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Economic Collaborative Activities to the Detriment of the State's Sustainable Development: Characteristics of the Criminal Offense and Peculiarities of Judicial Practice

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ABSTRACT

The aim of this research is to analyze the elements of the crime enshrined in the Art. 111-1 of the Criminal Code of Ukraine (CCU) from the perspective of encroachment on the sustainable development of Ukraine, the specifics of qualifying economic collaborationism, as well as court practice on this issue. The indicated methods were applied in the course of the research: formal and logical; dialectical; monographic; dogmatic; systemic-structural; statistical; legal modeling; summarization. Throughout legal characteristics of collaborationism is provided. The focus is directed to the features of the objective side of the crime that reflects the most common options for voluntary cooperation with the aggressor state during temporary occupation. The need to provide legal certainty to the concept of "voluntary" cooperation with the aggressor State is substantiated. It is noted that the subjective side of collaborationism is marked by direct criminal intention, and some parts of this provision also have a special purpose. Types and forms of collaborative activities are highlighted. The features of economic collaborationism are considered. The judicial practice on this issue is studied. It is concluded that the longer our state's territories remain under occupation, the more collaborationism spreads, hindering one of the main objectives of stable country's developing: conflict and post-conflict resolution of public security.

Keywords: collaborationism, economic collaborationism, sustainable development, Criminal Code of Ukraine, judicial practice.

1. Introduction

Sustainable development is one of humanity's key goals, as the success of this policy determines not only prosperity and economic leadership, but also the very existence of the current social, political, climatic, and security order. As a member of the international community, Ukraine is also committed to following this course, constantly improving and increasing its development indicators in all spheres of public life.

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An inclusive process of adaptation of the Global Sustainable Development Goals was initiated in order to determine strategic priorities for the development of Ukraine until 2030. Each global goal has been analysed and adjusted according to the national context and country-specific development. Goal 16 provides for the development of peace, justice, and strong state institutions. One of the tasks of this goal is to strengthen social stability, promote peacebuilding and public safety (conflict and post-conflict resolution) (Ministry of Economic Development and Trade of Ukraine, 2017). Along with the outbreak of full-scale war on the territory of our state, collaborationism has become one of the most serious threats to the fulfilment of this task. Accordingly, a detailed study of this negative phenomenon will contribute to its effective overcoming and the implementation of the tasks set before Ukraine.

The need for legislative consolidation of criminal liability for collaboration activity is primarily due to the fact that after the occupation of some Ukrainian territories by the aggressor country (Russian Federation), and then its full-scale invasion, some citizens and legal entities, betraying national interests, began to facilitate this country in carring out acts of aggression and deploying further military conflict against our State. Collaborators support the armed formations and occupation administrations of the aggressor state, which are qualified as collaborationism. That is why, starting from the beginning of the full-fledged war, the Verkhovna Rada introduced new articles to the Criminal Code for cooperation with Russia. As of August 1, 2024, 8464 criminal proceedings have already been initiated under the article "Collaborationism" (Article 111-1) and another 130-2 under a similar article "Assistance to the aggressor" (Article 111-2).

However, in the law enforcement agencies' practice, there are numerous cases where the same act is qualified under multiple articles during the investigation, and these articles themselves contain an element of legal uncertainty. This can lead to a significant number of overturned and amended court rulings, as well as appeals to the ECtHR. There are numerous opinions (both in academia and in practice) that different collaborationism manifestations extend to a number of individuals. National legislation has implemented a framework according to which certain forms of economic collaboration are equivalent to military one. However, according to the rules of international humanitarian law, this issue requires detailed investigation, as this sphere is critically important for the civilian population in occupied territories during an armed conflict.

The purpose of the research is to analyse the elements of the offense enshrined in Art. 111-1 of the CCU from the perspective of encroachment on the foundations of national security of Ukraine, the specifics of qualifying economic collaborationism, as well as court practice on this issue.

2. Methodology

The coverage of the outlined issues was promoted by applying the appropriate methodological tools covering general and specific scientific approaches. Particularly, the method of formal logic was used for the detailed investigation of the institution of collaborationism in general and its elements in particular. With the aid of dialectical approach, the characteristics of this criminal offense was provided. Monographic method contributed to the study of scientific views on the criminalistic characteristic of these socially dangerous acts and the problems of their investigating. Dogmatic method was invoked to the interpretation of the main legal categories and clarification of the conceptual-categorical instruments of the study. Systemic-structural method was helpful in determining the acts, which are considered collaborationism, as well as highlighting its forms and types. Statistical method made it possible to examine judicial practice on the issue under study. Legal modelling method helped in identifying current problems related to investigation of this offense, in particular its economic type. Using summarization method, the conclusions resulting from the study were formulated.

