

FEATURES OF RESPONSIBILITY FOR CRIMINAL OFFENSES DURING MARTIAL LAW IN UKRAINE: A LEGISLATIVE REVIEW 2022-2023

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Annotation. The article is devoted to the review of the legal regulation of criminal liability for the criminal offenses committed during the martial law and the state of emergency in connection with the armed aggression of the Russian Federation, which has escalated into a full-scale war since February 24, 2022.

The author examines a package of criminal legal acts which regulate a number of issues related to enhancing criminal liability of criminal law subjects during the martial law. It was found that the introduction of martial law and the state of emergency has its own specific regulations, which means that along with the possible temporary restrictions on the constitutional rights and freedoms of a person and a citizen for the period of the legal regime of martial law in the state, the specific means and mechanisms of legal regulation of substantive criminal law are becoming important in strengthening criminal liability for collaborative activities, the distribution of information aimed at promoting the actions of the aggressor state, crimes against the foundations of national security, looting etc. The article also considered circumstances that exclude the criminal illegality of an act and provide combat immunity under conditions of martial law.

The latter primarily include the Law of Ukraine “On Ensuring the Participation of Civilians in the Defense of Ukraine” of March 03, 2022 and the Law of Ukraine “On Amendments to the Criminal Code of Ukraine and Other Legislative Acts of Ukraine on Determining the Circumstances Excluding Criminal Illegality of an Act and Ensuring Combat Immunity in the Conditions of Martial Law” of March 15, 2022. In addition, the Criminal Code was supplemented with Article 43-1 “Fulfillment of the duty to protect the Motherland, independence and territorial integrity of Ukraine”. Furthermore, Section 2 “Final and Transitional Provisions” of the current Criminal Code of Ukraine was supplemented with the paragraph 22 as follows: “Civilians shall not be criminally liable for the use of firearms against persons carrying out armed aggression against Ukraine, if such weapons are used in accordance with the requirements of the Law of Ukraine “On Ensuring the Participation of Civilians in the Defense of Ukraine”.

In general, taking into account our own experience and the experience of the international community, it is necessary to improve all criminal law institutions, both in the direction of criminalization and decriminalization of certain criminal offenses, given the special tasks of criminal law in a state of emergency. The primary task of the modern criminal law of Ukraine is to ensure the right to life, health of a person and citizen, to ensure peace and security, and to counter criminal offenses committed by the Russian Federation against the Ukrainian people.

Key words: martial law, aggressor state, collaboration activity, looting, combat immunity, criminal liability, aiding the aggressor state, humanitarian aid.

1. Introduction.

In connection to the declaration of war in Ukraine on February 24, 2022 by the Russian Federation and the start of the missile and the bomb attacks on airfields and weapons depots almost throughout the

entire territory of Ukraine [1], the Verkhovna Rada of Ukraine voted unanimously for the introduction of martial law, approving the corresponding Decree of the President of Ukraine “On the introduction of martial law in Ukraine» [2].

The next fateful package of legislative acts of Ukraine on military confrontation with the aggressor was adopted by the Parliament of Ukraine in March-May, July 2022, ensuring the activities of law enforcement agencies, the specifics of responsibility for criminal offenses and improving the procedure for conducting pre-trial investigation and legal proceedings under martial law.

2. Analysis of scientific publications.

There are several researchers who studied the problems of modern criminal law, including – Baulin Y.V., Streltsov E.L., Veresha R.V., Konopelskyi V.Ya. Lykhova S.Ya., Stupnyk Y.V., Tishenko V.V., Chuvakov O.A., Voznyuk A.A., V.V. Topolnytskyi and other domestic and foreign scientists. All of them note that the martial law that operates in Ukraine, and the other extraordinary legal regimes objectively require the development of all branches of legislation, scientific analysis and interpretation of existing and new legislative provisions and provide the practical recommendations.

In such conditions, the criminal law direction requires a special appeal. The emergence of new types of criminal offenses related to martial law require their immediate scientific and practical study for the purpose of qualitative application.

First of all, this concerns issues of qualification of crimes against the foundations of national security of Ukraine, war and military crimes. Today, such tasks seem to be of primary importance for the criminal law science.

Highlighting previously unsolved parts of the general problem, to which the article is devoted.

