

THE DRAFT OF THE NEW CRIMINAL CODE OF UKRAINE: CONCEPTUAL PRINCIPLES AND BASIC PROVISIONS

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INTRODUCTION

The issue of reforming the current CC of Ukraine has been discussed for the past ten years. This is due to the fact that the existing CC, which has been in effect in force for 22 years, has been subjected to numerous amendments and additions that have disrupted its system leading to inconsistencies and collisions. The CC does not consider a lot of Ukraine's international obligations in the field of criminal law, does not sufficiently protect the interests of a victim of criminal offences, and has gaps and even errors. The article is based on the achievements of modern criminal law science, as well as the practice of applying the current CC, which was embodied in the provisions of the draft CC.

MAIN PART

1. The state of the current CC of Ukraine. The current Criminal Code of Ukraine (hereinafter - the CC of Ukraine, CC) was adopted by the Verkhovna Rada of Ukraine on April 5, 2001, and entered into force on September 1, 2021, that is, the CC of Ukraine of 2001 has been in force for more than twenty-two years. To compare: the CC of the USSR of 1927 was in force for thirty-four years, and during its period of validity, the NEP, industrialisation and collectivisation, Holodomor and mass repressions, preparation for the Second World War, the war itself and post-war reconstruction and other large-scale events occurred. The CC of the Ukrainian SSR of 1960 was in force for more than 40 years during such historical periods as the construction of "developed socialism" in the

USSR, the period of stagnation, restructuring, the collapse of the USSR and the gaining of independence by Ukraine, the first years of the formation of a new economic, social and political system in the country. Thus, the previous criminal laws were in force twice as long on average as the current CC and, at the same time, experienced periods of significant, often radical changes in society and the state.

2. The main factors that caused the need to prepare a draft of the new CC of Ukraine. First, in modern conditions, there is a need to change the paradigm of CC. The current CC is built on the concept of establishing prohibitions for potential subjects of committing certain types of socially dangerous acts under the threat of criminal liability. However, such a conceptual approach to the subject of regulation of criminal legislation in public life does not correspond to Part 2 of Art. 19 of the Constitution of Ukraine, according to which “state authorities, their officials ... are obliged to act only on the basis, within the limits of authority and in the manner provided for by the Constitution and laws of Ukraine.” The subject of regulation of the new CC is not the behaviour of people who do not commit criminal offences, but the activity of the state (first, represented by the court) in the administration of justice against those who commit criminal offences. Secondly, it is obvious that there is a change in the approach to the CC in the life of a person, society, and the state. One of the conceptual provisions of the current CC is defining it as one of the main means of combating negative phenomena in society and criminal law as one of the main branches of Ukraine’s national legal system. The draft CC proceeds from the fact that criminal legal means are extreme (last-ultima ratio) means of the state’s response to illegal acts. Thirdly, numerous changes and supplements to the current CC, which were introduced by Law No. 2617-VIII “On Amendments to Certain Legislative Acts on Simplifying the Pretrial Investigation of Certain Categories of Criminal Offenses” [1], led to the undermining of the fundamental principles of the CC that were established as a result of long-term doctrinal studies and legislative works and enshrined in the current CC of Ukraine as of September 1, 2001. This is most clearly seen from the fact that in Law No. 2617-VIII, the introduction of the category of criminal misdemeanours was not carried out due to the separation of an independent category of such acts and their distinction from crimes and administrative offences but was implemented by mechanical renaming crimes of minor gravity to criminal misdemeanours, neither decriminalisation nor mitigation of responsibility for criminal misdemeanours was carried out. In addition, the mechanical replacement of the term “criminal” with the term “criminal-illegal” entailed the distortion of the features of the crime (criminal offence), the content of guilt, complicity, signs, and legal consequences of the circumstances that exclude the criminality of the act, etc. Fourthly, numerous changes and supplements to the CC of 2001 led to a violation of its system. In the course of more than 22-year term of validity of the

