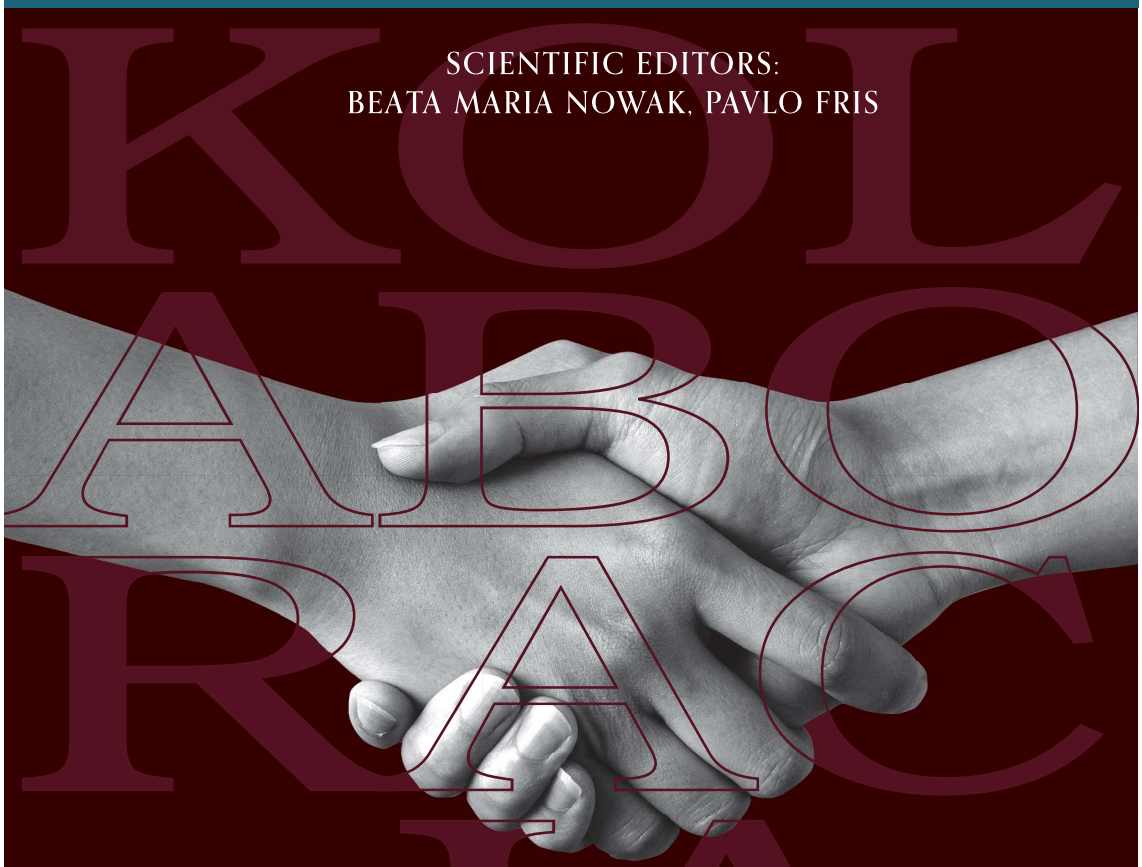
Collaboration with the enemy in war conditions. Polish-Ukrainian experiences

SCIENTIFIC EDITORS:
BEATA MARIA NOWAK, PAVLO FRIS



INSTYTUT
SPOŁECZNYCH PODSTAW PENITENCJARYSTYKI
2023

Collaboration with the enemy in war conditions. Polish-Ukrainian experiences

IHOR MEDYTSKYI[1]

COLLABORATIONIST ACTIVITY IN UKRAINE: AN ANALYSIS OF THE CRIMINAL LAW PROHIBITION, THE MODERN ENFORCEMENT OF THE LAW, CRIMINOLOGICAL PORTRAIT OF A COLLABORATOR'S PERSONALITY

The issue of collaboration on the Ukrainian territory was discussed and addressed in the literature in any serious manner for the last time in the context of the events of the Second World War. Today, drawing obvious parallels, the Ukrainian scientific community is gradually returning to study the topic at hand, whose importance is growing every year and which affects the vector of contemporary scientific research in the field of law. These studies are primarily devoted to the occupation of a part of the Ukrainian territory by the Russian Federation and the consequences of the temporary alienation of that territory. One of these effects is the emergence of collaboration and related or similar phenomena, which are caused by only one factor – the aggression of the Russian Federation which tends to make use of a variety of hybrid warfare measures, as a result of which, since 2014, Ukraine has temporarily lost its territorial integrity, while a part of its territory (the Autonomous Republic of Crimea, some areas of the Donetsk and Luhansk regions) is still under occupation. At the same time, according

[1] Ihor Medytskyi – doctor of law, professor at the Department of Policy on Combating Crime and Criminal Law of the Precarpathian National University. Vasyl Stefanyk (Ivano-Frankivsk, Ukraine). A graduate of the Faculty of Law of the National University of Wasyl Stefanyk. The scope of scientific interests includes current problems in the development of criminological sciences and criminal law - conceptual foundations of the development of the criminological theory of the effects of crime; effectiveness and costs of criminal legislation, activities of criminal justice bodies, and the penitentiary system; issues of qualification of crimes. Author of over 180 scientific works, including 5 monographs (3 collective); 3 scientific articles in scientific journals of the Scopus and Web of Science databases; over 30 scientific articles in professional publications and over 100 theses reports at Ukrainian and international conferences. ORCID number: 0000-0002-6720-6658

to J. Pysmensky the main reasons for the temporary success of the military campaign and the relative prevalence of collaborationist behaviour in the area are the following: 1) the long-lasting and planned preparation for the occupation (external factors); 2) the peculiarities of social and political development of pre-war Ukraine (internal factors); 3) post-Soviet heritage and attachment to the ideology of the "Russian world" (historical and ideological factors).[2]

The legislative response to the armed aggression unleashed in Ukraine took the form of substantial amendments to the Act on Criminal Liability, where the special provisions were expanded as the new criminal norms emerged and the old ones were changed. What captured the interest of researchers was the inclusion of Article 111-1 to the Criminal Code of Ukraine (hereinafter referred to as the CC), whose adoption marked the beginning of a regulation aimed at counteracting criminal law influences on frequent cases of collaboration. This norm is being increasing often applied in practice, in light of the fact that the Armed Forces of Ukraine managed to liberate the area that temporarily remained outside of Ukraine's control and given considerable activity on the part of criminal law enforcement. According to the materials presented by the Office of the Prosecutor General, in 2022, 3851 offences under Article 111-1 of the CC were reported, of which in 1,090 cases a notification on suspicion of committing a crime was served, and courts handled 620 proceedings which were initiated by an indictment.[3] At the beginning of April 2023, 4,887 cases of proven collaboration had already been registered.[4] The courts of first instance (2022) dealt with 308 proceedings under Article 111-1 of the CC, of which 268 ended in a verdict. 140 persons were convicted with final and non-appealable sentences – pursuant to Part 1 of Article 111-1 of the CC; 14 persons – pursuant to Part 2 of Article 111-1 of the Criminal Code; 17 persons – pursuant to Part 4 of Article 111-1 of the Criminal Code; 1 person – pursuant to Part 5 of Article 111-1 of the Criminal Code; 4 persons – pursuant to Part 7 of Article 111-1 of the Criminal Code.[5]

---

[2] Є. Письменський. *Колабораціонізм у сучасній Україні як кримінально-правова проблема.* Право України. 2020. №12. С.116.

[3] Офіс Генерального прокурора. Єдиний звіт про кримінальні правопорушення по державі (січень-грудень 2022): https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2 (дата звернення: 07.07.2023)

[4] Офіс Генерального прокурора. Злочини, вчинені в період повномасштабного вторгнення рф (2023, 4 квітня): з https://www.gp.gov.ua/ (дата звернення: 07.07.2023)

[5] Звіт судів першої інстанції про розгляд матеріалів кримінального провадження (2022). Звіт про осіб, притягнутих до кримінальної відповідальності та види

Many publications in the specialist literature have been devoted to the question of substantive conditions of the norm referred to Article 111-1 CC, in particular by A. Benitsky, M. Bondarenko, O. Dudorov, Z. A. Zagina-Zabolotenko, O. Kravchuk, V. Kuznetsov, O. Marin, R. Movchan, A. Muzyka, J. Pysmensky, M. Sijploka, M. Rubashchenko, M. Hawroniuk, V. Shablisty and other scholars. Despite such an intellectual diversity, many issues related to the criminal qualification of collaborationist activity still raise considerable doubts, which explains great interest which this topic enjoys.

Article 111-1 of the criminal code of Ukraine "Collaborationist activity". In order to justify that the adoption of the Act on Criminal Liability for collaboration was necessary, the authors argued that Russia was being supported in conducting aggressive actions and waging the armed conflict against Ukraine and that armed organisations and occupant administrations of the aggressor state received assistance as well. Collaborators continue to occupy high positions in the state, exert influence on how state policy or information space of Ukraine are shaped, which is unacceptable in the circumstances of constant armed aggression and hostilities. Collaborationism as a phenomenon undermines Ukraine's national security and poses a direct threat to state sovereignty, territorial integrity, constitutional order and other national interests of Ukraine, and for these reasons a collaborator must be held liable under the conditions ser forth in the law. Furthermore, post-conflict regulation is impossible without restoring justice and restricting rights of collaborators, and this can only be effected by way of a statute.[6]

As rightly noted by N. Antoniuk, the legislator structured the Article devoted to collaborationism in a highly complicated manner. First of all, it is divided into as many as eight parts and only the eighth part serves to describe legal qualification. All other parts (from 1 to 7) are independent components of criminal acts. At the same time, each of these parts specifies several forms in which a given offence may be committed. It is also worth noting that in the first two parts, Article 111-1 CC refers to the commission of misdemeanours, while parts 3 through 8 of Article 111-1 CC cover petty, serious and particularly serious offences. This means that only one Article of the Criminal Code points to an increase

---

кримінального покарання (2022): https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2022 (дата звернення: 07.07.2023)

[6] Пояснювальна записка до проекту Закону України про внесення змін до деяких законодавчих актів (щодо встановлення кримінальної відповідальності за колабораційну діяльність): https://itd.rada.gov.ua/billInfo/ Bills/pubFile/559222 (дата звернення: 07.07.2023)

in the social danger of collaboration, which comprises the whole range of criminal acts – from misdemeanours to particularly serious crimes.[7]

The term *collaborative activity*, as well as the related *collaborationism*, *collaborator* and similar, derived from the Latin 'collaborare' (cooperation), can take on both positive and negative meanings. According to the positive connotation, collaboration refers to a joint action or cooperation; according to the pejorative connotation, on the other hand, it means treacherous cooperation with the enemy. The circumstances of the Second World War led to the negative meaning of the term being substantially altered, as it began to be perceived as offensive. New definitions emerged: *aiding the enemy*, *supporting the occupying forces*, *working against fundamental national interests*, *treason*, *high treason*, etc.

In modern criminal law, the term 'collaboration' is associated with a conduct that entails complicity or interaction with the enemy (the aggressor state), committed to the detriment of the interests of the state (constituting a separate type of high treason). It is generally accepted in international law to interpret this activity as knowingly, voluntarily and intentionally collaborating with the enemy in this enemy's interests and against his own state's interests.[8]

The *general object* of the offence referred to in Article 111-1 of the Criminal Code are social relations in the area of national security, i.e. state, information and military security being the components thereof. The offence of collaborative activity has as its direct object the order of a state, sovereignty, defence capacities and other legally protected interests, which are protected by criminal law enforcement measures. Given the rather wide and varied range of forms of collaborationist activity, the direct object in each given case is determined according to the specific form. The *additional object* of the offence is also determined according to the manner in which it is committed. Thus, for example, the additional object of collaborative activity in the form of actions aimed at implementing the education standards of the aggressor state in educational facilities is the educational system of the relevant occupied territory which constitutes a part of the educational system of Ukraine.[9]

---

[7] Н. Антонюк. *Державна зрада і колабораційна діяльність: питання кримінально-правової кваліфікації.* Слово Національної школи суддів України. 2021. №4(37). С.57.

[8] *Новели кримінального законодавства України, прийняті в умовах воєнного стану* : наук.-практ. комент. / А. А. Вознюк, О. О. Дудоров, Р. О. Мовчан, С. С. Чернявський та ін. ; за ред. А. А. Вознюка, Р. О. Мовчана, В. В. Чернєя. Київ : Норма права, 2022. С.82.

[9] *Злочинна колаборація в умовах збройної агресії*: практич. порадник з кримінально-правової оцінки та розмежування / за заг. ред. В. В. Малюка. Київ : Алерта, 2023. С.105-106.

> If a Ukrainian citizen publicly denies that an armed attack against Ukraine occurred or that temporary occupation of a part of the territory of Ukraine was established or consolidated, or when he makes public appeals in support of the decisions and/or actions of the aggressor state, armed organisations and/or occupation administrations of the aggressor state, for other to cooperate with the aggressor state, armed organisations and/or occupation administrations of the aggressor state, or fails to acknowledge that the state sovereignty of Ukraine extends to the temporarily occupied territories of Ukraine, he shall be subject to a penalty of deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years (part 1 of Article 111-1 CC).