This review proposes to consider the main provisions of legislative acts concerning changes and amendments to the criminal legislation of Ukraine, in particular, those acts that were not considered as the criminal offense before the introduction of martial law. Therefore, the above circumstances determine the choice of the research topic.

3. The aim of the work.

The purpose of the article is to highlight the problems of criminal law regulation, including, the collaborative activities, the distribution of information products aimed at promoting the actions of the aggressor state, crimes against the foundations of national security, and looting. Furthermore, it analyzes the circumstances that exclude the criminal illegality of the act and provide combat immunity in the conditions of martial law. The other goal is to formulate proposals for the improvement of certain provisions of the criminal legislation.

The specificity of the Russian aggression against Ukraine consists in Russia's unconditional violation of the system of basic international legal agreements, the large scale of the damage caused, and the significant duration of the conflict.

Another feature of this war is its actual conduct without announcement, using the rules of conspiracy and masking its actions on the part of the Russian Federation.

Therefore, traditional views on the military conflicts are undergoing qualitative changes. Thus, a clear understanding of their legal nature and character should remain the focus of constant attention.

4. Review and discussion.

The articles 17 and 65 of the Constitution of Ukraine declares that the protection of the state and ensuring its security are the most important functions of the Ukrainian people. The obligation

of citizens of Ukraine to protect the Motherland, its independence and the territorial integrity, enshrined in the Constitution of Ukraine, requires additional regulation of ensuring the activities of law enforcement agencies in difficult conditions of martial law [3].

According to the Article 1 of the Law of Ukraine "On the legal regime of martial law", martial law is a special legal regime that is introduced in Ukraine or in its individual areas during the armed aggression or the threat of attack, the danger of the state independence of Ukraine and its territorial integrity. This law provides the relevant state authorities, the military command, the military administrations and the local self-government bodies the powers necessary to prevent a threat, to repel the armed aggression, to ensure national security and to eliminate the threat of danger to the state independence of Ukraine and its territorial integrity. Due to the threat, the law also temporarily restricts the rights and the freedoms of man and citizen, the rights and legitimate interests of legal entities, with indication of the duration of these restrictions.

The legal basis for the introduction of martial law is the Constitution of Ukraine, the Law of Ukraine "On the legal regime of martial law" and the Decree of the President of Ukraine on the introduction of martial law in Ukraine or in its individual areas, approved by the Verkhovna Rada of Ukraine [4].

According to the Article 5 of the Law of Ukraine "About the defense of Ukraine", the Parliament of Ukraine (hereinafter referred to as the Verkhovna Rada), carries out legislative regulation of defense issues, within the powers determined by the Constitution of Ukraine [5].

This review proposes to consider the main provisions of legislative acts that relate to changes and amendments to the criminal legislation of Ukraine, in particular, those acts that were not considered as a criminal offense before the introduction of martial law.

Two legislative acts (Laws of Ukraine No. 2107-IX and No. 2108-IX), which entered into force on March 15, 2022, are devoted to the issue of ensuring the liability of persons who carried out collaboration activities:

1) Law of Ukraine «On Amendments to Certain Legislative Acts to Ensure Responsibility of Persons Carrying out Collaboration Activities» [6] No. 2107-IX, which provides the legislative amendments on the freedom of conscience and religious organizations, trade unions, on state secrets, on the citizens participating in the protection of public order and the state border, on political parties in Ukraine, on military duty and military service, on public associations, on charitable activities and charitable organizations, as well as election legislation.

According to this Law, the appropriate restrictions for the citizens of Ukraine, established in the court, and the criminal responsibility for the offense are the direct consequences of the implementation of collaboration activities. For example, a ban on holding positions related to the performance of state or local government functions, as well as a ban or termination of the activities of public associations, political parties are the results of access to state secrets.

