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Draft Criminal Code of Ukraine: Innovations

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The need to edit the Criminal Code of Ukraine emerged due to the outdated Soviet content of laws that are unable to handle modern issues. In addition, considering the modern needs, it does not make provision for the fulfilment of tasks set by society for the law enforcement system. The idea of the new Criminal Code lies in the protection of the interests of victims, as well as in its more effective use by citizens. Considering the current continuation of work on the draft, the purpose of this paper was to investigate the provisions of the proposed action plan for the Criminal Code of Ukraine. During the study, the method of analysis and synthesis, the empirical method, and the comparison method were applied. The paper analysed the new criminal program proposed for discussion and focused on the areas of reforming the criminal justice system. It was found that the plan proposed for consideration is aimed at protecting the interests of victims, and it is stipulated that it should be convenient to use. The draft stipulates that the new Criminal Code and its application must comply with the decisions of the European Court of Human Rights regarding Ukraine. It was established that the draft of the Criminal Code of Ukraine prescribes the responsibility of officials for non-compliance with the decisions of the European Court of Human Rights. Due to the analysis of prospective legislation on criminal responsibility,

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a conclusion was made about choosing the correct vector to implement the main idea of the new Criminal Code of Ukraine – ensuring justice in the field of criminal justice on new foundations, classifying offences proceeding from the type of damage caused and establishing typical sanctions, determining the relationship between the severity of criminal offences according to an objective criterion, unification of circumstances that increase or decrease the degree of severity, elimination of gaps. The materials of this paper are of practical value for future research of experts, discovery of new questions, proposals, and analysis of new amendments to the draft of the new Criminal Code of Ukraine

Keywords: calculation unit, psychoactive substance, degree of severity, qualification formula, restitution

Introduction

Fundamental changes in the socio-political conditions of the state's life have created prerequisites for reforming the Criminal Code of Ukraine. The need to change the Criminal Code of Ukraine, which was adopted by the Verkhovna Rada in 2001, arose because of the outdated, Soviet content of provisions that are unable to respond to modern challenges, it does not allow fulfilling the tasks that society sets before the law enforcement system and the criminal justice system. The idea of the new Criminal Code is that it should really protect the interests of victims and be convenient to use. Currently, work on the draft of the new Criminal Code of Ukraine is ongoing. The working group on the development of criminal law has completed the discussion of the General part of the new Code.

Considering the importance of the problem, the reformation of criminal legislation has always been the focus of attention of scientists, including M. Buromenskyi, O. Horokh, O. Drozdov, A. Orlean, M. Khavroniuk, and others.

Results and Discussion

The analysis of the new Criminal Code suggests that the structure of the Criminal Code

will be quite conventional. However, it does not have the usual numbering of articles in arithmetic sequence. The analysis of sections and articles of the new Criminal Code of Ukraine gives grounds to assert that it reflects the most progressive and democratic provisions: articles are numbered according to the number of the book, section, and article (e.g., Article 1.3.1 Meaning of the terms of the Criminal Code). Such numbering is somewhat unusual for perception, and the author of this paper believes that it can create inconveniences in law enforcement practice, and therefore interfere with the application of legislation by ordinary citizens [1]. Definitions of concepts in the code are set out more concisely, complex concepts are divided into sub-paragraphs. Notably, the draft of the new code sets out both factually existing norms and new concepts. Instead of the “tax-free minimum wage of citizens”, it is proposed to use such a term as “calculation unit”, which will amount to 200 hryvnias.

The General part consists of three books. The first book is about the Criminal Code, its features as a law. The second book is about the concept of a criminal offence. The third book is criminal legal means and their application. Next is the Special part, which is

divided into 8 books and begins with crimes against a person and a citizen.

Notably, for the first time, Section 1.2. of the CCU defines the principles and fundamentals that judges, prosecutors, lawyers, and investigators must be guided by at all times.

