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CRIMINAL LIABILITY FOR OFFENSES AGAINST NATIONAL SECURITY: DOMESTIC AND FOREIGN PERSPECTIVES

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The article deals with the issue of criminal liability for crimes against the foundations of national security on the example of domestic and foreign experience of certain countries.

The author specifically analyzes the legislative regulation of criminal liability for crimes against national security in the Republic of Lithuania, the Republic of Latvia, the Republic of Estonia, Georgia, the Republic of Armenia, the Republic of Poland, Switzerland, the Federal Republic of Germany, and the French Republic.

The author suggests that there is a need for more in-depth research and improvement of the legal regulations regarding criminal liability for crimes against the foundations of national security in Ukraine. The article proposes resolving any inconsistencies between the title of Section I of the Special Part of the Criminal Code of Ukraine, which is “Crimes against the Fundamentals of National Security of Ukraine”, and the content of the relevant articles included in it. This section should address criminal liability for all activities that threaten Ukraine’s national security.

Therefore, the author recommends to include provisions for criminal liability related to the protection of state secrets, safeguarding critical infrastructure, expanding the scope of information security, imposing penalties for actions that aim to harm the state by an authorized person representing Ukraine in dealings with the leadership of a foreign state or organization, and establishing criminal liability for individuals who publicly insult the Ukrainian people or Ukraine.

Key words: national security; criminal liability; state; offenses; treason; critical infrastructure; information security.

Formulation of the problem. The need to ensure proper criminal law protection of Ukraine’s national security has become increasingly urgent since the start of the Russian-Ukrainian war. Therefore, it is crucial to thoroughly investigate the criminalization of offenses against Ukraine’s national security and to develop high-quality national legislation in this area, drawing on the experiences of other countries. This legislation should fully address the current needs.

Analysis of the research of the problem. The issue of criminal liability for crimes against the foundations of national security in Ukraine and in certain foreign countries has been studied by scholars such as O. Chuvakov, H. Reznichenko, V. Navrotskyi, I. Tomchuk, L. Moshniaga, V. Oliinyk, L. Demydova, V. Borysov, M. Karchevskiyi, M. Shepitko, V. Anishchuk, S. Bratel, and others.

The purpose of the article. The article aims to analyze the topic of criminal liability for offenses against national security. It will compare the experiences of different countries and propose improvements to the legal regulations in Ukraine.

Key findings of the study. According to Article 92, Part 1, Clause 17 of the Constitution of Ukraine, the foundations of national security are exclusively determined by the laws of Ukraine [1].

The term “national security of Ukraine” refers to safeguarding the country’s state sovereignty, territorial integrity, democratic constitutional order, and other national interests from actual and potential threats [2]. Officials who fail to comply with or violate the laws regarding Ukraine’s national security are subject to legal liability [2].

The Criminal Code of Ukraine establishes liability for the following actions:

- violent change or overthrow of the constitutional order or seizure of state power;
- encroachment on the territorial integrity and inviolability of Ukraine;
- financing of actions committed with the aim of violent change or overthrow of the constitutional order or seizure of state power, change of the boundaries of the territory or state border of Ukraine;
- high treason;
- collaboration;
- aiding the aggressor state;
- attempt on the life of a state or public figure;
- sabotage;
- espionage [3].

O. Chuvakov suggests that the main or additional objects of national security in Ukraine can be based on specific types of encroachment. He categorizes crimes that directly encroach on the foundations of national security of Ukraine as those outlined in Articles 109, 110, 110-2, 111, 111-1, 111-2, and others in the Criminal Code of Ukraine. Additionally, he identifies crimes that indirectly encroach on the foundations of national security of Ukraine, such as those listed in Articles 258, 258-1, 258-2, 258-3, and others in the Criminal Code of Ukraine [4, p. 39–40].

G. Reznichenko notes that the Criminal Code of Ukraine, Section I, which deals with “Crimes against the foundations of national security” and includes Article 111-1, did not change its name when the concept of ‘criminal offence’ was introduced. This is because all the articles in this section were classified as ‘crimes’ based on the classification of criminal offences provided for in Article 12 of the Criminal Code of Ukraine. However, with the introduction of Article 111-1, which includes criminal offences in parts 1 and 2, there is a question about the discrepancy between the section title and the public danger of the acts for which liability is provided. To address this, the section was decided to be renamed by replacing the word ‘crimes’ with ‘criminal offences’ [5, c. 323].