2) The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Establishment of Criminal Liability for Collaboration Activities» [7] No.2108-IX supplemented the Criminal Code of Ukraine [8] (hereinafter also the Criminal Code of Ukraine) with Article 111-1, which includes a definition of the concept of collaboration activities and its types, namely:

- public denial of the implementation of armed aggression; the establishment and approval of temporary occupation;
- calls for support for the actions of the aggressor state, support for the armed formations of the aggressor and its occupation administration, calls for cooperation with the state-aggressor and its authorized bodies, as well as to the non-recognition of the extension of the state sovereignty of Ukraine to the temporarily occupied territories of Ukraine;
- voluntarily holding a position in illegal authorities (or being elected to them), judicial, law enforcement agencies, which are created in the temporarily occupied territory;
- participation in the organization and conduct of illegal elections, referendums in the temporarily occupied territory;

- voluntary participation in the illegal armed or paramilitary formations;
- transfer of material resources to the illegal armed or paramilitary formations;
- implementation of propaganda in educational institutions;
- carrying out economic activities with the aggressor state or illegal authorities;
- organization and holding of events of a political nature, in particular congresses, meetings, rallies, marches, demonstrations, conferences, round tables, etc., as well as active participation in them;
- creation, collection, receipt, storage, use and dissemination of certain information in cooperation with the aggressor state and its occupation administration;
- voluntary participation of a citizen of Ukraine in illegal armed or paramilitary formations that are created in the temporarily occupied territory, and / or in the armed formations of the aggressor state or the provision of assistance by such formations in combat operations against the Armed Forces of Ukraine and other military formations created in accordance with laws of Ukraine, volunteer formations that were created or self-organized to protect the independence, sovereignty and territorial integrity of Ukraine.

According to Article 111-1 of the Criminal Code of Ukraine, depending on its part, a penalty for these offenses is provided in the form of corrective labor (for a period of 2 years), arrest (for a period of up to 6 months), a fine (170,000 UAH),

imprisonment (3 to 15 years or life imprisonment), deprivation of the right to hold certain positions or engage in certain activities (10 to 15 years), confiscation of property.

The next legislative act providing for liability for the production and distribution of prohibited information products is the Law of Ukraine “On amendments to certain legislative acts of Ukraine (on strengthening criminal liability for the production and distribution of prohibited information products)” [9]. No. 2110-IX dated March 3, 2022. This Law entered into force on March 16, 2022 and is primarily aimed at strengthening criminal liability for the production and distribution of prohibited information products, as well as counteracting the means of criminal legal influence against hostile information influences in the context of the ongoing hybrid war between the Russian Federation and Ukraine.

This Law fixes the corresponding changes in the Criminal Code of Ukraine and the Criminal Procedure Codes of Ukraine (hereinafter also the Code of Criminal Procedure of Ukraine) [10].

In particular, in accordance with Article 161 of the Criminal Code of Ukraine “Violation of the equality of citizens depending on their racial, national, regional affiliation, religious beliefs, disability and other grounds”, criminal liability for the following unlawful acts has been increased:

- for intentional actions aimed at inciting national, regional, racial or religious enmity and hatred;
- for deliberate actions that are aimed at humiliating national honor and dignity or humiliating the feelings of citizens in connection with their religious beliefs;
- for direct or indirect restriction of the rights or establishment of direct or indirect privileges of citizens on the grounds of race, skin color, political, religious and other beliefs, gender, disability, ethnic and social origin, property status, place of residence, linguistic or other grounds.

For the commission of these criminal offenses, the legislator has established such a penalty as: a fine of 8500 UAH. or restriction of liberty for up to five years, or imprisonment for up to three years, deprivation of the right to hold certain positions or engagement in certain activities for up to three years or without it.

The same actions that are associated with violence, deceit or threats, as well as those committed by an official, are punishable by a fine of 17,000 UAH. or imprisonment for a term of two to five years, with or without deprivation of the right to hold certain positions or engage in certain activities for up to three years.

Actions, which are provided for by the first or second parts of Article 161 of the Criminal Code of Ukraine, committed by an organized group of persons or entailed grave consequences, are punishable by imprisonment for a term of five to eight years.

Section XIX of the Criminal Code of Ukraine "War Crimes" is supplemented by Articles 435-1, 436-2.

So, according to part 1 of Art. 435-1 "Insulting the honor and dignity of a serviceman, threatening a serviceman" for insulting the honor and dignity, threatening to kill, violence or destroy or damage property to a serviceman who takes measures to ensure national security and defense, repulse and deter the aggression of the Russian Federation, his close relatives or family members – the person who committed this crime is punished with restriction of freedom for a term of three to five years or imprisonment for the same term.

