

CRIMINAL LAW MEANS OF COMBATING NATIONAL SECURITY CRIMES IN THE CONTEXT OF EUROPEAN INTEGRATION

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INTRODUCTION

The accession of the Ukrainian state to the Convention for the Protection of Human Rights and Fundamental Freedoms, the signing of the Association Agreement with the European Union by the President of Ukraine, its simultaneous ratification by the European Parliament and the Verkhovna Rada of Ukraine, approval by the Cabinet of Ministers of Ukraine of the Action Plan for its implementation, as well as Ukraine's application for membership in the European Union significantly have brought it closer to the European Community, which requires appropriate legal reforms, through the prism of which democratic priorities will be determined.

At the same time, the socio-economic and political-legal crises that constantly attack Ukrainian society and become the amplitude of systematic violations of the rights and freedoms of citizens, are the result of strategic miscalculations of state policy, including regarding the criminal law and criminal procedural policy of the state in the context of combating crimes in the national sphere security.

The mentioned challenges of the time require new scientifically based and practically balanced approaches with the aim of restoring trust in the state in society, improving mechanisms for the protection of rights and freedoms of citizens and the interests of the state, restoring and strengthening law and order.

The need for research on the chosen subject is also due to the discussion on the relevance of combating crimes in the field of national security in the context of European integration processes, the use of criminal law and criminal procedural forms and methods of combating them, their proportionality and compliance with European legislation.

1. National security as an object of criminal law protection of the state in the context of its European integration processes

1.1. State of scientific research determinants

The issue of national security, as a multifaceted and integrative systemic and social phenomenon, has always been in the field of view of scientists, practitioners, political and public figures, journalists and ordinary citizens.

Each of the mentioned subjects has its own understanding and individual peculiarity of world perception of the mentioned legal phenomenon.

For example, the use of the notion of “national security” in the political lexicon and state (public) administration is, as a rule, synonymous with the defense capability of the state, a notion that goes in unison with the external security of the state and a set of measures aimed at ensuring and maintaining them.

Legal scholars do not have a single approach to the definition of this law category, and consider this phenomenon in philosophical-legal, military-legal, institutional, educational-applied and other aspects.

In particular, P. Bohutskyi perceives this term as a phenomenon that defines the safe existence of a person, society and the state, the content of which has complex features, determined by a set of values and interests that are most important for human existence, which definitely have a universal character¹.

O. Honcharenko and E. Lysytsyn, analyzing the conceptual and terminological apparatus of research of the national security system, define it as the degree of protection of national interests, which allows indicating only a certain level of security².

O. Bantyshev and O. Shamara understand the foundations of national security as “constitutional, social and state order of Ukraine, its political system, sovereignty, territorial integrity and inviolability, defense capability, state, economic or informational security, as well as national security in the environmental and military spheres”³.

O. Motailo defines national security as a complex phenomenon, which is a system of interconnected elements, which includes a certain set of conceptual attitudes and provisions, socio-political and legal institutions, defined means, methods and forms that allow preventing, avoiding and responding to internal and external dangers and threats⁴.

Such a valid opinion is another confirmation of the theses of H. Sytnyk and M. Orel that “the notion “national security” is basic for defining a number of other notions, including, in particular: “national security policy”, “national security system”, “threats to national security”⁵.

¹ Bohutskyi P. Legal regime of criminal law protection of national security of Ukraine. Criminal law in the conditions of globalization: materials of the International Scientific and Practical Conference, Odesa, 25 May 2018. Odesa: NU “Odesa Law Academy”, Department of Criminal Law, 2018. P. 82.

² Honcharenko O., Lysytsyn E.M. Methodological principles of development of a new edition of the National Security Concept of Ukraine. National security. 2001. No. 4. P. 7.

³ Bantyshev O., Shamara O.V. Criminal liability for crimes against the foundations of national security of Ukraine (problems of qualification): monograph. 2nd ed., revised. and addit. K.: Scientific ed. department of NA SB of Ukraine, 2010. P. 26.

⁴ Motailo O. Basic conceptual approaches to the essence of the concept of “national security”. Law and public administration. 2019. No. 4. P. 293.

⁵ Sytnyk H., Orel M. National security in the context of European integration of Ukraine: a textbook /under the editorship of H. P. Sytnyk. Kyiv: Interregional Academy of Personnel Management, 2021. P. 75.

V. Lipkan concludes that national security as a dynamic process is a complex process in which the emergence, change and destruction of security are dialectically interdependent – “due to this, any attempt to define the notion of “national security” will be incomplete”⁶.

An almost similar opinion is held by Z. Chuiko, who defines the national security of Ukraine as “a dynamic political and legal regime, the goal of which is the security state of national interests from various threats, which is achieved thanks to the purposeful activity of state authorities and civil society institutions with the aim of guaranteeing human rights and fundamental freedoms, their progressive development and the stability of the constitutional system”⁷.

Ya. Lantinov proposes to consider the category “national security” in a broad and narrow sense, namely: national security in a broad sense is a system of “security” as all components of the nation of Ukraine (a hierarchical combination of state security, security of non-state associations (communities) and security of individuals), as well as a combination of all aspects of security (military-political, economic, energy, environmental, information security, etc.). There are reasons to believe that national security in a broad sense coincides with social security (not to be confused with public security). National security in the narrow sense is the highest, most general level of security, which cannot be reduced to any of the individual aspects. The content of national security in a narrow sense is to ensure the “life” of the nation of Ukraine, its original life activity⁸.

Summarizing the analysis of scientific research on the notion of the category “national security”, it will be appropriate to refer to the thesis from the introduction of the fundamental work of the Ukrainian economist O. Vlasiuk “National security of Ukraine: problems of internal policy” (2016) that national security is guaranteed by identifying and further neutralizing threats to statehood, social order and political system, national identity. Danger is formed by everything that destroys state independence, creates instability and outbreaks of violence, erodes and destroys the established and identifying ideas of the national political community about itself and the world⁹.

Therefore, the category “national security” is a basic and multifaceted concept that has its own structure and system, as well as its own picture of world perception depending on the sphere of human existence and, accordingly, the context of the science of its cognition: jurisprudence, economics, public administration, politics, journalism, military affairs and defense, etc.

⁶ Lipkan V. Theoretical foundations and elements of national security of Ukraine: monograph. K.: Text, 2003. P. 50.

⁷ Chuiko Z. The question of the constitutional foundations of national security in Ukraine. Herald of Academy of legal sciences of Ukraine. 2008. No. 3 (54). P. 139.

⁸ Lantinov Ya. Regarding the definition of national security of Ukraine as an object of criminal law protection. Law forum. 2011. No. 1. P. 572.

⁹ Vlasiuk O. National security of Ukraine: evolution of national policy problems: Vol. of science works. K.: NISD, 2016. P. 15.

1.2. Style, approaches and vector of professional attention to world perception of national security as a legal category

From a legal point of view, this concept will be perceived differently depending on the field of law and the style of scientific and scientific-practical research.

