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IMPROVING THE SANCTIONS OF THE NORMS ESTABLISHING CRIMINAL LIABILITY FOR CRIMINAL OFFENCES AGAINST PROPERTY AS A MEASURE TO ENSURE ECONOMIC SECURITY OF UKRAINE

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Abstract. *The purpose* of the present article is twofold: firstly, to define the essence and content of property penalties under the criminal legislation of Ukraine; secondly, to analyse and summarise the trends in the development of penalty policy under martial law. In addition, the article considers the "economy" of criminal offences against property and the penalties provided for their commission. *A scientific discussion* on the problem of improving the types of penalties for criminal offences against property and their importance for the economic development of the state is also presented. It is imperative to ascertain appropriate sanctions for criminal infractions, constituting a pivotal responsibility for the legislator in order to forestall an incongruity between the societal threat posed by an act and the nature and extent of the imposed retribution. A methodical examination of the sanctions framework for "simple" property-related criminal infractions reveals that, with the exception of specific (predominantly egocentric and aggressive) acts, the legislator has opted to prescribe penalties in the form of financial penalties and corrective labour. This approach can be explained by the desire to make an offence economically unprofitable for the person committing it. It is emphasised that a fine, as well as correctional labour (which, since the adoption of the current Criminal Code, has also been considered by scientists as a possible type of special fine), are more economically advantageous for the state for the following reasons: 1) no costs for the execution of the sentence by the convicted person; 2) partially free labour services; 3) receipt of funds for the budget; 4) realisation of the purpose of punishment through the restriction of property rights. *Results.* It is noted that under the conditions of martial law, the approach to the classification of property offences was significantly changed, which, due to the not fully balanced disposition of the relevant parts of the amended articles, created an artificial basis for the non-alternative application of punishment in the form of imprisonment to offenders; ignoring the clarifications of the Supreme Court leads to the continuation of the practice of applying sanctions under Article 185(4) of the Criminal Code of Ukraine to persons who have committed simple thefts and imposing a sentence of imprisonment. Such an approach should be considered inappropriate, firstly, given that the purpose of punishment of the accused is not achieved; secondly, in case of application of Article 185(1) of the Criminal Code of Ukraine, a person could be sentenced to a fine of one thousand to three thousand tax-free minimum incomes, community service for a term of eighty to two hundred and forty hours, or correctional labour for a term of up to two years, which is economically beneficial for the state. While the provisions of Article 69 of the Ukrainian Criminal Code may be applied to such individuals under certain circumstances and for specific types of property, analysis of court practice indicates that this approach is employed less frequently than exemption from punishment with probation. The authors argue that it is expedient to consider the possibility of establishing an alternative form of punishment for offences against property (a fine and correctional labour), if this is consistent with the general principles of

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criminal policy. It is advisable to impose imprisonment for property offences committed under martial law only if such conditions contribute to the commission of a socially dangerous act.

Keywords: economic policy, property types of punishment, criminal offenses against property, imprisonment, maintenance of convicts, costs, economic development, criminal liability.

JEL Classification: D04, K14, D24, F63

1. Introduction

The enhancement of the state's economic policy necessitates the resolution of contentious issues that impede its progression in diverse domains. This assertion is particularly salient in the context of the economic dimension of criminal law and penal policy. This component is conceptualised through the evaluation of the detriment inflicted by criminal transgressions, the outcomes of imposing financial penalties and corrective labour, along with the expenditures incurred by the state in administering both incarceration and life imprisonment sentences.

In such circumstances, the determination of adequate sanctions for criminal offences is one of the primary tasks that the legislator must address in order to prevent an imbalance between the social danger of the act and the type and amount of punishment. A pertinent example in this context is criminal offences against property, the limits of criminal liability for which have undergone appropriate changes since the introduction of a special legal regime of martial law.

To date, the issues of determining the limits of punishment for criminal offences, as well as the importance of pecuniary punishment for the economic development of the state, have been considered in the works of such scholars as A.S. Benitskyi, V.I. Borisov, O.O. Dudorov, R.O. Movchan, M.I. Panov and others. Nevertheless, the significance of pecuniary punishment within certain types of criminal offences committed under martial law and in the light of recent changes to criminal law requires additional attention, and this is why the theme of the article is relevant.