Armed aggression against Ukraine means a direct and/or indirect (hybrid) use of armed force (by the Russian Federation) against the sovereignty, territorial integrity and political independence of Ukraine. The current armed aggression against Ukraine comprises the following: 1) the take-over of the Autonomous Republic of Crimea (ARC) in February-March 2014, which marked the first episode of the Russian intervention in Ukraine (according to Part 2, Article 1 of the Act of Ukraine "On Guaranteeing Civil Rights and Freedoms and the Legal System on the Temporarily Occupied Territory of Ukraine", the ARC and the city of Sevastopol have been under the temporary occupation of the Russian Federation since 20 February 2014); 2) the launch of the armed confrontation on 7 April 2014 and the subsequent occupation by the Russian Federation of a part of the territory of the Donetsk and Luhansk regions, leading to the establishment of the so-called Donetsk and Luhansk "people's republics"; 3) the crime of aggression which commenced on 24 February 2022 and resulted in a large-scale invasion of Ukraine by the Armed Forces of the Russian Federation with the support of the Republic of Belarus.[10] Among the armed organisations of the Russian Federation, the Act of Ukraine "On Guaranteeing Civil Rights and Freedoms and the Legal System on the Temporarily Occupied Territory of Ukraine" mentioned regular forces and units subordinate to the Ministry of Defence of the Russian Federation, special units and forces subordinate to other law enforcement agencies of the Russian Federation, their advisors, instructors and irregular illegal armed forces, armed gangs and mercenary groups, created, subordinated, managed and financed by the Russian Federation, and with the assistance of the occupation administration of the Russian Federation, which comprises its state organs and structures being functionally responsible for the management of the temporarily occupied territories of Ukraine

[10] *Новели кримінального законодавства*…, op. cit., C.86.

and self-proclaimed bodies controlled by the Russian Federation that usurped the exercise of power in the temporarily occupied territories of Ukraine.

The *occupation administration* is defined as an organisation of state authorities and structures of the Russian Federation, functionally responsible for the management of the temporarily occupied territories and self-proclaimed bodies controlled by the Russian Federation that usurped the exercise of power in the temporarily occupied territories and which performed or perform functions reserved to state or local government authorities in the temporarily occupied territory of Ukraine, including, in particular, bodies, organisations, enterprises and institutions, also law enforcement and judicial authorities, notaries public and public utility bodies.[11]

Public denial is deemed to mean as an open appeal to an unspecified group of people or a public expression of one's own thoughts or beliefs, whereby certain facts or events are not being acknowledged. A speech is public when the person uttering it is aware that the information expressed therein may be freely and fully received by an unspecified group of persons. As stated in clause 1 of the note in the first part of that Article, the dissemination of appeals or expressions of denial to an unspecified group of persons, in particular on the Internet or through the mass media, is considered public. Moreover, one needs to take into consideration that a denial expressed, for instance, at a rally, a gathering of people or another mass event will also have a public character. In this case, some public denials constitute criminal acts, whereby one makes an intentional and public denies (refutes or in any way diminishes), in a sense justifying serious violations of international humanitarian law, especially an international crime of armed aggression committed by one state against another sovereign state, as well as other 'war crimes.' Public denial may concern the facts of armed aggression against Ukraine; the fact of temporary occupation of a part of the territory of Ukraine was established or consolidated.

Public appeals by Ukrainian citizens may include the following[12]:

- supporting decisions and/or actions of the aggressor state, armed forces and/or the occupation administration of the aggressor state – approval of certain initiatives or voluntary implementation of decisions of the aggressor state, illegal armed forces (including those made up of Ukrainian citizens) working for that aggressor state or pseudo-governmental bodies imposed by

[11] Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України: Закон України від 15.04.214 р. № 1207-VII: https://zakon.rada.gov.ua/laws/show/1207-18#Text (дата звернення: 20.07.2023).

[12] *Злочинна колаборація в умовах збройної агресії*…, op. cit., С.107-111.

the aggressor state under the guise of the occupation administration, which may include Ukrainian citizens, provided that such decisions and/or actions do not serve to satisfy aggressor state's obligations following from international humanitarian law. And thus, for instance, according to Article 56 of the Convention relative to the Protection of Civilian Persons in Time of War, "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties."

At the same time, other decisions of the aggressor state may pertain to both general matters (military aggression under the guise of a special military operation, establishment of pseudo-state entities in the occupied territories, annexation of the Autonomous Republic of Crimea) and local issues (involvement in the appointment of certain members of the occupation administration, taking normative measures in contravention to the law in force). Support for decisions can take the form of either specific actions or inaction (refraining from assisting the Armed Forces of Ukraine, recognising the legitimacy of authorities created by the aggressor state, recognising the superiority of pseudo-normative acts of the temporary occupation administration over legal decisions of local authorities of Ukraine and their officials). Acts performed when coerced or when motivated by the desire to preserve life in the occupation during a state of extreme necessity cannot be regarded as voluntary support for decisions within the meaning of Article 39 of the Criminal Code (e.g. observance of a curfew), if such acts do not constitute another offence as provided for in the special part of the Criminal Code of Ukraine;

- cooperation with the aggressor state, armed forces and/or occupation administration of the aggressor state – a specific set of actions which have been voluntarily performed by a Ukrainian citizen in the interest of and/or jointly with the aggressor state, illegal armed forces (including those made up of Ukrainian citizens) working for that aggressor state or pseudo-governmental bodies imposed by the aggressor state under the guise of the occupation administration, which may include Ukrainian citizens. Cooperation may take the form of organisational or voluntary activities, or be in the nature of intellectual assistance (providing advice on how to satisfy particular needs, carrying out instructional or legal actions);

- failing to acknowledge that the state sovereignty of Ukraine extends to the temporarily occupied territories of Ukraine (hereinafter referred to as TOT) – utterances or actions aimed at promoting the assertion of sovereignty of the aggressor state; committed in order to hinder the exercise of Ukraine's sovereignty in the occupied territories or other territories in the interests of the aggressor state. Contributing to the establishment of the sovereignty of the aggressor state may entail involvement in the establishment of local authorities on the temporarily occupied or other territories of our country, submission to the legislation of another aggressor state on the territory of Ukraine. Obstructing the exercise of the sovereignty of Ukraine on the occupied or other territories in the interests of the aggressor state may consist in the refusal to implement decisions of legitimate state authorities of Ukraine, obstructing the performance of their duties.

Clause 7 in Part 1 of Article 1-1 of the Act of Ukraine "On Guaranteeing Civil Rights and Freedoms and the Legal System on the Temporarily Occupied Territory of Ukraine" defines the territory of Ukraine temporarily occupied by the Russian Federation (TOT) as a part of the Ukrainian territory where armed forces of the Russian Federation and the occupation administration of the Russian Federation have established and exercise effective control or within which borders armed forces of the Russian Federation have established and exercise overall control in order to set up the occupation administration of the Russian Federation.[13]

As regards the first and second types of actions, i.e. ideological and cultural/educational collaboration, an indispensable part of the objective features thereof is that the offence is committed *publicly*. The public commission of these actions means that they can be described as increasing public danger. When defining what constitutes public commission of an act, one must take into account a set of circumstances which include the time, place, environment when appeals were made, etc. The number (circle) of persons which make up the public, although deemed unspecified, should include at least two persons, but the definition of a public does not provide for any upper limit at all. Public appeals addressed to one specific person may be considered as incitement to commit an offence.[14]

> Voluntary occupation by a Ukrainian citizen of a position unrelated to the performance of organisational and managerial or administrative and economic functions

[13] Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України: Закон України від 15.04.214 р. № 1207-VII: https://zakon.rada.gov.ua/laws/show/1207-18#Text (дата звернення: 07.07.2023).

[14] *Новели кримінального законодавства…*, op. cit., C.90-91.

> in bodies unlawfully established on the temporarily occupied territory, including in the occupation administration of the aggressor state, is subject to a penalty of deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years, with or without confiscation of property (Part 2, Article 111-1 CC).

The law of Ukraine does not specify what exactly is meant by occupying positions. Simultaneously, if one were to study normative legal acts, in particular the Act of Ukraine "On the Civil Service," it would become clear that the phrase "occupying a position" is quite frequently used therein in the context of preparatory measures to appoint a certain person to a position within civil service ("competition process for a position in the civil service," "candidates for positions in the civil service") and is, as a matter of fact, linked with such appointment. In other normative legal acts, the term "occupying a position", "occupied position" sees quite wide use and implies a legal fact where a person is appointed to hold a specific position in the manner prescribed by the laws of Ukraine, which is accompanied by an employment relationship being officially registered. In light of the wording of clauses 2, 5 and 7 of Article 111-1 CC, a collaborator must occupy a position in a body that was established unlawfully; it does not suffice to perform work unrelated to one's profession. On the other hand, "position" is indeed defined in the Ukrainian law. For instance, according to part 4 of clause 1 in Article 2 of the Act of Ukraine "On the Civil Service," a position in the civil service constitutes a basic organisational unit of a state authority with a defined structure and list of staff, having official duties established in accordance with the law and having the powers as specified within the limits set by the law.[15]

Participation in the activities of unlawful organs, branches, forces established by the aggressor state is defined as *voluntary* if it occurs on the own initiative of the collaborator, provided such an individual had the opportunity to freely express one's will[16].

In the context of the objective features of this collaborationist behaviour[17] there are several aspects of Ukrainian's citizens activity, which must be ascertained for an individual to be held criminally liable. Firstly, the person occupies positions in unlawful authorities established within TOT, including

---

[15] З. А. Загиней-Заболотенко. *Добровільне зайняття громадянином України посади у незаконних органах влади, створених на тимчасово окупованій території, а також в незаконних судових або правоохоронних органах як форми колабораційної діяльності.* Юридичний науковий електронний журнал. 2022. №6. С.319.

[16] *Новели кримінального законодавства* України…, op. cit., C.103.

[17] *Злочинна колаборація в умовах збройної агресії* …, op. cit., C.112-115.

the occupation administration of the aggressor state. Secondly, the position is not related to the performance of organisational and managerial or administrative and economic functions.

Examples of such positions include office worker, legal advisor, accountant, maintenance worker, human resources worker, civil protection officer. Persons performing purely professional (doctor, statistician, social worker, etc.), industrial (e.g. driver, jeweller or employee of the housing and economic sector, other similar municipal structures), technical (printer, technical secretary, security guard, conductor, etc.) functions *de jure* can be performed by persons occupying positions not related to the performance of organisational and managerial or administrative and economic functions (if these positions are provided for within the structures and organisational units of the unlawful authorities). However, since they carry out secondary (auxiliary) functions, the relevant actions can be described as immaterial within the meaning specified in Part 2 of Article 11 of the Criminal Code.[18]

Article 43 IV of the Convention with respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, drawn up on 18 October 1907 (it entered into force in Ukraine on 24 August 1991) provides that where the authority of the legitimate power has in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country. This provision is confirmed by Article 9 of the Law of Ukraine Act of Ukraine "On Guaranteeing Civil Rights and Freedoms and the Legal System on the Temporarily Occupied Territory of Ukraine," which stipulates that any authorities, their officers and officials of TOT and the measures undertaken thereby are deemed illegal if these authorities or persons have been established, elected or appointed in a manner not provided for by law. Any act (decision, document) issued by certain authorities and/or persons is invalid and has no legal effect, except for documents confirming the fact of birth, death, registration (dissolution) of marriage of a person on the area of TOT, which are attached to the application for state registration of the relevant civil status record.[19]

With regard to the performance of organisational and managerial or administrative and economic functions, the Plenum of the Supreme Court of Ukraine

---

[18] *Новели кримінального законодавства* України…, op. cit., C.104-105.

[19] Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України: Закон України від 15.04.214 р. № 1207-VII: https://zakon.rada.gov.ua/laws/show/1207-18#Text (дата звернення: 07.07.2023).

in Resolution No. 5 of 26.04.2002 "On judicial practice in bribery cases" established that organisational and managerial duties are those which are related to the management of an industry, work collective, workplace, production activities of individual employees in enterprises, institutions or organisations regardless of the form of ownership (chiefs of ministries, other central executive bodies, state or private enterprises, institutions and organisations, heads of structural subdivisions and others). Administrative and economic duties are deemed to mean duties related to the administration or disposal of state or private property (making decisions on the manner of storage, processing, sale, ensuring control over these activities, etc.). Such rights, to one extent or another, are vested in the chiefs of departments and services of economic planning, procurement, finance, managers of warehouses, shops, their deputies, heads of enterprise departments, department auditors and controllers.

The fact that a citizen voluntarily holds a position presupposes his or her employment or joining the service in an unlawful state authority established on the area of TOT, including within the occupation administration of the aggressor state, committed without coercion and of his or her own free will, as well as the performance of such functions in a reorganised state body that has become unlawful as a result of organisational and personnel changes.