CC of Ukraine of 2001, an extremely large number of amendments were made to it by people's deputies of six convocations of the Verkhovna Rada of Ukraine. As of October 20, 2023, 1,461 amendments and additions were made to the CC, of which 279 changes and additions were made to the General Part of the CC and 1,182 to the Special Part. A lot of provisions of the Code have been changed several times. Thus, in the current CC of Ukraine, out of 447 articles as of September 1, 2001, only 51 articles remained in their original version (11.4%). At the same time, with previous changes, legislators often violated the general principles of criminal legislation, introduced collisions into its provisions or created gaps in them, and made obvious mistakes. Fifth, the large-scale invasion of the Russian Federation into Ukraine necessitated the introduction of numerous changes to the system of national legislation of Ukraine, including the CC. The Russian-Ukrainian war revealed new types of socially dangerous acts in the sphere of national security of Ukraine (for example, collaborative activities), as well as in the sphere of protection of the international legal order, which were not provided for in the current CC. In order to correct these shortcomings, the legislator, in the first months of the war, hastily introduced numerous changes to the CC, which were subsequently improved. A new conceptual approach to the solution of these issues is proposed in the draft CC. Sixth, new challenges for the CC arose in connection with the European Council granting Ukraine the status of a candidate for the European Union on June 23, 2022. This decision, among other things, provides for the fulfilment of numerous obligations of Ukraine regarding the adaptation of its legislation, including criminal ones, to the EU *acquis*. It is obvious that the draft CC, which is based on other substantive and structural provisions compared to the current CC, has embodied the EU *acquis* in the field of criminal law in its provisions. Finally, seventhly, the lack of a mechanism to protect the CC from arbitrary decisions by the legislator led, as noted, to many negative phenomena in the content of the current CC. It is apparent that the CC, as a systemic regulatory legal act, which defines the most severe legal restrictions that the state is authorised to apply to a person, must be reliably protected from unjustified changes in it in order to be a prescribed act and prevent its use as a tool for solving personalised political issues, establishment of unfounded and frankly erroneous prescriptions, attempts to use criminal legal means in political struggle or economic competition, etc. The draft CC provides for certain safeguards against similar phenomena.

3. Working group on the development of criminal law. By Decree of the President of Ukraine No. 584/2019 of August 7, 2019, "Questions of the Commission on Legal Reform" [2], a working group on the development of criminal law (hereinafter - a working group) was created as part of the aforementioned commission. Currently, the working group has 11 members, including nine professors, a People's Deputy of Ukraine and a judge of the Supreme Court. The Commission and its working groups have the follow-

ing objectives: developing and submitting to the President of Ukraine agreed proposals on improving the legal system of Ukraine, taking into account the modern challenges and needs of a democratic society, in particular, preparing and summarising proposals for changes to criminal liability legislation. Implementing these tasks and aiming to organize a broad public discussion, the working group developed a draft of the new Criminal Code of Ukraine. [3]

4. Values of the draft CC. In particular, the following values are the basis of the draft CC: 1) the safety of a person, society, the state and the international community from criminal encroachments, 2) the protection of the rights of a victim of a criminal offence and the determination of his or her role in solving issues of a person's responsibility for a committed criminal offence, 3) protection of human rights and freedoms from arbitrary state intervention, 4) ensuring compliance of the provisions of the draft CC with Ukraine's international legal obligations, first of all, EU acts, in terms of establishing responsibility for certain types of crimes and modern European practices of countering crime by criminal law means, 5) continuity of the provisions of the draft CC and its relative stability.

5. Rule of law. According to Art. 1.1.1 The CC is the only law of Ukraine that, on the basis of the rule of law, regulates social relations between the state and persons who commit the acts stipulated by this Code (criminal offences and other illegal acts). The rule of law is specified in Section 1.2 "Principles of the Criminal Code and its Application", which enshrines and discloses such material and legal components of the principle of the rule of law as legality, legal certainty, equality before the CC and non-discrimination, proportionality, individuality, humanism, single application of a penalty and other criminal legal means, conscientious fulfilment of international obligations. The specified principles relate not only to the construction of the draft CC, but also to its application (Article 1.2.9), and in their totality, reflect the principle of the rule of law in the criminal-legal dimension [4].

6. Legal certainty of the provisions of the draft CC. To ensure legal certainty, the draft CC contains Section 1.4. Glossary, which states that "The terms used in this Code, which have a definition in another law, an international treaty or an act of the European Union, are applied in accordance with their normative definition, except for the cases provided for in part 2 of this article and other articles of this Code" (Article 1.4.1.). Part 2 of this Article lists 61 terms that are used in two or more sections of the CC. Thus, according to Clause 22 Part 2 of Article 1.4.1. "a corruption offence – any crime or misdemeanour provided for by this Code, the corpus delicti of which contains the following mandatory signs of corruption: a) unlawful demand – as an object or means of a criminal offense and b) abuse or tendency to abuse, influence on decision-making or trade of influence, – as a way of committing a criminal offense."