3. Literature review

The key difference between treason and collaborationism lies in their context: if treason is relevant during any military conflict, then collaborationism is inextricably linked to the fact of occupation and cooperation with the occupier. This differentiation takes on particular importance in the context of the contemporary challenges generated by the imperialist policy of Vladimir Putin's totalitarian regime (Dzhuzha, Vasylevych & Tychyna, 2023).

The term "collaborationism" is interpreted as voluntary co-operation of certain groups or strata of the population of occupied territories with the occupiers. Scholars believe that collaborationism involves a political agreement with the occupier and "cooperation" with the occupation authorities in civilian sectors, as well as "co-belligerence" on the side of the occupation forces (Dereiko, 2007).

The academic discourse on collaborationism highlights its conceptual complexity and multifaceted nature. P. Digeser (2022) argues that the concept's inherent ambiguity facilitates political manipulation and abuse. He points to the fundamental challenge of distinguishing between conscious cooperation with an occupier and the necessary survival strategies of a wartime populace, a dilemma prevalent throughout Nazi-occupied Europe. To further refine this analysis, Digeser also introduced the concept of "gender collaborationism".

Collaborationism is the conscious, voluntary, and intentional collaboration of Ukrainian citizen with the enemy (occupier, country-aggressor, etc.), in the interests of the latter and at the expense of his/her own State (in political, informational, economic, and other spheres) (Illarionov, 2017). At the same time, the key to qualifying collaborationism under Ukrainian legislation is proving intentional and voluntary cooperation. Voluntariness will be the main subject matter of proof after the liberation of the occupied territories. The law provides for circumstances excluding criminal liability, even if a person's actions formally fall under the definition of collaboration. These circumstances include physical or mental coercion (Art. 40 of the Criminal Code) and extreme necessity (Article 39 of this act). For example, if a mayor, under pressure from the occupiers, makes public calls for cooperation, his actions will not be a crime if it is proven that he was subjected to insurmountable physical coercion (torture) that deprived him of his free will. If the coercion was surmountable (psychological pressure, threats), the question of responsibility is decided through the prism of extreme necessity. To do this, it must be established that there was no other way to eliminate the danger and that the harm caused did not exceed the harm prevented. Meanwhile, it should be remembered that an attack on a person's life is always more significant harm.

Collaborationism is a criminal phenomenon, but it is multifaceted and influences consciousness not only from the perspective of the traitor's (collaborator's) interests but also encompasses an ideological component. In addition to these motives of the collaborator, there is also a third component of collaborationism, which includes forced collaborationism, when an individual or a certain group or stratum of the population finds itself in a temporarily occupied territory.

Ya. Hrytsak (1996) adheres to this standpoint, stating that collaborationism is the cooperation of the population of conquered states with the occupation regime, and distinguishes its following types: forced, voluntary, ideological. However, it is unclear what the author meant by the term "conquered states," as collaboration activity, in our opinion, is possible only in the temporarily annexed areas of the country. In the conquered territories of an entire state, the concept of collaborationism loses its categorical meaning, as, one way or another, all citizens will be forced to work for the aggressor country, complying with and adhering to its laws.

O. Holovkin and I. Skazko (2018) interpret collaborationism as a willful act of Ukrainian citizen, consisting in the performance of managerial (organizational or administrative) functions in illegal bodies, institutions or state enterprises on territories not controlled by Ukraine. Such actions

are classified as a crime because they damage the sovereignty, territorial integrity, defensive capacity and state, economic or information security of Ukraine.

N. Antonyuk (2022) highlights the following types of collaborationism:

military – involves direct participation in the occupier's military, police, intelligence, or counterintelligence apparatus;

economic – encompasses any cooperative activity within the economic sector under occupation;

cultural or spiritual – refers to engagement with occupiers in the cultural sphere, historically observed as a means to cultivate public loyalty, propagate supremacist ideologies, and bolster the psychological state of the occupying forces;

domestic – describes the formation of amicable personal relationships between the local population and the occupiers;

political or administrative – signifies cooperation with or service within the political and administrative structures established by the occupying power.