Production and dissemination of materials that contain an insult to honor and dignity, a threat of murder, violence or destruction or damage to property to a serviceman who takes measures to ensure national security and defense, to repel and deter the armed aggression of the Russian Federation, to his close relatives or family members, is punishable by restriction freedom for a term of three to five years or imprisonment for the same term (part 2 of article 435-1 of the Criminal Code of Ukraine).

The next new article, which was supplemented by the Criminal Code of Ukraine, is Article 436-2 "Justification, recognition of lawful, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants."

According to this article, justification, recognition of lawfulness, denial of the armed aggression of the Russian Federation against Ukraine, initiated, inter alia, by presenting the armed aggression of the Russian Federation against Ukraine as an internal civil conflict, justification, recognition of lawfulness, denial of the temporary occupation of part of the territory of Ukraine, as well as glorification of persons who committed the armed aggression of the Russian Federation against Ukraine, initiated in 2014, representatives of armed formations of the Russian Federation, as well as glorification of its participants, are recognized as criminal acts (Part 1 of Art. 1 st. 436-2 of the Criminal Code of Ukraine).

Persons are also subject to criminal liability for the production, distribution of materials that contain justification, recognition of lawful, objection to the armed aggression of the Russian Federation against Ukraine (part 2 of article 436-2 of the Criminal Code of Ukraine).

Actions provided by the paragraphs 1 or 2 of this article, committed by an official, or committed repeatedly, or by an organized group, or with the use of mass media, are punishable by imprisonment for a term of five to eight years, with or without confiscation of property.

The Law of Ukraine "On amendments to the Criminal Code of Ukraine on strengthening responsibility for crimes against the foundations of the national security of Ukraine in the conditions of the martial law regime" [11] No. 2113-IX dated March 03, 2022, which entered into force on March 07, 2022, increased liability for crimes against the foundations of Ukraine's national security under martial law.

Thus, the amendments made to Articles 111 and 113 of the Criminal Code of Ukraine strengthened criminal liability for high treason and sabotage under martial law and established the maximum punishment in the form of imprisonment for a term of fifteen years or life imprisonment, with mandatory confiscation of all property. The same Law prohibits any amnesty for persons who have committed high treason and sabotage.

The Law of Ukraine "On ensuring the participation of civilians in the defense of Ukraine" [12] No. 2114-IX dated March 3, 2022, which entered into force on March 7, 2022, regulates the issue of ensuring the participation of civilians in the defense of Ukraine.

The main provisions of this Law are as follows.

During the period of martial law, citizens of Ukraine, as well as foreigners and stateless persons legally located on the territory of Ukraine (hereinafter referred to civilians), may participate in repelling and deterring the armed aggression of the Russian Federation and / or other states, including, to receive

firearms and ammunition in accordance with the procedure and requirements established by the Ministry of Internal Affairs of Ukraine.

The use by civilians of firearms obtained in accordance with this Law is carried out similarly to the use of weapons by military personnel when they perform tasks to repel armed aggression against Ukraine in the manner approved by the Cabinet of Ministers of Ukraine.

Civilians are obliged to hand over the firearms and unused ammunition they received to the National Police of Ukraine no later than 10 days after the termination or cancellation of martial law in Ukraine.

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During the period of martial law, citizens of Ukraine can participate in repelling and deterring the armed aggression of the Russian Federation and /or other states, using their own award weapons, sporting weapons (pistols, revolvers, rifles, smooth-bore guns), hunting rifled, smooth-bore or ammunition.

Civilians are not responsible for the use of firearms against those persons who carry out armed aggression against Ukraine, if such weapons are used on the basis and in the manner determined by Article 1 and Article 4 of this Law.

This Law establishes a list of persons who can participate in the defense of Ukraine. These include: citizens of Ukraine, as well as foreigners and stateless persons who are legally on the territory of Ukraine during the period of martial law. Both groups can participate in rebuffing and deterring the armed aggression of the Russian Federation and / or other states.

The Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Strengthening the Responsibility for Looting [13] No. 2117-I dated March 3, 2022, which entered into force on March 7, 2022, provides for a number of legal norms aimed at strengthening responsibility for committing criminal offenses against property and looting.