If a certain term is used in only one section of the Special Part of the CC, then it is explained at the beginning of this section in the article “Meaning of Terms Used in this Section”. Thus, in Clause 2 of Article 9.5.1. Section 9.5 “Criminal offenses against integrity in the Public Sphere”, it is defined: “2) *acquisition of assets* (income) - their acquisition into ownership: a) by a person authorised to perform the functions of a state or local self-government, b) by another natural or legal entity, if proven, that such acquisition was made on behalf of a person authorised to perform the functions of the state or local self-government, or c) by another natural or legal entity, if it is proven that a person, authorised to perform the functions of the state or local self-government, can directly or indirectly act in relation to such assets of actions identical in content to the exercise of the right to dispose of them”.

7. Protection of victim’s rights. Ensuring the rights of a victim is based on the definition of the victim as an individual (a person) or a legal entity that has been harmed by a criminal offense (Article 2.2.2). To compensate for the harm caused to the victim, the draft CC provides for such criminal legal remedies as restitution and compensation. If a person has not made restitution and/or compensation by the time the sentence is passed, the court obliges him or her to refund (compensate) the harm caused by the crime in the amount of one and a half times and in the case of committing a mercenary crime - in the amount of two times. In case of impossibility of compensation for a person found guilty of committing an intentional violent crime, the harm caused will be compensated by the state “at the expense of the State Fund for Compensation of Damage to Victims in the cases and in the manner prescribed by law” (Article 3.7.1). When determining the type of harm caused by a crime, a significant, considerable, or serious violation of the rights and freedoms of a person or a citizen is distinguished, and the death of a person or the death of two or more persons is classified as particularly grave harm (Part 2-5 of Article 2.1.4). A lot of circumstances that increase the severity of the crime by one or two degrees are related to the victim, for example, committing a crime against a minor or underage person; a pregnant woman; a person who has reached the age of 70; a disabled person; a person who was in a helpless state, etc. When qualifying a set of crimes, it is assumed that crimes committed by one or more acts that caused damage to two or more victims are qualified separately for each of the victims, taking into account the harm caused to each of them (Part 2 of Article 2.8.4). A fine, as a type of main and additional punishment, consists of monetary recovery of a person in favour of the State Fund for Compensation of Damage to Victims (part 1 of Article 3.3.1), and mitigating circumstances are recognised, in particular, as providing assistance to the victim after commission of a crime, as well as voluntary restitution and compensation (Clauses c, d, Part 1 of Article 3.2.2). When sentencing under an agreement on reconciliation with the victim, the court imposes a penalty agreed upon by the parties to the

agreement. According to Part 1, Article 10, Article 3.3.2, no penalty is imposed on a person who committed a minor crime for the first time if he or she sincerely repented, voluntarily committed restitution and/or compensation and reconciled with the victim. In addition, when solving the issue of suspension under the condition that the convicted person serves a term or life sentence, the court, among other things, considers such a circumstance as the fact that the convicted person has taken all possible measures for restitution or compensation (Articles 3.3.9, 3.3.10). Granting amnesty or pardon to a convicted person does not release this person from the obligation to make restitution or compensation (Clause 4 of Article 3.5.1, item 4 of Article 3.5.2). Among the security measures, the CC project provides for restrictive measures (Clause b, Part 2 of Article 3.6.1), among which the court can apply various types of prohibitions to protect the injured person. Expungement of a criminal record can take place if, in particular, the obligation to make restitution and compensation has been fully fulfilled.

8. The CC project and international obligations of Ukraine. The conformity of the provisions of the draft CC with the international legal obligations of Ukraine and modern European practices in combating crime is achieved by the Europeanization of the CC and the incorporation of EU *acquis* into it, the sources of which are directives, regulations, decisions, recommendations, international agreements, decisions of the European Court of Human Rights, framework decisions on the harmonisation of legislation, a common position and decision in the context of the provisions of the EU Treaty on the cooperation of law enforcement and judicial authorities in criminal cases (Article 34 of the Treaty), as well as the content of international acts, in particular those adopted within the framework of other international organisations, etc. The Europeanization of the draft CC involves not only taking into account the provisions reflected in the *acquis* of the EU, but also in the best legislative practices of individual European states [5].