Even from a practical legal point of view, the specified category will have a different semantic load depending on the type of legal profession and the style of implementation of practical functions.

In particular, an international lawyer, a criminal lawyer and a theoretician teacher in the field of state theory and philosophy of law will put completely different meanings into this legal category.

Just like the operational officer of the Security Service of Ukraine from the unit of counter-intelligence or protection of the interests of the state, the prosecutor and the judge perceive the term “national security” differently. And despite the fact that all of them should first of all refer to the original source, namely: paragraph 9 of part 1 of article 1 of the Law of Ukraine “On the National Security of Ukraine” No. 2469-VIII dated 21.06.2018, which gives a normative definition of this term. The difference will consist in the peculiarities of the legal perception interpretation of the concept of “national security” through the prism of their functional and procedural competence, defined by the Constitution, branch laws (“On the Security Service of Ukraine”, “On the Prosecutor’s Office”, “On the Judiciary and the Status of Judges”), the Criminal Procedure Code and other legislation, as well as depending on the “vector of their professional attention”. For example, if for the first efforts should be focused on detecting offenses in the specified area and their prevention, then for the prosecutor the main focus should be on properly bringing them to justice (ensuring proper legal procedure), and for the court – weighing the arguments of all parties, their assessment and making a final decision that will have legal consequences.

We, in turn, can assume that in the context of European integration processes, it is appropriate to consider national security as a complex, multi-level social phenomenon, which includes a set of fixed, guaranteed interests that have an appropriate legal mechanism for the implementation of measures aimed at protecting the rights and freedoms of citizens, society and the state, creating in them an image of security and protection from external and internal threats, ensuring legal, political, military-defense and psychological conditions that allow to represent the state, society, nation in the conditions of globalization and European integration in a dignified and profitable way (taking into account national interests).

1.3. A citizen as an object of criminal law protection of national security

On the basis of the above, we can define an object of national security that is subject to criminal law protection – a citizen, society, state.

Let’s pay attention to such an important aspect that despite the human-centered priority of the development of national security as a social phenomenon, one of the main objects of its criminal law protection is the citizen. Such a position can be explained by the fact that the institution of citizenship

determines the dual legal relationship between a person and the state, which gives rise to mutual rights and obligations. Citizenship itself indicates a person's belonging to a certain state, thanks to which the former has certain rights and is responsible to the latter, which ensures the protection of their rights and interests. The existence of mutual rights and obligations between a person and the state is usually connected with the need for the state to ensure the general natural rights of a person, including the right to his safety, safe living conditions and well-being, but, we believe, is not related to national interests, the implementation of which ensures the state sovereignty of Ukraine.

For example: the obligation to respect the laws of the state and to observe them arises for both a person, a citizen and a stateless person. Just as the state must ensure safe living conditions for all three categories of persons. However, only citizens of Ukraine, as a certain legal category of society, are subject to certain types of socially dangerous acts that are subject to criminal law protection, violations of which have certain criminal consequences. Namely: according to the disposition of Article 111 of the Criminal Code of Ukraine, only a citizen of Ukraine is the subject of committing treason, that is, an act intentionally committed to the detriment of the sovereignty, territorial integrity and inviolability, defense capability, state, economic or informational security of Ukraine¹⁰. In this case, it is national security in the state security, information, economic, scientific-technological and military spheres, as the object of criminal encroachment, as well as sovereignty, territorial integrity and inviolability, defense capability, state, economic or informational security of Ukraine, as object of criminal legal protection, manifest in a systemic relationship exclusively with a citizen of Ukraine. In this case, the need to legislate their criminal law protection against criminal encroachments on the citizens of Ukraine is related to the realization of national interests that ensure the state sovereignty of Ukraine. And illegal actions of citizens of Ukraine only under such conditions form the composition of this criminal offense. The same actions of a stateless person or a foreigner will not constitute the crime of "treason", but may, under similar conditions, constitute other criminal offenses that encroach on the national interests of the Ukrainian state, its state sovereignty, progressive democratic development, as well as safe living conditions and welfare of its citizens.

As an antipode from the point of view of the encroachment subject on national security, we cite the disposition of part 1 of article 114 of the Criminal Code of Ukraine (espionage) – transfer or collection for the purpose of transfer to a foreign state, a foreign organization or their representatives, information constituting a state secret, if these actions committed by a foreigner or stateless person¹¹. In this case, on the contrary, only a foreigner or a stateless person can be the subject of this criminal-legal qualification, and the relationship between a citizen of Ukraine and the state of Ukraine can be traced in ensuring the national interests of Ukraine, as evidenced by part 2

¹⁰ Criminal Code of Ukraine dated 5.04.2001 No. 2341-III. URL: <https://ips.ligazakon.net/document/T012341?an=911540> (access date 09.02.2024).

¹¹ Ibid.

of this article of the Special Part of the Law on Criminal Liability – a person who has stopped the activities provided for in the first part of this article and voluntarily informed the state authorities about what has been done is released from criminal liability, if as a result of this and the measures taken, damage to the interests of Ukraine has been avoided¹².

1.4. National interests as the basis of national security

The above gives reasons to draw a logical conclusion that national interests are the litmus test that defines national security as a special social phenomenon and legal phenomenon, and is the red thread that outlines its criminal-legal protection, since, as O. Vlasjuk notes, a problem in the field of national security of Ukraine arises in the event of a threat to its national interests¹³.

In this regard, P. Bohutskyi's opinion is correct that in the legal relations of national security, national interests are formed at the expense of material, spiritual and intellectual needs that are vital for a person and society, which allow to ensure the safe existence and development of both society and individual social entities, create safe conditions for human life. Security values are opposed by another sphere, where under certain circumstances, when security values are ignored, a person ceases to exist, that is, society and the state cease to exist, and ultimately the ability and opportunity to reflect on law and all its values is lost. Material, intellectual, spiritual values always precede interests, values of human, social existence, are always social values, determined by the conditions of social existence and are different in relation to different spheres of social existence. Among the main values that define social existence are the life of a person and the safety of his life activities, hence the safety of society and all social entities, including the safety of the political organization of society, i.e. the state¹⁴.

It is not for nothing that the legislator in the sectoral Law of Ukraine "On National Security of Ukraine" No. 2469-VIII of 21.06.2018 defines the concept of national security through the prism of national interests, namely: national security of Ukraine is protection of state sovereignty, territorial integrity, democratic constitutional system and other national interests of Ukraine from real and potential threats. In turn, the legislator defines national interests as the vital interests of a person, society and the state, the implementation of which ensures the state sovereignty of Ukraine, its progressive democratic development, as well as safe living conditions and the well-being of its citizens¹⁵.

¹² Criminal Code of Ukraine dated 5.04.2001 No. 2341-III. URL: <https://ips.ligazakon.net/document/T012341?an=911540> (access date 09.02.2024).

¹³ Vlasjuk O. National security of Ukraine: evolution of national policy problems: Vol. of science works. K.: NISD, 2016. P. 26.