S. Kalyvas (2008) also provides a typology, specifically investigating military and armed collaboration, and examines their theoretical underpinnings through frameworks of indirect rule and civil war dynamics.

4. Results and discussion

With the commencement of the full-fledged invasion of our country by the RF in 2022, the criminal legislation of Ukraine was complemented with Art. 111-1 "Collaborative Activities". The Criminal Code of Ukraine (2011) establishes a detailed legal framework for collaborationism. The relevant provision is structured into eight parts: the first 7 define distinct forms of collaborative activity, while the 8th one outlines an aggravated offense for acts that lead to fatalities or other grave consequences. These forms of collaboration can be systematically grouped into three main categories: 1) ideological, cultural, and educational collaborationism, which includes propaganda and information campaigns directed at legitimizing the temporary invasion of Ukrainian territories (Parts 1, 3, and 6); 2) administrative and military-political collaborationism that encompasses participation in illegal governing bodies or military units established by the aggressor state (Parts 2, 5, and 7); 3) economic (financial) collaborationism, which involves providing material or financial support to the aggressor state's illegal entities.

According to Article under consideration, collaboration is defined as intentional actions that undermine national security by directly threatening territorial integrity, sovereignty, and constitutional order of Ukraine. It involves conscious and voluntary cooperation with an enemy, carried out for the benefit of the enemy and to the detriment of Ukraine. Specific forms of this crime include public acts by a Ukrainian citizen, such as refuting the armed aggression against his/her country; validating the temporal occupation of Ukrainian territory; advocating for support of or engagement with the aggressor state, its military units, or its occupational administration; and disputing Ukraine's domain over the territories that are its temporarily occupied".

Within this formulation, a question may arise concerning the limits of freedom of expression and criminal liability for collaboration. Here we should state that Art. 111-1(1) defines specific offences related to information collaborationism. These are public actions of Ukrainian citizen, which may consist either in denying key facts (armed aggression, temporary occupation) or in calling for support of the occupier, cooperating with it or non-recognition of Ukrainian sovereignty over annexed territories. The public nature of these crimes is a prerequisite; this means that objections or appeals must be addressed to an undefined circle of individuals, regardless of the form in which they are disseminated – whether in real communication, on the Internet or through the media. It is the publicity supported by evidence (such as witness testimony) that is an important

indicator of a collaborator's willingness to act, which simplifies the evidentiary process for law enforcement.

At the same time, in our view, some remarks should be made regarding the powers of citizens who are in the occupied territory and engaged in collaboration activities. Indeed, some rules contain signs of performing organizational-administrative and/or administrative-managerial functions (Parts 5–7, Art. 111-1 of the Criminal Code of Ukraine (2011) (CCU)):

- any voluntary act by a Ukrainian citizen to occupy an organizational-managerial or administrative-economic position within illegal governing bodies in temporarily occupied territories, including the aggressor state's occupation administration, constitutes collaborationism. This also extends to voluntarily seeking or accepting election to such bodies, or actively participating in, or publicly advocating for, the organization and conduct of illegal elections and/or referendums in those territories (Part 5 of Art. 111-1 CCU);

- organization and conduct of activities of a political nature, performing information activity in collaboration with the aggressor State and/or its occupation administration, aimed at supporting them or their armed formations, and/or avoidance of its responsibility for armed aggression against Ukraine, in the absence of signs of high treason, active participation in such activities (Part 6 of Article 111-1 of the Criminal Code of Ukraine);

- committing acts that qualify as treason by a citizen of Ukraine: voluntary cooperation with the occupying authorities in temporarily occupied territories, in particular, holding positions in illegal courts or law enforcement agencies, participating in hostilities on the side of the enemy, or providing assistance to enemy armed forces (Part 7 of Article 111-1 of the Criminal Code of Ukraine).

However, most rules of the said article provide for criminal liability for collaboration activity not connected to performing the aforementioned functions:

- publicly denial of the Russia's armed aggression against Ukraine or calling for support for the actions of the aggressor, its armed formations, the occupation administration, and cooperation with them. This also includes denying Ukraine's state sovereignty over the temporarily occupied territories;

- voluntarily holding positions in illegal authorities established in the occupied territories, if these positions do not involve organizational, administrative, or economic powers;

- conducting propaganda in educational institutions with the aim of justifying Russian aggression, legalizing the occupation, avoiding responsibility for the aggressor, and introducing Russian educational standards. It should be noted that this part is worded in such a way that it does not exclude the possibility of collaborationist activity in the actions of individuals performing organizational-managerial or administrative-economic functions in educational institutions. These may be heads of educational institutions or their deputies.