For example, criminal liability has been strengthened in a number of articles of the Criminal Code of Ukraine, which provide for liability for committing criminal offenses against property (Art. 185 "Theft", Art. 186 "Robbery", Art. 187 "Robbery", Art. 189 "Extortion", Art. 191 "Assignment, embezzlement or possession by abuse of official position") by increasing the punishment in case of committing crimes in the presence of such an aggravating circumstance as "conditions of martial law or a state of emergency".

In addition, in article 432 "Looting" of the Criminal Code of Ukraine for the theft on the battlefield of things that are with the dead or wounded (looting), the punishment is increased in the form of imprisonment for a term of five to ten years.

The Law of Ukraine "On Amendments to the Criminal Code of Ukraine and other legislative acts of Ukraine on the establishment of circumstances excluding the criminal wrongfulness of an act and providing combat immunity under martial law" [14] No. 2124-IX dated March 15, 2022, which entered into force on 21 March 2022, circumstances have been established that exclude the illegality of a criminal offense and provide combat immunity under martial law.

This Law of the Criminal Code of Ukraine is supplemented by a new article 43-1 "Fulfillment of the obligation to protect the Fatherland, independence and territorial integrity of Ukraine".

In accordance with Article 43-1, an act (action or inaction) committed in a state of martial law or during an armed conflict and aimed at repelling and deterring the armed aggression of the Russian Federation or the aggression of another country is not a criminal offense, if this caused harm to life or health a person who carries out such aggression, or has caused harm to law-protected interests, in the absence of signs of torture or the use of means of warfare prohibited by international law, other violations of the laws and customs of war provided for by international treaties, the consent to be bound by which was given by the Verkhovna Rada of Ukraine.

Each person has the right to defend the Motherland, its independence and territorial integrity of Ukraine, regardless of the possibility of avoiding a collision, causing harm or seeking help from other persons or state authorities, the Armed Forces of Ukraine.

A person is not subject to criminal liability for the use of weapons, ammunition or explosives against persons who carry out armed aggression against Ukraine, as well as damage or destruction of their property in connection with this.

Law No. 2124-IX also amended the Law of Ukraine "On the Defense of Ukraine".

The concept of "combat immunity" provided for in the second paragraph of Article 1 is of particular importance to the amendments to the Law. This concept means "the release of the military command, military personnel, volunteers of the Territorial Defense Forces of the Armed Forces of Ukraine, law enforcement officers who, in accordance with their powers, participate in the defense of Ukraine, persons defined by the Law of Ukraine "On Ensuring the Participation of Civilians in the Defense of Ukraine", from liability, including criminal liability, for the loss of personnel, military equipment or other military property, the consequences of the use of armed and other force in the repulse of armed aggression against Ukraine or the liquidation (neutralization) of an armed conflict, the performance of other tasks for the defense of Ukraine using any type of weapons (weapons), the occurrence of which could not be foreseen in the planning and execution of such actions (tasks) or covered by a justifiable risk, except in cases of violation of the laws and customs of war or the use of armed force, defined by international treaties, the consent to to which is provided by the Verkhovna Rada of Ukraine».

The provisions of the Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Improving the Efficiency of Combating Cybercrime under Martial Law" [15] No. 2149-IX dated March 24, 2022, which entered into force on April 3, 2022, provides for measures to increase the effectiveness of the fight against cybercrime under martial law.

This Law amended the Criminal Code of Ukraine, in particular, Article 361 "Unauthorized interference in the operation of information (automated), electronic communication, information and communication systems, electronic communication networks" was reworded and the penalties for committing a crime were strengthened. In particular, the maximum penalties provide for fines of up to 170 thousand hryvnia or imprisonment for a period of 10 to 15 years with deprivation of the right to hold certain positions or engage in certain activities for up to 3 years.

The Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Responsibility for the Illegal Use of Humanitarian Aid [16] No. 2155-IX of March 24, 2022 (entered into force on April 3, 2022) of the Criminal Code of Ukraine was supplemented by Article 201-2. Illegal use for profit of humanitarian aid, charitable donations or grants.

The Note to Article 202-2 states that humanitarian aid, charitable donations and gratuitous aid should be understood as the concepts defined by the Laws of Ukraine "On Humanitarian Aid" and "On Charitable Activities and Charitable Organizations".

