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**ПОНЯТТЯ І ОСОБЛИВОСТІ ПРАВОВОЇ СИСТЕМИ КАНОНІЧНОГО ПРАВА****Анотація**

Стаття присвячена проблемі визначення статусу канонічного права у категоріях сучасної юриспруденції. Канонічне право визначається як самостійна персональна правова система. Розвідка структури каноніко-правової системи в контексті юридичної компаративістики дозволяє встановити наявність у неї усіх необхідних ознак правової системи. Результати дослідження предмета і методів каноніко-правового регулювання додатково підкреслюють специфіку канонічного права.

**Ключові слова:** канонічне право, правова система, каноніко-правове життя, каноніко-правове регулювання, метод акривії, метод ікономії.

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**ПОНЯТИЕ И ОСОБЕННОСТИ ПРАВОВОЙ СИСТЕМЫ КАНОНИЧЕСКОГО ПРАВА****Аннотация**

Статья посвящена проблеме определения статуса канонического права в категориях современной юриспруденции. Каноническое право определяется как самостоятельная персональная правовая система. Изучение структуры канонико-правовой системы в контексте юридической компаративистики позволяет установить наличие у нее всех необходимых признаков правовой системы. Результаты исследования предмета и методов канонико-правового регулирования подчеркивают специфику канонического права и являются дополнительным подтверждением обосновываемого тезиса.

**Ключевые слова:** каноническое право, правовая система, канонико-правовая жизнь, канонико-правовое регулирование, метод акривии, метод икономии.

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## UKRAINIAN CRIMINAL CODE AS A LEGAL NECESSITY AND POSSIBLE WAYS TO IMPROVE ITS EFFICIENCY

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Article deals with the necessity of legislative imposition of criminal prohibition and criminal liability as the only contemporary justified reaction form to some types of deviant behaviour. It is mentioned that Ukrainian Criminal Code could be less voluminal, and by introducing elements of restorative justice and the criminal misdemeanour it could become more efficient. Stability is not a characteristic feature of the Ukrainian Criminal Code because amendments to it are introduced on a highly regular basis and are often chaotic. Ukrainian Criminal Code can be efficient without the necessary portion of dynamism.

**Keywords:** criminal liability, criminal code, necessity of criminal law, dynamics and stability of criminal law, efficiency of criminal code.

There has never been and probably shall not be a time in human history when the state (or other similar structure) will refrain from using criminalization and penalization in general. This is obvious when we understand criminality as a natural part of human behaviour. As deviant activity will always be a part of human behaviour respective criminal measures will also have to exist. Therefore, society needs to have criminal legislation as a measure to treat criminal acts. Of course, one may ask why should this be specifically criminal legislation, or may it be any other form of social control? Sure,

it can be other. However, society did not work out so far any other which is also that strong and understandable to people as the criminal legislation.

It is hardly arguable that one of the primary challenges of any society is to insure people obey laws vital for public security and safety as well. Amidst the multitude of social control methods criminal responsibility stands separately as the harshest one and as *ultima ratio*. Understandably, the criminal legislation envisaging such criminal responsibility should be i) utmost definite and clear in wording; ii) reasonably stable and dynamic;

iii) efficient, i.e. sustaining crime level at a minimum adherent to security and safety of the society.

Acting Ukrainian Criminal Code (UCC) was enforced in September, 2001 and at the moment of its adoption contained 447 articles. Having not yet reached its 15-th anniversary the UCC can be generally characterized by the following pejorative notions: i) flawed wording; ii) instability; iii) low efficiency, etc. Moreover, the UCC's contents are often so sophisticated that even specialists find it problematic to interpret. Current trends in criminalization and criminal policy are often intertwined and hence it complicates the process of criminal norms application. Mentioned conclusions are worth a lengthy and a profound research, however in this thesis we shall restrain only to their short summary.