A positive aspect of the draft CCU under study is the introduction of a new Section 1.3, which concerns the clarification of the terms of the CCU. The corresponding terms have received a fixed and clearly defined meaning, which renders their misinterpretation impossible. For instance, the concept of psychoactive substance has been unified, such substances include narcotic drugs, psychotropic substances, alcoholic beverages, intoxicating drugs, potent medicinal drugs, etc. There are 84 such terms proposed in the Criminal Code [2].

The next essential point is that the proposed Criminal Code sets out a specific calculation unit, based on which fines will be charged and damage will be determined, which amounts to 200 hryvnias. The volume of the calculation unit is fixed and can change no more than once a calendar year. This allows finally moving away from the “tax-free minimum wage of citizens”.

In the draft Criminal Code under study, the definition of the composition of the criminal offence and its elements is fixed at the legislative level, which, according to the author of this paper, is a correct decision. Article 2.1.2 states that the composition of a criminal offence is a set of mandatory features that determine the object, the objective side, the subject and the subjective side of the criminal offence [2].

Given the limited scope of the article, the author would like to draw attention to the subjective side of the composition of the criminal offence, since for the first time the

concepts of legal error and factual error are legislatively defined:

➤ a legal error is a person’s misunderstanding: a) that the act or inaction committed by them is prescribed by the Code as a criminal offence; b) what means of criminal liability can be applied to them;

➤ a factual error is a person’s incorrect understanding of the presence or absence of a sign of a criminal offence.

The draft Criminal Code also sets out the concept of intent specified and non-specified. Intent is considered specified if the person expects the occurrence of damage in a certain amount. Intent is considered non-specified if the person expects the occurrence of damage in any amount.

An entirely different approach to the concept of multiplicity is observed in the new Criminal Code as well. It is legislatively stipulated that the types of multiplicity of criminal offences are a) a set of criminal offences; b) recidivism of criminal offences. It is indicated that the totality of criminal offences is the commission by a person of two or more single criminal offences: a) for none of which they were convicted and b) for each of which means of criminal liability are to be applied to the person.

The age of criminal liability stays unchanged (16 years), but along with the terms “minor” and “underage individual”, the term “young individual” appears – aged from 18 to 21 years. However, what is interesting, in the opinion of the author of this paper, is the definition of the subject of a criminal offence, namely: the subject of a criminal offence (the general subject of a criminal offence) is a reprehensible individual – a person who, directly or through other persons who are not subject to criminal liability, committed a criminal offence at the age from which,

according to the Code, criminal liability for its commission may arise.

Special attention should be paid to the classification of criminal offences prescribed in the general part of the draft Criminal Code of Ukraine, depending on the degree of severity. Criminal offences, depending on the severity, are divided into misdemeanours and crimes, and depending on the form of guilt – into intentional and negligent.

For the first time in the Criminal Code, intentional crimes have ten degrees of severity, considering: a) the type of damage caused by them, b) features of the composition of the crime, which change the degree of severity of the crime. The author of this study believes that the developers factored in the good practices of foreign countries.

Negligent crimes have two degrees of severity, considering the type of damage caused by them. Certain ratios are established between the damage caused and the severity of the committed intentional criminal offence. It is considered appropriate to link the gravity of the crime to the consequences and aggravating/mitigating circumstances.

A unified algorithm for determining the severity of a crime is also provided. The degree of gravity of a crime committed in the absence of a sign of *corpus delicti* that changes the degree of its severity is fundamental. The degree of severity of a crime committed in the presence of a sign of *corpus delicti*, which changes the degree of its severity in comparison with the fundamental one, changes in a clearly defined sequence. There are also certain rules that reduce the severity of the crime. If there are no grounds for reducing or increasing the severity of the crime, the court cannot change the basic severity of the crime. This approach is correct and applicable in the world.

The qualification formula will probably be the most difficult challenge for the participants in the proceedings, since it is easy to miss a symbol in the list of numbers, hyphens, and full stops, and the procedural document will already contain a misqualified content of a crime. In other words, such a description of the formula is more suitable for technical documentation using electronic databases. And considering the possible totality of crimes or a new rule to qualify acts against each victim, one will end up with a procedural document incomprehensible to an individual.