The purpose of the article is threefold: firstly, to define the essence and content of property-based types of punishment under the criminal law of Ukraine; secondly, to analyse and summarise the trends in the development of penalty policy under martial law; and thirdly, to consider the "economy" of criminal offences against property and the punishments provided for their commission.

2. Trends in the Development of Punitive Policy under Martial Law (on the Example of Criminal Offences Against Property)

Criminal offences against property represent the most prevalent and socially detrimental acts, given their susceptibility to a multitude of determinants. Contemporary examples of such determinants include military and political factors, which have profoundly impacted the trajectory of criminal law, encompassing both the general principles of its application and the criminalisation of novel offences, as well as the secondary penalisation of existing ones. It is evident that the prevailing state of criminal legislation in general, and in terms of criminal liability for property-related offences, can be regarded as suboptimal. This suboptimality has a deleterious effect on the effectiveness of criminal law in combating crime. The primary cause of this situation is the inconsistency of amendments and additions to the Ukrainian Criminal Code, as well as the absence of coherence between the provisions of the General and Special Parts.

V.I. Tiutiuhin concurs with this assessment, observing that the analysis demonstrates the presence of numerous and unjustifiably dynamic so-called "point" amendments and additions to criminal law, which are often characterised by chaos and unsystematicity. In addition, these amendments are frequently erroneous, and are often made merely "for the needs of the moment", without due regard for the systemic links and interaction that exist between the provisions of this law. As a result, the proper application of this law is further complicated. It is evident that such "novelisation" engenders an imbalance of systemic relations in the criminal law, with the potential to exert a detrimental influence on the implementation of these legal provisions. Consequently, the courts (including the Supreme Court) find themselves constrained by the provisions of a number of such sanctions of the articles of the Special Part of the Criminal Code, which have been subjected to critical analysis. This results in the courts being compelled to "ignore" the universal and mandatory provisions of the law, in order to "adapt" erroneous legislative decisions to the needs of modern practice (Tiutiuhin, 2023).

It is important to note that the majority of these amendments were made to the criminal law provisions, which establish criminal liability for criminal offences against property. In 2022, the Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Strengthening Liability for Looting" dated 03.03.2022 No. 2117-IX (The Law of Ukraine "On Amendments to the Criminal Code of Ukraine to Strengthen Liability for Looting") was passed,

which included the addition of a qualifying feature to Articles 185-187 and Articles 189, 191 of the Criminal Code of Ukraine. This feature pertains to the commission of a criminal offence in a state of martial law or a state of emergency. Such changes have resulted in an imbalance between the degree of social danger posed by certain types of criminal property offences and the punishment that can be imposed for their commission. It is evident that *the legislator has established a distinctive feature of the objective side, namely the situation of committing a criminal offence under martial law or a state of emergency as the sole basis for imposing a sentence of imprisonment. This is irrespective of other features of the commission of acts against property or the amount of damage caused by them.* This legislative decision has thus resulted in a violation of the principles of criminal law, as well as European and international recommendations on the expediency of saving repression and avoiding imprisonment in all possible cases. Furthermore, this decision creates internal inconsistencies between the elements of a criminal offence, namely, between intent, consequences and the limit of punishment. Indeed, the intent of the offender is driven by a mercenary motive in the absence of a purpose in the form of using martial law conditions to commit a socially dangerous act.

These lacunae, which were engendered by chaotic changes made to the national criminal legislation, have been the subject of repeated research by scholars and have also formed a number of grounds for appealing to the Supreme Court to review the types and limits of punishment imposed on persons who have committed criminal offences against property in the absence of qualifying and especially qualifying features, except in times of martial law. In light of these challenges, legislative and law enforcement agencies have devised and implemented a range of alternative approaches to address this issue.