¹⁴ Bohutskyi P. Theoretical foundations of formation and development of national security law of Ukraine: diss. ... Dr. Law Sciences: 12.00.01. Kyiv, 2020. Pp. 184, 187.

¹⁵ The Law of Ukraine "On National Security of Ukraine" No. 2469-VIII dated 21.06.2018. URL: <https://zakon.rada.gov.ua/laws/show/2469-19#Text> (access date 10.02.2024).

2. Regarding the substantive and procedural understanding of criminal law means of combating crimes in the field of national security

2.1 The concept, content and specifics of criminal law means of combating crimes in the field of national security

In our previous scientific works, we suggested that crimes in the field of national security should be understood not only as crimes against the foundations of national security, defined in Section I of the Special Part of the Criminal Code of Ukraine, but also other criminally punishable acts that to one degree or another relate to or can relate to issues of protection of state sovereignty, territorial integrity and democratic constitutional order and other vital national interests from real and potential threats. In particular, in our opinion, these are all those crimes for which, in accordance with Part 2 of Article 216 of the Criminal Procedure Code of Ukraine, the prosecution is determined by the investigators of the security agencies¹⁶.

Let us add that our position is justified not only by the nature of the tasks of the Security Service of Ukraine, as a state body of special purpose with law enforcement functions, which ensures the state security of Ukraine, enshrined in Article 2 of the branch Law – protection of state sovereignty, constitutional order, territorial integrity, scientific, technical and the defense potential of Ukraine, the legitimate interests of the state and the rights of citizens against the intelligence and subversive activities of foreign special services, encroachments by certain organizations, groups and individuals, as well as ensuring the protection of state secrets¹⁷, as well as by the specifics of the legal technique regarding the legal protection of objects of criminal law protection, which is established in various sections of the Special Part of the Criminal Code of Ukraine, but are under the criminal law protection of the Security Service of Ukraine.

As of the date of writing this scientific work, these crimes should include criminal offenses provided for by specific articles of the Criminal Code of Ukraine, namely: 109 (actions aimed at violent change or overthrow of the constitutional order or seizure of state power), 110 (encroachment upon territorial integrity and inviolability of Ukraine), 110-2 (financing of actions committed for the purpose of violent change or overthrow of the constitutional order or seizure of state power, change of territory or state border of Ukraine), 111 (treason), 111-1 (collaborative activity), 111-2 (assistance to the aggressor

¹⁶ Shestopalov R.M. Combating Crimes In The Field Of National Security: Theoretical Idyl And Practical Reality. Legal Discourse. Law in the postmodern epoch: general characteristics and manifestation particularities in separate law branches: Scientific monograph. Riga, Latvia: "Baltija Publishing", 2023. P. 669–698. URL: <http://baltijapublishing.lv/omp/index.php/bp/catalog/view/299/8346/17408-1> ISBN 978-9934-26-284-5 (Recommended for printing and distribution via Internet by the Academic Council of Baltic Research Institute of Transformation Economic Area Problems according to the Minutes № 1 dated 30.01.2023). P. 670.

¹⁷ The Law of Ukraine "On the Security Service of Ukraine" No. 2229-XII dated 25.03.1992. URL: <https://zakon.rada.gov.ua/laws/show/2229-12#Text> (access date 10.02.2024).

state), 112 (attempt on the life of a state or public figure), 113 (sabotage), 114 (espionage), 114-1 (obstructing the lawful activities of the c and other military formations), 114-2 (unauthorized dissemination information on the sending, movement of weapons, armaments and military supplies to Ukraine, the movement or placement of the Armed Forces of Ukraine or other military formations formed in accordance with the laws of Ukraine, committed under conditions of martial or a state of emergency), 201 (smuggling), 258 (terrorist act), 258-1 (involvement in the commission of a terrorist act), 258-2 (public calls to commit a terrorist act), 258-3 (creating a terrorist group or terrorist organization), 258-4 (facilitating the commission of a terrorist act), 258-5 (financing of terrorism), 258-6 (crossing the state border with a terrorist purpose), 265-1 (illegal manufacture of a nuclear explosive device or a device that disperses radioactive material or emits radiation), 305 (smuggling of narcotic drugs, psychotropic substances, their analogues or precursors or falsified medicinal products), 328 (disclosure of state secrets), 329 (loss of documents containing state secrets), 330 (transmission or collection of information constituting official information collected in the process of operative-search, counter-intelligence activities, in the field of country defense), 332-1 (violation of the procedure for entering and leaving the temporarily occupied territory of Ukraine), 332-2 (illegal crossing of the state border of Ukraine), 333 (violation of the procedure for international transfers of goods subject to state export control), 334 (violation of the international flights rules), 359 (illegal acquisition, sale or use of special technical means of obtaining information), 422 (disclosure of information of a military nature that constitutes a state secret, or loss of documents or materials containing such information), 435-1 (insulting the honor and dignity of a serviceman, threatening a serviceman), 436 (war propaganda), 436-2 (justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants), 437 (planning, preparation, resolution and conducting aggressive war), 438 (violation of the laws and customs of war), 439 (use of weapons of mass destruction), 440 (development, production, acquisition, storage, sale, transportation of weapons of mass destruction), 441 (ecocide), 442 (genocide), 443 (attempt on the life of a representative of a foreign state), 444 (crimes against persons and institutions with international protection), 446 (piracy), 447 (mercenary).

Therefore, the criminal law means of combating crimes in the sphere of national security are concrete norms of substantive law enshrined in the Special Part of the Criminal Code of Ukraine, which provide for criminal liability for encroachment on objects of criminal law protection in the sphere of national security.

Their specificity lies not only in the fact that the pre-trial investigation in them is carried out exclusively by the investigators of security agencies (or investigators of other agencies in the event that the above-mentioned criminal offenses are determined by a reasoned resolution of the prosecutor due to ineffective investigation by the security agency), but also in the fact that this list may constantly change after the introduction of relevant legislative changes, in particular to Part 2 of Article 216 of the Criminal Procedure Code

of Ukraine. This testifies to the organizational and legal dynamism of the criminal law means of this category, which is determined by the features of the protection of national interests depending on time (primarily the political-legal regime) and space (primarily, geographical and other locational features of the crime scene).

2.2 Space and time as factors of criminalization of acts in the sphere of national security

Such dialectical categories as space and time, which determine the forms of matter existence, indicate the expediency of criminalization (decriminalization) of certain actions, primarily in the field of national security.