If we analyze the crime provided for in Part 4 of Article 111-1 of this Law, it concerns: the provision of resources (transfer of material assets (equipment, fuel, food, etc.) to illegal military or paramilitary groups operating in the occupied territories, or to the armed forces of the enemy); economic cooperation (conducting business or any other economic activity jointly with the aggressor state or its occupation structures). These crimes can be committed by both ordinary citizens and persons in leadership positions.

As one can see, the dispositions of the Article 111-1 describe separate elements of criminal offenses (Parts 1, 2 – criminal misdemeanors; Parts 3, 4 – non-serious offences; Part 5 – serious crime; Parts 6, 7, 8 – particularly serious crimes), which essentially reflect the most common forms of collaborationist activity that can be carried out during the period of military aggression against Ukraine and temporarily invasion.

As the practice of combating collaborationist activity indicates, there are numerous instances of incorrect qualification, where the same action (or omission) is criminalized under a few

articles containing an element of legal uncertainty. This may be resulted in a great number of overturned and amended verdicts in the future, as well as their appeal to the ECHR (Holovkin & Skazko, 2018). Concurrently, there is favorable practice in handling criminal matters in relation to the article under consideration. We believe that courts generally correctly apply substantive and procedural law when considering cases related to collaborationist activity. We also stress on the importance of the courts' strict and unwavering adherence to the provisions of criminal procedural law regarding ensuring the rights of participants in the proceedings, especially the accused in the case. Ensuring the right to access to justice, the right to defense for the accused, and at the same time transparency in the judicial process are important principles of the judiciary. Implementing the principles of publicity and transparency in criminal trial leads to the realization of the principle of the rule of law and, concurrently, plays an important role in preventing crime and fostering a respectful attitude towards the current legislation of the state.

Let us turn to some conclusions of the Supreme Court on the issue under consideration. Thus, according to the case № 202/13808/23, the defense counsel raises the issue of changing the court decisions regarding the accused on the grounds of substantial breach of procedural law and incorrect application of criminal liability law. In support of his claims, the defense counsel notes that in this criminal proceeding, accused's actions are incorrectly qualified under Part 7 of Article 111-1 of the Criminal Code of Ukraine (providing assistance to illegal armed or paramilitary groups created in the temporarily occupied territory and/or in the armed forces of the aggressor state in conducting hostilities against the Armed Forces of Ukraine and other military formations), while they should be qualified according to Part 2 of Article 114-2 (preventing legal activity of the Armed Forces of Ukraine and other military formations, that have led to loss of life or other severe effects).

The panel of judges notes that, based on the above, an inherent feature of all criminal offenses constituting collaboration is the existence of stable ties of the subject of these offenses with the relevant occupied territory, outside of which the phenomenon of collaborationism cannot exist. In the case of committing the relevant acts by persons who have no ties with the temporarily occupied territory, even if such a person is a citizen of Ukraine, but resides in other areas, such acts are not collaboration in nature, and therefore they must be qualified under other articles, in particular, as in this criminal proceeding under Art. 114-2 of the CCU. The Court concludes that interaction with the enemy can be remote, which is a specific feature of primarily information acts that can be committed to the detriment of the State both in the territory that is temporarily invaded and in the territory controlled by Ukraine, or even abroad. However, even recognizing the possibility of contactless interaction with the enemy should not change the social and legal nature of collaboration as such, which exists only in the occupied territories (Supreme Court of Ukraine, 2024, December 10).

In the proceedings No. 183/184/23 the Supreme Court defined criteria for criminalization of collaboration activities. Thus, according to the verdict, the person was found guilty and sentenced to arrest for the 3 months' period disqualified from positions related to organizational and managerial functions in educational institutions for a term of 10 years, for acting as the head of the education department during the temporary occupation of Kupiansk (Kharkiv region). Acting with direct intent, she introduced the Russian curriculum in the above-mentioned educational institution; in particular, students were given textbooks in Russian according to Russian educational standards, and she also called on other persons to cooperate with the aggressor state by sending messages to teachers about collaborating with the occupying powers.