The initial step was to ascertain the extent to which theft should be considered a criminal act. The Law of Ukraine No. 3886-IX dated 18.07.2024, entitled "On Amendments to the Code of Ukraine on Administrative Offences and Certain Other Laws of Ukraine on Strengthening Liability for Petty Theft of Property and Regulation of Certain Other Issues of Law Enforcement" (The Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offences and Certain Other Laws of Ukraine on Strengthening Liability for Petty Theft of Property and Regulation of Certain Other Issues of Law Enforcement") stipulated that theft is criminalised if it exceeds two tax-free minimum incomes.

The explanatory note to the draft law also emphasised that the judicial practice of applying the rules on criminalisation of theft under martial law in Ukraine demonstrates that the punishment for theft is disproportionate. It is imperative that the punishment corresponds to the degree of public danger posed by the crime, the circumstances of its commission, and the perpetrator's personality, in order to ensure fairness. It is evident that the principle of proportionality is violated when punishment for theft is imposed under martial law. This is particularly evident in cases where the same liability is imposed for crimes that are clearly more serious, and for offences that were considered minor crimes or even misdemeanours prior to the amendments under discussion. A pertinent example of this can be found in part one of Article 185 of the Ukrainian Criminal Code. It is therefore the opinion of the present author that this situation should be resolved by increasing the amount of money that distinguishes between theft and misdemeanour crimes. The explanatory note to the draft legislative act in question also emphasised that the judicial practice of applying the rules on criminalising theft under martial law in Ukraine demonstrates that the punishment for committing theft is disproportionate. It is vital that the punishment is proportionate to the degree of public danger posed by the crime in question, the circumstances of its commission, and that it takes into account the personality of the perpetrator, i.e., that it is fair. Consequently, when imposing a punishment for theft committed under martial law, the principle of proportionality is violated, as equal liability is imposed for crimes that are evidently more serious and for offences that were categorised as minor crimes or even misdemeanours prior to the amendments under discussion. This is evident in part one of Article 185 of the Ukrainian Criminal Code. It is this author's opinion that the resolution to this situation must be found in an increase in the financial resources available to differentiate between administrative and criminal liability for theft. The purpose of the draft law is twofold: firstly, to regulate legal relations in the administrative and criminal law spheres, and secondly, to ensure more effective and fair application of punishment for petty theft. The latter is also intended to improve the process of solving administrative and criminal offences (Explanatory note to the Draft Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offenses Regarding Increased Liability for Petty Theft of Other People's Property").

The adoption of this legislative act, on the one hand, partially contributed to solving the problem of bringing to criminal liability under Article 185(4) of the Criminal Code of Ukraine persons who actually committed simple thefts under martial law. At the same time, such a legislative decision gave grounds to consider this situation as a partial decriminalisation of theft, which, accordingly, led to active appeals to the court of cassation to review the

types and limits of punishment using Article 5(1) of the Criminal Code of Ukraine.

Thus, the decision of the Supreme Court of October 07, 2024 in case No. 278/1566/21 states that the provisions of Article 58 of the Constitution of Ukraine, taking into account the requirements of Article 92(22)(1) of the Constitution of Ukraine, should be understood in such a way that only the laws of Ukraine define acts that constitute crimes and establish criminal liability for their commission. Such laws shall have retroactive effect in time in cases where they mitigate or cancel criminal liability of a person... Establishment by legislative acts of a different minimum wage shall not entail changes in the qualifying features of the crimes provided for in parts four of Articles 81, 82, 84, part three of Article 83, part two of Article 86 and Article 86-1 of this Code. The provision of Article 6(2) of the Criminal Code of Ukraine on retroactive application of the law does not apply to these cases... The Joint Chamber believes that the CCU's conclusions in this decision cannot be applied to the situation that arose in connection with the discussed amendment to Article 51 of the Code of Ukraine on Administrative Offences. Changes to the minimum wage or the tax-free minimum income do not have as their direct purpose to change the criminal law, so although they may affect the application of the criminal law to a certain range of acts, they do not constitute a change to the criminal law and therefore do not have retroactive effect. The AmCham also believes that the periodic changes in the level of ML in the relevant legislation do not result in the decriminalisation of those acts that were classified as criminal offences based on the level of ML in force at the time of the offence. However, in the opinion of the Joint Chamber, this approach cannot be applied to the amendments to Article 51 of the Code of Ukraine on Administrative Offences introduced by Law No. 3886-IX. Article 3(6) of the CCU provides that amendments to the CCU may be made, in particular, by laws amending the legislation of Ukraine on administrative offences, which differs the situation under consideration from amendments to regulatory acts of other branches of law, which were considered by the CCU in the above-mentioned Decision. In the explanatory note to the proposed amendments to Article 51 of the Code of Ukraine on Administrative Offences, the legislator defined their purpose as a change in criminal law to achieve proportionality in the application of criminal liability for minor offences. Consequently, the Joint Chamber considers the amendment to Art. 51 of the Code of Administrative Offences of Ukraine, which increases the NM coefficient to 2, to be an amendment to the criminal law. This is due to the fact that the legislator's objective was to alter the disposition of the relevant criminal offences. The Joint Chamber thus concludes that the amendment to Art. 51 of the Code of Administrative Offences, which concerns the increase of the NM coefficient for the qualification of the relevant acts as an administrative offence, is a law on criminal liability. This abolishes the criminal unlawfulness of an act for acts the subject of which was property for an amount not exceeding 2 NM. Simultaneously, the Court emphasises that the calculation of the amount equivalent to 2 NM is contingent upon the amount of NM that was in effect at the time of the relevant act (The Resolution of the Supreme Court of October 7, 2024 in case No. 278/1566/21).