For example, the introduction according to the Law of Ukraine “On the approval of the Decree of the President of Ukraine “On the Introduction Of Martial Law in Ukraine”” No. 2102-IX dated 24.02.2022 was a consequence of the adoption of the Law of Ukraine “On Amendments to the Criminal and Criminal Procedure Codes of Ukraine to ensure countermeasures against unauthorized dissemination information on the sending, movement of weapons, armaments and military supplies to Ukraine, the movement, transfer or placement of the Armed Forces of Ukraine or other military formations formed in accordance with the laws of Ukraine, committed under conditions of martial or a state of emergency” No. 2160-IX dated 24.03.2022¹⁸, by which the Special Part of the Criminal Code of Ukraine was supplemented by Article 114-2 – “unauthorized dissemination of information on the sending, transfer of weapons, armaments and military supplies to Ukraine, the movement, transfer or placement of the Armed Forces of Ukraine or other military formations formed in accordance with the laws of Ukraine, committed in the conditions martial law or state of emergency”¹⁹, since the publication of such information may pose a threat to the national security of the state. In this case, it was the temporal parameters – martial law, as a form of matter – that became the basis for the criminalization of such an act.

Another example: the implementation into national legislation of the provisions of the Additional Protocol to the Convention of the Council of Europe on the Prevention of Terrorism, as well as the comprehensive strengthening of the capabilities of the national system of combating terrorism, taking into account European and global practices in the field of countering terrorist activities, became the basis for the introduction, according to the Law of Ukraine “On Amendments to the Criminal and Criminal Procedural Codes of Ukraine in connection with

¹⁸ The Law of Ukraine “On Amendments to the Criminal and Criminal Procedural Codes of Ukraine on Ensuring Counteraction to the Unauthorized Dissemination of Information on the Dispatch, Transfer of Weapons, and War Supplies to Ukraine, Movement, Transfer, or Placement of the Armed Forces of Ukraine or other military personnel formed in accordance with the laws of Ukraine formations committed under conditions of war or state of emergency” No. 2160-IX dated 24 March 2022. URL: <https://zakon.rada.gov.ua/laws/show/2160-20#n10> (access date 12.02.2024).

¹⁹ Criminal Code of Ukraine dated 5.04.2001 No. 2341-III. URL: <https://ips.ligazakon.net/document/T012341?an=911540> (access date 09.02.2024).

the ratification of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, as well as to some legislative acts of Ukraine on improving the fight against terrorism” No. 2997-IX dated 21.03.2023²⁰ amendments to the current Criminal Code of Ukraine, namely: the introduction of Article 258-6 – crossing the state border of Ukraine with a terrorist purpose²¹. In this case, the connection to a geographical object – the state border, as the subject of a criminal offense, and the need to fulfill Ukraine’s conventional obligations in the context of its European integration processes, became the basis for the criminalization of such an act.

Therefore, time and space are the fundamental factors of criminal law means of combating crimes in the field of national security.

3. Characteristics of individual criminal law means of combating crimes in the field of national security

Using the example of a philosophical-legal and scientific-practical analysis of the most ambiguous provisions of the Criminal Code of Ukraine, we will selectively consider certain modern problematic issues of such means from the angle of time and space, from the point of view of their compliance with the Constitution of Ukraine and the context of the implementation of national legislation to the European.

3.1. Treason and sabotage

Thus, after the declaration of martial law in Ukraine, one of the first criminal law means of combating crimes in the field of national security has been the introduction of amendments to Article 111 of the Criminal Code of Ukraine, (it was supplemented by part 2), which provides for criminal liability for treason committed under martial law, in the form of deprivation of liberty for a term of fifteen years or life imprisonment, with confiscation of property²².

In our opinion, regardless of the seriousness of such a criminal offense against the foundations of national security as treason, we consider the sanction of the recently introduced part of the article of the Law on Criminal Liability to be too categorical, too absolute, and not in accordance with the general principles of sentencing. Under such conditions, the general principles of sentencing set forth in Clause 3 of Part 1 of Article 65 of the Criminal Code, according to which the court imposes a punishment, taking into account the gravity degree of the committed criminal offense, the identity of the guilty

²⁰ The Law of Ukraine “On Amendments to the Criminal and Criminal Procedural Codes of Ukraine in connection with the ratification of the Additional Protocol to the Convention of the Council of Europe on the Prevention of Terrorism, as well as to some legislative acts of Ukraine on improving the fight against terrorism” No. 2997-IX dated 21.03.2023. URL: <https://zakon.rada.gov.ua/laws/show/2997-20#n20> (access date 12.02.2024).

²¹ Criminal Code of Ukraine dated 5.04.2001 No. 2341-III. URL: <https://ips.ligazakon.net/document/T012341?an=911540> (access date 09.02.2024).

²² Ibid.

person and the mitigating and aggravating circumstances of the punishment, are not taken into account.

In connection with this, we believe that the absence of a “fork” in the sanction of this part of Article 111 of the Criminal Code of Ukraine when determining the amount of punishment in the form of imprisonment for a certain period is unlikely to correspond to both the general principles of sentencing and European values of criminal justice. Therefore, we propose to make changes to part 2 of this Article by introducing a “fork” into its sanction, which would clearly outline the time parameters of the punishment in the form of imprisonment for a certain period for committing such acts.

Similar changes should be made to Part 2 of Article 113 of the Criminal Code of Ukraine (sabotage) for the same reasons.

3.2 Collaborative activity

The general and amorphous name of such a criminal act as “collaborative activity” has been unknown to national legislation until March 2022, which still does not contain a separate definition of this term. The criteria by which a person can be classified as a collaborator are contained only in a separate Article 111-1 introduced into the Criminal Code of Ukraine in March 2022, which is quite voluminous, has 8 parts, each of which, in fact, constitutes a separate part of the criminal offense.

We will analyze selective idioms of this object of criminal encroachment as a criminal law means of combating crimes in the field of national security.

In particular, part 1 of Article 111-1 of the Criminal Code of Ukraine provides for criminal liability for public denial by a citizen of Ukraine of armed aggression against Ukraine, establishment and approval of the temporary occupation of part of the territory of Ukraine, or public appeals by a citizen of Ukraine to support the decisions and/or actions of the aggressor state, armed formations and/or occupation administration of the aggressor state, to cooperation with the aggressor state, armed formations and/or occupation administration of the aggressor state, to non-recognition of the extension of the state sovereignty of Ukraine to the temporarily occupied territories of Ukraine²³.

Thus, an act in the form of a public denial by a citizen of Ukraine of carrying out armed aggression against Ukraine, which constitutes an objective aspect of a criminal offense under part 1 of Article 111-1 of the Criminal Code of Ukraine, essentially overlaps with the composition of the crime provided for in Article 436-2 of the Criminal Code of Ukraine, which involves responsibility for justifying, recognizing as legitimate, denying the armed aggression of the Russian Federation against Ukraine.

The absurdity of this norm is indicated by its sanction – deprivation of the right to hold certain positions or engage in certain activities for a period of ten to fifteen years.

²³ Criminal Code of Ukraine dated 5.04.2001 No. 2341-III. URL: <https://ips.ligazakon.net/document/T012341?an=911540> (access date 09.02.2024).

