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CRIMES AGAINST THE BASICS OF NATIONAL SECURITY IN THE CONTEXT OF RECENT AMENDMENTS AND CHANGES

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Characterization of crimes against the foundations of national security in the context of the latest changes and additions was carried out. It is established that criminal law is not stable, as it is based on changing and fluid historical conditions, which are determined by political, social and economic forces. In view of the current events caused by the started war against our state, a number of changes and additions were made to Chapter 1 “Crimes against the foundations of national security” of the Criminal Code of Ukraine.

It is emphasized that crimes against the foundations of national security are socially dangerous, illegal, punitive and culpable acts, committed by a physically reprehensible person who has reached the age of criminal responsibility, and encroaches on the state and social order of Ukraine, its sovereignty, political system, inviolability, territorial integrity, defense capability, information and economic security, as well as national security in the field of ecology and military armament. Among them, the legislator includes actions aimed at violent change or overthrow of the constitutional order or at the seizure of state power (Article 109); encroachment on the territorial integrity and inviolability of Ukraine (Article 110); 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 (Article 110-2); treason (Article 111); encroachment on the life of a state or public figure (Article 112); sabotage (Article 113); espionage (Article 114) and obstruction of the lawful activities of the Armed Forces of Ukraine and other military formations (Article 114-1). A general description of the components of these crimes is provided.

Changes to the legislation, which were introduced to the Criminal Code of Ukraine in connection with the full-scale invasion of Russia into Ukraine, were considered. It was found that Section I “Crimes against the foundations of national security” of the Criminal Code of Ukraine was supplemented with the following articles: Collaborative activity (Article 111-1); Assistance to the aggressor state (Article 111-2); Obstructing the lawful activities of the Armed Forces of Ukraine and other military formations (Article 114-1); Unauthorized dissemination of information about the transfer, transfer of weapons, armaments and war supplies to Ukraine, the movement, transfer or placement of the Armed Forces of Ukraine or other mili-

tary formations formed in accordance with the laws of Ukraine, committed under conditions of war or a state of emergency (Article 114-2).

It was concluded that the criminalization of certain acts under martial law is a necessary, relevant and timely step on the part of the state.

Key words: crimes; foundations of national security; criminalization; martial law; state of emergency.

Formulation of the problem. We imagine criminal law as an orderly, stable system or structure based on certain basic fundamental elements. However, it is not stable in the sense of “basic fundamental elements”, because it is based on changing and fluid historical conditions, which are determined by political, social and economic forces. Therefore, the practice of social relations requires constant attention to objects of criminal law protection. Transformational processes in Ukraine show that today it is in the epicenter of world attention as a state that seeks self-identification in the European and world space, trying to find its own way in the global world and its place among the countries of civilized democracy. In these difficult socio-political conditions, the legal policy of Ukraine attracts considerable attention of the world community, whose expectations are a certain warning when forming the legal foundations of the Ukrainian state. The state of criminal legal doctrine, criminal legislation and law enforcement is of particular importance for countering dangerous challenges in all spheres of life in Ukraine. At the same time, practice shows that criminal law continues to be the sharpest weapon for overcoming emerging dangers, an important role in which belongs to such well-known socio-legal phenomena as criminalization and decriminalization. In view of the current events caused by the war against our country, a number of changes and additions have been made to Section I “Crimes against the foundations of national security” of the Criminal Code of Ukraine, therefore these issues are relevant and require additional research

Analysis of the study of the problem. This problem was studied by V. Hryshchuk, O. Dudorov, O. Murashyn, M. Panov, M. Khavronyuk and others.

The purpose of the article. To reveal the criminal and legal aspects of crimes against the foundations of national security in the context of recent changes and additions.

Presenting main material. Ukraine is on a difficult path to protecting and preserving its sovereignty and independence. In the conditions of external aggression against our state, the mechanism of protection of Ukraine’s national security acquires special importance. This mechanism can function successfully and ensure the fulfillment of the goals set before it only under the condition of its proper legal regulation. One of the ways to protect Ukraine’s national security is to establish criminal liability for criminal offenses that encroach on Ukraine’s priority national interests.

Crimes against the foundations of national security are socially dangerous, illegal, punitive and culpable acts committed by a physically reprehensible person who has reached the age of criminal responsibility, and encroaches on the state and social order of Ukraine, its sovereignty, political system, inviolability, territorial integrity, defense capability, information and economic security, as well as national security in the field of ecology and military weapons [1, p. 35].

Among them, the legislator includes actions aimed at violent change or overthrow of the constitutional order or at the seizure of state power (Article 109); encroachment on the territorial integrity and inviolability of Ukraine (Article 110); 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 (Article 110-2); treason (Article 111); encroachment on the life of a state or public figure (Article 112); sabotage (Article 113); espionage (Article 114) and obstruction of the lawful activities of the Armed Forces of Ukraine and other military formations (Article 114-1) [2].