Consequently, the Supreme Court's interpretation led to a partial resolution of the issue concerning compliance with the principles of proportionality and fairness in the context of criminal prosecution for property-related offences.

The second step was an attempt to clarify the procedure and grounds for applying a specific circumstance (committing criminal offences against property). It is evident that the Supreme Court's ruling on March 28, 2023 in case No. 722/594/22 stipulates that the board is of the opinion that the phrase "under martial law or a state of emergency" in parts four of Articles 175-187, 189 and 191 of the CC should be interpreted as "using the conditions of martial law or a state of emergency". The validity of this interpretation is substantiated by the preparatory works for the legislation, which incorporated the "martial law" amendments to the aforementioned articles of the CC. The conclusion also reflects the intention of the Committee members to utilise these amendments "to establish a fair punishment for persons who use the helpless state of the inhabitants of certain territories during hostilities for robbery and plunder, as well as appropriate other people's property on the battlefield, using tragic circumstances for their own gain". The Panel considers that such a clearly expressed intention on the part of the legislator does not provide grounds for the belief that the purpose of this law was to exclude the possibility of applying paragraphs 1-3 of Articles 185-187, 189, 191 in circumstances that have no connection with the use of the helpless state of the inhabitants or other conditions created by military operations, which facilitate the commission of crimes to a degree significantly different from the circumstances of ordinary life. The Collegium also observes that the interpretation of the feature «under martial law or a state of emergency» without taking into account whether such conditions were used to commit the crime constitutes a violation of the principle of individualisation of punishment set forth in Article 61(2) of the Constitution of Ukraine. The Panel considers that the evident infringement of the principle of proportionality in the application

of criminal sanctions, as evidenced by the utilisation of the "under martial law or a state of emergency" provision in the aforementioned articles of the CC, results in the erroneous interpretation that this provision does not consider the commission of the crime under these circumstances (The Resolution of the Supreme Court of March 28, 2023 in case No. 722/594/22).

At the same time, an analysis of local court verdicts delivered after the Resolution came into force shows that as of today, every second theft committed without the application of martial law is qualified under Article 185(4) of the Criminal Code of Ukraine (except for those considered petty theft under the new legislation). The same applies to other types of criminal offences against property.

Thus, *the above provides a basis for the following conclusions:*

1) Under martial law, the approach to the qualification of criminal offences against property has changed significantly, which, due to the not fully balanced dispositions of the relevant parts of the amended articles, has created an artificial basis for imposing imprisonment on criminal offenders without alternative;

2) ignoring the clarifications of the Supreme Court leads to the continuation of the practice of applying to persons who have committed simple theft under Article 185(4) of the Criminal Code of Ukraine a sentence of imprisonment for up to five years with simultaneous release from serving a sentence of probation. Such an approach should be considered inappropriate, firstly, given that the purpose of punishment of the accused is not achieved; secondly, in case of application of Article 185(1) of the Criminal Code of Ukraine, a person could be sentenced to a fine of one thousand to three thousand tax-free minimum incomes, community service for a term of eighty to two hundred and forty hours, or correctional labour for a term of up to two years, which is economically beneficial for the state.