9. Continuity of the draft CC. The draft CC preserves and develops the provisions of the current CC regarding the criminal law and its effect in time, space and terms persons, the subject of the crime, the illegal act and its consequences, the subjective party, the unfinished crime and complicity in a crime, the multiplicity of crimes and circumstances that exclude the illegality of the act, as well as regarding the features of individual components of crimes provided for in the Special Part. The draft CC defines a crime as an illegal act that corresponds to the composition of the crime provided for by this Code. *Corpus delicti* of a criminal offence is defined as a set of mandatory features that determine the object, objective side, subject and subjective side of the *corpus delicti* of a criminal offense and are provided for in: 1) articles of the General part of this Code, which determine the general signs of a criminal offense, and 2) articles of the Special Part of this Code, which determine the characteristics of a separate criminal offense and its degree of severity (Part 1 of Article 2.1.3).

10. Stability of the Criminal Code. In order to prevent numerous changes to the CC, the draft provides that changes to the CC are made, as a rule, no more than once during one session of the Verkhovna Rada of Ukraine; the same article (part of an article, clause of an article) of this Code, as a rule, cannot be changed earlier than twelve months after the date of entry into force of the law on previous amendments to it; the law on amendments to this Code enters into force thirty days after its official publication, unless the law itself provides a longer term. A law that abolishes criminal liability for an act or improves the legal status of a person who has committed a criminal offense enters into force on the day following the day of its official publication, and a law that changes the size of the calculation unit – on January, 1 of the year, following the year when this law was officially published. The specified provisions regarding changes to the CC may not be applied in a special period and in conditions of a state of emergency.

11. Structure of the draft CC. The draft CC provides for General and Special parts, as well as Transitional and Final Provisions. However, unlike the current CC, the draft CC contains the division of parts into books, and the books are divided into sections. The general part includes three books: the first book “On the Criminal Code of Ukraine”, the second book “On Criminal Offence”, finally, the third book “On Criminal Legal Means and their Application”. In general, the General part contains 25 chapters.

The structure of the Special Part is subordinated to the hierarchy of values, which are encroached upon by criminal offenses: a person, a society, a state, as well as an international legal order. Corpus delicti of criminal offenses that encroach on these values are provided for in eight books: the fourth book “Criminal Offenses against a Person”, the fifth book “Criminal Offenses against Public Health”, the sixth book “Criminal Offenses against the Economy”, the seventh book “Criminal Offenses against Society”, the eighth book “Criminal Offenses against Justice”, the ninth book “Criminal Offenses against the State and National Security of Ukraine”, the tenth book “Criminal Offenses against the Order of Military Service”, the eleventh book “Crimes against the International Legal Order”. Each book is divided into sections. In total, the Special part has 50 chapters.

12. Criminal offence. A criminal offense is an illegal act that corresponds to the corpus delicti of a crime, or a criminal misdemeanour provided for by this Code. A criminal misdemeanour is an illegal act that does not cause and is not capable of causing significant harm to a person, society, or a state, while a crime is an illegal act that causes or is capable of causing substantial, significant, grave, particularly grave or exceptionally grave harm to law enforcement concerns. All specified types of harm are clearly differentiated in the draft CC, which creates an appropriate legal criterion for distinguishing between a misdemeanour and a crime. Five types of harm correspond to the following basic levels of severity of intentional crimes: 1) substantial harm – 1st degree of severi-

ty; 2) significant harm – 3rd degree of severity; 3) grave harm – 5th degree of severity; 4) particularly grave harm – 7th degree of severity; 5) exceptionally grave harm – 9th degree of severity. Two types of harm correspond to the following basic levels of severity of careless crimes: 1) grave harm – 3rd degree of severity; 2) particularly grave harm – 5th degree of severity. The basic degrees of severity of crimes are provided for in each article of the Special Part of the CC, which provides for the basic corpus delicti of the crime. Misdemeanours are not divided into degrees of severity.