According to the panel of judges, the court of appeal did not take due notice to the issue that the accused committed a crime, which poses a great public danger; carried out actions targeted at introducing the aggressor state's norms of education in training institutions during martial law, and therefore the basic punishment of arrest imposed on her does not comply with the general

principles of sentencing, legality, fairness, validity and customization of penalty and will not contribute to correcting the perpetrator and prevent the commission of new offenses.

In view of this, the Supreme Court believes that in the above circumstances, the imposition of a basic punishment of arrest on a person is a misapplication of the criminal liability law. Therefore, the verdict of the court of appeal must be canceled with asking for a new trial in the appellate court, during which it is necessary to take into account the above and make a lawful and reasonable decision (Supreme Court of Ukraine, 2024, January 29).

According to the case file No. 638/5446/22, the accused claimed that he had assumed the post of acting director of the utility company of the self-proclaimed "Kupiansk district military and civil administration" (Kharkiv region) under mental and physical pressure from the occupiers, and therefore believed that he could be released on probation.

In this regard, the Supreme Court noted that in criminal law, an act committed when several options of conduct can be chosen, taking into account the cumulative circumstances that may rule out a criminal offence, but which the courts did not establish in this criminal proceeding, is considered voluntary. The panel of judges considers the defense's arguments that his client took the post of acting director of the municipal enterprise in the structure of the occupation administration of the aggressor state not voluntarily, but due to physical and mental coercion by the occupation forces of the terrorist country of the Russian Federation unfounded. Witnesses' testimony confirms the voluntary occupation of this position in the absence of physical or mental coercion. Besides, no evidence was provided that the accused did not have the opportunity to refuse this position, and no evidence of mental coercion, threats and physical coercion against the him was established. Accordingly, the decisions of the courts of previous instances were upheld (Supreme Court of Ukraine, 2024, January 31).

In accordance with the case No. 161/12980/22, the defense counsel argued that his client's actions were indirectly motivated by a mercenary motive and a false sense of careerism, using the fact of the establishment of occupation authorities in the area of the Markivska commune (Luhansk region) in his personal interests, with the aim of taking a position in the illegally created body, the socalled procuratorate, do not refute the validity of the above conclusions of the lower court and the appellate court regarding the presence of direct intent in the actions of the accused.

In its turn, the Supreme Court focused on the matter that criminal liability for actions under Part 7 of Art. 111-1 of the Criminal Code of Ukraine (Collaborationism) occurs in case of voluntary holding of a position by a citizen of Ukraine in illegal judicial or law enforcement bodies established in the temporarily occupied territory.

The social danger of the criminal offense provided for by Art. 111-1 of the Criminal Code of Ukraine is in the fact that a person (collaborator), using the conditions of martial law, cooperates with the occupation authorities to the detriment of their own state, thereby consciously assisting the aggressor in creating a structure of illegal governing bodies. The public danger of this crime lies in the fact that a person (collaborator), using the conditions of martial law, cooperates with the occupation authorities to the detriment of his own state, thereby deliberately (consciously) assisting the occupying forces to establish illegitimate powers. That is, if the collaborator knew about illegal character of his actions, anticipated their negative impact, and wanted it to occur, it can be confidently asserted that the person had direct intent to commit the crime provided for by Art. 111-1 of the CCU (Supreme Court of Ukraine, 2024, February 08).

Another interesting decision on this issue is one in case No. 953/406/23. According to its materials, the convicted person refers to the misapplication of the criminal liability law, which he sees in the incorrect qualification of his actions under Part 7, Art. 111-1 of the CCU. He believes that his actions, which were expressed in the voluntary occupation of the position of a driver, which provided for the management of property in the form of vehicles, as well as the write-off of fuel and lubricants, should be qualified under Part 5 of the aforementioned norm as taking volunteer

post related to administrative and business functions in illegal authorities established in the temporarily invaded areas. He stated that he did not perform any functions inherent in law enforcement officers.

To justify its position, the Court turned to the case No. 633/195/17, in which the Grand Chamber concluded on the interpretation of the term used in some articles of the CCU, namely "law enforcement officer" and noted that in deciding whether a person is a law enforcement officer, it should be taken into account that systematic analysis of the legal acts regulating the status of the public authority with which a person is in an employment or service relationship; powers of the employee in accordance with his/her job description, which provide for performing law enforcement activity, in particular, the use of preventive and coercive measures defined by law, as well as measures provided for by criminal procedure legislation and legislation on administrative offenses; legislation on pension provision for the relevant category of employee. However, the construction of Part 7 does not use this concept, and therefore the reference to the abovementioned Grand Chamber's decision in this matter is irrelevant. Accordingly, the judges summarized that the actions of the convict were correctly qualified under Art. 111-1(7) (Supreme Court of Ukraine, 2024, January 22).