> A Ukrainian citizen who expresses propaganda in educational institutions, regardless of the type and form of ownership, the purpose of which is to make it easier to wage an armed aggression against Ukraine, to establish and consolidate temporary occupation of a part of the territory of Ukraine, to evade responsibility for perpetrating an armed aggression against Ukraine by the aggressor state as well as the actions of citizens of Ukraine aimed at introducing educational standards of the aggressor state in educational institutions shall be subject to a penalty of community service for up to two years or to detention for up to 6 months or deprivation of liberty for up to 3 years, along with deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years (Part 3, Article 111-1 of the Criminal Code).

The term of propaganda which when expressed leads to being held legally liable under Part 3 of Article 111-1 CC should be interpreted in a negative (destructive) sense. It constitutes a form of communication with participants of an educational process, which consists in manipulating their awareness to impart in them such ideas and stances that justify the support for armed aggression against Ukraine, the establishment and consolidation of temporary occupation of a part of the territory of Ukraine, the evasion of responsibility for perpetrating an of armed aggression against Ukraine by the aggressor state. The pertinent ideas and stance are

praised rather than condemned, and their expression is presented as behaviour that can be imitated and spread.[20]

The *expression of propaganda* is the dissemination, in an intentional and active manner, of specially selected arguments, facts, opinions, statements and other forms of information with the aim of ideologically influencing public opinion and imparting certain views and beliefs on the relevant sections of the population or on social, national or other groups. At the same time, propaganda is to be distinguished from, for instance, calls (appeals), as it has a predetermined ideas and views which were agreed upon with representatives of the aggressor state or the occupation administration, such ideas and views to be disseminated by ideological means, based on a defined programme and, if necessary, with the use of relevant materials. In the context of Part 3 of Article 111-1 CC, the purpose of propaganda is: 1) to facilitate an armed aggression against Ukraine; 2) to establish and consolidate the temporary occupation of part of the territory of Ukraine; 3) to evade responsibility for the perpetration of armed aggression against Ukraine by the aggressor state.[21]

A mandatory objective feature of the offence provided for in Part 3, Article 111-1 CC is the location where the offence is committed – an educational institution (regardless of the type and form of ownership). According to the Act of Ukraine "On Education", an educational institution is a legal entity operating pursuant to public or private law, whose principal object of activity is education (Article 1(1)(6)):[22]

- an institution of higher education of a relevant type, which performs educational, scientific, technical science, innovative and teaching activities, provides the organisation of the educational process and facilitates the acquisition of higher education by individuals, or scientific institutions providing higher education for university students at the tertiary (educational and scientific) level of higher education;
    - a vocational and technical training facility of a relevant type, which satisfies the needs of citizens for vocational and technical training, obtaining qualifications in a relevant profession and specialty according to their interests, abilities and state of health;

---

[20] *Новели кримінального законодавства України*…, op. cit., C.97.

[21] *Злочинна колаборація в умовах збройної агресії:* практич. порадник з кримінально-правової оцінки та розмежування / за заг. ред. В. В. Малюка. Київ : Алерта, 2023. С.116.

[22] Про освіту: Закон України від 05.09.2017 р. № 2145-VIII: https://zakon.rada.gov.ua/laws/show/2145-19#Text (дата звернення: 07.07.2023).

- a general educational facility of a relevant type, regardless of reporting and form of ownership, forming a part of the general secondary education system;
- a pre-school educational facility of a relevant type, regardless of reporting and form of ownership, forming a part of the pre-school education system.

"Measures aimed at the implementation of the educational standards of the aggressor state in educational institutions" include those that signify the process of departing from national educational standards in educational institutions of Ukraine with a simultaneous or gradual transition to the educational standards of the aggressor state. The analysis of the problematic aspects of the application of Part 3 of Article 111-1 CC has proven that this form of collaboration consisting in "introducing educational standards of the aggressor state in educational institutions" is construed in various ways, which requires further clarification. In particular, the scope and nature of measures, the entirety of which forms "introduction", as well as the question of the group of persons who are the subjects of this offence, have been associated with a variety of interpretations.

The objective features of the offence under Part 3 of Article 111-1 of the Criminal Code comprise performing actions aimed at implementing these educational standards in educational institutions. Actions of employees and officials of unlawful authorities in the field of education, the management of educational institutions, initiative groups of pedagogical employees aimed at providing education in accordance with the educational standards of the aggressor state could include the following: establishing educational standards in the temporarily occupied territories, preparing typical educational programmes, typical educational plans, their approval, ensuring control of the implementation of these standards, plans, programmes. In other words, the implementation of educational standards should be deemed to mean an activity which facilitates the implementation of certain requirements as regards the content of educational activities. This means that it is a matter of ensuring a certain level of compliance with educational standards of the aggressor state by participating in the preparation of the educational programme and/or educational plan (relevant elements thereof), approving them and issuing instructions regarding their performance. In this context, it is important to draw attention to the fact that the implementation of educational standards of the aggressor state in specific institutions is effected not only by officials of these institutions holding the relevant organisational and administrative positions (school principals, rectors, pro-rectors and other authorised persons), but also by those teachers and other pedagogical

staff who could assist the occupant in preparing the educational plan and/or educational programme of the aggressor state.[23]

> The transfer of material resources to unlawful armed or paramilitary forces established in the temporarily occupied territory and/or to armed or paramilitary forces of the aggressor state and/or performing economic activities in cooperation with the aggressor state, unlawful bodies established in the temporarily occupied territory, including by the occupation administration of the aggressor state shall be subject to a penalty of a fine of up to ten thousand of non-taxable minimum income of citizens, or to a penalty of deprivation of liberty for the period from three to five years, along with deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years and confiscation of property (Part 4, Art. 111-1 of the Criminal Code).

The category of *material resources* has not been clarified in any regulation, which means that it can encompass any type of material resources whatsoever, any means of any nature that can be used when needed: financial (cash, movable or immovable property, property rights certified by appropriate documents, etc.), natural (land, subsoil, water and other natural resources, objects of the animal world), energy (current legislation classifies energy of any kind as a material resource) and other assets.[24] In the context of Part 4 of Article 111-1 CC, material resources comprise objects of the material world, appropriate premises and buildings, materials or other services, energy resources, equipment, tools, machinery, etc., necessary to satisfy material needs of unlawful armed or paramilitary forces formed on the area of TOT and/or an armed or paramilitary forces of the aggressor state.

Transfer consists of providing material resources to representatives of the aggressor state, its armed forces and/or the occupying administration of the aggressor state. Transfer of resources covers not only the transfer of material resources for one-time (food, ammunition) or constant (vehicles, uniforms) use, which is accompanied by the transfer of ownership for the benefit of unlawful armed or paramilitary forces established on the area of TOT and/or armed or paramilitary forces of the aggressor state. Granting the temporary right to use any of the above may also be considered as transfer of material resources.[25]

---

[23] *Злочинна колаборація в умовах збройної…*, op. cit., C.119.

[24] І. Медицький. *Колабораційна діяльність і пособництво державі-агресору: «дотичність» та розмежування в ході кримінально-правової кваліфікації.* Кримінальне право України перед викликами сучасності і майбуття: яким воно є і яким йому бути : матеріали міжнар. наук. конференції, м. Харків, 21-22 жовт. 2022 р. / редкол.: В. Я. Тацій, Ю. А. Пономаренко, Ю. В. Баулін та ін. Харків : Право, 2022. С.64.

[25] *Злочинна колаборація в умовах* збройної…, op. cit., C.121-123.

Performing economic activity (either personally or via an economic organisation formed for this purpose) in cooperation with the aggressor state, such activity being related to the production (manufacture) and/or sale of goods, performance of works, provision of services, for the purpose at generating revenue, constitutes a voluntary activity of a citizen of Ukraine under Part 4 of Article 111-1 CC. Such economic activity is considered to be a type of collaboration since it is carried out in cooperation with the aggressor state, unlawful authorities established on the area of TOT, including the occupation administration of the aggressor state. The cooperation may consist in the fact that the economic activity:

- is carried out by a business entity in the interest of one of the institutions specified above;
- is run by a joint venture between Ukraine and the aggressor state or occupying power;
- is carried out under the direction of a Ukrainian citizen within an enterprise of the aggressor state or an enterprise established in the occupied territory.[26]

The law in force defines *economic activity* as "the activity of economic actors, pertaining to public production, with the aim of manufacturing and selling products, performing works or providing services of a valuable nature, for which specific prices have been imposed" (Part 1 of Article 3 of the Commercial Code); "the activity of a person related to the production (manufacture) and/or sale of goods, performance of works, provision of services, for the purpose at generating revenue, carried out by a person independently and/or through separate branches, or by any other person who acts on behalf of the former person, in particular on the basis of contracts of mandate, powers of attorney and agency agreements" (Article 14(1)(36) of the Tax Ordinance). The fundamental difference between the normative guidelines referred to above lies in the purpose of the procedure – the Tax Ordinance requires that income be obtained, while the Commercial Code, as far as income is concerned, distinguishes between commercial and non-commercial activity (Article 3(2) of the Commercial Code).[27] Thus, economic activity has a specific purpose, objective structure and conditions of performance. The Act defines economic actors as follows: 1) business organisations – legal entities established in accordance with applicable regulations and other legal entities engaged in economic activity and registered in accordance with the law; 2) citizens of Ukraine, foreigners and stateless

---

[26] *Злочинна колаборація в умовах* збройної…, op. cit., C.130-131.

[27] Господарський кодекс України від 16.01.2003 р. № 436-IV: https://zakon.rada.gov.ua/laws/show/436-15#Text; Податковий кодекс України від 02.12.2010 р. № 2755-VI: https://zakon.rada.gov.ua/laws/show/2755-17#Text (дата звернення: 08.07.2023)

individuals who engage in economic activity and are registered in accordance with the law as entrepreneurs (Part 2 of Article 55 of the Commercial Code).

O. Kravchuk and M. Bondarenko point out that when determining whether economic activity is being conducted, it is necessary to establish who acted and made decisions on behalf of the economic actors. First of all, it could be the manager, the person performing his or her duties or any other person who acted on behalf of the economic actor (during negotiations, when concluding and signing agreements, in the delivery of goods, works, services). Persons performing technical functions (salesmen, warehousemen), depending on their intentions, may be accomplices to such an offence, or their actions may not satisfy the objective features of the offence (performance of economic activity).[28]

> Voluntary occupation by a Ukrainian citizen of a position related to the performance of organisational and managerial or administrative and economic functions in unlawful authorities established on the temporarily occupied territory, including the occupation administration of the aggressor state, or being voluntarily elected to such authorities, as well as participation in the organisation and holding of illegal elections and/or referendums in the temporarily occupied territory, or public incitement to hold such unlawful elections and/or referendums in the temporarily occupied territory shall be subject to a penalty of deprivation of liberty for a period from five to ten years, along with deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years, with or without confiscation of property (Part 5 of Article 111-1 CC).

This sub-type of collaborationist activity is similar to that referred to in Part 2 of Article 111-1 of the Criminal Code, except for the nature of the position occupied by an individual. Part 5 qualifies the voluntary occupation by a Ukrainian citizen of a position in unlawful state bodies established in the area of TOT, including in the occupation administration of the aggressor state, if this is related to the performance of organisational and managerial or administrative and economic functions. Therefore, in order to correctly qualify an individual's actions, i.e. as to whether is satisfies the objective features of the offence, it is necessary to extract (obtain) data on the organisational and personnel structure of the institution and on the individual's functional duties performed at that position.

Examples of such positions include: the head of the illegitimate government and his or her deputies, the chief physician of a clinic, the general manager of an enterprise whose management falls within the sphere of activity

---

[28] О. Кравчук, М. Бондаренко. *Колабораційна діяльність: науково-практичний коментар до нової статті 111-1 КК*. Юридичний науковий електронний журнал. 2022. № 3. С. 200.

of the illegitimate government, the head of the personnel department, the head of the finance department, the chief sanitary physician, the veterinary service laboratory manager, the departmental auditor[29].

Voluntary election to the illegitimate government established on the area of TOT, including the occupation administration of the aggressor state, occurs when an individual is not directly appointed to hold a given position, but takes part in an election, voluntarily submits his or her candidacy, and based on the results of this election takes up positions in the illegitimate government established on the area of TOT, including the occupation administration of the aggressor state. Collaborationist activity of this sort will be considered to have occurred upon the individual commencing the performance of duties at the position for which he or she was elected. The mere participation in an election as a candidate for the positions in the illegitimate government established on the area of TOT, including in the occupation administration of the aggressor state, depending on the other circumstances of the case, may be considered an attempt to commit the offence provided for in Part 5 of Article 111-1 of the Criminal Code.[30]

As a rule, during the elections of the President of Ukraine, deputies to the Parliament of Ukraine and the pan-Ukrainian referendum, voting by citizens of Ukraine on the area of TOT is not organised nor carried out. Citizens of Ukraine living in the temporarily occupied territory are to be provided with the conditions for free expression of their will during elections of the President of Ukraine, deputies to the Parliament of Ukraine and the pan-Ukrainian referendum in another territory of Ukraine. In the case of elections of deputies to the Supreme Council of the Autonomous Republic of Crimea, deputies to local councils, mayors of villages, municipalities, cities, any other elections and referenda held on the area of TOT, including with the assistance or participation of state bodies and bodies of local self-government established in accordance with the Constitution and laws of Ukraine, it should be taken into account that in accordance with Part 5 of Article 9 of the Act of Ukraine "On Guaranteeing Civil Rights and Freedoms and the Legal System on the Temporarily Occupied Territory of Ukraine", they are invalid and have no legal effects.