Not only that, with such an absolute understanding of these norms, the difference lies both in the subject of the crime (according to Article 111-1, it can only be a citizen of Ukraine), and in the sanctions for committing such acts: according to part 1 of Article 111-1 – punishment in the form of deprivation of the right to hold certain positions or engage in certain activities for a certain period, on the other hand, the sanction of Article 436-2 of this Code provides for a much harsher punishment (depending on the part of the article) from correctional labor to imprisonment for a term of up to eight years with or without confiscation of property.

That is, one and the same manifestation of objection (text, speech, slogan, picture, etc.), according to the results of a semantic-textual study conducted by a linguist expert, can be perceived and interpreted differently by the investigator, and, as a result, for the accused, the prospect of receiving different punishment according to the severity: from deprivation of the right to hold certain positions to real deprivation of liberty with confiscation of property. This, of course, can also create grounds for possible abuses in the legal qualification of actions of the same content.

We believe that the introduction of Part 1 of Article 111-1 into the Criminal Code of Ukraine is a manifestation of the legislator's unreasonable emotionalism, caused by the conditions of martial law, since his actions regarding the criminalization of the relevant inferences of a person can hardly be called democratic and in line with European values. We also believe that this provision of the law is only an additional burden on security agencies, the prosecutor's office and the court. The continuation of the existence of the specified norm only distracts their attention from the fulfillment of the tasks and functions assigned to them by the branch and procedural laws, and does not contribute to real countermeasures against crimes in the field of national security, strengthening of law and order.

In addition, the sanction under Part 1 of Article 111-1 of the Criminal Code of Ukraine (deprivation of the right to hold certain positions or engage in certain activities for a period of ten to fifteen years), in our opinion, does not at all correspond to the provisions of Part 2 of Article 50 of the Criminal Code of Ukraine, according to which punishment is aimed not only at punishment, but also at the correction of convicts, as well as at the prevention of new criminal offenses by both convicts and other persons²⁴.

Judicial practice according to part 1 of Article 111-1 of the Criminal Code of Ukraine generates its own "life hacks" when convicting persons according to this norm. For example, according to the verdict of the Zavodskyi District Court of the city of Dniprodzerzhynsk, Dnipropetrovsk region, dated 30.06.2023, a citizen was sentenced under Part 1 of Article 111-1 of the Criminal Code of Ukraine to the penalty of deprivation of the right to engage in certain

²⁴ Criminal Code of Ukraine dated 5.04.2001 No. 2341-III. URL: <https://ips.ligazakon.net/document/T012341?an=911540> (access date 09.02.2024).

activities – to use in any way Russian resources blocked on the territory of Ukraine and social networks for ten years (case No. 208/6080/23)²⁵.

The prosecutor appealed the specified court decision in connection with the incorrect imposition by the court of restrictions on the accused regarding the use of information, since depriving a person of the right to engage in certain activities consists in limiting his ability to carry out official, professional or other special activities, which are subject to certain qualification requirements.

Having agreed with the arguments of the prosecutor's appeal, the Dnipro Court of Appeal on 09.10.2023 overturned the said verdict of the local court and passed its own verdict, in which it was noted that the punishment should be imposed with clearly formulated restrictions on the occupation of positions and the execution of one or another professional activity by the accused. The appellate court has come to the conclusion that the sentence imposed on the accused does not meet the requirements of the law of Ukraine on criminal liability, as it does not contain a prohibition on engaging in any activity within the meaning of Article 55 of the Criminal Code of Ukraine. Under such conditions, the panel of judges of the Court of Appeal specified the punishment assigned to the accused and imposed on him a coercive measure in the form of deprivation of the right to hold positions in state authorities, state administration, local self-government bodies, self-organization bodies of the population, as well as to engage in educational and pedagogical activities for a period of ten years²⁶.

However, was such a punishment (from the point of view of achieving its goal) worth the attention of operatives of the Security Service of Ukraine, its investigators, prosecutors, courts of first instance and appeals?! The question is rhetorical.

If we make a short criminological portrait of persons brought to justice for criminal offenses provided for in part 1 of Article 111-1 of the Criminal Code of Ukraine, we can state that, as a rule, these are marginal individuals who lead an immoral and antisocial lifestyle, do not work anywhere and do not study, abuse alcohol or narcotic or psychotropic substances, are deprived, to a greater extent, of logical, critical and creative thinking.

In connection with this, a rhetorical question arises again: how can depriving such a person of the right to hold positions in state authorities or local self-government for a period of ten to fifteen years by a court verdict contribute to their correction, or prevent the commission of such actions by other similar persons?!

Therefore, we propose to completely exclude part 1 of Article 111-1 of the Criminal Code of Ukraine as a “procedural laughingstock”.

Criminal liability provided for in part 4 of this article for carrying out economic activities in cooperation with the aggressor state, illegal authorities

²⁵ The Verdict of the Zavodskiy District Court of the city of Dniprodzerzhynsk dated 30 June 2023. Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/Review/111983079> (access date 13.02.2024).

²⁶ The Verdict of the Dnipro Court of Appeal dated 09.10.2023. Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/Review/114044329> (access date 13.02.2024).

created in the temporarily occupied territory, including the occupation administration of the aggressor state²⁷ should also be decriminalized as not complying with international treaties, the consent to the binding of which has been given by the Verkhovna Rada of Ukraine. Namely: in accordance with Article 48 IV of the Convention on the Laws and Customs of War on Land dated 18.10.1907, if the occupier collects taxes, duties and fees determined by such a state on the occupied territory, he shall do so, if possible, in accordance with the current rules of taxation and their sphere of action, as a result of which he is obliged to bear the costs of managing the occupied territory to the same extent as the legitimate government was obliged to do²⁸.

3.3. Justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants

Article 436-2 of the Criminal Code of Ukraine, introduced in March 2022, has not gone far, from the point of view of expediency, common sense and logic, not to mention compliance with European integration processes. It provides for criminal liability for a wide range of actions that constitute the objective side of such a criminal offense as justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants²⁹.

And although the appearance of this article was preceded by a lively discussion of the draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine (Regarding Strengthening Criminal Liability for the Production and Distribution of Prohibited Information Products)”, which during 2020 – early 2022 did not find adequate legal and moral support in political and diplomatic³⁰, as well as cultural circles³¹, the martial law

²⁷ Criminal Code of Ukraine dated 5.04.2001 No. 2341-III. URL: <https://ips.ligazakon.net/document/T012341?an=911540> (access date 09.02.2024).

²⁸ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, date of entry into force for Ukraine – 24 August 1991). URL: https://zakon.rada.gov.ua/laws/show/995_222#Text (access date 13.02.2024).

²⁹ Criminal Code of Ukraine dated 5.04.2001 No. 2341-III. URL: <https://ips.ligazakon.net/document/T012341?an=911540> (access date 09.02.2024).

³⁰ Proposals of the Ministry of Foreign Affairs of Ukraine to the draft Law of Ukraine “On Amendments to the Criminal Code of Ukraine on Establishing Criminal Liability for Publicly Denying the Fact of Armed Aggression by the Russian Federation and the Temporary Occupation of Part of the Territory of Ukraine”. URL: https://www.kmu.gov.ua/storage/app/bills_documents/document-2236467.pdf (access date 05.12.2023).