Although theoretically, the provisions of Article 69 of the Criminal Code of Ukraine may be applied to such persons and property penalties imposed, an analysis of court practice shows that this approach is used less often than probation.

3. The "Economics" of Criminal Offenses Against Property and the Penalties Provided for Their Commission

Criminal offences against property are among the most prevalent socially dangerous acts, causing the greatest material damage to citizens and the state. According to judicial statistics, the material damage caused by such acts amounted to 404269550 UAH in 2019, 517165694 UAH in 2020, 863706302 UAH in 2021, 530166854 UAH in 2022, and 538183616 UAH in 2023. These amounts also take into account the amount of material damage caused to victims of criminal offenses against property.

A systematic analysis of the sanctions established for committing "simple" criminal offences against property provides grounds for the conclusion that, with the exception of certain (mostly mercenary and violent) acts, the legislator provides for punishment in the form of a fine and corrective labour, among other types. This approach appears to be explained by the desire to make a criminal offence economically unprofitable for the person committing it.

Some Ukrainian criminologists point out that in certain articles of the Special Part of the Criminal Code the fine is set at a level significantly lower than the amount of material damage caused by the crime, and therefore believe that such amounts of fines cannot make committing a crime "economically unprofitable" (Hutorova, 2005; Korzhanskyi, Shchupakivskyi, 2004; Usatyi, 2007; Shapovalova, 2006) (cited by Y.A. Ponomarenko – author's note). Nonetheless, Y.A. Ponomarenko contests the veracity of such assertions, contending that the fine cannot be considered a form of compensation for criminal activity or a levy on illegally obtained assets. Rather, it is remitted not from the offender's criminal assets, but rather from the offender's legitimate income (or savings), thus impacting their property rights as outlined in Article 50(1) of the Criminal Code. Property obtained through criminal means is subject to either being returned to the victim or being appropriated by the state as revenue (paragraphs 4 and 5 of Article 81 of the CPC in the old version and Article 100 in the current version of the CPC with the authors' clarification – author's note). In a similar vein, it is imperative that the material damage caused by the crime is fully compensated (Article 1166(1) of the Civil Code). Accordingly, the sanction may set the amount of the fine at a figure lower than the amount of damage caused by the crime described in the hypothesis of the aforementioned article. This is due to the fact that, when combined with the amount of compensation, the sanction will in any case exceed the amount of damage caused or income received from the crime (Ponomarenko, 2012).

Simultaneously, the imposition of a fine, in addition to correctional labour (which, since the adoption of the prevailing criminal legislation, is also regarded as a potential form of special fine), is more cost-effective for the state for the following reasons: 1) the execution of the sentence by the convicted individual is not associated with any costs; 2) partial utilisation of labour services; 3) receipt of funds to the budget; 4) the realisation of the objective of punishment through the limitation of property rights.

It is evident that scholars concur with regard to the economic nature of correctional labour as a form of

punishment. It is acknowledged that, at the present stage of development, correctional labour engenders specific property consequences, namely a diminution in the income of the convicted individual and limitations on professional advancement. The following legal restrictions are applicable to the perpetrator in the context of correctional labour being carried out at the place of work of the convicted person. In particular, the convicted person is prohibited from leaving the place of work at their own request. Furthermore, the annual vacation of the convicted person is not counted towards the term of serving their sentence (Moldovanenko, 2017).