Participation in the organisation and conduct of illegal elections and/or referenda implies active action to organise or conduct them. Participation in the organisation and conduct of illegal elections and/or referendums on the area of TOT involves participation in bodies carrying out illegal elections, referendums, i.e.:

---

29 *Новели кримінального законодавства…*, op. cit., C.105.

30 *Злочинна колаборація в умовах збройної…*, op. cit., C.134-135.

electoral commissions or other similar bodies, other participation in the conduct of elections, e.g. as a candidate, observer on behalf of a candidate, participant in a pre-election campaign. Public calls for such illegal elections and/or referendums on the area of TOT occur when an entity publicly calls for conducting illegal elections or referendums on the area of TOT. The offence is committed when an individual makes the appeal. At the same time, liability should arise regardless of whether or not an illegal election or referendum has indeed taken place.[31]

> Organising and conducting political events, performing informational activities in cooperation with the aggressor state and/or its occupation administration with the aim of supporting the aggressor state, its occupation administration or armed forces and/or evading responsibility for the armed attack against Ukraine, in the absence of features pointing to treasonous nature of the act, active participation in such activities shall be subject to a penalty of deprivation of liberty for a period from ten to twelve years, with deprivation of the right to hold certain positions or carry out certain activities for a period of ten to fifteen years, with or without confiscation of property (Part 6 of Article 111-1 of the Criminal Code).

According to clause 2 of the note to Article 111-1 CC, political events include congresses, assemblies, rallies, marches, demonstrations, conferences, roundtables, etc. Specifically, this term applies to a free, public expression of political views, where it is possible to make demands, adopt resolutions, make other appeals regarding various matters related to public life, at a meeting anyone can attend, held in the form of congresses, assemblies, meetings, rallies, marches, demonstrations, pickets, conferences, roundtables or at any combination of the above, the purpose of which is to arrange the political life in a society, on the initiative of natural or legal persons.

The organisation of a political event is a set of activities related to its creation, establishment, preparation, development, implementation, support, carried out thanks to the involvement of others in specific activities and in the event as a whole. Holding an event comprises a set of activities, the purpose of which is to ensure that the event's programme is effectively implemented and that its objectives are achieved. Holding an event is narrower in scope than the 'organisation of an event' and form a part of it. In the context of Part 6 of Article 111-1 CC, holding an event begins when the event is opened and ends when it is completed, and is used to refer to its most substantive, active and public part.[32]

According to Part 3 of Article 111-1 of the Criminal Code, the performance of informational activities implies the creation, collection, acquisition, storage,

---

[31] Ibidem, C.136-137.

[32] *Злочинна колаборація в умовах збройної…*, op. cit., C.138.

use and dissemination of relevant information. Informational activities can be deemed to mean as a type of professional, political or public vigilance of certain persons, which consists in: a) informational interaction with authorities, civic associations, corporations or natural persons; b) creation of and facilitating access to public information; c) organisation of informational resources; d) development of information and telecommunication infrastructure, means of communication and information security.

Active participation in events of a political nature is a type of activity which implies that a person is involved in the processes occurring in the course of organisation and holding of events of a political nature, their interaction with the participants in the process, and may be manifested in actions, whose purpose is to publicly and actively support the agenda or the implementation of the decisions, resolutions, conclusions, etc. which were issued, holding relevant positions, performing assigned duties, and other types of participation. Active participation in events of a political nature may also consist in fulfilling tasks set by the organiser, carrying out campaigns, holding a relevant stage of such an event, facilitating premises, speakers, an audience for the event, supporting the chairman, participating in debates, putting forward initiatives, formulating motions, resolutions, etc. Mere attendance at an event of a political nature, without taking the aforementioned and other active measures, does not constitute an offence under Part 6 of Article 111-1 of the Criminal Code. It is important to understand that criminal liability under Part 6 of Article 111-1 of the Criminal Code is imposed, in the absence of features point to treason.[33]

> Voluntary occupation by a Ukrainian citizen of a position in unlawful judicial or law enforcement authorities established on the temporarily occupied territory as well as voluntary participation of a Ukrainian citizen in illegal armed or paramilitary forces established on the temporarily occupied territory and/or in armed forces of the aggressor state, or providing such forces with assistance in conducting hostilities against the Armed Forces of Ukraine and other military forces established in accordance with the laws of Ukraine, volunteer forces formed or self-organised for the purpose of protecting the independence, sovereignty and territorial integrity of Ukraine shall be subject to a penalty of deprivation of liberty for a period from twelve to fifteen years, along with deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years, with or without confiscation of property (Part 7 of Article 111-1 of the Criminal Code).

[33] *Злочинна колаборація в умовах збройної…*, op. cit., C.139-140.

Judicial authorities in contravention of the Ukrainian law are invalid, as are the decisions issued thereby. At the same time, the instance and range of cases adjudicated by an unlawfully established court is of no consequence. Authorities that perform functions similar to those recognised by Ukraine as law enforcement on the temporarily occupied territories will be deemed as unlawful law enforcement authorities.

Voluntary occupation by a citizen of a position in an unlawful judicial or law enforcement authority entails his/her employment or joining the service of a relevant authority, institution, organisation, committed without coercion and of his or her own free will, as well as occupation of such a position in a reorganised body, institution, organisation, that has become unlawful as a result of organisational and personnel changes made by representatives of the aggressor state or the occupying administration. Thus, for example, remaining as a judge in a judicial authority that has been reorganised and incorporated into the system of the occupying state shall be subject to a penalty, as the Ukrainian state make it possible for judges who have worked in Ukrainian courts established within TOT and have expressed a desire to relocate in connection with the temporary occupation by the Russian Federation to be transferred to a position as a judge in a court in another territory of Ukraine. At the same time, a judge who has not demonstrated a desire to relocate to a non-occupied part of Ukraine has the option to resign from the unlawful judicial authority and refrain from performing collaborationist activity.[34]

As noted by N. Antoniuk, this part pertains not only to judges, since the competences in the judicial authorities are manifestly distributed between those who are directly responsible for the administration of justice, i.e. judges, and the judicial apparatus (court clerks, court assessors, bailiffs, etc.) being constitutes a structural component of court's operation.[35]

According to O. Kravchuk and M. Bondarenko, the presence of organisational and managerial or administrative and economic functions is necessary in order for an offence of voluntary occupation of a position in unlawful judicial or law enforcement authorities established in the temporarily occupied territory to have been deemed committed. Otherwise, being employed at positions which do not involve such functions will be qualified as set forth in Part 2 of Article 111-1 of the Criminal Code.[36] M. Hawroniuk expressed a similar view in that he evaluated relevant positions in terms of whether they involve activities akin to that

[34] *Злочинна колаборація в умовах збройної…*, op. cit., C.142-143.
[35] Н. Антонюк. *Державна зрада і колабораційна діяльність* …, op. cit., C. 63.
[36] О. О. Кравчук, М. С. Бондаренко. *Колабораційна діяльність* …, op. cit., C. 202.

of a judge or law enforcement officer. The occupation of a position of a court assessor, bailiff or any other position in the judicial apparatus, prosecutor's office, etc., should, in his opinion, qualified as falling within the scope of Part 2 of Article 111-1 CC, i.e. as occupation of a position not related to the performance of organisational and managerial or administrative and economic functions.[37]

J. Pysmensky and R. Mowczan, on the other hand, expressed a position to the opposite, as they suggested that Part 7 of Article 111-1 of the Criminal Code should to used to evaluate activities of a person occupying any positions in unlawful judicial or law enforcement authorities established in the temporarily occupied territory, including those which are do not involve organisational and managerial or administrative and economic functions, but without which the performance of a relevant function would not be possible: positions of court administrator, judge's assistant, court clerk, court registrars, human resources or accounting departments, etc. At the same time, the authors rightly note that there is no provision in Part 7 of Article 111-1 CC, similar to the one included in Part 5 of the note, whereby liability would arise only for the occupation of positions related to relevant functions.[38] Secondly, Part 7 of Article 111-1 CC comprises a special structure of an offence concerning the acts described in Part 2 and Part 5 of Article 111-1, as it refers to a separate type of unlawful authorities established in the temporarily occupied territory (an additional feature).[39]

O. Marin emphasises that a Ukrainian citizen incurs the greatest liability for holding a position in unlawful judicial authorities established in the temporarily occupied territory of Ukraine and unlawful law enforcement agencies there created. He states that joining the service in the "people's militia", any quasi-state security service or prosecutor's office, serving as a judge, court assessor, any other functions (*without specifying which those are* – I.M.) in quasi-judicial authorities in the temporarily occupied territory of Ukraine constitutes a particularly serious crime and is subject to liability under Part 7 of Article 111-1 of the Criminal Code of Ukraine.[40]

---

[37] Є. О. Письменський, Р. О. Мовчан. *Новели кримінального законодавства України про колабораційну діяльність: дискусійні питання та спроба їх розв'язання*. Юридичний науковий електронний журнал. 2022. №6. С.358.

[38] Є. О. Письменський, Р. О. Мовчан. *Новели кримінального законодавства України*…, op.cit., С.358, 360.

[39] *Новели кримінального законодавства*…, op. cit., С. 108.

[40] О. К. Марін. *Кримінальна відповідальність за роботу в інтересах держави-агресора. Теоретико-прикладні проблеми юридичної науки на сучасному етапі реформування кримінальної юстиції (пам'яті В. П. Колгана):* збірник тез Міжнародної

Z. Zaginei-Zabolotenko explains that holding a position by a Ukrainian citizen in any authority unlawfully established in the territory of TOT and the subsequent performance of the duties assigned to that post will be qualified, taking into account the totality of circumstances, under Part 2, 5 or 7 of Article 111-1 and clause 1 or 2 of Article 111 of the Criminal Code "High treason". It is only such an assessment on criminal law grounds that will satisfy the principle of completeness of qualification and will ensure that collaborators face inevitable criminal liability. At the same time, taking into consideration the imposition of martial law or the period of armed conflict during which the treason occurred, these actions should be qualified as providing assistance to a foreign state, foreign organisation or their representatives in carrying out diversionary actions against Ukraine or as transferring to the side of the enemy under the conditions of martial law or armed conflict.[41] A similar position on the criminal law qualification is presented by N. Antoniuk.[42]

To *participate in illegal paramilitary or armed forces is to join that criminal association*, to be a part of them and to continue to carry out, within their framework, any action in support of the aggressor state. Joining illegal paramilitary or armed forces means agreeing to be involved in them. A person may be appointed to a specific position, receive a weapon, a pass, a military uniform, receive a call sign, take an oath, affix a signature, be assigned functional duties in the force, etc. Voluntary participation implies the absence of coercion that would preclude the free expression of will (threats, blackmail, etc.) when making a decision on such an involvement[43].

It is necessary to distinguish the participation of a citizen of Ukraine in illegal armed or paramilitary forces crated on the temporarily occupied territory and/or in the armed forces of the aggressor state (Part 7 of Article 111-1 CC) from the participation in the operation of paramilitary or armed forces which were not set forth by the law (Article 260 CC) based on the following criteria: 1) *the subject of the offence* – in the case of collaboration, it can only be a citizen of Ukraine; 2) *the place* of creation of relevant forces or their affiliation to the aggressor state – it is of no consequence, as regards the qualification of an act under Article 260 CC, where and how the paramilitary or armed

науково-практичної конференції (м. Хмельницький, 27 травня 2022 року). Хмельницький : Хмельницький університет управління та права імені Леоніда Юзькова, 2022. С.20.

41 З. А. Загиней-Заболотенко. *Добровільне зайняття громадянином України* …, op. cit., С.321.

42 Н. Антонюк. *Державна зрада і колабораційна діяльність* …, op. cit., С.60.

43 *Злочинна колаборація в умовах збройної* …, op. cit., С.144.

forces were created or if they are affiliated with a particular state, i.e. Article 260 CC applies to participation in any such forces.[44]

In the context of Part 7 of Article 111-1 of the Criminal Code, the conduct of hostilities involves the operation of paramilitary or armed forces, the purpose of which is to kill people, destroy combat equipment or military facilities of the Armed Forces of Ukraine and other military forces established in accordance with the laws of Ukraine, including volunteer forces formed or self-organised for the purpose of protecting the independence, sovereignty and territorial integrity of Ukraine, to take control of the occupied territory, to repel the attack or assault and to maintain the territory seized by their troops. They may be defensive, offensive (counter-offensive) or aggressive (seizure of foreign territory) in nature. In the case of aggressive hostilities, civilian infrastructure buildings may be affected, as well as the civilian population. Providing assistance in the conduct of hostilities implies making steps to support the interests of Ukraine's military adversary, which: (1) facilitate or enable the effective conduct of hostilities by illegal armed or paramilitary forces established on the temporarily occupied territory or armed forces of the aggressor state; (2) complicate, prevent or diminish the effectiveness of combat operations of the Armed Forces of Ukraine and other military forces established in accordance with the laws of Ukraine, volunteer forces formed or self-organised for the purpose of protecting the independence, sovereignty and territorial integrity of Ukraine.[45] This includes, for example, removing obstacles to the activities of illegal armed or paramilitary forces, providing them with the necessary information, transport services, repair work, financing, etc.[46]

The fact that Article 111-1 is absent from the list specified in Part 2 of Article 22 of the Criminal Code means that liability for collaborationist activity requires a *subject* to reach 16 years of age. The current state of affairs raises no reservation and is confirmed by practice.