We believe that the activity of a collaborator associated with facilitating the formation and functioning of the aggressor state's apparatus is, in general, the most socially dangerous form of collaboration activity. Based on the analysis of scientific sources, three key signs of collaborationism can be identified: 1) Subject and purpose: collaborationism is the activity of individuals (mainly citizens of Ukraine) who voluntarily cooperate with the aggressor, damaging the interests of their own country. 2) Conditions of commission: these acts are committed during the military occupation of a certain territory. 3) Voluntary or coercive: such cooperation may be both voluntary and forced (compulsory) (Trehub, 2024).

Prior to the adoption of the Law of Ukraine No. 2108–IX (2022), by which the Criminal Code of Ukraine was supplemented with Article 111-1, certain forms of collaboration activity fell under the elements of the crime provided for in Part 1 of Article 111 of the Criminal Code of Ukraine (for example, participation of Ukrainian citizen in illegitimate military formations on invaded areas or assisting them falls under the definition of state treason in the form of transition to the side of the enemy in conditions of martial law or during armed conflict), while other forms are not a criminal offence (for example, occupying by Ukrainian citizen a post not connected to performing managerial and business functions in outlaw authorities).

Concurrently, among the 8 parts of the prohibitive norms of Art. 111-1 of the Criminal Code, which enshrine liability for collaboration activity, the greatest difficulty in qualification, in our opinion, is presented by assistance to the occupiers through the transfer of resources to the illegal armed forces in the invaded areas or to the troops of an aggressor state, as well as doing business with an aggressor state or its outlaw powers (Part 4 of Art. 111-1 of the Criminal Code of Ukraine).

The crime provided for in Part 4 of Art. 111-1 of the Criminal Code of Ukraine (2010), "collaboration activity," is classified as a non-serious crime by its degree of social danger (punishable by a fine of up to 10 000 non-taxable minimum incomes of citizens or imprisonment for a term of 3 to 5 years, with deprivation of the right to hold certain positions or engage in certain activities for a term of 10 to 15 years, and with confiscation of property).

The legal nature of the crime provided for in Part 4 of Art. 111-1 of the Criminal Code of Ukraine is characterized by transferring material resources and conducting business activity with the occupier. Let us examine these aforementioned elements of collaborationism in more detail.

In the science of criminal law and law enforcement there are various opinions on the manifestations of collaborationism, specifically: economic, military, and humanitarian. National legislation includes a practice whereby certain forms of so-called "economic" collaborationism are

equated with military collaborationism. In our view, this has an extremely bad effect on the qualification of crimes and, within population, undermines the authority of the judicial and law-enforcement spheres. However, according to the humanitarian law norms, this issue demands in-depth examination, as this sphere is critically vital for the civilian population under occupation during an armed conflict (Trehub, 2023). In a practical guide on the criminal-legal assessment and differentiation of criminal collaboration in under military aggression, the representatives of the Security Service of Ukraine noted the need to improve the aforementioned norm and to comprehensively clarify it through all possible means, in a manner that ensures its unambiguous perception and interpretation (Vasylenko, 2022).

The OHCHR made several critical observations regarding the substance of the provisions and the normative formulation of Art. 111-1 in its report on the situation with observing human rights in Ukraine (01 August 2022 – 31 January 2023). Restrictions on human rights must be implemented under strict conditions: they should be set by a law formulated with sufficient precision to allow people to regulate their behavior (Zhydkov, 2024). Consequently, the issue of researching collaborationism from the perspective of judicial practice and the provisions of international legal acts remains complex and requires further exploration of how to regulate societal relations to protect national security of our State.