13. Circumstances excluding the illegality of an act. Section 2.9 of the draft CC provides for the 13 most typical circumstances that exclude the illegality of an act: legitimate defence; protection of Ukraine from armed aggression; the use of a protective agent that strikes autonomously; detention of a person who has committed an illegal encroachment; extreme necessity; justified risk; causing harm with the consent of a person; causing harm during sports; performance of professional or official duties; combat immunity; execution of professional or official duties; conflict of responsibilities; performance of a special task to uncover the criminal activity of an organized criminal group or terrorist group. This list of circumstances is not exhaustive, as a circumstance that excludes the illegality of an act is also recognized as an action or inaction which, although not provided for in Section 2.9, meets the requirements defined therein.

14. Criminal law qualification. The draft CC contains a completely new section for criminal legislation, Section 2.10 “Criminal-Legal Qualification”, which refers to the definition of an article, part thereof, clause of the CC, which provides for a committed act and defines it as a criminal offense or as an act that is not a criminal offense. The articles of this Section define the concepts of the formula and justification of the qualification, as well as the rules for the qualification of a set of criminal offenses, a criminal offense in the case of competing articles, an unfinished crime, a crime committed in complicity, as well as rules for changing the qualification.

15. Criminal legal remedies. In article 3.1.1. it is determined that a criminal legal remedy is the restriction of a person’s rights or the imposition of duties on a person prescribed by this Code, which is applied by a court in the event of a criminal offense or other illegal act provided for by this Code, and the purpose of a criminal legal remedy is to protect society from criminal offenses and other illegal acts stipulated by this Code. The Draft CC (Article 3.1.2.) provides for seven types of criminal legal means: 1) punishment; 2) probation; 3) security measures; 4) restitution or compensation; 5) confiscation of property or seizure of an item; 6) criminal record; 7) criminal legal remedies against a legal entity. Considering the provisions of the Constitution of Ukraine, which uses the term “criminal liability”, the draft CC defines that criminal liability is the criminal legal means provided for in clauses 1-5 of the first part of Article 3.1.2. of this Code, which is subject to application to a person convicted of a criminal offence, as well as a criminal record.

16. Punishment. For the commission of a criminal offense, the draft CC provides for both basic and additional punishments. The following types of basic punishments are provided for the commission of a crime: 1) a fine; 2) imprisonment for a certain term; 3) life imprisonment; at the same time, a fine may be imposed as an additional punishment together with imprisonment for a certain period. For committing a misdemeanour, the following basic punishments are defined in the draft: 1) monetary penalty; 2) free-of-charge work; 3) restriction of freedom of movement; 4) arrest; at the same time, a fine may also be imposed as an additional punishment along with restriction of freedom of movement or arrest.

17. Sanctions. The General part provides typical sanctions for crimes and misdemeanours. The following typical sanctions are established for crimes depending on their degree of severity: 1) crime of the 1st degree of severity – a fine in the amount of 100 to 500 calculation units or imprisonment for a period of 3 months to 2 years; 2) a crime of the 2nd degree of severity – a fine in the amount of 500 to 1000 calculation units or imprisonment for a term of 2 to 3 years; 3) a crime of the 3rd degree of gravity – a fine in the amount of 1,000 to 2,000 calculation units or imprisonment for a term of 3 to 4 years; 4) a crime of the 4th degree of gravity – imprisonment for a term of 4 to 6 years; 5) a crime of the 5th degree of severity - imprisonment for a term of 6 to 8 years; 6) a crime of the 6th degree of severity – imprisonment for a term of 8 to 10 years; 7) a crime of the 7th degree of severity – imprisonment for a term of 10 to 13 years; 8) crime of the 8th degree of severity – imprisonment for a term of 13 to 16 years; 9) a crime of the 9th degree of gravity – imprisonment for a term of 16 to 20 years or life imprisonment. At the same time, for a crime of the 9th degree of severity, which is a crime of genocide, aggression, a crime against humanity or a war crime (Parts 11.1–11.4 of this Code), a sanction is established in the form of imprisonment for a term of 16 to 30 years or life imprisonment. Less severe typical sanctions for crimes committed by minors are established in a separate Article 3.10.2 of the Code.

A single sanction is established for a misdemeanour in the form: of a fine in the amount of 50 to 100 calculation units or free-of-charge work for a period of 1 to 3 months, or restriction on freedom of movement for a period of 15 days to 3 months, or arrest for a period of 15 days to 3 months.