First of all – we need a criminal code. Criminal law in any formalized condition is a *sine qua non* attribute of the state which is created by people's necessity to live together. Criminal law is an artefact produced by people as an idea of due conduct. It is commonly treated by people as a viable, generally approved and sought-after institute. Current frustration in efficiency of the acting UCC is understandable once glancing at the increasing registered crime level. According to the Ukrainian Ministry of Internal Affairs and the Prosecution Office Statistics, since 2009 till present days we have an increase in registered crime of about 5-15% per year. Therefore, in the circumstances of little efficiency of the criminal justice system based on current UCC, we are forced to look for alternative measures in criminal justice system which might help to increase its efficiency and help to deal with the criminal justice bodies overload. For instance, based upon the European experience, it can be the restorative justice concept. Nevertheless, restorative justice as a concept shall not replace the ordinary criminal justice, but rather complement it.

Secondly, Ukrainians live in the area which is originally named the Slavic one, and typically are Slavic. If we go back to those times we can find out that Slavic used to live in accordance with the “Kon” as the divine verity and set of divine rules for slavs. They knew the real and natural laws of the universe. After slavs stopped living according to “Kon”, they began to live in accordance with “ZaKon” which means “beyond the verity of Kon”. Since those times, supposedly, we have the “zakon” (in Ukrainian – “legal act”) as the secondary set of rules which in its core has no connection with divine verity, and therefore can't be either perfect, or fully true.

Every year UCC as the “zakon” is amended several times in order to make the legal regulation better. However, striving to make a perfect Criminal code is senseless in its core. We shall never draft a law, especially a criminal one, fully meeting the purpose of its passing. We can only try to make this “zakon” more effective, which means that the crime level will be as low as it is possible in society so that law-abiding citizens feel safe.

Thirdly, the legislator should care about what criminal laws they pass and use here a scientific,

but not political approach. Just as Oscar Wilde's play “The Importance of Being Earnest” is a farcical comedy in which the protagonists maintain fictitious personae in order to escape burdensome obligations<sup>1</sup>, the same way Ukrainian legislators in their effort to maintain social order mostly often spontaneously adopt criminal law norms as the last resort when they can't achieve any positive effect using other methods of social control. As Graham Parker [1, p. 34] notes, panic was often the major ingredient in formulating new laws which were hurriedly passed to prevent (or try to prevent) some currently urgent problem. This idea is maintained by many Ukrainian scientists. Namely, Professor V. Tulyakov [2, p. 5] emphasized that more than a half of changes to the Ukrainian Criminal Code had such a voluntaristic scent.

Fourthly, we should make sure UCC is reasonably stable. According to the recent research of Professors V. Tatsiy, V. Tyutyugin, V. Borisov (June, 2010) [3, p. 12], amendments to the UCC from the moment of its adoption were excessive. Since September 1, 2001 changes to different UCC's norms were made 242 times. The number of UCC's articles was increased by 36 up to 480 existing now. There were changed and amended 198 articles, which makes up 44% of the total number of articles in the first passed UCC edition. We can conclude that every month 2 or 3 of the UCC's norms is novelized.

UCC is somewhere in the middle according to the number of norms it incorporates. However, it may be sound to look at experience of other countries, whose criminal codes are not that voluminal, i.e. Germany (358 articles in CC), Norway (1902) (436 articles in CC), Poland (363 articles in CC), Russia (360 articles in CC), Turkey (342 articles in CC)<sup>2</sup>.

Of course, UCC should be dynamic to meet the needs of the society and maintain its efficiency. But constant chaotic and exuberant changes lead to complexity in understanding. This also proves our previous thesis on excessive use of criminal repression by legislator as simple, but not necessarily the most efficient measure.

Fifthly, UCC should be understandable to be applicable. Most Ukrainian scientists cite that in the circumstances of multiple changes to the UCC, it is hardly possible to chase after them, let alone i) plan any effective long-term crime combating policy; ii) provide for stable and certain investigation and court practice; iii) be understandable for ordinary people.

Sixthly, UCC should be based on a relevant ideology. Existing UCC ideology, according to Professor V. Tulyakov [2, p. 6], remains neoclassical with positivist and sociological law school elements, despite the changing social, economic, political and legal surrounding. And even though restorative approaches are gaining more weight. Future ideology of the UCC should be based on Ukrainian law tradition, Slavic customs and mentality, a sound mixture of retributive and restorative approaches.