V. Navrotskyi believes that a promising approach to developing criminal legislation, especially in terms of regulating offenses against the foundations of national security of Ukraine, is to focus on the general elements of criminal offenses. Due to the high level of public danger posed by such attacks, they should be criminalized by establishing specific articles in the Criminal Code of Ukraine. Additionally, any amendment or change to the criminal law should be required to correlate with the existing legislative provisions [6, p. 21].

Some foreign examples of regulating criminal liability for crimes against national security are examined to explain their concept.

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For instance, according to the Criminal Code of Georgia, imprisonment is prescribed for activities that involve attempting to transfer all or part of the state's territory to a foreign state. This also applies to entering into unconstitutional agreements or negotiations, and the illegal seizure of military control [7, p. 191].

The Criminal Code of the Republic of Lithuania establishes penalties for collaborationism and abuse of official powers by the state leadership in their dealings with foreign states or public organizations, if such behavior is not in the best interests of the Republic of Lithuania and has resulted in or could lead to significant losses [7, p. 191].

The Criminal Code of Poland includes provisions for punishing individuals who attempt to harm the state while acting on behalf of the government in dealings with a foreign state or organization. It also imposes penalties for providing false intelligence to the Republic of Poland, if the Polish authorities were deceived by the concealment of true information or the reporting of false information that is significant to the Republic of Poland. Additionally, the law establishes consequences for publicly insulting the nation or the Republic of Poland, which could lead to imprisonment for up to three years [7, p. 191–192].

The German Criminal Code includes provisions for liability for preparing and inciting aggressive war, high treason, preparing for high treason, continuing the activities of a party declared unconstitutional, and publicly insulting the federal President, state symbols, and constitutional bodies [7, p. 192].

The Criminal Code of Switzerland includes provisions for holding individuals accountable for attempting to change the Constitution of the Confederation or a canton through the use of force, for unlawfully removing constitutional state bodies from office or preventing them from performing their duties, and for attempting to separate a Swiss territory from the Confederation or a territory from its canton [8, p. 505–506].

The Criminal Code of the Republic of Latvia imposes liability for the disclosure of military information that does not constitute a state secret, as well as for the disclosure of official secrets—information that is not meant to be made public. There is also liability for disclosing non-public information after leaving office [9, p. 148].

The Criminal Code of the Republic of Estonia includes laws regarding criminal liability for revealing state secrets. This means that sharing or illegally passing on information that is considered a state secret is punishable by law, depending on the level of secrecy [9, p. 149–150].

Similarly, the Criminal Code of Ukraine addresses criminal offenses related to the protection of state secrets in Chapter XIV. This section outlines offenses concerning the protection of state secrets, the integrity of state borders, conscription, and mobilization [3].

The Criminal Code of the Republic of Armenia establishes liability for the following actions: usurpation of state power, which refers to actions aimed at the violent seizure or retention of state power in violation of the Constitution of the Republic of Armenia, as well as the violent overthrow of the constitutional order of the Republic of Armenia or violent violation of its territorial integrity; public calls for the violent seizure of state power or violent change of the constitutional order of the Republic of Armenia; and assassination of a state, political, or public figure with the aim of terminating their activities [10, p. 164].

The primary objectives of Ukraine's national security criminal-legal protection strategy, as highlighted by L. Demydova, are still relevant. These objectives include the development of a plan to enhance Ukraine's criminal legislation, particularly in the construction of its Special Part; the advancement of theoretical approaches to safeguarding Ukraine's national security foundations within the context of national and international security; the refinement of criminal law policy to protect Ukraine's national security foundations, considering ongoing monitoring of the country's socio-political landscape, crime patterns, and the anticipation of new internal and external threats; the enhancement of criminal law protection for Ukraine's territorial integrity and the functioning of democratic institutions across its territory; the reinforcement of legal protection for the activities of the Ukrainian Armed Forces and other lawful military entities during special periods to ensure national security and territorial integrity restoration; the establishment of mobilization training systems and conditions for staffing the Ukrainian Armed Forces, other law-abiding military entities, and civil defense services during special periods; the reinforcement of criminal

liability for violations of critical infrastructure facilities, such as energy, transport, and the defense-industrial complex; and the improvement of criminal law protection for state secrets, state information resources, electronic governance systems, and technical and cryptographic information protection, while considering best practices from developed countries, among other measures [11, p. 9–10].