A literal interpretation of Parts 4 and 6 of Article 111-1 of the Criminal Code, in the absence of any mention that an unlawful act was committed by a Ukrainian citizen, indicates that any person, regardless of nationality, who transfers material resources to specific recipients and/or conducts economic activity with them will be subject to criminal liability (Part 4); or organises and conducts political events, carried out informational activities in support of the aggressor state,

---

44 *Новели кримінального законодавства*…, op. cit., C.108.

45 *Злочинна колаборація в умовах збройної* …, op. cit., C.145-146.

46 *Новели кримінального законодавства*…, op. cit., C.109.

its occupation administration or armed forces and/or evades responsibility for an armed attack against Ukraine, takes an active part in such activities (Part 6).

The legal doctrine has not reached any significant consensus as regards the interpretation of the provisions referred to above. And thus V. Kuznetsov and M. Sijploki suggest to take into account the well-established similarities between collaboration and high treason and to consider that only a Ukrainian citizen may be the subject of the relevant offences (Articles 1 and 6 CC); in light of how Part 4 of Article 111-1 of the Criminal Code is applied as well as legislative drafting principles, O. Zaytsev and V. Bodeiko consider it reasonable to clarify that this Part requires Ukrainian citizenship, so as to avoid any misinterpretation by attributing it to a subject *in genere*; J. Pysmensky emphasises that the subject of collaboration is a citizen of the state whose territory is occupied. Meanwhile, O. Kravchuk and M. Bondarenko state that the subject of the offences under Parts 4 and 6 of Article 111-1 CC is a person who does not necessarily have the status of a citizen of Ukraine. At the same time, the scholars emphasise that the subject of all offences which make up collaboration must, as a rule, meet such characteristics as belonging to the local population or having other permanent ties to the relevant occupied territory (residence, place of registration, place of business or other activity); A. Benitsky points out that due to the fact that the legislator expanded the catalogue of subjects as regards some forms of collaboration, the subjects of the specific forms under Parts 4 and 6 of Article 111-1 of the Criminal Code may be either citizens of Ukraine or foreigners or stateless persons; A. Muzyka takes the view that collaborationist activities are intentional actions (…) committed by a citizen of Ukraine, a foreigner (with the exceptions of citizens of the aggressor state) or a stateless person, in the absence of features point to treason.[47]

---

[47] В. В. Кузнецов, М. В. Сийплокі. *Кримінальна відповідальність за колабораційну діяльність як новий виклик сьогодення. Науковий вісник Ужгородського Національного університету. Серія ПРАВО. 2022. Випуск 70. С.386; О. В. Зайцев, В. А. Бодейко.* Щодо встановлення суб'єктивних ознак колабораційної діяльності (узагальнення матеріалів судової практики). *Вісник Луганського державного університету внутрішніх справ ім. Е. О. Дідоренка. 2022. Вип. 4 (100). С.107; О. О. Кравчук, М. С. Бондаренко.* Колабораційна діяльність: науково-практичний коментар до нової статті 111-1 КК. *Юридичний науковий електронний журнал. 2022. №3. С.199-201; Є. О. Письменський.* Колабораційна діяльність у сфері освіти: проблеми тлумачення та вдосконалення кримінального закону. Право України. 2022. № 11. 12-23. С.55; А. Беніцький. Особливості кримінально-правової кваліфікації злочинів, передбачених ч. 4 ст.111-1 Кримінального кодексу України та розмежування їх із суміжними складами злочинів. Право України. 2022. № 11. 12-23. С. 90-91; А. Музика Норми про відповідальність за колабораційну діяльність потребують актуальних поправок. *Кримінально-правові*

However, the first position referred to above is preferable as it corresponds to the real intention (spirit) and goals for adopting the draft Act of Ukraine regarding amendments to certain legislative acts (on the establishment of criminal liability for collaboration) dated 24.02.2021 No. 5144 and to the needs of law enforcement practice. Sharing the understanding of collaboration (J. Pysmensky et al.), i.e. as cooperation of a citizen of a state whose territory is (fully or partially) occupied with the occupant state or its representatives, we consider it appropriate to acknowledge that the subject of collaborationist activity (Parts 4 and 6 of Article 111-1 CC) can only be a citizen of Ukraine, while similar actions committed by stateless persons or foreigners, should there be grounds therefor, should be qualified in accordance with other Articles of the Code, primarily Chapter I of the Special Part.

It will also be proper to consider separate features, since a comprehensive examination of the objective composition of collaborationist activities will be incomplete without analysing additional features: 1) activities undertaken by citizens of Ukraine to implement the education standards of the aggressor state in educational institutions (Part 3 of Article 111-1); 2) carrying out economic activities in cooperation with the aggressor state, unlawful authorities established on the temporarily occupied territory, including the occupation administration of the aggressor state (Article 111-1(4)); 3) voluntary occupation by a citizen of Ukraine of a position related to the performance of organisational and managerial or administrative and economic functions in authorities established on the temporarily occupied territory, including the occupation administration of the aggressor state (Article 111-1(5)); 4) voluntary occupation by a citizen of Ukraine of a position in unlawful judicial or law enforcement authorities established on the temporarily occupied territory (Part 7 of Article 111-1 of the Criminal Code).

In the context of liability for propaganda (clause 3 of Article 111-1 CC), N. Antoniuk notes that such activities may be performed not only by teachers or other persons working in relevant educational institutions, regardless of the form of ownership, but also by any person who takes advantage of an educational institution for propaganda purposes. Furthermore, the Article is not only concerned with the impact on pupils, students or other wards, but also with the impact on

---

відповіді на виклики воєнного стану в Україні: матеріали міжнар. наук. конф., м. Харків, 5 трав. 2022 р. / упоряд. та заг. ред.: Ю. В. Баулін, Ю. А. Пономаренко; Нац. юрид. ун-т ім. Ярослава Мудрого; Нац. шк. суддів України; Громад. орг. «Всеукр. асоц. кримін. права»; НДІ вивч. проблем злочинності ім. акад. В. В. Сташиса. Харків: Право, 2022. С. 113.

the teaching staff working in an educational institution. While it is not difficult to distinguish between the subject that is being taught and possible propaganda during a mathematics or a chemistry course, the situation is much complicated in the case, for example, of a history lesson. N. Antoniuk rightly believes that should a history teacher go on to teach about the history of the Russian Federation or express the view that Ukrainians as a nation and Ukraine as a state never existed, such actions and informational activity towards students or other pupils is socially dangerous. After all, the authority of the teacher and his/her views oftentimes has a decisive impact on the development of the student's awareness.[48]

The act of implementing educational standards of the aggressor state in educational institutions can be committed by a subject who is a citizen of Ukraine, who has power, granted by the occupation administration of the aggressor state, to implement educational standards (most of all, a director of an educational institution, his or her deputies, heads of structural units tasked with implementing educational standards, members of teaching, pedagogical and scientific councils).[49] Scholars have also arrived at the following reasonable conclusions: 1) teachers who do not perform organisational and managerial duties and are not involved in the implementation of educational standards in their capacities cannot be regarded as subjects of the act of implementing educational standards of the aggressor state; 2) the direct teaching of subjects based on previously implemented educational standards of the aggressor state in the occupied territories does not meet the legal definition of the offence under Part 3 of Article 111-1 CC (i.e. the implementation of educational standards of the aggressor state). Thus, the direct teaching of subjects based on the standards of the aggressor state, which were already implemented by relevant officials in the occupied territories, does not satisfy the objective side of the offence under Part 3 of Article 111-1 CC, that is "actions aimed at implementing educational standards of the aggressor state". Teaching does not constitute implementation of the requirements concerning content of educational plans.[50]

Based on the normative interpretation specified above, the particular subject referred to in clause 4 of Article 111-1 of the Criminal Code must fulfil a mandatory requirement of being entered into the governmental register of economic activity, regardless of where and under what conditions this has been

---

48 Н. Антонюк. *Державна зрада і колабораційна діяльність* …, op. cit., C.61.

49 Є. О. Письменський *Колабораційна діяльність в сфері освіти*…, op. cit., C.54-55.

50 *Злочинна колаборація в умовах збройної* …, op. cit., C.120.

effected, whether or not it occurred in accordance with the requirements set forth by Ukrainian law in force and on the territory controlled thereby or in cooperation with the aggressor state, unlawful authorities of state power established on the temporarily occupied territory, including the occupation administration of the aggressor state, whereby the requirements of "occupational legislation" have been met. It is important that the unlawful conduct of this kind may also take place on the territory of the Russian Federation.

In the context of voluntary occupation of a position in unlawful judicial or law enforcement authorities created at the area of TOT, we support the view that the subject must perform organisational and managerial or administrative and economic functions. The social danger of this unlawful behaviour (whose formal embodiment is manifested in the sanction contained in a criminal norm) is determined by its nature (content) and consequences, which, although removed from the scope of Part 7 of Article 7 of the Criminal Code, does remain, however, in direct connection with the administration of justice or the provision of law enforcement services. It would be difficult to logically justify the opinion that the legislator regards the conduct of persons whose function is determined by a position they occupy in unlawful judicial and law enforcement authorities, where such position is not related to the performance of organisational and managerial or administrative and economic functions in the area of the administration of justice or law enforcement activities, as so dangerous that the state imposes the penalty of deprivation of liberty for a period from twelve to fifteen years, along with deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years, with or without confiscation of property. Otherwise, the legislator's actions would be completely incomprehensible and illogical, since a lighter punishment would, as a matter of fact, be reserved for subjects within the confines of unlawful authorities, who as part of their status occupy the aforementioned positions (Part 5 of Article 111-1 CC), as compared to persons who belong to the same authorities (judicial and law enforcement) whose scope and effects of unlawful activity are not associated with such capacity (Part 7 of Article 111-1 CC). Finally, the Act defines unlawful judicial and law enforcement authorities as constituting a part of the system of state authorities and structures of the Russian Federation, which are functionally responsible for managing the temporarily occupied territories, which is impossible without the relevant powers and functions.

Each form of complicity can only be committed intentionally, while the intention can only be direct if the subject is aware of the socially dangerous nature of his or her action (act or omission), foresees its socially dangerous

consequences in the form of increasing the capacity or granting further opportunities of the aggressor state, the occupant or the armed forces that are involved in the armed aggression against Ukraine and wishes such consequences to occur.

Purpose is a mandatory feature of the subjective side of such types of collaborationist activity as:

- conducting propaganda activities in educational facilities with the aim of facilitating the conduct of an armed attack against Ukraine, establishing and consolidating the temporary occupation of a part of the territory of Ukraine, evading responsibility for carrying out an armed attack against Ukraine by the aggressor state (Part 3 of Article 111-1 CC);
- any action, the purpose of which is to implement the educational standards of the aggressor state in educational institutions (Part 3 of Article 111-1 CC);
- organising and performing activities of a political nature, the purpose of which is to support the aggressor state, its occupation administration or armed forces and/or evading responsibility for the armed attack on Ukraine (Part 6 of Article 111-1 of the Criminal Code);
- performing informational activities, he purpose of which is to support the aggressor state, its occupation administration or armed forces and/or evading responsibility for the armed attack on Ukraine (Part 6 of Article 111-1 CC).

In the case of other forms of collaboration, neither the purpose nor the motive constitute mandatory features that determine the composition of the offence, but they definitely need to be established, as they become important for the successful resolution of other criminal law issues (mainly related to the imposition of punishment). Analysing and taking these subjective manifestations into consideration should ensure that one takes a proper approach to the extremely necessary (at least from the perspective of the practical implementation of the principle of justice) individualisation of liability.[51]

Part 8 of Article 111- CC contains 2 qualifying features that pertain to the acts stipulated in Parts 5 to 7 of this Article. These are: acts by individuals or decision-making that led to fatalities; performed by persons in the form of acts or decisions that led to other serious consequences.

The term 'fatalities' in the context of Article 111-1 of the Criminal Code of Ukraine is to be understood as causing the death of at least one person (or several of them) as a result of the commission of the offences provided for in Part 5, Part 7 of Article 111-1 of the Criminal Code. This view is based on the provisions of paragraph 21 of the Resolution of the Plenum of the Supreme

[51] *Новели кримінального законодавства*…, op. cit., C.117-118.

