude that a wide legislator should be more concerning about preventive, than chastising, activity

remains genuine, including in Ukraine. It should be stressed that counteracting criminality is a urgent task of all branches of power and society. It should be based on scientific principles and requirements compliance with which is essential; otherwise, as world experience shows, there will be no results. However, one may speak about the fulfillment and results of the Integrated programs for the prevention of crime adopted during the last fifteen years in Ukraine only relatively.

In summarizing Ukrainian, foreign, and international criminological experience in combating crime, the guiding principles relating to the prevention of crime elabourated by United Nations congresses for the prevention of crime and criminal justice, one may suggest the following.

The prevention of crime should be regarded as an obligatory element of social policy. What was said by the German criminologist, F. von Liszt, continues to be relevant: the best criminal law policy is the best social policy. Only an elevated social policy is capable of forming a civil society which is the foundation of a rule-of-law State and of positively influencing the quality of legal order within a State. Society must understand these important tenets of criminological policy and be interested in strengthening the preventive effect of social measures.

A criminological policy which is not only the aggregate of strategies and measures, but also an ideological generator enhancing a preventive «tension» in society, must promote this, form a social tolerance and respect for social values, accumulate «social capital» (public order, trust, honor, and so on), without which it is impossible to build a rule-of-law democratic State with a market economy.

The prevention of crime is not an isolated problem which is resolved by simple and direct methods, but rather an broad and complex orientation of activity requiring systematic strategies and differentiated conceptions that take into account socio-economic, political, and cultural conditions of the society in which they are implemented, and also the degree of development of society with a special accent on changes occurring in it now and possibly will occur in the future.

Often society by various routes gives rise to criminal behaviour or increases criminogenic potential — a failure to provide, poverty of some and lack of control, mercenary behaviour of others, lack of real concern about the «working» families and unsupervised children, poor schooling and nurturing, ineffective work of the State apparatus, and so on. These shortcomings may be overcome by the proper organization of social life and use of modern scientific knowledge, including in the domain of combating crime.

State programs should be drawn up on the basis of a global, integrated, and coordinated approach, determining in so doing the short-term or urgent, medium-term, and long-term (permanent) tasks. This makes it possible to evaluate the results of realizing the decisions adopted, lessen their possible negative economic and social consequences, and reduce the possibility for the commission of crimes while enlarging in so doing the sphere of satisfaction of requirements by means of law.

In our view, a reduction of the practical possibility of committing crimes may be achieved by conceptual strategies of criminological policies; the resolution of complex tasks of adaptation; nurturing and informational work in the population; interference in crisis situations;

involving the general public in preventive activity; counteracting so-called «background» phenomena which entail social degradation and de-socialization not only of individuals, but lead to a deterioration of morality and culture of all society (child and adolescent delinquency, narcotics additions, addiction to toxic substances, vagrancy, parasitic way of life, victimization, alcoholism, prostitution, legal nihilism, criminal subculture, sectarianism, begging, and others).

When devising specific strategies, one should proceed from the criminogenic situation, the state of criminality, the criminogenic potential of members of society or parts thereof, the level to which the theories of crime prevention have been elabourated, the degree of resource provision and machinery for its distribution, and so on.

An important step on the way to enhancing the effectiveness of crime prevention is the activity of the Coordinating Committee for Combating Criminality attached to the President of Ukraine, which is professionally engaged with the planning, control, and coordination of crime prevention on the national and regional levels. Understandably, this work does not reduce merely to hearing reports by subjects responsible for combating crime, as was the case previously.

The mass media and enlightenment activity play an important role in implementing strategies for counteracting criminality. It is advisable to study and assess the role of the mass media and its influence on various aspects of crime prevention and the administration of criminal justice, since an understanding by the general public of criminal-law and criminological policies and their position is a decisive factor in ensuring the effectiveness and justness of the legal system. The positive contribution of the mass media in informing the public about crime prevention and administering criminal justice should be encouraged, for together with programs of public and legal education, learning the norms of life in society is important. This concerns uncontrolled advertisements of miracle drugs, beer, low-alcohol cocktails, and the like. Ukrainian narcologists sound the alarm: the «face» of Ukrainian alcoholism is becoming younger — 16 year old patients in narcotics clinics surprise no one. During the past ten years, beer alcoholics in Ukraine have increased ten times. The per capita increase in beer produces has led to a problem with alcohol among 14 and 15-year olds[1].

In the form in which they now exist, criminal law statistics are unsuited for the effective combating of criminality since they have a more popular, familiarization, nature. In, for example, Germany a substantial volume is issued annually with police criminal statistics which contains detailed scientifically-substantiated criminological information about crime, its structure, dynamics, geography, nature, factors, and so on.

The introduction of technical means to combat crime is more widely encountered in world practice. New achievements of science and technology should be used in the interests of people and thereby in the interests of the effective prevention of crime. It should be recalled that new technology may influence new manifestations of crime. These consequences need to be foreseen and prevented in advance, rather than combating them later. Qualitative changes in crime and its taking on a professional, organized, and more precise character confront the science of criminalistics with tasks to

[1] *E. Romanishin*, «Тяжке похмілля від легкого алкоголю» [Grave Consequences of Types of Light Alcohol], Урядовий кур'єр, 19 January 2008.

elabourate modern methods and means for counteracting criminal phenomena.

On this level the more active and creative use of criminalistics data of the technical and natural sciences should be deemed to be more urgent in accordance with its tasks: the introduction of such innovations in investigative activity as digital, photographic, and video technologies, multimedia devices, distance observation, and internet technologies. This requirement is affected by the large number of tasks that need to be resolved within relatively brief periods, the insufficiency of information concerning an event being investigated, the lack of reliable sources to obtain the information, difficulties in interaction with specialists and operational-search personnel, and resistance to investigations on the part of interested persons. The introduction of innovations also will affect the optimization of the investigation and elimination (or reduction) of investigative errors.

The need to form new and to modernize existing scientific recommendations with regard to the identification and investigation of individual types of crimes is urgent (referring to new criminal manifestations) on the basis of introducing modern information technologies, methods of modeling and forecasting, setout out respective recommendation in more accessible form for the investigator, including in the form of certain algorithmic diagrams, which are realized on the base of modern computer technologies.

In determining the orientation of scientific quests in the domain of criminalistics, one must proceed from the requirements of the investigator and forensic and expert practice, predictions of probable lines of development and structural changes in criminal manifestations, and international experience in combating them. These axiomatic assertions do not need superfluous mention, but they make sense and need to be made because of the disproportion between the requirements of practice and doctrinal lines of inquiry observed at present. Some criminal law scholars as a consequence of labour intenseness, complexity, and length of time needed for empirical observations avoid the need to create an informational foundation for individual criminalistics methods «from the ground up» and give preference to a certain «modernization» of work done previously and relatively «simple» methods, without elabourating new ones. This «selectiveness» is mistaken, and therefore scholars should concentrate their attention on developing models for investigating crimes committed in the credit-financial and banking spheres, privatization, processing and food industries, fuel and energy, and agro-industrial complex, as well as crimes against the environment.

In analyzing the reasons which obstruct the active introduction of the achievements of criminalistics into forensic investigative practice, one must indicate not only the inadequate level of scientific work, but also the conservative stereotypes formed in this sphere by practical activity and a certain lack of desire by practitioners to work «according to science». These stereotypes need to be overcome, and a decisive step must be made by scholars. They need to review the recommendations made by science since some of them can hardly serve as an instrument of practical activity.