³¹ Proposals of the Ministry of Culture and Information Policy of Ukraine to the draft Law of Ukraine “On Amendments to the Criminal Code of Ukraine on Establishing Criminal Liability for Publicly Denying the Fact of Armed Aggression by the Russian Federation and the Temporary Occupation of Part of the Territory of Ukraine”. URL: https://www.kmu.gov.ua/storage/app/bills_documents/document-1942827.pdf (access date 05.12.2023).

introduced in Ukraine, and the need to adopt relevant normative legal acts on this matter, nevertheless contributed to the rapid criminalization of a particular worldview of a person. As a result, with all the signs of “political expediency”, on 16 March 2022, deliberately ignoring the comments of relevant ministries (the Ministry of Culture and the Ministry of Foreign Affairs), the Criminal Code of Ukraine was supplemented with another “emotional” norm, the further application of which in practice revealed all its shortcomings, miscalculations and gave rise to contradictions.

According to the Office of the Prosecutor General, during 2022–2023, guilty verdicts under Article 436-2 of the Criminal Code of Ukraine were passed by the courts in relation to 503 people, 430 of which were released from serving a sentence with probation on the basis of Article 75 of the Criminal Code of Ukraine, and 73 were sentenced to the actual punishment, in particular 50 – to actual deprivation of liberty, 2 – to restriction of liberty, 9 – to arrest, 9 – to a fine and 3 – to correctional works. Plea agreements were concluded with 308 persons³².

Despite the external (from the point of view of legal statistics) “problem-free” enforcement of this norm, in practice there are already certain contradictions and ambiguities, which, in turn, catalyze the need to revise some of its provisions.

We believe that, first of all, this concerns the identification of the qualifying features of the objective side of the given composition of the criminal offense as circumstances that influence the determination of the type and measure of punishment.

In particular, the sanction under part 3 of this article provides for punishment in the form of imprisonment for a term of five to eight years with or without confiscation of property for the actions provided for in parts 1 and 2 of this article, committed by an official, or committed repeatedly, or organized group, or with the use of mass media³³.

In our opinion, it is hardly proportionate to impose such a severe punishment for an act, for example, committed repeatedly by an ordinary citizen, and the same act, but committed by an official or an organized group. A logical but rhetorical question arises: will such a punishment be clearly unfair for a citizen who twice (in a period of time sufficient to qualify his actions as repeated) in social networks on his page (with the number of followers limited to friends or even a family circle) posted prohibited content, as well as punishment for the same actions, but already committed by the head of a state enterprise, institution, organization or deputy during several appearances on television talk shows or radio?! We believe that the presence in Part 3 of Article 436-2 of the Criminal Code of Ukraine, the sanction of which provides for the most severe punishment,

³² Excerpt from the report note of the Office of the Prosecutor General regarding the study of the practice of consideration by courts of criminal proceedings on criminal offenses related to the armed conflict.

³³ Criminal Code of Ukraine dated 5.04.2001 No. 2341-III. URL: <https://ips.ligazakon.net/document/T012341?an=911540> (access date 09.02.2024).

such a qualifying feature as “repetition of the crime” does not correspond to the principles of legality, justice, proportionality and individualization of punishment, and the article itself is de facto a tool criminal prosecution of dissidents. Therefore, the expediency of continuing the existence and enforcement of this norm in this version needs to be reviewed from the point of view of its compliance with the provisions of Articles 10 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (ratified by Ukraine on 14.07.1997), which provide that everyone has the right to freedom of expression, and this right includes the freedom to hold one’s views, to receive and impart information and ideas without interference by state authorities and regardless of borders; the use of the rights and freedoms recognized in this Convention must be ensured without discrimination on any basis – gender, race, skin color, language, religion, political or other beliefs, national or social origin, belonging to national minorities, property status, birth, or by another sign³⁴.

3.4. An insult to the honor and dignity of a serviceman, a threat to a serviceman

The addition of Article 435-1 to the Criminal Code is evidence of absurd and hasty law-making, with all the signs of poor legal technique, as evidenced by the legal architecture of this norm and its place in the coordinate system of the law of Ukraine on criminal liability.

Yes, the relatively new (as of March 2022) Article 435-1 of the Criminal Code provides for criminal liability for insulting the honor and dignity of a serviceman, threatening a serviceman³⁵.

The specified norm was nevertheless adopted by the legislator, despite the serious and weighty warnings of the Chief Scientific Expert Department of the Verkhovna Rada of Ukraine, in particular, that such non-property personal (private) rights of individuals, such as honor and dignity, are regulated by civil law. Articles 28 and 32 of the Constitution of Ukraine, as well as Article 297 of the Civil Code of Ukraine enshrine the right of everyone to respect for his dignity and honor. In case of violation of such rights, a person can apply to the court with a claim for the protection of dignity and honor, which, according to Article 201 of the Civil Code of Ukraine, are non-property goods protected by civil legislation. The infliction of moral damage to these objects of civil law protection in connection with the humiliation of the honor and dignity of a natural person is subject to compensation (Article 23 of the Civil Code of Ukraine). The mechanism for the protection of a person’s non-property assets is detailed in civil

³⁴ European Convention on the Protection of Human Rights and Fundamental Freedoms (Rome, 04.11.1950, ratified by Ukraine on 14.07.1997). URL: https://zakon.rada.gov.ua/laws/show/995_004#Text (access date 14.02.2024).

³⁵ Criminal Code of Ukraine dated 5.04.2001 No. 2341-III. URL: <https://ips.ligazakon.net/document/T012341?an=911540> (access date 09.02.2024).

legislation, and therefore all those who believe that their honor and dignity have been insulted can use its provisions for their protection³⁶.

Also, in our opinion, the aggrieved party established in this norm, a military serviceman, who carries out measures to ensure national security and defense, repulse and deter armed aggression of the Russian Federation, is somewhat discriminatory. Under such circumstances, it is necessary to prove not only the victim's affiliation to his military service, but also his performance of the above-mentioned measures provided for by the provisions of parts 1 and 2 of this article in the current version. At the same time, under such a legal construction, it is unclear: is even one component sufficient to recognize a serviceman as a victim under this article, or is a complex combination of them necessary?! It is also unclear when a serviceman performs such measures, which may become a condition for him to acquire the status of a victim. In other words: when exactly the insult to the honor and dignity of a serviceman will be a criminally punishable act – at the moment when he directly and actively performs the above measures (is in a position, performs a combat mission, etc.), and he is insulted at this time, or at any time and anywhere (even during the domestic stay of a serviceman in a coffee shop in the rear on vacation)?!

However, the biggest confusion is caused by the fact that the crime under Article 435-1 of the Criminal Code of Ukraine is for unknown reasons included in its Chapter XIX – “Criminal offenses against the established order of military service (military criminal offenses)”.