As for the criminal legal means that can be applied to persons who have committed crimes, such measures include groups of measures of punishment, restitution, and compensation, confiscation of property and seizure of possessions, as well as security measures, among which the innovation is the disclosure of information about the individual who committed the crime. A substantial change is the reduction in the number of types of punishments from 12 that are available in the Criminal Code to only 3. For the commission of a crime, the following types of punishments are established and can be applied as the principal ones: a fine, imprisonment for a certain term, and life imprisonment.

For committing a misdemeanour, the following types of punishments are established and can be applied as the principal ones: a) monetary penalty; b) corrective unpaid work; c) restriction of freedom of movement; d) arrest.

As for fines, their size varies, but the legislator put the calculation unit as the basis. Therewith, the payment of the fine can be paid in instalments or delayed for a year.

Imprisonment for a certain term is established for a period of three months to twenty years, and for crimes against international humanitarian law related to the

intentional deprivation of a person's life, up to thirty years. Admittedly, the question arises regarding the effectiveness of applying a 30-year punishment, since imprisonment leads to degradation, and is a destructive measure.

Life imprisonment is provided only for crimes of 9th and 10th degrees.

At the same time, the category "criminal legal means" appears, which, apart from punishments, includes socially useful work, probation, probation arrest, electronic monitoring, compensation, restitution, confiscation, and restrictive measures.

An essential point is the possibility of applying criminal legal means to a legal entity. When applying a criminal legal means, a legal entity is obliged to make restitution or compensation in full. Of particular interest is the provision prohibiting the support of a legal entity at the expense of public finances [2].

Article 3.1.6 – sanctions for crimes, which defines the punishment for a crime depending on its severity (10 degrees of severity), is an innovation for the Criminal Code, the sanctions are placed in a tabular form, which is also new for the Criminal Code.

Notably, the Criminal Code will also list circumstances that exclude the possibility of criminal liability. Thus, there is a circumstance of playing sports – "Causing harm while playing sports" – it is legal to cause harm to the life or health of a person during a sports competition or training, if: a) the corresponding sport is recognized in Ukraine according to the established procedure, b) competition, training is officially organized, c) the person who is harmed has voluntarily and in advance given consent to engage in this sport, and d) the person who causes harm respects the rules of this sport.

The author of this paper believes that such a circumstance as causing harm with

the consent of a person is controversial, and therefore deserves attention. It is lawful to cause damage with the consent of a person, if: a) the damage is caused to the rights and interests that this person is authorized to dispose of, b) the person's consent is voluntary, c) this consent was obtained in advance according to the requirements of the law.

The person authorized to dispose of the relevant rights and interests is a legally capable person or a legal representative of an incapacitated or disabled person. Causing death with the consent of a person is not considered lawful.

As for the section that defines the types of security tools, the legislator tried to clearly define them. Thus, a means of security is a forced limitation in the exercise of human rights or freedoms, which is applied to secure society to a person convicted by a court of law for committing a criminal offence, or to a person who has committed an illegal act prescribed by the Criminal Code. The author of this paper believes that a security measure – the publication of information about a person's conviction – is questionable. Disclosure of information is a means of security, which lies in posting information about a person convicted of committing an intentional crime in a) media determined by the Court, b) the Unified State Register of Individuals Who Committed Crimes. It is comforting that the legislator provided a caveat, in case of publicizing information about a person's conviction, it is not allowed to post the personal data of other participants in the criminal proceedings.

Restitution and compensation appear as a means of ensuring the violated rights of the victim. Thus, a person who committed a criminal offence, as a result of which the personal right of the victim was violated and/

or caused damage to the victim, the territorial community, the state, shall be obliged to make restitution and/or compensation [2].

Analysis of the draft of the Criminal Code allows noting that the proposed CCU has no such type of punishment as confiscation of property, which is available in Article 51 of the current CCU. Instead, a separate Section 3 was proposed, which handles the confiscation of property and the seizure of possessions. Consequently, confiscation of property lies in the forced gratuitous withdrawal of compensation for damage to victims, money, property rights, and other property that belongs to the convicted person by right of ownership to the state fund.