M. Karchevskiy points out that historically, the concept of information security in criminal and legal discourse was mainly focused on protecting state secrets from being leaked. This narrow focus is reflected in the Criminal Code of Ukraine (part 1, Article 111), where it is only mentioned in relation to liability for treason.

Karchevskiy argues that this limited view does not align with the increasing use of information technology and the need for legal regulation to protect social relations. He believes that criminal law should not narrowly define information security as solely protecting state secrets, as the threats to information security extend beyond the leakage of classified information [12, p. 6–7]. He suggests that information security should be seen as a system of social relations that ensures the fulfillment of information needs for citizens, society, and the state. This includes ensuring access to information resources, forming information resources, and maintaining the functioning of information technologies as means of accessing and forming information [12, p. 8–9].

V. Anishchuk also emphasizes that information security aims to prevent harm caused by biased information that leads to false and illegal dissemination, use, and distribution of information [13, c. 142–143].

Foreign experience in protecting critical infrastructure is valuable. For instance, in Germany, the protection of critical infrastructure is primarily the responsibility of the Federal Office for Information Security, the Federal Office for the Protection of the Constitution, the Federal Office for Civil Protection and Disaster Management, the Federal Criminal Police, and the Federal Agency for Technical Assistance [14, p. 264].

In Poland, critical infrastructure encompasses elements that ensure the security of the state and its citizens, as well as the effective functioning of state administration bodies and business institutions [14, p. 264]. In France, critical infrastructure facilities are defined as institutions, production facilities, and facilities that provide goods and services essential for the functioning of society [14, p. 264].

Conclusion. The current state of criminal liability for crimes against the foundations of national security in Ukraine requires further comprehensive research and improvement of legal regulations. We consider addressing inconsistencies regarding the title of Chapter I of the special part of the Criminal Code of Ukraine, “Crimes against the foundations of the national security of Ukraine”, and the content of the relevant articles included in it, to be necessary.

This section should enforce criminal liability for all actions that threaten Ukraine’s national security. Therefore, new articles should be included to establish criminal liability in the areas of protecting state secrets and critical infrastructure, expand the protection of information security, and penalize actions aimed at harming the state by a person authorized to act on behalf of the state in relations with the leadership of a foreign state or organization. Additionally, criminal liability should be determined for individuals who publicly insult the Ukrainian people or Ukraine.

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КРИМІНАЛЬНА ВІДПОВІДАЛЬНІСТЬ ЗА ЗЛОЧИНИ ПРОТИ ОСНОВ НАЦІОНАЛЬНОЇ БЕЗПЕКИ: ВІТЧИЗНЯНИЙ ТА ЗАРУБІЖНИЙ ДОСВІД

У статті розглянуто питання кримінальної відповідальності за злочини проти основ національної безпеки на прикладі вітчизняного та зарубіжного досвіду окремих країн.

Зокрема, досліджено досвід Литовської Республіки, Латвійської Республіки, Естонської Республіки, Грузії, Республіки Вірменія, Республіки Польща, Швейцарії, Федеративної Республіки Німеччина та Французької Республіки з питань законодавчого регулювання кримінальної відповідальності за злочини проти основ національної безпеки.

Зроблено висновок, що станом на сьогодні питання кримінальної відповідальності за злочини проти основ національної безпеки України потребує подальшого всебічного ґрунтовного дослідження та відповідно вдосконалення правового регулювання. Пропонується усунути неузгодженості щодо назви розділу I особливої частини Кримінального кодексу України “Злочини проти основ національної безпеки України” та змісту відповідних статей, які входять до нього.

Також важливим є питання, щоб даним розділом була передбачена кримінальна відповідальність за всі діяння, які становлять загрозу для основ національної безпеки України. Так, видається за доцільне, включити до нього статті, які б передбачали кримінальну відповідальність у сфері охорони державної таємниці, захисту критичної інфраструктури, розширити питання охорони інформаційної безпеки, встановити відповідальність за вчинення дій, спрямованих на завдання шкоди державі особою, яка уповноважена виступати від імені держави у відносинах з керівництвом іноземної держави або іноземною організацією та публічну образу Українського народу чи України.

Ключові слова: національна безпека; кримінальна відповідальність; держава; злочини; державна зрада; критична інфраструктура; інформаційна безпека.