Note that part 1 of Article 401 of the Criminal Code of Ukraine clearly defines the concept of a military criminal offense – criminal offenses provided for in this section against the procedure for carrying out or completing military service established by law, committed by military personnel, as well as conscripts and reservists during military service³⁷.

At the same time, part 2 of this article regulates the circle of possible subjects of this crime – servicemen of the Armed Forces of Ukraine, the Security Service of Ukraine, the State Border Guard Service of Ukraine, the National Guard of Ukraine and other military formations formed in accordance with the laws of Ukraine, the State Special Transport Service, the State Service of Special Communications and Information Protection of Ukraine, as well as other persons specified by law³⁸.

According to Clause 3 of Part 4 of Article 216 of the Criminal Procedure Code of Ukraine, pretrial investigation of criminal offenses against the established order of military service (military criminal offenses), except for

³⁶ Conclusion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine on the draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine (Regarding Strengthening Criminal Liability for the Production and Distribution of Prohibited Information Products)” No. 16/03-2022/54282 dated 02.03.2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1243501> (access date 14.02.2024).

³⁷ Criminal Code of Ukraine dated 5.04.2001 No. 2341-III. URL: <https://ips.ligazakon.net/document/T012341?an=911540> (access date 09.02.2024).

³⁸ Ibid.

criminal offenses provided for by Article 422 of the Criminal Code of Ukraine, is carried out by investigators of the State Bureau of Investigation³⁹.

At the same time, Part 2 of Article 216 of this Code regulates the investigation of a crime under Article 435-1 of the Criminal Code of Ukraine by investigators of security agencies⁴⁰.

Judicial practice in cases of this category is scarce. As of the date of preparation of this scientific work, the Unified State Register of Court Decisions contains data on the consideration during the years 2022-2024 of as many as 6 criminal cases under Article 435-1 of the Criminal Code of Ukraine, for which 6 people were convicted and 7 sentences were handed down (1 sentence was overturned by the appeals court with a new verdict).

Without questioning the legality of the decisions made and the competence of the servants of Themis, taking into account the above arguments, we believe that all verdicts were passed without excessive intellectual encumbrance by a logical and legal analysis of the norms of substantive law, which was obviously influenced in 5 cases by the favorable position of the defense (admission of guilt, sincere remorse) and in 1 case of committing a crime incriminated under Part 2 of Article 435-1 of the Criminal Code of Ukraine together with other criminal offenses, the presence of evidence of which provided the court with legal grounds for convicting the person.

Let's briefly analyze the conclusions of Themis, which are available in the public domain.

According to the verdict of the Khmelnytskyi City District Court dated 16.01.2024, an unemployed person – PERSON_5, who, while intoxicated, created a conflict with a military serviceman – PERSON_4, during which he used obscene language in public place insulted his honor and dignity, for which he sincerely repented in court and was convicted under Part 1 of Article 296, Part 1 of Article 435-1 of the Criminal Code of Ukraine. In this case, the court did not specify what exactly the measures to ensure national security and defense, repulse and deter armed aggression of the Russian Federation were carried out by the victim serviceman – PERSON_4, if according to his testimony, given to the court, on 2 August 2023, at about 19 o'clock he, in the military uniform, together with other military personnel, was on Myr Avenue in the city of Khmelnytskyi, where they were buying pies and coffee in the "Vinnytskyi" department store, and at that time the accused approached him and for no reason, using obscene words, began to verbally insult him and threaten him with physical violence⁴¹.

Similarly, in the judgment of the Berehiv district court of the Zakarpattia region of 09.02.2023, no information is given about what activities at 10:00 a.m.

³⁹ Criminal Procedure Code of Ukraine dated 13.04.2012 No. 4651-VI. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (access date 14.02.2024).

⁴⁰ Criminal Procedure Code of Ukraine dated 13.04.2012 No. 4651-VI. URL: <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (access date 14.02.2024).

⁴¹ The Verdict of the Khmelnytskyi City District Court dated 16.01.2024. Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/Review/116352561> (access date 14.02.2024).

on 23.08.2022 and where exactly the head of the moral and psychological support group, major PERSON_7 was, whose honor and dignity PERSON_4 insulted, while intoxicated, who admitted his guilt and sincerely repented⁴².

The verdict of the Ivano-Frankivsk Court of Appeal dated 03.08.2023 canceled the verdict of the Kolomyia City District Court and adopted a new verdict, which convicted PERSON_4 in total under part 2 of article 109, part 5 of article 111-1, part 2 of article 435-1, part 3 of article 436- 2 of the Criminal Code of Ukraine⁴³. According to the data available in the Unified State Register of Court Decisions, the specified case does not contain information about any military serviceman who would have the status of a victim and who would accept “at his own expense” offensive materials distributed by the accused.

The situation was somewhat different in criminal case No. 712/4108/22, which was considered by the Sosniv District Court of the city of Cherkasy, according to the verdict of 14.07.2022, PERSON_2 was convicted, who wrote an insulting, swearing, humiliating in content message to the victim serviceman – PERSON_1 on the Facebook social network and⁴⁴. The case was considered in a simplified manner, the accused pleaded guilty, the evidence was not investigated. However, the introductory part of the sentence contains data that the accused does not work anywhere, and therefore there is no affiliation of her as a subject of the commission of a military criminal offense, defined in part 2 of Article 401 of the Criminal Code of Ukraine.

The verdict of the Kitsman district court of the Chernivtsi region dated 20.02.2023 approved the plea agreement between the prosecutor and the accused – PERSON_5, who on his pages in the social networks “Facebook”, “Telegram”, “Youtube” made and distributed video materials in which contains insulting statements addressed to the head INFORMATION_3 PERSON_6 and the employees of this unit in general. Victims PERSON_8, PERSON_6, PERSON_10 and PERSON_7 did not appear at the preparatory court session, however, submitted written statements in which they did not object to the conclusion of a plea agreement between the suspect and the application of Article 69 of the Criminal Code of Ukraine, and requested that the trial be held without their presence⁴⁵.

A special scientific and practical analysis is required for the first final court decision under this article – the verdict of the Uzhhorod City District Court dated

⁴² The Verdict of the Berehiv District Court of the Zakarpatskyi Region dated 09.02.2023. Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/Review/109165415> (access date 14.02.2024).

⁴³ The Verdict of the Ivano-Frankivsk Court of Appeal dated 03.08.2023. Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/Review/109602652> (access date 14.02.2024).

⁴⁴ The Verdict of the Sosniv district court of the city of Cherkasy dated 14.07.2022. Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/Review/105237696> (access date 14.02.2024).

⁴⁵ The Verdict of the Kitsman district court of Chernivtsi region dated 20.02.2023. Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/Review/109076815> (access date 14.02.2024).