Confiscation of property is applied in cases of conviction of a person for an intentional criminal offence.

Attention should also be paid to the section concerning the specific features of criminal legal means in relation to a person who has committed a criminal offence at a minor or young age. The legislator uses the term “young age” for the first time – a young individual – a person who has reached the age of 18 but has not reached the age of 21.

The author of this paper supports the opinion of experts who believe that it is necessary to make provision for the possibility of exemption from serving a sentence for minors who have committed a crime repeatedly during probation. The new Criminal Code should also make provision for a mechanism for observing the rights of a person after serving their sentence and erasing their criminal record.

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So far, only 5 books have been written for the Special part of the Code (the first of them is called “Crimes and Misdemeanours Against a Person and Citizen”), but from them one can conclude on the general structure.

At the beginning of each section, there are articles that list aggravating and mitigating circumstances for this category of crimes (if any). For each individual crime, there are no particular penalties, but only indications of the degree of such a crime. It is interesting that the Special part will have no sanctions because all of them were transferred to the General part as they become typical.

The first books written already specify new types of crimes: illegal accusation of committing a crime, violation of the right to defence, coercion to testify; forced marriage, exploitation of a person, enforced disappearance.

Conclusions

Thus, as the study proved, the implementation of the principal idea of the new Criminal Code – ensuring fairness in criminal justice on a new basis, classifying offences proceeding from the type of damage caused and establishing typical sanctions, overcoming the voluntarism of the legislator, determining the correlation between the severity of criminal offences according to an objective criterion, the unification of circumstances that increase or decrease the degree of severity, the clarification of a large number of definitions, the elimination of gaps, all this allows moving from the “state-criminal” relationship to the system of “victim-state-criminal” relations [3].

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Проект Кримінального кодексу України: новели

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Анотація

Потреба у редагуванні Кримінального кодексу України виникла через застарілий радянський зміст законів, що не мають змоги реагувати на сучасні проблеми. Також, враховуючи потреби сучасного часу, він не передбачає виконання завдань поставлених суспільством перед правоохоронною системою. Ідея нового Кримінального Кодексу полягає в захисті інтересів потерпілих, а також у більш ефективному використанні громадянами. Враховуючи теперішнє продовження роботи над проектом, мета статті полягає у дослідженні положень запропонованого плану дій Кримінального кодексу України. В ході роботи було застосовано метод аналізу та синтезу, емпіричний метод та метод порівняння. У статті проаналізовано запропоновану до обговорення нову кримінальну програму та зосереджено увагу на напрямках реформування системи кримінальної юстиції. З'ясовано, що запропонований до розгляду план спрямований на захист інтересів потерпілих, передбачено, що він має бути зручним у користуванні. У проекті зафіксовано, що новий Кримінальний кодекс та його застосування мають відповідати рішенням Європейського суду з прав людини щодо України. Встановлено, що в проекті Кримінального кодексу України передбачена відповідальність для посадовців за невиконання рішень Європейського суду з прав людини. У результаті аналізу перспективного законодавства з питань кримінальної відповідальності зроблено висновок про обрання правильного вектору реалізації основної ідеї нового Кримінального кодексу України – забезпечення справедливості у сфері кримінальної юстиції на нових засадах, класифікації правопорушень виходячи з виду заподіяної шкоди та встановлення типових санкцій, визначення співвідношення між тяжкістю кримінальних правопорушень за об'єктивним критерієм, уніфікація обставин, які підвищують або знижують ступінь тяжкості, ліквідація прогалін. Матеріали становлять практичну цінність для майбутніх досліджень експертів, відкриття нових питань, пропозицій та аналізу нових внесень щодо проекту нового Кримінального Кодексу України

Ключові слова: розрахункова одиниця, психоактивна речовина, ступінь тяжкості, формула кваліфікації, реституція