Consequently, it can be deduced that the implementation of property-based sanctions on individuals who have perpetrated criminal acts against property facilitates the realisation of the fundamental purpose of punishment, particularly in consideration of the principle of proportionality within the context of criminal law. Simultaneously, in consideration of the recent amendments to the national criminal legislation and the systematic imposition of the sole viable form of sanction for individuals who have perpetrated simple criminal offences against property under martial law (in instances where they have not been discharged from serving a sentence with probation), criminal offenders are subjected to the sole viable form of sanction: imprisonment for a specified duration. The prevailing scholarly consensus on this criminal law measure (provided that it can be replaced by a less repressive one) is that it is economically unprofitable. This position is reflected in both European and international legal documents.

National legislation stipulates that persons serving sentences in correctional colonies shall be held responsible for the reimbursement of the costs of their maintenance, with the exception of the cost of food, footwear, clothing, linen, special food and workwear. The reimbursement by convicts of the costs set out in part one of this Article, which belong to the revenues of correctional colonies, shall be made subsequent to the deduction of personal income tax and alimony. Deductions made under the authority of a writ of execution and other enforcement documents are executed in accordance with the prescribed legal procedure (Instructions on working conditions and wages of persons sentenced to restriction of liberty or deprivation of liberty, approved by the Order of the Ministry of Justice of Ukraine dated 07.03.2013 No. 396/5). Consequently, the issue of providing material support for the effective functioning of correctional and educational colonies was addressed.

In accordance with the Instruction on working conditions and salaries for those sentenced to restriction of liberty or imprisonment, approved by the Order of the Ministry of Justice of Ukraine of 07.03.2013 No. 396/5, convicts are engaged in paid work, the material results of which are used to support the activities of penal institutions. According to the legal act, convicts who work are paid at least fifty per cent of their monthly salary for the time they work (Instructions on working conditions and wages of persons sentenced to restriction of liberty or deprivation of liberty, approved by the Order of the Ministry of Justice of Ukraine dated 07.03.2013 No. 396/5), regardless of any deductions. Similar provisions are contained in Article 120 of the Criminal Executive Code (The Criminal Code of Ukraine No. 1129-IV).

Concurrently, the legislation encompasses provisions for exceptions to the aforementioned rule, which pertain to the procedure for engaging specific categories of convicts in labour. Thus, in accordance with the above-mentioned instruction, persons sentenced to imprisonment who have reached the retirement age established by Article 26 of the Law of Ukraine "On Compulsory State Pension Insurance", persons with disabilities of the first and second groups, persons with bacterial tuberculosis, women with a pregnancy of more than four months, women with children in orphanages in penal colonies are allowed to work at their request, taking into account the opinion of the Medical Commission of the Healthcare Institutions of the State Penitentiary Service of Ukraine. The type of activity and the duration of working time of these categories of convicts are determined by the Medical Commission of the Healthcare Institutions of the State Penitentiary Execution Service of Ukraine depending on their ability to work, taking into account their state of health, the production profile of the enterprise or penitentiary institution (Instructions on working conditions and wages of persons sentenced to restriction of liberty or deprivation of liberty, approved by the Order of the Ministry of Justice of Ukraine dated 07.03.2013 No. 396/5). This leads to the conclusion that the maintenance of such categories of prisoners can only be carried out at the expense of the state.

The issue of the correlation between the effectiveness of imprisonment and the economic costs incurred by the state in providing for convicts is also being addressed in recent draft laws submitted to the Verkhovna Rada of Ukraine. In the explanatory notes to these draft laws, the authors emphasise the expediency of providing for sanctions in the provisions of the Special Part of the Criminal Law that are proportionate to the degree of social danger of the act.

As demonstrated by the draft Law of Ukraine "On Amendments to Article 336 of the Criminal Code of Ukraine on the Establishment of Non-custodial Types of Punishments", which is punishable by imprisonment for a term of three to five years, as outlined in Article 336, with the words "punishable by a fine of three thousand to five thousand tax-free

minimum incomes, or community service for a term of one hundred sixty to two hundred forty hours, or correctional labour for a term of one to two years, or restraint of liberty for a term of one to two years" (The Draft Law "On Amendments to Article 336 of the Criminal Code of Ukraine on the Establishment of Non-custodial Types of Punishments").