Article 1 of the Law of Ukraine «On Humanitarian Aid» [17] defines the term "humanitarian aid", which means targeted gratuitous assistance in cash or in kind, in the form of non-repayable financial assistance or voluntary donations, or assistance in the form of work, services provided by foreign and domestic donors for humanitarian reasons to recipients of humanitarian aid in Ukraine or abroad.

Humanitarian aid is a kind of charity and should be directed in accordance with the circumstances, objective needs, the consent of its recipients and subject to the requirements of Article 3 of the Law of Ukraine "About charitable activities and charitable organizations"[18].

Weapons, ammunition and equipment that can cause bodily harm or death cannot be humanitarian aid.

It should be noted that responsibility for illegal actions with humanitarian aid comes not only during the period of martial law. In this situation, martial law acts as a circumstance in the presence of which the punishment will be much heavier than if the crime had been committed in peacetime.

Depending on the severity of the act, the punishment for the specified crime is a fine of up to 51,000 hryvnias, or correctional labor for up to two years, or imprisonment for a period of five to seven years with deprivation of the right to hold certain positions or engage in certain activities for up to three years, and with confiscation of property.

The Law of Ukraine "On amendments to the Criminal and Criminal Procedure Code of Ukraine regarding the provision of counteraction to the unauthorized dissemination of information on the direction, movement of weapons, weapons and ammunition to Ukraine, the moving, movement or placement of the Armed Forces of Ukraine or other military formations formed in accordance with the laws of Ukraine, committed in martial law or state of emergency" [19] No. 2160-IX dated March 24, 2022 (entered into force on March 26, 2022)

The Criminal Code of Ukraine was supplemented with a new article 114-2 "Unauthorized dissemination of information about the direction, movement of international military assistance to Ukraine, movement or deployment of the Armed Forces of Ukraine or other military formations of Ukraine, committed in a state of martial law or a state of emergency".

The dissemination of information refers to the transmission of information through all possible channels. This may be the media, the Internet, statements and letters addressed to third parties, public speaking or the distribution of leaflets. The transfer of information is prohibited "in the interests of the security of the state". We are talking about a restriction only for the duration of martial law or until the General Staff of the Ministry of Defense of Ukraine publishes relevant information.

According to the Law, such actions are punishable by imprisonment for a period of 3 to 12 years.

The Law of Ukraine "On Amendments to Article 114-2 of the Criminal Code of Ukraine on Improving Responsibility for the Unsanctioned Dissemination of Information on the Means of Counteracting the Armed Aggression of the Russian Federation" [20] No. 2178-I dated April 1, 2022 (entered into force on April 13, 2022) made the relevant amendments to the Criminal Code of Ukraine.

Thus, Article 114-2, supplementing the Criminal Code of Ukraine, provides for criminal liability for the dissemination of information about the direction, movement of weapons and ammunition to Ukraine, including their movement through the territory of Ukraine, if such information was not posted (distributed) in an open access by the General Staff of the Armed Forces of Ukraine, the Ministry of Defense of Ukraine, the Main Intelligence Directorate of the Ministry of Defense of Ukraine or the Security Service of Ukraine or in official sources of partner countries. According to this article, criminal liability for this offense occurs if it is committed in a state of martial law or a state of emergency.

Under Article 114-2 of the Criminal Code of Ukraine, the cases when the specified crime was committed by prior conspiracy by a group of persons or out of mercenary motives, or with the aim of providing such information to the state carrying out armed aggression against Ukraine, its representatives or illegal armed formations, or if they entailed grave consequences, in the absence of signs in their actions of treason or espionage were provided as the circumstances aggravating liability.

Taking into account the indicated circumstances, a penalty in the form of imprisonment for a term of eight to twelve years is envisaged.

The Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Code of Ukraine to improve liability for collaboration activities and the specifics of the application of measures to commit crimes against the foundations of national and public security" [21] No. 2198-IX dated April 14, 2022 (entered into force on April 23 2022) supplements the Criminal and Criminal Procedure Codes of Ukraine by criminal law norms that are aimed to improve the responsibility for collaborative activities and aiding the aggressor state.