Court of Ukraine of 12.06.2009 No. 7 "On the practice of application of law by the courts of Ukraine in cases of crimes against the safety of production," which states that fatalities are deaths of one or more individuals. At the same time, it is necessary to establish a direct link between decisions of a person who commits the offence referred to in Parts 5-7 of Article 111-1 of the Criminal Code and fatalities or other serious consequences.

According to Part 4 of the note to Article 111-1 of the Criminal Code, in Part 8 of this Article, damage that exceeds a non-taxable minimum income of citizens one thousand or more times is considered to be serious. The non-taxable minimum income of citizens, as defined in the regulation on the emergence of administrative and criminal liability, is set at the level of the tax social benefit being 1/2 of the subsistence minimum for able-bodied persons as of 1 January of the current year. The non-taxable minimum income of citizens at the level of social benefits from 1 January 2023 is UAH 1342.[52] Taking into consideration that the note grants a specific meaning to the term 'serious consequences' for the purposes of Article 111-1 CC, other types of damage (e.g. those leading to a serious injury, etc.) do not constitute the grounds to qualify the act as the offence under Article 111-1 of the Criminal Code. At the same time, when in the course of activities performed or decisions taken other types of damage are caused that satisfy the features of the offences under Parts 5-7 of the Criminal Code, it is necessary to account for the issue of a set of relevant offences.

Current practice in the application of the provisions on collaborationist activity by judicial authorities

The empirical basis for the research performed for the purposes of this paper was the generalisation of judicial practice materials in cases concerning collaborationism, obtained by the author through free access to the Consolidated State Register of Judicial Decisions, which, as of 24 January 2023, contained 150 sentences referring to Article 111-1 CC, issued by the courts of Ukraine in the period from April 2022 to January 2023 against 152 persons: Part 1 of Article 111-1 of the CC – 99 offences (65.1%); Part 2 of Article 111-1 of the Criminal Code – 32 (21%); Part 4

[52] PLN 149.73 according to the exchange rate as of 22.08.2023 – translator´s note

of Article 111-1 CC - 11 (7.3%); Part 5 of Article 111-1 CC – 3 (2%); Part 6 of Article 111-1 CC – 2 (1.3%); Part 7 of Article 111-1 CC – 5 (3.3%).

Part 1 of Article 111-1 CC (99 sentences, or 65.1%). Practice shows that in the absolute majority of cases pertaining to analysed unlawful behaviour under consideration there is a symbiosis – a simultaneous combination of public denials and appeals (replacing the conjunctive 'or' with 'and (or)' in Part 1 of Article 111-1 CC seems to be justified - I. M.), whose content may vary and entail: failing to acknowledge that the state sovereignty of Ukraine extends to the temporarily occupied territories of Ukraine, stating that cities of Ukraine are in fact Russian, and also expressing the view that it is necessary to hold referendums to determine their affiliation to a certain state; providing information materials discrediting the Armed Forces of Ukraine (hereinafter referred to as AFU), where the Ukrainian army is accused of destroying civilian infrastructure and killing civilians, and which glorify supporters of the "Lugansk People's Republic" and the "Donetsk People's Republic", as well as the armed forces of the Russian Federation in the armed aggression against Ukraine; form an opinion in society about the legitimacy of the actions of the authorities and officers of the Armed Forces of the Russian Federation on the invasion and occupation of the territory of Ukraine; express an opinion that the existence of Ukraine as a sovereign state is impermissible and that the Russian Federation expanding its sovereignty to the area of TOT was legal; reject the fact that the Russian Federation is the initiator of the international armed conflict, etc.

Public nature is associated with committing an offence in public places/places of concentration of citizens, both standard ones (public transport stops, commercial and catering establishments, cultural establishments, enterprises, institutions and organisations, etc.) and rather non-standard ones (isolation ward of Kharkiv State Investigation Facility, a judgment issued by the Zhovtneve District Court of Kharkiv on 07.08.2022 in case no. 639/1837/22).[53] Attention should be paid to the high (40.4%) percentage of instances when the illegal behaviour in question is committed by distributing material on social networks to groups who make use of online resources (including the banned 'Vkontakte', 'Odnoklassniki'), Telegram channels, etc. Despite the fact that the 40-54 age category of collaborators (41%) is the most criminogenic (according to the information of the General Prosecutor's Office), their technical and communication skills are at a level which is sufficient to achieve the intended purpose. Especially if one were to take into

[53] Вирок Жовтневого районного суду м. Харкова від 08.07.2022 р. у справі № 639/1837/22: https://reyestr.court.gov.ua/Review/105146407 (дата звернення: 08.07.2023)

account the need to overcome the blocked social networks of the aggressor state by means of virtual private networks (VPNs) or by other means

Part 2 of Article 111-1 of the Criminal Code (32 convictions, or 21%). It concerns holding positions which are not related to the performance of organisational and managerial or administrative and economic functions in the rural, residential district, municipal or related subdivisions of the occupation administration and the performance of the following functions: the chairman or secretary of the relevant council (creating lists of persons and collecting their passport data, distribution of humanitarian aid among the population, distribution of propaganda products with appeals to support the decisions and measures of the aggressor state and the overthrow of the constitutional system of Ukraine, etc.); an employee of housing and communal services department (drawing up lists of procurement needs for fuel and greases, candidates for work in community teams, etc.); an official (issuing certificates, keeping records and storing documents, registering incoming and outgoing documents, receiving citizens, etc.); a social worker (visiting pensioners and persons with disabilities to provide home assistance, providing medicines when needed; receiving pensioners, drawing up lists of payments of cash assistance to pensioners from the Russian Federation, issuing certificates and disability renewal confirmations, etc.); health worker (checking on the activities of the Department of Housing and Communal Services, preparing lists of needs for the purchase of fuel and lubricants, candidates for work in community teams, etc.); a healthcare professional (reviewing the activities of health institutions, enterprises and establishments, supplying the population with medicines and medical products, etc.); education department employee (organising cultural and mass events for students of educational facilities, organising group work, working with documents, etc.).

In some circumstance, the criminal qualification in the situation of the actual concurrence of offences seems incomplete. And thus, the fact that "the accused not only performed the functions of the secretary to the chairman of the village council, but also, in the course of these functions, publicly denied Russian armed aggression against Ukraine and called for supporting the decisions and actions of the aggressor state and its armed forces" was overlooked by the Globynskiy District Court of the Poltava region"(judgment of 11 October 2022, case no. 527/2285/22).[54]

[54] Вирок Глобинського районного суду Полтавської області від 11.10.2022 р. у справі № 527/2285/22. URL: https://reyestr.court.gov.ua/Review/106689367 (дата звернення: 08.07.2023)

Part 4 of Article 111-1 CC (11 sentences, or 7.3%). As court documents indicate, at present, the provision of material resources to the aggressor state is not systemic, being limited to isolated cases of providing food to representatives of the opponent's military forces; alcoholic beverages; industrial goods; fuel; up-to-date information on the whereabouts of soldiers of the Armed Forces, representatives of the territorial defence, participants in hostilities and citizens with an active pro-Ukrainian attitude; assistance in the construction of block posts; hiding representatives of the armed and paramilitary formations of the aggressor state on the territory controlled by Ukraine. The specified unlawful behaviour is mainly due to the desire to secure privileges from the representatives of the occupational authorities enabling further long-term residence in the occupied territory, free movement within it and conducting economic activity.

The mandatory qualifying feature of the offence is entry intro the state register of economic activity, regardless of where and under what conditions this has been effected, whether or not it occurred in accordance with the requirements set forth by Ukrainian law in force and on the territory controlled thereby or in cooperation with the aggressor state, whereby the requirements of "occupational legislation" have been met. It is important that the unlawful conduct of this kind may also take place on the territory of the Russian Federation, as exemplified by the qualification for Part 2 of Article 28, Part 4 of Article 111-1 of the Criminal Code concerning actions of persons who "rendered advisory services in the field of IT modernisation and ensured that accounting databases of enterprises were operational via the 1C software – this also applies to companies that were located on the territory of the Russian Federation and the Donetsk region" (judgment of the Pecherskyi District Court of Kyiv, of 26.09.2022, case no. 757/15806/22-k)[55].

The court practice in this context is ambiguous, and it was objectively determined by a number of factors, including the 'short-lived' standard of Article 111-1 CC itself, the absence of appropriate explanations from higher instances, divergent positions in criminal law doctrine and in law enforcement. The courts are not uniform when defining the parameters, including also what entails performing business activity, in some cases confirming that the objective side of the offence takes the form specified above, while in others using the simpler term 'transfer of material resources' or combining both types of conduct.

The activities of PERSON_4, who was engaged in entrepreneurial activity since 26.04.2000, living in the village of Shevchenkove in the Kupyansk

[55] Вирок Печерського районного суду м. Києва від 26.09.2022 р. у справі № 757/15806/22-к: https://reyestr.court.gov.ua/Review/107694567 (дата звернення: 17.02.2023)

poviat of the Kharkov region, were qualified as performing business activity in cooperation with the aggressor state, including the occupation administration of the aggressor state, established on the temporarily occupied territory. In March 2022, due to the military aggression of the Russian Federation, the territorial community of Kupyansk poviat of Kharkiv region, including the village of Shevchenkove, was occupied by units of the aggressor state. From the end of February to the beginning of May 2022, the defendant continued to carry out business activities, in particular the sale of Ukrainian-made goods through the "INFORMATION_3" shop. In July 2022, while staying in the village of Shevchenkove in the Kupyansk poviat of the Kharkiv region, he received documents from an unidentified representative of the so-called "tax service" operating under the occupation administration, where his registration as a business entity in the village of Shevchenkove was confirmed and which granted him a permit to carry out business activities in the territory of the village in cooperation with the occupation administration of the aggressor state and being exempted from taxation until the end of 2022 (judgment of the Kyiv District Court in Kharkiv of 26 December 2022, case No. 953/7065/22)[56].

In other cases, we do not observe such detailed qualifications. The court deemed as transfer of material resources to illegal armed or paramilitary forces established in the temporarily occupied territory and to armed or paramilitary forces of the aggressor state (Part 4 of Article 111-1 CC) the following prohibited act. PERSON_3 was proactive in appealing to representatives of the armed, paramilitary forces of the aggressor state, conducting activity as a sole trader, running a shop for ten years engaged in the sale of food and industrial goods. He agreed to donate material resources in the form of foodstuffs, alcoholic beverages and industrial goods, and therefore had privileges in obtaining diesel fuel for further sale to the local population (judgment of the Burinsky District Court of Sumy Oblast of 01.12.2022, case no. 574/368/22).[57] It seems that it would be more justified to consider the mere conduct of a business as a conduct that was in contravention of the law. Cooperation between an individual and military personnel of the Russian Federation, which in fact consisted only in the sale of fuel and grease, grain and foodstuffs in order to receive profit, was subjected to an additional criminal law assessment as "joint economic activity". At the same time, the defendant's economic activity lacks the necessary features (record

[56] Вирок Київського районного суду м. Харкова від 26.12.2022 р. у справі № 953/7065/22: https://reyestr.court.gov.ua/Review/108377777 (дата звернення: 17.02.2023).

[57] **Вирок** Буринського районного суду Сумської області від 01.12.2022 р. у справі № 574/368/22: https://reyestr.court.gov.ua/Review/107641030 (дата звернення: 17.02.2023).

or registration, separate property of the enterprise, etc.) – these were not specified by the court in the judgment (judgment of the Kyiv District Court in Kharkiv of 20 December 2022, case no. 953/6434/22).[58]

Part 5 of Article 111-1 of the Criminal Code (3 convictions, or 2%). This concerns cases of voluntary employment/being elected to positions, related to organisational and managerial or administrative and economic functions in unlawful authorities established in the area of TOT (chief of a municipal enterprise, leading specialist in the humanitarian aid department of the occupation administration).

Part 6 of Article 111-1 of the Criminal Code (2 convictions, or 1.3%). Organisation of political events and implementation of informational activities in cooperation with the aggressor state is deemed to include placing the flag of the Russian Federation with the slogan "Odessa, a Russian city" on the building of an apartment block, as well as taking photographs and films for the purpose of their further transfer to representatives of the Russian Federation (judgment of the Kiev District Court of Odessa of 25 November 2022, case no. 947/26981/22);[59] performance of information activities comprises the manufacture of leaflets lifting the 'spirits of Russian soldiers', along with their further distribution on the territory of the Luhansk region (judgment of the Dzerzhinsky District Court of the city of Kharkiv of 28.12.2022, case no. 638/7303/22).[60]

Part 7 of Article 111-1 of the Criminal Code (5 convictions, or 3.3%). Only one verdict concerned a person who voluntarily occupied a position in an unlawful law enforcement authority – "an acting deputy prosecutor of the Novopskov district of the General Prosecutor's Office of the Lugansk People's Republic"(judgment of the Ivano-Frankivsk City Court of the Ivano-Frankivsk Oblast of 13.12.2022, case no. 344/10333/22).[61] The judgment did not touch upon the issue of whether or note the defendant, in his position, performed organisational and managerial or administrative and economic functions. Other cases pertain to the provision of assistance to armed or paramilitary forces of the aggressor state or similar forces established in the area of TOT in conducting hostilities against the Armed

---

[58] Вирок Київського районного суду м. Харкова від 20.12.2022 р. у справі № 953/6434/22: https://reyestr.court.gov.ua/Review/107960245 (дата звернення: 17.02.2023).