18. Other criminal legal means. Along with punishment, the draft CC provides for such criminal-legal means and the rules for their application as probation, security measures, restitution and compensation, confiscation of property and seizure of things, as well as a criminal record (taking into account the fact that the Constitution of Ukraine provides for the existence in the legislation of Ukraine of the institution of a criminal record, its expungement and removal). Finally, the draft CC also provides for criminal legal remedies against a legal entity, which the court can apply to it, namely:

1) a fine or 2) liquidation of a legal entity with confiscation of its property. In addition to the fine or instead of it, the court may apply the following criminal legal measures to a legal entity: 1) limiting support from public finances; 2) restriction of certain activities.

19. General rules for imposing punishment. Article 3.3.1. provides for the general rules for imposing punishment, according to which the court imposes a punishment, which in terms of type and size is necessary and sufficient to achieve its goal. A more severe punishment is imposed only if a less severe measure is insufficient to achieve this goal. The court imposes a punishment within the limits of a standard sanction, taking into account: 1) the specifics of a peculiar criminal offense, 2) the identity of the culprit, 3) the number of signs that increase the gravity of a crime, 4) circumstances that mitigate or aggravate the punishment for a crime and a misdemeanour, 5) risks of committing a new criminal offense and other circumstances established by the probation authority in the pre-trial report, 6) provisions of the General part of this Code. As for a person sentenced to imprisonment for a certain term for one crime or for a set of crimes, the court must consider the possibility of non-compliance under the condition of imprisonment for a certain term.

20. Exemption from punishment. According to Article 3.4.1. types of exemption from punishment are: 1) non-imposition of punishment; 2) non-fulfilment of the prescribed punishment; 3) postponement of execution of the assigned punishment; 4) suspension of punishment; 5) termination of execution of punishment. Types of change of the prescribed punishment are: 1) reduction of the unserved part of the punishment; 2) reduction (commutation) of the imposed punishment; 3) replacement of the punishment imposed.

21. Main corpus delicti of crimes. The articles of the Special Part contain the main corpus delicti of crimes. Thus, Article 9.5.4. "Abuse of Official Powers or Opportunities Related to them" provides: "A public official who has committed abuse of official powers or opportunities related to them, i.e.: 1) illegally used property that is in state or communal ownership, or provided its use (rent, leasing) to another person, 2) used budget funds not for their intended purpose, 3) illegally received a loan, subsidy, subvention, allowance, benefit or assisted another person in obtaining them, 4) illegally determined the price, for by which goods were sold, services provided or work performed, 5) illegally exempted himself or another person from a mandatory payment or reduced it, 6) illegally established or increased an allowance, surcharge, bonus, other incentive, compensation or guarantee payment for himself or another person, 7) purchased goods, work or services before or without carrying out the procedure established by law or violating it, or 8) made payment for goods, work or services before or without carrying out the procedure established by law or violating it, if the relevant action caused significant property damage, - committed a crime of the 1st degree".

Variative actions are listed under the corresponding numbers in Arabic numerals with brackets (to ensure legal certainty during qualification), and the actions themselves are rendered in the perfect case (to correctly establish the time of the end of the criminal offense).

22. Privileged corpus delicti of crimes. In some Sections of the Special Part, signs are provided that reduce the severity of the crime by three (especially privileged corpus delicti) and two (privileged corpus delicti) degrees of severity. Thus, Chapter 4.1 of the fourth book “Criminal Offenses against a Person” contains Article 4.1.5 “Murder”, according to which “A person who causes the death of another person - has committed a crime of the 7th degree of severity.” At the same time, Article 4.1.1 provides that the features that reduce the severity of the crimes provided for in this Section by three degrees are the commission of a crime: 1) provided for in Article 4.1.5, with exceeding the limits of legitimate defence, the limits of use of a protective agent that strikes autonomously, within the limits of causing harm to a person who has committed an illegal offense during his detention, or within the limits of extreme necessity; 2) provided for in Article 4.1.5, under the influence of a special state of mind (Article 2.3.5 of this Code). Thus, a person who commits intentional murder in the presence of at least one of the specified signs is recognized as having committed a crime of the 4th degree of severity, that is, an especially privileged murder. In turn, Article 4.1.2 provides that the signs that reduce by two degrees the severity of the crimes provided for in this Section are the commission of a crime: 1) provided for in Article 4.1.5, solely out of compassion for a terminally ill person (except for a minor child or pregnant woman) and with the aim of relieving his or her of unbearable physical suffering at his or her repeated, clearly expressed request; 2) provided for in Article 4.1.5, by a person during his or her performance of a special task to prevent or uncover the criminal activity of an organized criminal group or a terrorist group... In such a case, a person who committed intentional homicide in the presence of at least one of the specified signs is recognized as having committed a crime of the 5th degree of severity, that is, a privileged murder.