11.07.2022, which approved the plea agreement between the accused and the prosecutor, and established that on 14.04.2022 at 12 o'clock, PERSON_4, being in a state of alcohol intoxication and being at ADDRESS_1, being aggressive towards military personnel who carry out measures to ensure national security and defense, repelling and deterring armed aggression of the Russian Federation, seeing the citizen PERSON_6, INFORMATION_2, who is a serviceman of the Armed Forces of Ukraine, namely the clerk of the logistics group NUMBER_1 of the Territorial Defense brigade NUMBER_2, dressed in military uniform, acting deliberately, began verbally insulting her honor and dignity and, with the aim of causing the latter to fear for her life and encroaching on her personal safety, as a serviceman, began verbally threatening her murder, violence, as a result of which PERSON_6 had real reasons to fear the implementation of this threat⁴⁶. In this case, the court did not bother at all to find out whether the unemployed accused PERSON_4 fell under the characteristics of the subject of a military criminal offense, provided for in part 2 of Article 401 of the Criminal Code of Ukraine; did not check what exactly PERSON_6 was doing to ensure national security and defense; it was not investigated whether she was recognized as a victim, since in the verdict she is specified as a citizen of PERSON_6, and the text of the court decision does not contain any data on her having such a procedural status, as well as no data on her position as a person who suffered moral damage as a result verbal insults from PERSON_4, about the approval of the agreement between the accused and the prosecutor.

Taking into account the above, we believe that if the legislator wants criminal liability for such types of acts to remain, it is necessary to more carefully review the issue of the subject of this crime commission, the person of the victim, and the circumstances should be clearly outlined (first of all, time and location parameters – the moment and place of execution by a serviceman measures to ensure national security, during the implementation of which his honor and dignity were insulted or threatened.

CONCLUSIONS

The category “national security” is a basic and multifaceted concept that has its own structure and system, as well as its own picture of world perception depending on the sphere of human existence and, accordingly, the context of the science of its cognition: jurisprudence, economics, public administration, politics, journalism, military affairs and defense, etc.

We can assume that in the context of European integration processes, it is appropriate to consider national security as a complex multi-level social phenomenon, which includes a complex of established, guaranteed and those that have the appropriate legal mechanism for the implementation of measures aimed at protecting the rights and freedoms of citizens, the interests of society and the state, the creation of their envision security and protection from external

⁴⁶ The Verdict of the Uzhhorod City District Court dated 11.07.2022 308/8031/22. Unified State Register of Court Decisions. URL: <https://reyestr.court.gov.ua/Review/105252796> (access date 14.02.2024).

and internal threats, provision of legal, political, military-defense and psychological conditions that allow to represent the state, society, and nation decently and profitably (taking into account national interests) in the conditions of globalization and European integration.

National interests are the litmus test that defines national security as a special social and legal phenomenon, and is the red thread that outlines its criminal legal protection.

Criminal law means of combating crimes in the sphere of national security are concrete norms of substantive law enshrined in the Special Part of the Criminal Code of Ukraine, which provide for criminal liability for encroachment on objects of criminal law protection in the sphere of national security.

The permanent updating of the legislation on criminal liability for actions in the field of national security indicates the organizational and legal dynamism of criminal and legal means of this category, which is determined by the peculiarities of the protection of national interests depending on time (primarily the political and legal regime) and space (primarily, geographical and other locational features of the crime scene).

Such dialectical categories as space and time, which determine the forms of matter existence, indicate the expediency of criminalization (decriminalization) of certain acts, first of all, in the field of national security, thus they are fundamental factors of criminal law means of countering them.

The overly “emotional” provisions of certain norms of the Criminal Code of Ukraine are subject to additional legislative review and updating.

In particular, parts 2 of articles 111 (treason committed under martial law) and sabotage (committed under martial law) do not correspond to the general principles of sentencing and European values of criminal justice due to the lack of an appropriate “fork” in their sanctions for imposing punishments, which clearly would outline the time parameters of the punishment in the form of imprisonment for a certain period.

Due to the disproportionality of achieving the goal of the prescribed punishment and the costs of “professional attention” of law enforcement and judicial bodies, it is proposed to cancel, by excluding from the Criminal Code of Ukraine, part 1 of Article 111-1 (public denial by a citizen of Ukraine of armed aggression against Ukraine, establishing and confirming the temporary occupation of territory of Ukraine or public appeals by a citizen of Ukraine to support the decisions and/or actions of the aggressor state, armed formations and/or occupation administration of the aggressor state, to cooperate with the aggressor state, armed formations and/or occupation administration of the aggressor state, to non-recognition of the spread of state sovereignty of Ukraine to the temporarily occupied territories of Ukraine).

In connection with the non-compliance with international law, in particular the provisions of Article 48 IV of the Convention on the Laws and Customs of War on Land of 18 October 1907, acts related to conducting economic activities in cooperation with the aggressor state, illegal authorities created on temporarily occupied territory including the occupation administration of the aggressor state should be decriminalized territory.

The presence of part 3 of in the Article 436-2 of the Criminal Code of Ukraine, the sanction of which provides for the most severe punishment for justifying, recognizing as legitimate, denying the armed aggression of the Russian Federation against Ukraine, glorifying its participants, such a qualifying feature as “repetition of the crime” does not correspond to the principles of legality and justice, proportionality and individualization of punishment. The expediency of continuing the existence and enforcement of this norm in this form requires a review for its compliance with the provisions of Articles 10 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

Also, the legal architecture of Article 435-1 of the Criminal Code of Ukraine, which provides for criminal liability for insulting the honor and dignity of a serviceman, threatening a serviceman, should be reviewed more carefully. In particular, the legal fixation of the subject of this crime, the person of the victim, should be corrected, and the circumstances should be clearly defined (first of all, the time and location parameters – the time and place of the serviceman’s performance of measures to ensure national security, in the course of which his honor and dignity or threatened).

ABSTRACT

In this scientific work, a scientific and practical analysis of criminal law means of combating crimes in the field of national security in the context of European integration was carried out.

Considerable attention is paid to the study of the conceptual foundations of the understanding of national security as an object of criminal law protection of the state, emphasizing the context of its European integration processes. For this purpose, the state of scientific research on the chosen topic was analyzed, based on the own practical experience of law enforcement. The styles, approaches and the vector of professional attention of the world perception of national security as a legal category were distinguished, which gave an opportunity to scientifically substantiate the own terminology of national security, to outline its subject, that is the part of criminal law protection, as well as define national interests as its basis.

A serious emphasis is placed on the study of the material and procedural understanding of criminal law means of combating crimes in the field of national security, thereby defining their concept, content and specificity, analyzing space and time as factors of acts criminalization in the mentioned field.

Using the example of philosophical-legal and scientific-practical analysis, the most ambiguous provisions of the Criminal Code of Ukraine are considered, which provide for criminal liability for such acts as treason; sabotage; collaborative activity; justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants; an insult to the honor and dignity of a serviceman, a threat to a serviceman.

Modern problematic issues of criminal law means of combating crimes in the field of national security are outlined from the point of view of their compliance

with the Constitution of Ukraine and the context of the implementation of national legislation to the European.

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