The common object of crimes against the foundations of Ukraine's national security is public relations regarding the protection of the foundations of Ukraine's national security: its constitutional system, sovereignty, territorial integrity, defense capability. That is, relations that ensure the existence of Ukraine as a sovereign, independent, democratic, social and legal state. As for the main immediate object of each individual crime, it is national security in certain areas. Also, Article 112 of the Criminal Code of Ukraine contains an additional object: human life, and for Article 113 of the Criminal Code, the mandatory additional object is, in addition to the life and health of a person, property and the environment.

From the objective side, all crimes provided for by Section I of the Special Part of the Criminal Code of Ukraine are committed by action. At the same time, based on their increased social danger, the legislator constructs most of them as crimes with a formal structure. Some of these crimes are formulated as truncated syllables - the legislator transfers the moment of their end to the previous stages of committing the crime (preparation or attempt). For example, according to Part 1 of Art. 109 of the Criminal Code, conspiracy to commit the actions provided for in this part (preparation) is considered a completed crime. Encroachment on the life of a state or public figure (attempted murder or murder), in accordance with Art. 112 of the Criminal Code is considered a finished crime from the moment of the attempted murder of these persons. The time and circumstances of the crime are mandatory signs of only one form of treason: switching to the enemy's side can be committed only in wartime or during an armed conflict.

The high level of danger of these crimes is expressed in their subjective characteristics. The considered crimes are committed, as a rule, with direct intent, in which a person wants to harm the foundations of Ukraine's national security. A person acts with the aim of changing or overthrowing the constitutional order, seizing state power, harming Ukraine's sovereignty, changing its territory, weakening the country's economic situation.

Subjects of crimes against the foundations of the national security of Ukraine can be criminal persons who have reached the age of 16. The only exception is Art. 111 of the Criminal Code of Ukraine (only a citizen of Ukraine) and Art. 114 of the Criminal Code (exclusively a foreign citizen or stateless person). Also Art. 112 and Art. 113 of the Criminal Code establishes a reduced age of criminal responsibility, namely 14 years.

On March 3, 2022, the Verkhovna Rada of Ukraine, in connection with the full-scale invasion of Russia into Ukraine, adopted Law No. 2108-IX, which added to the CCU Article 1111 "Collaborative activity", which is included in Section I of the Special Part of the Criminal Code of Ukraine "Crimes against the foundations of national security". It is not for nothing that the term "collaborationism" is considered voluminous, which is why an eight-part article and a note appeared for the first time in the Special Part of the Criminal Code of Ukraine [3].

Despite the presence of responsibility for crimes against the foundations of national security, such as treason, violent change or overthrow of the constitutional order, seizure of state power, encroachment on the territorial integrity of Ukraine, etc., which was provided for by the criminal law even before, and the commission of which, according to the general understanding, is covered by the concept "collaborative activity", taking into account the rare cases of denying the war against Ukraine and occupying positions in the occupation authorities, the legislator allocated certain crimes to a separate article, apparently wanting to simplify the legal qualification of criminal acts, speed up their investigation and trial.

Special attention should be paid to Art. 111-2 of the Criminal Code of Ukraine "Assistance to an aggressor state", which supplemented the code in accordance with Law No. 2198-IX dated 04/14/2022. The legislator defines aiding and abetting as intentional actions aimed at helping the aggressor state, armed formations, occupation administration of the aggressor state, committed by a citizen of Ukraine, a foreigner or a stateless person, with the exception of citizens of the aggressor state, with the aim of harming Ukraine by implementing or supporting decisions, actions of the aggressor state, armed formations, occupation administration of the aggressor state, voluntary collection, preparation and/or transfer of material resources or other assets to representatives of the aggressor state, its armed formations, occupation administration of the aggressor state [4].

Crimes against the basics of national security in the context of recent amendments and changes

From the above, it can be seen that the disposition of Art. 111-2 covers the disposition of Art. 111-1 of the Criminal Procedure Code, but establishes a different level of responsibility, so we can predict many more discussions by practitioners and scientists to improve its content and analyze future judicial and investigative practice.

The Verkhovna Rada of Ukraine also adopted Law No. 2160-IX dated March 24, 2022, according to which the Criminal Code of Ukraine was supplemented by Art. 114-2, which provides for bringing guilty persons to criminal liability for the unauthorized dissemination of information about 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, if it is not placed in public access the General Staff of the Armed Forces, the Ministry of Defense or official sources of the departments of the partner countries. Depending on the severity of the crime, the penalty is imprisonment for a term of 3 to 12 years. And the statute of limitations does not apply to this crime, as it belongs to crimes against the foundations of national security of Ukraine [5].

Conclusions. Therefore, the national security of Ukraine is a normatively recognized priority national interest. This is a fundamental fundamental attribute that ensures the existence of Ukrainians as a nation, the existence of our unique identity and unity, as well as the realization by the Ukrainian people of their exclusive right to build an independent, sovereign, democratic, legal and social state. Currently, the protection of one's own country, its borders and a dignified repulse of the enemy are extremely important, and the criminalization of certain acts under martial law is a necessary mechanism for achieving this goal.