As stated in the explanatory note to the draft law, the utilisation of alternative forms of punishment, as an alternative to imprisonment, has the potential to engender significant savings to the state budget, as well as to material and human resources. These savings can then be allocated to other pressing priorities, such as the defence and national security of Ukraine. Finally, the application of imprisonment obliges the state to create appropriate conditions for the execution of the sentence: to have the necessary number of penal institutions; to have the necessary number of free places and free space in these institutions to accommodate convicted persons sentenced to imprisonment; to spend resources on sending convicted persons to places where they will serve their sentences and, if necessary, to transfer them to prison; to incur various costs for the maintenance of convicted persons (creation of appropriate living conditions, sanitary and hygienic conditions, etc.). In addition, once the sentence has been served, the offender will need socialisation, assistance with employment (possibly including retraining) and most likely treatment – this may also lead to additional expenditure of state resources in relation to sentencing a person to imprisonment (and not to another type of punishment). The use of other types of punishment (instead of imprisonment) will bring additional revenues to the state and local budgets during martial law and after its termination. After all, the application of such types of punishment as fines and correctional labour will lead to additional budget revenues. The application of punishment in the form of community service means the performance of socially useful work free of charge (i.e., additional budget savings and help in solving the problem of lack of personnel for the performance of certain necessary work). The application of a non-custodial sentence is an opportunity for a convicted person to work and earn an income from which taxes, fees and a single social contribution are paid (which will provide additional budget revenue during and after martial law); to help solve the problem of shortage of personnel in various sectors of the economy during martial law (since a convicted person sentenced to non-custodial punishment can work in enterprises, institutions, organisations, and not serve a sentence of imprisonment with isolation from society), which will provide additional budget revenues, strengthen the economic stability of the state and, as a result, strengthen Ukraine's defence capabilities. The labour activity of such convicts in enterprises of various sectors of economy (instead of serving a prison sentence with isolation from society) will help to maintain the economic activity of domestic enterprises and the Ukrainian economy (many enterprises are currently experiencing a shortage of personnel), and the isolation of such convicts from society can only aggravate the problem of personnel shortage in various sectors of economy (Explanatory note to the Draft Law of Ukraine "On Amendments to Article 336 of the Criminal Code of Ukraine on the Establishment of Non-custodial Types of Punishments").

It should be noted that the aforementioned proposal concerns the determination of the limits of criminal liability and punishment for evasion of conscription for military service during mobilisation, for a designated period, for military service by conscription of persons from among reservists during a designated period, which in martial law should be considered more serious than criminal offences against property committed under martial law, but without its direct use as a setting for a socially dangerous act.

It can thus be concluded that martial law, insofar as it pertains to a specific circumstance of a criminal offence, should be regarded as a qualifying or especially qualifying feature only when it is employed to facilitate the implementation of a criminal intent. This position is endorsed by numerous scholars and is reflected in the decisions of the Supreme Court, which are mandatory for consideration under the provisions of the criminal procedure legislation.

4. Conclusions

Deprivation of liberty represents one of the most severe forms of punishment, the enforcement of which necessitates the allocation of substantial financial resources to facilitate adequate conditions for the detention of convicts. Notwithstanding the procedural framework established by national legislation, which stipulates the transfer of a designated proportion of earnings to the state budget to ensure the continued adequate maintenance of convicts, such transfers are often inadequate in addressing the quotidian challenges faced by individuals serving a prison sentence.

The majority of amendments introduced to the criminal legislation under the special legal regime of martial law pertained to the imposition of harsher penalties for specific categories of criminal offences, notably those affecting property. This escalation entailed the establishment of a non-alternative punishment in the form of imprisonment, which does not always align with the degree of social threat posed by criminal offences. Consequently, an augmentation in the number of individuals subjected to imprisonment necessitates an escalation in financial resources allocated to penitentiary institutions,

a course of action that is not congruent with the objectives of enhancing the state's economic policy.

In such circumstances, it appears more appropriate to ascertain the feasibility of establishing an alternative form of punishment for criminal offences against property, namely a fine and corrective labour. This alternative form of punishment would be consistent with the general principles of criminal law policy. However, it is only advisable to impose imprisonment for such acts committed under martial law when these conditions contribute to the commission of a socially dangerous act.

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