Thus, the Criminal Code of Ukraine was supplemented with Article 111-2 "Aiding the aggressor state". The term "assisting the aggressor state" should be understood as the commission of deliberate actions aimed at helping the aggressor state (aiding), an armed formation and / or the occupation administration of the aggressor state, committed by a citizen of Ukraine, a foreigner or a stateless

person, with the exception of citizens of the state – aggressor, with the aim of causing harm to Ukraine by: implementing or supporting the decisions and/or actions of the aggressor state, armed formations and/or the occupation administration of the aggressor state; voluntary collection, preparation and / or transfer of material resources or other assets to representatives of the aggressor state, its armed formations and / or the occupation administration of the aggressor state.

Actions provided by this article of the Criminal Code of Ukraine are punishable by imprisonment for a term of ten to twelve years with deprivation of the right to hold certain positions or engage in certain activities for a term of ten to fifteen years and with or without confiscation of property.

It is important to note that Article 111-2 of the Criminal Code of Ukraine is a crime against the foundations of Ukraine's national security, so the statute of limitations for criminal liability does not apply.

The Law "On Amendments to the Criminal and Criminal Procedural Codes of Ukraine and other legislative acts of Ukraine regarding the regulation of the procedure for the exchange of persons as prisoners of war" of July 28, 2022 [22] No. 2472-IX (hereinafter – the Law of July 28, 2022) established the procedure for solving relevant issues in the field of humanitarian law. The law entered into force on August 19, 2022.

By the Law of July 28, 2022, the Criminal Code of Ukraine was supplemented by one article – 84-1 with the following content "Article 84-1. Exemption from serving a sentence in connection with the adoption by an authorized body of a decision to hand over a convicted person for exchange as a prisoner of war.

1. A convicted person, in respect of whom an authorized body has made a decision to hand him over for exchange as a prisoner of war and to whom written consent to such an exchange has been given, shall be released from serving his sentence.

2. If the exchange of such a convict has not taken place, the court, at the prosecutor's request, makes a decision to send the convict, released from serving his sentence in connection with his transfer for exchange as a prisoner of war, to further serve the previously imposed sentence.

3. In the event that a person who was released by the court from serving a sentence in connection with the adoption by an authorized body of a decision on his transfer for exchange as a prisoner of war and such an exchange took place, commits a neCтw criminal offense during the unserved part of the sentence, the court shall impose a punishment on him according to the rules provided for Articles 71 and 72 of this Code».

The fundamental question remains relevant: can military personnel of the Russian army (or armed citizens, such as PMK "Wagner") have the status of prisoners of war, if they are already being (or are) being held criminally liable? It is understood that in such cases the mentioned persons are war criminals, and they cannot be recognized as prisoners of war. At least under the current legislation of Ukraine.

Discussion. During a state of war and a state of emergency, the commission of a crime is recognized by the legislator as an aggravating circumstance (clause 11, part 1 of article 67 of the Criminal Code of Ukraine).

Russian aggression caused new types of socially dangerous acts that required criminalization, as well as new forms of manifestation of already known criminal offenses.

Regarding the novelties of the criminal law, the following questions remain debatable:

criminal liability for non-compliance with international standards for the detention of prisoners of war, released from serving a sentence in connection with the adoption by an authorized body of a decision on the transfer of a convicted person for exchange as a prisoner of war;

difficulties in qualifying as war crimes the actions of DNR/LNR militants, who take an active part in the war against Ukraine on the side of the Russian Federation; distinguishing looting from other criminal offenses against property, which are committed under the conditions of the legal regime of

martial law; post-war challenges to the CC should include the use of weapons in the rear, which were in the advanced positions of the Armed Forces.

In this regard, we consider it necessary to improve the legislation in terms of responsibility for illegal handling of weapons.

5. Conclusion.

Russian aggression and the state of war in Ukraine require scientific analysis and interpretation of new legislative provisions in the criminal law field. Effective protection against large-scale Russian aggression requires the use of all means, the mobilization of all resources to achieve victory over the enemy.

The war has caused new types of socially dangerous acts that require criminalization, as well as new forms of manifestation of already known criminal offenses. Among them are cases of evasion of conscripts from mobilization related to illegal crossing of the border, expansion of the circle of collaborators; abuse of humanitarian and other aid, etc.

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