Seventhly, we can ease the criminal justice system overload and criminalization of society by introducing the felony/misdemeanour distinction in criminal legislation, and therefore make the strictly criminal felonies list as short as possible. The adopted in 2008 Criminal Justice System Reforming Concept<sup>3</sup> provides for introducing in Ukraine a

<sup>1</sup> [http://en.wikipedia.org/wiki/The\\_Importance\\_of\\_Being\\_Earnest](http://en.wikipedia.org/wiki/The_Importance_of_Being_Earnest)

<sup>2</sup> <http://legislationline.org/documents/section/criminal-codes>

<sup>3</sup> <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?n-reg=311%2F2008>

felony/misdemeanour distinction. Namely, crimes of minor degree at present are supposed to become criminal misdemeanours, crimes of more severe degrees will remain as felonies. This seems to be a reflection of the European countries' criminal law tradition, e.g. France, Germany, etc. However, since the introduction in 2012 of the felony/misdemeanour division in Criminal Procedural Code of Ukraine nothing else was further incorporated in the UCC. Therefore, today at the end of 2015 we have no misdemeanour de facto.

Eighthly, UCC should be efficient. Efficiency of the criminal justice system can be judged by at least two criteria: i) social security and safety, utmost low crime level and lessening number of habitual criminals; ii) reasonable expenses of the taxpayers to subsist it.

Should there formally be fewer crimes, than there will be less criminals and evident registered crimes. Retributive and restorative approaches combination in the criminal law method will most

likely help to meet the challenge of reducing criminal conduct and changing criminal behaviour. Purely retributive model perpetuates a system that is compounding the very problem it is there to solve, and we are heaping expense upon a taxpayer in an exponential or compounding way with no qualitative result. It can become a "runaway train" for the budget as seen in the USA, where States are known to allocate more for prisons than for education of children [4, p. 3-4]. Expenses to subsist criminal justice should be reasonable, depending on the qualitative condition and sphere of its application.

Lastly, as mentioned above, UCC should be reasonably short, well-composed, stable, understandable, based on the existing ideology and law tradition, based on scientific research, efficient.

The mentioned guidelines for improving the UCC are suggested preliminarily. Further research is a must for further adequate and thorough suggestions in this sphere. Otherwise, voluntary changes will turn out again to be deceptively ambitious.

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## КРИМІНАЛЬНИЙ КОДЕКС УКРАЇНИ ЯК ЗАКОНОДАВЧА НЕОБХІДНІСТЬ ТА ШЛЯХИ ПІДВИЩЕННЯ ЙОГО ЕФЕКТИВНОСТІ

### Анотація

У статті розглядається питання необхідності законодавчого встановлення кримінально-правової заборони та кримінальної відповідальності як єдиної на теперішній час виправданої форми реагування на прояви окремих видів девіантної поведінки. Встановлено, що КК України міг би бути меншим за обсягом, а шляхом інтродукції кримінального проступку, елементів відновного правосуддя можна було б також підвищити його ефективність. Вказано, що стабільність не є характерною рисою КК України, так як зміни до нього вносяться доволі регулярно та часто, на жаль, носять доволі хаотичний характер. Разом з тим, ефективним КК України не може бути без певної міри динамізму.

**Ключові слова:** кримінальна відповідальність, кримінальний кодекс, необхідність кримінального закону, динамізм та стабільність кримінального закону, ефективність кримінального кодексу.

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## УГОЛОВНЫЙ КОДЕКС УКРАИНЫ КАК ЗАКОНОДАТЕЛЬНАЯ НЕОБХОДИМОСТЬ И ПУТИ ПОВЫШЕНИЯ ЕГО ЭФФЕКТИВНОСТИ

### Аннотация

В статье рассматривается вопрос о необходимости законодательного установления уголовно-правового запрета и уголовной ответственности как единственной на сегодняшний день оправданной форме реагирования на проявления некоторых видов девіантного поведения. Установлено, что УК Украины мог бы быть меньшим по объему, а путем интродукции уголовного проступка, элементов восстановительного правосудия можно было бы также повысить его эффективность. Указано, что стабильность не является характерной чертой УК Украины, так как изменения в него вносятся с завидной регулярностью и часто, к сожалению, носят весьма хаотичный характер. Вместе с тем, эффективным УК Украины не может быть без определенной доли динамизма.

**Ключевые слова:** уголовная ответственность, уголовный кодекс, необходимость уголовного закона, динамизм и стабильность уголовного закона, эффективность уголовного кодекса.