[59] Вирок Київського районного суду м. Одеси від 25.11.2022 р. у справі № 947/26981/22: https://reyestr.court.gov.ua/Review/107502058 (дата звернення: 17.02.2023)

[60] Вирок Дзержинського районного суду м. Харкова від 28.12.2022 р. у справі № 638/7303/22: https://reyestr.court.gov.ua/Review/108152933 (дата звернення: 17.02.2023)

[61] Вирок Івано-Франківського міського суду Івано-Франківської області від 13.12.2022 р. у справі № 344/10333/22: https://reyestr.court.gov.ua/Review/107850847 (дата звернення: 17.02.2023)

Forces of Ukraine and other military or volunteer forces by providing information on the deployment of units of the Armed Forces of Ukraine, their numbers, armament and movement of military equipment, the place of residence of military personnel.

The criminological portrait as regards employment status

Within the structure of a person's criminological features, four components (substructures)[62] are traditionally distinguished: 1) socio-demographic (information on gender, age, education, citizenship, social position, origin and occupation, marital status, permanent employment or lack thereof and place of residence (registered residence), sources of livelihood (income), belonging to urban or rural population, etc.); 2) social role – a set of activities undertaken by an individual in the framework of the social relations system (at work, in the family, as regards health and age); 3) moral and psychological – used to describe a person's worldview, spirituality, views, beliefs, attitudes and value orientations (views, beliefs, aspirations and life expectations, intellectual, volitional and emotional features, mental disorders); 4) criminal law related (motives for committing the offence, direction and duration of the subject's criminal behaviour, group or individual nature of the socially dangerous act, role played in the commission of the offence (perpetrator, organiser, instigator, co-conspirator), methods chosen to achieve the criminal objective, attitude of the person guilty of the offence committed,

---

[62] Н. П. Ждиняк. Особистість злочинця. Велика українська юридична енциклопедія : у 20 т. Т. 18 : Кримінологія. Кримінально-виконавче право / редкол.: В. І. Шакун (голова), В. І. Тимошенко (заст. голови) та ін.; Нац. акад. прав. наук України ; Ін-т держави і права імені В. М. Корецького НАН України ; Нац. юрид. ун-т імені Ярослава Мудрого. 2019. С. 325; Є. Гладкова. Особа *(особистість)* злочинця. Велика українська кримінологічна енциклопедія. У 2 т. Т. 2: М-Я / рекол.: В. В. Сокуренко (голова), О. М. Бандурка (співголова) та ін. ; наук. ред. О. М. Литвинов. Харків : Факт, 2021. С.225; *Кримінологія* : підручник / А. М. Бабенко, О. Ю. Бусол, О. М. Костенко та ін. ; за заг. ред. Ю. В. Нікітіна, С. Ф. Денисова, Є. Л. Стрельцова. 2ге вид., перероб. та допов. Харків : Право, 2018. С.135; *Кримінологія*. Академічний курс / Кол. авторів ; за заг. ред. О. М. Литвинова. К.: Видавничий дім «Кондор», 2018. С.83; І. Г. Богатирьов. *Кримінологія* : підручник / заг. ред. І. Г. Богатирьова, В. В. Топчія. Київ : ВД Дакор, 2018. С.80; *Кримінологія: Загальна та Особлива частини*: підручник / І. М. Даньшин, В. В. Голіна, М. Ю. Валуйська та ін.; за заг. ред. В. В. Голіни. 2-ге вид. перероб. і доп. Х.: Право, 2009. С.37-40.

repetition (recidivism), the provision used to classify the offence, type and severity of the penalty, etc.

I. Danshin distinguishes 7 groups of signs and features of a criminal's personality: socio-demographic; role-personal; socio-psychological; traits and qualities of legal and moral consciousness; hereditary (genetic) and mental deviations and anomalies; criminal law traits; general positive human qualities.[63]

In the fundamental "Course of Modern Ukrainian Criminology", A. Zakaluk, describing in detail the personality structure of a criminal, refers to:

- signs of formation and socialisation of an individual (education; occupation; information on traits acquired in the parental family, length of stay in the parental family, etc.);
- expressions of social status and social roles (social position, occupation, nature of production (education); marital status; socio-housing conditions, etc.);
- signs of the personality's orientation (needs, interests, interests, and interests);
- signs of the personality's social status and social roles (social status, occupation, type of production (education); marital status; social and housing conditions, etc.);
- direct signs of personality orientation (needs, interests, social values, activity in the principal areas of life);
- demographic qualities with social and psychological significance;
- psychophysiological characteristics (adaptive reactions, motor activity, type of higher nervous activity, etc.);
- indicators of physical health (general condition; physical disabilities; chronic somatic diseases);
- indicators of mental health (pathology that excludes capacity to perform acts at law; anomalies that limit capacity to perform acts at law;);
- individual psychological traits (character traits; positive and socially desirable traits; willpower); 9) features related to the commission of an offence by a person.[64]

In addition to the aforementioned summary of court decisions in cases of collaborationism, we also processed the data provided by the General Prosecutor's Office regarding perpetrators of crimes, according to which the year of 2022 there were 3,851 collaborationism-related offences recorded – 949 offences (Parts

---

[63] И. Н. Даньшин. *Общетеоретические проблемы криминологии:* Монография. Х.: Прапор, 2005. С.110.

[64] А. П. Закалюк. *Курс сучасної української кримінології: теорія і практика:* У 3 кн. К.: Видавничий Дім «Ін Юре». 2007. Кн. 1: Теоретичні засади та історія української кримінологічної науки. С.258-262.

1, 2 of Article 111-1 CC) and 2,902 crimes (Parts 3, 4, 5, 6, 7, 8)[65]; 726 collaborators were identified[66]. A comprehensive analysis of this statistical information will provide the best possible criminological perspective and will allow to evaluate the circumstances prevailing at the present time.

Socio-demographic area. Criminal activity in the form of voluntary cooperation with the aggressor state is, for the most part, committed by men: 62.5% and 68%. According to the General Prosecutor's Office, the age breakdown of the 726 collaborators identified in 2022 is as follows: 0 under 14 years of age; 14-15 years of age – 0; 16-17 years of age – 0; 18-28 years of age – 49; 29-39 years of age – 177; 40-54 years of age – 298; 55-58 years of age – 71; 60 years of age and over – 131. This indicates that the 40-54 years of age category (41%) is the most criminogenic, while young people aged 18-28 are the least likely to collaborate (6.7%).

The legislative structure of Article 111-1 CC (with the exception of Parts 4 and 6) directs the attention of the law enforcement officer to the fact that collaborationism may be committed only by citizens of Ukraine; moreover, neither court materials nor the data of the General Prosecutor's Office contain information about foreigners or stateless persons. Also noteworthy is the fact that in 13.8% of judgments, the perpetrator of the offence was a citizen of Ukraine born on the territory of the Russian Federation (21 persons), in 5.3% - born on the territory of Moldova, Uzbekistan, Georgia, Hungary, Belarus, Turkmenistan or Abkhazia (8 persons).

According to the court judgements, among the collaborators, individuals with higher education account for the greatest share (27%). Allowing for 18 persons (11.8%) with special secondary education, which at the moment is equivalent, at the educational and professional level, to a bachelor's degree, and 2 persons with incomplete higher education (1.3%), we have arrived at a conclusion that offenders are characterised by a high level of education – persons with higher and vocational education account for 40.1% of the total number of convicts. A significant number of sentences concern individuals with secondary education (26.3%) and vocational education (9.9%); there was no information about the level of education of the defendant in 23.7% of judgements. According

---

[65] Єдиний звіт про кримінальні правопорушення по державі за січень-грудень 2022 року. Офіс Генерального прокурора: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2 (дата звернення: 23.02.2023).

[66] Єдиний звіт про осіб, які вчинили кримінальні правопорушення за січень-грудень 2022 року. Офіс Генерального прокурора: https://gp.gov.ua/ua/posts/pro-osib-yaki-vchinili-kriminalni-pravoporushennya-2 (дата звернення: 23.02.2023).

to the data provided by the General Prosecutor's Office, in 55.7% of the cases, the collaborators at the time of committing the crime had higher and vocational education, 11.7% – vocational and technical education, and 32.5% – a secondary basic and profiled education.

Information about professional employment of persons convicted of collaborationism is as follows: 46.7% were at that time unemployed, 13.8% were retired at the time of committing the offence, 19.1% had a permanent job, while in the case of 20.4% of sentences there was no information about employment status. According to data from the General Prosecutor's Office with regard to employment status, among employment, individuals without any disabilities who at that time were not working or studying (349 or 48.1%) as well as unemployed persons (70 or 9.6%) constituted the greatest share. Individuals employed in the socio-political and labour area performed work and duties in the capacity of deputies to oblast, poviat, town and village councils (23/3.2%), civil servants (6/0.8%), local government officials (11 / 1,5%), officials of the poviat state administration (1 / 0.1%), officials of the judiciary (6 / 0.8%), employees of law enforcement agencies (21 / 2.9%), officials and employees of other state bodies (2 / 0.3%), pupils and students of educational institutions (3 / 0.4%).

The socio-demographic characteristics of collaborators can also be described using traits referring to the sphere of family and marital relations. 31% of the cases concerned persons in a registered marriage, 25% of the convicts were single, and in 4% of the cases the persons' marriage was dissolved, 1.3% of convicts were widowers, while in 38.8% of the judgments there is no data about marriage. In 13.8% of the sentences issued, the convicted persons had minor/minor children or other persons (disabled) as dependents.

Criminologists associate moral and psychological characteristics of a criminal with several important subgroups: world-view (views, beliefs, habits, attitudes, expectations, etc.); intellectual qualities (level of mental development, range of knowledge, life experience, limited or, on the contrary, wide range of views, their direction, diversity of interests, etc.); orientation towards human values and socially significant moral qualities and characteristics, which belong to the "deep" personality traits; emotional and volitional qualities (state of will, temperament, character, initiative, abundance of energy or lability, feelings, emotions, etc.), psychophysiological traits (innate and acquired properties of the psyche, bodily organisation of the person, including physical anomalies)[67].

---

[67] *Потерпілий від злочину (міждисциплінарне правове дослідження)* / колектив авторів / за заг. ред. Ю. В. Бауліна, В. І. Борисова. Харків : Вид-во Кроссроуд, 2008. 364 с.

When looking for the main reasons that ensured the success of the operation carried out by the Russian Federation against Ukraine in 2014, with the subsequent relative prevalence of collaborationist behaviour, J. Pysmensky distinguishes, *inter alia*, the post-Soviet legacy and attachment to the ideology of the "Russian world" (historical and ideological factors). The researcher concludes that at the root of collaborationist practices in the occupied territories of Ukraine as well as the loyalty identified among a part of the local population to the occupation regime lie tendencies to adhere to post-Soviet ideas which are governed by the "Russian world" motto (political and ideological grounds) as well as more economical motivations (egoism, desire, sometimes deceptive, to enrich oneself) or base qualities (vanity, revenge)[68].

Contemporary law enforcement practice only confirms and builds upon the considerations referred to above. Being citizens of Ukraine and living on its territory, collaborators demonstrate anti-national ideological and political preferences, rejecting the current Ukrainian government and approving the policy of the aggressor state, advocating ideas of pro-Russian orientation and following the geopolitical interests of the Russian Federation, which envisage the presence of Ukraine in its sphere of influence. All this occurs despite the obvious awareness of the forms of genocide committed in Ukraine by the Russian Federation, including: 1) mass murder of civilians in the temporarily occupied territories of Ukraine (in Bucha, Irpen, Mariupol, Borodianka, Gostomel and many other locations), abduction and imprisonment, torture, rape, mockery; 2) systematic creation of such living conditions for civilians which are aimed at annihilation; 3) forced deportation of civilians to the territory of the Russian Federation, as well as the taking of Ukrainian children to be raised in a foreign environment in order to destroy their identity; 4) physical and psychological violence against civilians, representatives of state and local authorities, social organisations, local activists, journalists, clergy and other persons known for their social and political position; 5) weakening of the country's economic potential and security as a result of the destruction of economic infrastructure (energy and gas industry infrastructure, grain storage facilities, obstruction of the sowing activities, blockade of maritime trade routes, etc.)[69].

---

[68] Є. О. Письменський. *Колабораціонізм як суспільно-політичне явище в Україні (кримінально-правові аспекти)* : наук. нарис. Сєвєродонецьк, 2020. С.39-42.

[69] Про Заяву Верховної Ради України «Про вчинення Російською Федерацією геноциду в Україні»: постанова Верховної Ради України від 14.04.2022 р. № 2188-IX: https://zakon.rada.gov.ua/laws/show/2188-20#Text (дата звернення: 24.02.2023).