The dispositions of 8 sections of Art. 111-1 contain 24 separate constituent elements of criminal offenses, reflecting the most common forms of collaboration activity that can manifest during the period of military aggression and temporarily invasion. However, the most complex and disguised forms of collaborationist activity involve the transferring material resources to the aggressor, and/or conducting business activity with it, its bodies or administrations on the invaded areas (Part 4 of the article under study). This is primarily explained by the complexity of engaging in economic activity due to the significant number of diverse legislative and industry-specific regulations and prohibitions. Consequently, some citizens violate the law without knowing its requirements, while others, conversely, seek ways and means to evade responsibility for committing these unlawful acts. Therefore, there is the need to examine and analyze in detail the aforementioned manifestations of collaborationism.

The national security of Ukraine is the primary object of the offense enshrined in Art.111-1(4) of the CCU, as the provisions of this norm protect the foundations of the Ukrainian state, society, and people – independence, integrity, sovereignty, inviolability, and the constitutional regime. Material resources constitute one of the forms of unlawful activity; that is, they are the subject matter of the crime.

"Inventories" (material resources) include: *materials (raw materials, primary and secondary materials, components, and other tangible assets for production, distribution, and administrative purposes); *work in progress (partially processed/assembled parts, assemblies, products, and unfinished technological processes); *finished goods (products manufactured by the enterprise for sale that meet contractual or regulatory requirements); *merchandise (tangible assets purchased for resale); *low-value and quickly wearing items (items used for up to one year or one operating cycle); *current biological assets (as measured under this Standard) and initially recognized agricultural/forestry products) (Ministry of Finance of Ukraine, 1999).

The term "inventories" appeared in domestic academic literature during the formation of accounting in Ukraine to align it with international standards. Before the implementation of standards, the terminology varied ("goods and material valuables," "objects of labor," "material resources," "production resources"). With the adoption of national provisions consistent with International Accounting Standards, this term is defined as assets: a) to be sold as part of the main activity, b) to be in the production cycle for further sale or c) to be used to create products, perform tasks or ensure the operation of the enterprise (Mochernyi, 2005).

In legal literature, material resources are understood as:

- fixed and current assets of production that are used (or can be used) in the production process and form its material and physical basis;

- liquid assets controlled by the enterprise, which have a material form, and are in a continuous turnover process;

- material resources, component parts, and other tangible assets for manufacturing and administrative needs, management and accounting purposes (Melnyk, & Liubezna, 2006).

Being the objective side of the crime provided for in Art. 111-1(4), the transfer itself involves providing existing material support to the occupier, its armed formations, and/or the occupation administration. The presence of a direct addressee is defined in the disposition of the aforementioned norm (illegitimate military or paramilitary formations of the occupier or established in the temporarily invaded area). "Paramilitary" should be understood as formations that have a military-type organizational structure, namely: one-man command, subordination, and discipline, and in which military, drill, or physical training is conducted. "Armed formations" should be understood as militarized groups that illegally possess explosives, firearms or other arms. Military or paramilitary formations are illegal if their creation and participation are not stipulated by the Constitution of Ukraine or any other law. Such formations do not belong to any legitimate paramilitary or armed formations, as they do not have and cannot have any legal basis, or they may be created based on subordinate regulatory legal acts (for example, acts of local self-government bodies).

As one can see, conducting economic activity, is the voluntary activity by Ukrainian citizen (personally or through an economic organization created by them), carried out in interaction with the invader, and which is related to manufacturing, selling goods, execution of works, rendering services aimed at obtaining income. Such economic activity should be recognized as one of the types of collaborationist activity, as it is carried out in interaction with the occupier, illegal governing agencies in the invaded areas (occupation management included) (Vasylenko, 2022).

Such interaction stipulates that the business activity: is committed by an economic subject in the interests of the abovementioned counterparties; is committed by a joint enterprise of Ukraine and the occupier or occupation authorities; is committed under the governance of Ukrainian citizen. If we analyze the two concepts "in interaction with the aggressor state" and "in interaction with an economic entity of the aggressor state", it becomes obvious that these concepts are not identical, since, unlike government bodies, economic entities are not performers of functions and officials of the aggressor. Therefore, in each case, the determination of an economic entity's interaction with the aggressor state must be approached carefully, and all material circumstances of the case must be objectively assessed (Vasylenko, 2022).