23. Qualified corpus delicti. Each section of the Special Part contains articles that list the elements of the crime, which increase the severity of the committed crime by two degrees (specially qualified crime) or by one degree (qualified crime). Thus, Article 9.5.2. Section 9.5 “Criminal Offenses against Integrity in the Public Sphere” specifies that the features that increase the severity of the crimes provided for by this Section by two degrees are the commission of a crime provided for by: 1) Articles 9.5.5–9.5.8, if its object or means there was an unlawful benefit in a large amount; 2) Article 9.5.9, regarding assets, the value of which exceeds the legal assets of a person by more than three hundred thousand calculation units; 3) Articles 9.5.4 or 9.5.6, using official powers or opportunities related to them by a public official who occupies a particularly responsible position.

At the same time, Article 9.5.3 specifies that the features that increase the severity of the crimes provided for by this Section by one degree are the commission of a crime provided for by: 1) Articles 9.5.5–9.5.8, if its object or means was illegal benefit in a significant amount; 2) Article 9.5.9, regarding assets, the value of which exceeds the legal assets of a person by more than one hundred thousand calculation units; 3) Articles 9.5.4–9.5.8, as part of a simple group; 4) in a special period or during a state of emergency; 5) Articles 9.5.4, 9.5.5, 9.5.7, with the aim of concealing another crime or facilitating its commission.

24. Sanction of the Article of the Special Part. Each article of the Special Part contains an indication of a certain degree of severity of the crime, which corresponds to its basic composition, provided for in this article, and refers to the amount of the sanction established in Article 3.2.5. “Sanctions for Crimes”, which is contained in the General Part. Thus, for a crime of the 1st degree of severity, a fine in the amount of 100 to 500 calculation units or imprisonment for a period of 3 months to 2 years is provided.

25. Property damage. Many types of crimes require the objective party to cause property damage as a mandatory feature. Substantial property damage is always a sign of the main component of the crime, but if a certain act causes significant or serious property damage, then this entails an increase in the severity of the crime by 2 or 4 degrees, respectively. Thus, according to Article 2.5.11 “If the article of the Special Part of this Code provides for the causing of substantial property damage, but in fact the crime caused property damage of a larger amount, then the gravity of the committed crime is increased relative to the basic degree of gravity of the crime, respectively: 1) by two degrees - if significant property damage is caused (Clause 3 of Part 1 of Article 1.4.4 of this Code), or 2) by four degrees - if severe property damage is caused (Clause 4 of Part 1 of Article 1.4.4 of this Code).

26. Algorithm for determining the severity of the committed crime. Article 2.5.13 of the draft CC provides for a certain algorithm for establishing the final degree of severity of the crime committed by a person. According to this article, the algorithm for establishing the degree of severity of a crime committed by a person in reality compared to the basic degree, which is provided for in the article of the Special Part, consists of the following consecutive steps: 1) if the crime caused significant or serious property damage, then the severity of the crime is increased by two or four degree in accordance with Article 2.5.11 of this Code; 2) the severity of the crime is reduced by three degrees, if particularly privileged features of the crime are established; 3) if the grounds for reducing the severity of the crime by three degrees are not established, then the severity of the crime is reduced by two degrees, if signs of the privileged nature of the crime are established; 4) if there are no grounds for reducing the severity of the crime by two or three degrees, then the severity of the crime is increased by two degrees, if signs of a

particularly qualified nature of the crime are established; 5) if there are no grounds for reducing the severity of the crime by three or two degrees or for increasing the severity of the crime by two degrees, then the severity of the crime is increased by one degree, if signs of the qualified nature of the crime are established; 6) in the case of committing an unfinished crime, the severity of the crime is reduced accordingly: for preparation for a crime – by three degrees of severity, and for an attempt to commit a crime – by one or two degrees of severity in accordance with Part 3 of Article 2.6.3 of this Code; 7) if the grounds for reducing or increasing the severity of the committed crime have not been established, the court cannot change the basic degree of severity of the crime provided for in the relevant article of the Special Part under which the person's act is classified.