This is best illustrated by the judgment of the Poltava District Court of the Poltava Oblast of 10.11.2022 in case no. 545/5177/22. The defendant, in the period from 24.02.2022 to 11.09.2022, acting intentionally, personally, voluntarily and on her own initiative, in support of the armed aggression of the Russian Federation on the territory of Ukraine, being aware of the unlawful nature of her actions, anticipating socially harmful effects and wanting them to occur, in a public and open manner vis-à-vis the population of the rural community had constant contact with the military of the aggressor state – the Russian Federation, and repeatedly, voluntarily and gratuitously provided material means to the soldiers for each shift of the occupation army of the Russian Federation, namely food, alcoholic beverages, and also prepared food and other things for them. At the same time, the defendant, in the period when this location was occupied, did not provide any material assistance to the local population, thus putting the interests and needs of the occupants above the fellow citizens)[70].

Criminal law area. A collaborator performs the unlawful conduct in an individual capacity, and this reaches an almost absolute level, considering in as many as 96% of judgments issued by courts, it was established that perpetrators did indeed commit the offence they were charged with, without involvement of any other person (accomplices) in fulfilling the objective features of the offence. For the remaining 4% of cases, accomplices usually performed without any detailed division of tasks (simple participation). According to the General Prosecutor's Office, 12 (1.7%) of identified collaborators committed offences as part of a group, of which 5 (0.7%) acted as part of an organised group or criminal organisation.

Those convicted of collaboration comprise individuals with no criminal record – this concerns as many as 94% of the sentences (including 6.5% of persons deemed as having no criminal record pursuant to Article 89 CC). A further 4.6% of collaborators were previously held criminally liable and had criminal record (unexpunged), and in a further 1.3% of cases the court did not provide any information about the subject in this regard. An analysis of convictions for collaboration shows that individual for the most part committed the offences out of personal interest and with the use of violence, such offences being: 54.3% – offences against property; 13% – offences against public safety; 11% – offences of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors and other offences against public health; 11% – offences against the administration of justice; 8.7% – offences against human

[70] Вирок Полтавського районного суду Полтавської області від 10.11.2022 р. у справі № 545/5177/22: https://reyestr.court.gov.ua/Review/107246755 (дата звернення: 24.02.2023).

life and health; and 2.8% – offences against public order and accepted principles of morality. According to the data of the General Prosecutor's Office, out of the total number of collaborators identified by the General Prosecutor's Office, 25 individuals (3.4%) had criminal record, of which 12 (1.5%) had their criminal record unexpunged.

The courts decided to impose punishment on those convicted of collaboration, mainly within the limits of the sanctions set out in Article 111-1 of the Criminal Code of Ukraine:

a) Part 1 of Article 111-1 CC – 99 convictions (100 persons) (penalty of deprivation of the right to hold certain positions or carry out certain activities for a period from 10 to 15 years): 10 years – 74 sentences (74%); 11 years – 9 sentences (9%); 12 years – 9 sentences (9%); 13 years – 3 sentences (3%); 14 years – 1 sentence (1%) and 15 years – 3 sentences (3%);
b) Part 2 of Article 111-1 CC – 32 convictions (penalty of deprivation of the right to hold certain positions or carry out certain activities for a period from 10 to 15 years, with or without confiscation of property): 10 years without confiscation – 19 sentences (59.4%); 10 years with confiscation – 3 sentences (9.4%); 12 years without confiscation – 2 sentences (6.3%); 12 years with confiscation – 3 sentences (9.4%); 13 years without confiscation – 3 sentences (9.4%); 15 years without confiscation – 1 sentence (3.1%) and 15 years with confiscation – 1 sentence (3,1%);
c) Part 4 of Article 111-1 CC – 11 convictions (12 persons) (sanction in the form of a fine of up to 10,000 untaxed non-taxable minimum income of citizens or deprivation of liberty for a period from 3 to 5 years, with deprivation of the right to hold certain positions or carry out certain activities for 10 to 15 years and confiscation of property): deprivation of liberty and rights – 8 sentences (72.7%); imprisonment without confiscation – 1 sentence (9.1%); fine and deprivation of rights – 2 sentences (18.1%);
d) Part 5 of Article 111-1 CC – 3 convictions (deprivation of liberty for a period from 5 to 10 years with deprivation of the right to hold certain positions or carry out certain activities for a period from 10 to 15 years, with or without confiscation of property: deprivation of liberty and rights, with confiscation of property – 2 sentences; deprivation of liberty and rights, without confiscation of property (with application of Article 69 CC) – 1 sentence;
e) Part 6 of Article 111-1 CC – 2 convictions (deprivation of liberty for a period from 10 to 12 years with deprivation of the right to hold certain positions or carry out certain activities for a period from 10 to 15 years, with or without confiscation of property); deprivation of liberty and rights;

f) Part 7 Article 111-1 CC – 4 convictions (5 offences) (deprivation of liberty for a period from 12 to 15 years with deprivation of the right to hold certain positions or carry out certain activities for a period from 10 to 15 years, with or without confiscation of property): deprivation of liberty and rights, with confiscation of property – 2 sentences (50%); deprivation of liberty without confiscation of property – 2 sentences (50%).

The effectiveness of punishment for collaboration depends to a large extent on both the legislative structure of the norm and the practice of application, provided it is legal, legitimate and fair.

Flaws in the structure of sanction under Article 111-1 CC

The sanction set forth in clauses1 and 2 of Article 111-1 CC provides for a non-alternative penalty in the form of deprivation of the right to hold certain positions or carry out certain activities. At the same time, as R. Mowczan rightly points out, it is overlooked that the corresponding offence is most often committed by a person who does not hold any position and does not carry out any activity, and therefore is actually unable to bear any actual punishment.[71] We have already mentioned the percentage of persons convicted under Part 1 of Article 111-1 CC who were not working or were already retired (60.5% in total). Moreover, deprivation of the right to hold certain positions or to carry out certain activities for a certain period of time as a main or additional penalty, as emphasised by W. Szablisty, should be imposed only when the offence satisfies the specific objective features, and not as currently, considering judges when sentencing are simply forced to deprive individuals, who do not have any such authority, of the right to hold positions related to the performance of state or local government functions. These crimes were, and continue to be, committed without making use of any special authority or in connection with a specific function (almost all convicts were antisocial, did not study or work anywhere).[72] Other

[71] Р. О. Мовчан. Кримінальна правотворчість воєнного часу: аналіз концептуальних помилок. Кримінальне право України перед викликами сучасності і майбуття: яким воно є і яким йому бути : матеріали міжнар. наук. конференції, м. Харків, 21-22 жовт. 2022 р. / редкол.: В. Я. Тацій, Ю. А. Пономаренко, Ю. В. Баулін та ін. Харків : Право, 2022. С.21.

[72] В. В. Шаблистий. Теоретичні проблеми кримінальної відповідальності за колаборaційну діяльність. Кримінальне право України перед викликами сучасності

scholars (O. Ryabchinskaya, Z. Zaginei-Zabolotenko, O. Yevdokimova) note the controversial position taken by the legislator. When imposing the penalty under Part 1 of Article 111-1 CC, judges act, as it were, "with reference to the future." For instance, in the judgment of the Korolovsky District Court of Zhytomyr of 16 January 2023 in case no. 296/298/23, it was stated that "… at the time of committing the crime PERSON_3 was not working. This means that the collaborationist activity of PERSON_3 was not related to their function or employment in a certain role. However, in the court's view, individuals who publicly call for supporting decisions and actions of the aggressor state should be barred from participating in any form of state and local government administration".[73] In such cases, the main goal of the penalty is not achieved and the preventive effect of the punishment is negligible. It is precisely this goal, however, which should be treated as a priority, especially since R. Babanli's research on contemporary works devoted to the problem of adjudication in other countries with developed penological theory allowed to acknowledge that treating penalties as a remedial and preventive measure for new offices should be criticised as an approach.[74] O. Ryabchinskaya has considered whether to include the penalty of community service to the sanction provided for in Part 3 of Article 111-1 CC. Imposing this type of penalty on educators (pedagogues) who supported armed aggression, justified it, promoted anti-Ukrainian ideology among the young generation would be very inappropriate, to say the least. This kind of punishment cannot also be imposed on individuals whom occupants involved in the educational process, but who do not have pedagogical training or relevant experience[75].

Sentencing practice. When imposing the penalty for the offence provided for in Part 2 of Article 111-1 CC, the courts have elected to apply the additional penalty in the form of confiscation of property in 21.9% of cases. But it is worth emphasising that in light of the provisions of Part 2 of Article 59 of the Criminal

---

і майбуття: яким воно є і яким йому бути : матеріали міжнар. наук. конференції, м. Харків, 21-22 жовт. 2022 р. / редкол.: В. Я. Тацій, Ю. А. Пономаренко, Ю. В. Баулін та ін. Харків : Право, 2022. С.61.

[73] Вирок Корольовського районного суду м. Житомира від 16.01.2023 р. у справі №296/298/23: https://reyestr.court.gov.ua/Review/108401700 (дата звернення: 24.02.2023).

[74] Р. Ш. Бабанли. *Призначення покарання в Україні* …, op. cit., С.194.

[75] О. П. Рябчинська. Заходи кримінально-правового характеру за колабораційну діяльність: реалії та перспективи. Кримінальне право України перед викликами сучасності і майбуття: яким воно є і яким йому бути : матеріали міжнар. наук. конференції, м. Харків, 21-22 жовт. 2022 р. / редкол.: В. Я. Тацій, Ю. А. Пономаренко, Ю. В. Баулін та ін. Харків : Право, 2022. С.72.

Code,[76] confiscation of property may not be pronounced if collaborationist activity was committed as an misdemeanour (Part 2 of Article 111-1 CC).

In the context of liability under Part 4 of Article 111-1 CC, in 72.7% of the sentences the courts acknowledged that the penalty could be conditionally suspended pursuant to Article 75 CC, in three cases imposing a lighter sentence than provided by law (Article 69 CC). Analysing how the legal mechanism of conditional suspension of penalty is being executed in practice, R. Babanli draws the correct conclusion that this mechanism is not always used for its intended purpose. Given how significant an impact this mechanism can have on the execution of punishment, it is unreasonable to apply it as this leads to an imbalance and makes the process of punishment irrational.[77] It is our position that it is impossible to apply Article 75 CC when sentencing due to the nature of the criminal act, i.e. if the act was committed in the conditions of martial law

In 84.2% of the sentences handed down (out of 130), the courts considered the sincere remorse of the convicted persons as a mitigating circumstance, which allows us to conclude that this is confirmed according to a formalised, 'mechanistic' approach, without additional argumentation and analysis. When the vast majority of the offences in question were committed, the large-scale Russian invasion of Ukraine was already underway, during which law enforcement agencies as well as public and international organisations recorded and reported in the mass media the numerous war crimes committed by the Russian occupants, in particular the murder and torture of the civilian population, rape, looting, destruction of residential and social infrastructure, etc. In such circumstances, guided by the principle of justice, the courts are obliged to be more selective in their approach to the issue of penalty, opting, if necessary, to impose punishment whose severity will approach the upper limit.

The question arises whether the courts use such a 'liberal' approach only to collaborators, or is it part of a more widespread and dangerous tendency to punish a whole range of crimes in a manner which violates the very foundations of Ukraine's national security? A similar parallel can be found in the data provided by V. Batyrgarieva concerning a criminological analysis of justifying, recognising as legitimate or denying the armed aggression of the Russian Federation and glorifying its participants, which constitutes a new challenge to the security of Ukraine's information space. Almost nine out of ten people (87.5%) are exempted from having to serve a suspended sentence. Leniency

[76] О. П. Рябчинська. Заходи кримінально-правового характеру за колабораційну діяльність…, op. cit., C.73.

[77] Р. Ш. Бабанли. *Призначення покарання в Україні*…, op. cit., C.425.

towards the guilty is generally explained by the fact that these individuals express sincere remorse for what they did and assisted the law enforcement authorities in the course of the investigation. The scholar correctly assumes that such post-criminal conduct is merely an outward expression of having accepted 'rules of the game,' an adaptation mechanism to the unfavourable conditions in which the person has found themselves when faced with the investigation and the trial. After all, a person's ideology, views, moods are not so easily and quickly subject to change. A conclusion should thus be drawn that such an approach is nothing more than a desire to reduce the severity of criminal consequences.[78] The question we have posed could only be answered in the future following a comprehensive criminal law and criminological analysis of offences against the state

Criminological information on a collaborator's personality, the persons' socio-demographic, moral-psychological and criminal law traits will have direct consequences both in the course of further legislative refinement of the norm set forth in Article 111-1 of the Criminal Code and the development of effective general and specific prevention measures for this type of offences. The generalisation of the statistical data of the judicial authorities has made it possible to present the following criminological portrait of the personality of a collaborator: predominantly male, aged between 29 and 54, with a sufficiently high level of education – with tertiary and vocational education; able to work, but not working or retired; sharing anti-national ideological and political views, rejecting the legitimate authority of Ukraine and approving of the policy of the aggressor state; having no previous criminal record and presenting individualistic unlawful behaviour.

[78] В. С. Батиргареєва. До кримінологічного аналізу виправдовування, визнання правомірною або заперечення збройної агресії рф та глорифікації її учасників як нового виклику безпеці інформаційного простору України. Інформація і право. 2022. №4(43). С. 43.