REFERENCES

1. Bantyshev O. F., Shamara O. V. (2014). Kryminal'na vidpovidal'nist' za zlochyny proty osnov natsional'noyi bezpeky Ukrainy: monohr. Luhans'k, TOV "Virtual'na real'nist'", 240 s. URL <https://er.dduvs.in.ua/jspui/bitstream/123456789/6197/1/%d0%ba%d1%80%d0%b8%d0%bc%20%d0%b2%d1%96%d0%b4%d0%bf.pdf>
2. Kryminal'nyy kodeks Ukrainy: Zakon Ukrainy vid 05.04.2001 roku URL: <https://zakon.rada.gov.ua/laws/show/2341-14#n690>
3. Pro vnesennya zmin do deyakykh zakonodavchykh aktiv Ukrainy shchodo vstanovlennya kryminal'noyi vidpovidal'nosti za kolaboratsiynu diyal'nist': Zakon Ukrainy vid 03.03.2022 No. 2108-IX URL: <https://zakon.rada.gov.ua/laws/show/2108-20#Text>
4. Pro vnesennya zmin do Kryminal'noho ta Kryminal'noho protsesual'noho kodeksiv Ukrainy shchodo udoskonalennya vidpovidal'nosti za kolaboratsiynu diyal'nist' ta osoblyvostey zastosuvannya zapobizhnykh zakhodiv za vchynennya zlochyniv proty osnov natsional'noyi ta hromads'koyi bezpeky: Zakon Ukrainy vid 14.04.2022 No. 2198-IX URL: <https://zakon.rada.gov.ua/laws/show/2198-20#Text>
5. Pro vnesennya zmin do Kryminal'noho ta Kryminal'noho protsesual'noho kodeksiv Ukrainy shchodo zabezpechennya protydyi nesanktsionovanomu poshyrennyu informatsiyi pro napravlennya, peremishchennya zbroyi, ozbroynennya ta boyovykh prypraviv v Ukrainu, rukh, peremishchennya abo rozmishchennya Zbroynykh Syl Ukrainy chy inshykh utvorenykh vidpovidno do zakoniv Ukrainy viys'kovykh formuvan', vchynenomomu v umovakh voyennoho abo nadzvychnaynoho stanu: Zakon Ukrainy vid 24.03.2022 No. 2160-IX URL: <https://zakon.rada.gov.ua/laws/show/2160-20#Text>.

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ЗЛОЧИНИ ПРОТИ ОСНОВ НАЦІОНАЛЬНОЇ БЕЗПЕКИ В КОНТЕКСТІ ОСТАННІХ ЗМІН І ДОПОВНЕНЬ

Дано характеристику злочинів проти основ національної безпеки в контексті останніх змін і доповнень. Констатовано, що кримінальне право не є стабільним, оскільки ґрунтується на мінливих і плінних історичних умовах, які визначаються політичними, соціальними та економічними силами. З огляду на сучасні події, зумовлені розпочатою війною проти нашої держави, до Розділу 1 “Злочини проти основ національної безпеки” КК України внесено низку змін і доповнень.

Акцентовано, що злочини проти основ національної безпеки – це суспільно небезпечні, протиправні, карні та винні діяння, вчинені фізичною осудною особою, яка досягла віку кримінальної відповідальності, і посягає на державний і суспільний лад України, її суверенітет, політичний устрій, недоторканність, територіальну цілісність, обороноздатність, інформаційну та економічну безпеку, а також національну безпеку у сфері екології та воєнного озброєння. До їх числа законодавець відносить дії, спрямовані на насильницьку зміну чи повалення конституційного ладу або на захоплення державної влади (ст. 109); посягання на територіальну цілісність і недоторканність України (ст. 110); фінансування дій, вчинених з метою насильницької зміни чи повалення конституційного ладу або захоплення державної влади, зміни меж території або державного кордону України (ст. 110²); державну зраду (ст. 111); посягання на життя державного чи громадського діяча (ст. 112); диверсію (ст. 113); шпигунство (ст. 114) та перешкодження законній діяльності Збройних Сил України та інших військових формувань (ст. 114¹). Надано загальну характеристику елементам складів цих злочинів. Розглянуто зміни до законодавства, які були внесені до КК України у зв’язку із повномасштабним вторгненням росії в Україну.

З’ясовано, що Розділ I “Злочини проти основ національної безпеки” КК України доповнено статтями: Колабораційна діяльність (ст. 111-1); Пособництво державі-агресору (ст. 111-2); Перешкодження законній діяльності Збройних Сил України та інших військових формувань (ст. 114-1); Несанкціоноване поширення інформації про направлення, переміщення зброї, озброєння та бойових припасів в Україну, рух, переміщення або розміщення Збройних Сил України чи інших утворених відповідно до законів України військових формувань, вчинене в умовах воєнного або надзвичайного стану (ст. 114-2).

Зроблено висновок, що криміналізація окремих діянь в умовах воєнного стану є необхідним, актуальним і своєчасним кроком з боку держави.

Ключові слова: злочини; основи національної безпеки; криміналізація; воєнний стан; надзвичайний стан.