27. Digitization of the CC project. The draft CC was built using modern achievements of legislative technology and achievements of digital technologies and is designed for its future application in conditions of digitalization. This will allow, in particular, to unify the terminology, give references to “related” other articles of the same Code or other normative legal acts (including those indicated by blanket dispositions), make distinctions with related criminal and other offenses, etc. There are computer programs for qualifying a criminal offense committed by a person and providing assistance to the law enforcer when making a decision on application of a particular criminal law remedy to a person who has committed a criminal offense or other illegal act provided for by the CC.

CONCLUSIONS

1. The current CC of Ukraine does not fully correspond to modern ideas about the subject of criminal law regulation, exaggerates the role of criminal law in overcoming negative phenomena in society, has systemic inconsistencies and conflicts.
2. The project of the new CC of Ukraine is built on modern achievements of criminal law science, based on the fact that criminal law means are the last resort (*ultima ratio*) in solving negative phenomena in society, built in accordance with the requirements of the rule of law, an integral component of which there is legal certainty and proportionality.
3. The draft CC provides for criminal-legal means of compensation for harm caused to a victim (restitution and compensation), as well as the possibility of a victim's participation in determining the degree of responsibility of a guilty person, etc.
4. The draft CC implements the provisions of the *acquis* of the EU, solves problems that were actualized by the practice of applying the current CC of Ukraine, creates conditions for increasing the effectiveness of the application of the provisions of the draft CC while simultaneously ensuring the appropriate level of protection of human

rights and freedoms, protection of society and the state as well as the international legal order.

5. The structure and content of the draft CC, its individual parts, as well as articles create conditions for the successful digitalization of the draft CC and the use of artificial intelligence by law enforcement agencies in the qualification of criminal offenses and the choice of criminal law remedies against a person who has committed a criminal offense or other illegal act, provided for by this Code.

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NAUJOJO UKRAINOS BAUDŽIAMOJO KODEKSO PROJEKTAS: KONCEPTUALŪS PRINCIPAI IR PAGRINDINĖS NUOSTATOS

Santrauka. Straipsnyje aptariamas naujojo Ukrainos baudžiamojo kodekso (toliau – Ukrainos BK, BK) projektas, kurį parengė Ukrainos Prezidento 2019 m. rugpjūčio mėn. sudaryta Teisės reformos komisijos darbo grupė baudžiamosios teisės plėtros klausimais. Straipsnio tikslas – išryškinti konceptualiuosius pagrindus, kuriais grindžiamas naujojo Ukrainos BK projektas, taip pat jo pagrindines nuostatas, susijusias su BK projekto turiniu ir teisine forma. Pateiktas trumpas dabartinio Ukrainos BK apibūdinimas, įvardyti pagrindiniai veiksniai, lėmę poreikį parengti naujojo Ukrainos BK projektą, pabrėžiami šio projekto privalumai palyginti su dabartiniu galiojančiu BK. BK projektas pristatomas kaip teisės aktas, reglamentuojantis valstybės veiklą ribojant nusikalstamas veikas padariusių asmenų teises ir laisves; nurodant vertybes, kuriomis grindžiamas BK projektas, teigiama, kad naujojo BK konstrukcija grindžiama teisinės valstybės principu; aptariamas numatomas socialinis poveikis, kurį sukels naujojo BK projekto įgyvendinimas Ukrainos nacionalinėje teisės sistemoje.

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Yurii Baulin, teisės mokslų daktaras, Jaroslavo Išmintingojo nacionalinio teisės universiteto profesorius, Ukrainos nacionalinės teisės mokslų akademijos akademikas, Ukrainos Prezidento sudarytos Teisės reformos komisijos darbo grupės baudžiamosios teisės plėtros klausimais vadovas, buvęs Ukrainos Konstitucinio Teismo teisėjas ir pirmininkas. Interesų sritys – konstitucinė teisė, baudžiamoji teisė.