According to scholars, "voluntariness" is an element of the objective side of the crime not only under Parts 2, 5, 7 of Art. 111-1 of the CCU, but inherent in all manifestations of collaboration activity, since the commission of coerced actions obviously changes the criminal-legal assessment of the committed act. If coercion was applied by the aggressor state for a person to transfer material resources or conduct economic activity, then criminal liability is excluded altogether. An important role in qualifying the offense under Art. 111-1 is played by the moment of its completion. Since Part 4 of the said article refers to transferring physical resources, the crime is considered completed from the moment these actions are committed. In accordance to the legislative structure of the objective element, the said crime has a formalistic composition. Its social danger lies in the fact that its commission encroaches on the national security of our country, and therefore, the commission of the relevant actions is sufficient for its completion (Kuznetsov & Syiploki, 2022).

Of no less importance in qualifying the said crime is the subject of its commission. In our opinion, the subject of the crime provided for in Art. 111-1 of the Criminal Code of Ukraine can only be a citizen of Ukraine, although such an indication is absent. It seems illogical to recognize a foreign citizen or a stateless person as a subject of this crime, as this is not specified in the law. Such

persons may be aiders to the aggressor state in accordance with Art. 111-2 of the Criminal Code of Ukraine.

The subjective side of the offense under study is marked by a willful form of guilt in the form of direct cause. Moreover, the dispositions of 8 sections of Art. 111-1 describe separate constituent elements of crimes according to their social danger level, namely: Parts 1, 2 – criminal misdemeanors; Parts 3, 4 – non-serious offences; Part 5 – a serious crime; Parts 6, 7, 8 – particularly serious crimes. This indicates the complex construction of the norm, which essentially reflects the most common forms of collaboration activity that may be carried out during the period of armed aggression against Ukraine and temporary occupation. Collaborators know about socially harmful character of their actions, foresee their negative impact that lies in in strengthening the capabilities or expanding certain opportunities of the aggressor state and desire to commit such actions. That is, this crime involves only intentional fault in the form of direct cause; a negligent form of guilt is impossible in this case.

Analyzing in more depth the crime stipulated in Art. 111-1(4), it should be noted that in judicial practice, there is no holistic approach to the law assessment of the registration by a citizen of Ukraine or a foreigner as an entrepreneur in the occupied territories and carrying out certain activities to secure their interests in accordance with the rules established by the occupiers. Here it is necessary to find out whether the said rules concern a form of business in collaboration with the attacker. From the perspective of law enforcement, this form of aiding the aggressor state is more complex, as it may also have a humanitarian character, enabling the provision of necessary life-sustaining attributes to the people in the occupied areas or the observance of human rights, and thus poses less social danger. This form of unlawful cooperation, although considered a manifestation of collaborationism, has a significantly lower social danger than so-called "military collaborationism" (Maliuk, 2023). Objectively, in most cases, such actions are identical to the ordinary labor activities of individuals who find themselves under occupation. Therefore, these people cannot be classified as collaborators in the full sense of the word.

The Geneva Convention (Art. 39) provides that civilians residing in occupied territory must be afforded the opportunity to obtain paid employment (Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, 1949). Collaboration activity that does not harm the state or its citizens, in the context of international law, indicates that the humanitarian component of voluntary cooperation of the population with the occupier is emphasized in international acts and should be taken into account in the criminal-legal qualification of such actions by collaborators (Maliuk, 2023).

In practical activities, situations arise where it is difficult to distinguish between lawful actions in the occupied territory and collaborationism. This indicates the need for a comprehensive approach to researching the issue of collaboration activity and distinguishing not only its forms but also the conditions under which it is carried out and its consequences (Vasylenko, 2022).

When characterizing business activities in the invaded territories, the requirements for the specifics of its implementation must be taken into account. Part 8 of Art. 13 of the Law of Ukraine No. 1207-VII (2014) which states: "During the regime of temporary occupation, the norms of regular legislation are not applied in the temporarily occupied territory". The content of economic activity and its definition are contained in Art. 3 of the Economic Code of Ukraine (2003), which enshrines that business activity is a way of doing business where companies or individual entrepreneurs produce and sell goods or services. The main goal of this activity is to generate profits and achieve certain economic and social outcomes. The Tax Code of Ukraine (paragraph 14.1.36 of article 14.1) defines economic activity as any activity related to production, sale of goods, execution of works or provision of services that is aimed at generating income. This activity may be carried out by the person himself, his units or other persons acting on his behalf (for example,

under commission contracts). If the economic activity is not aimed at profit, it is considered a non-entrepreneurial.

Based on the normative definition of the concept of business activity, we have to note that such activity cannot include the registration of an entity as an entrepreneur (State recording of legal persons, public formations without the legal entity status, and private entrepreneurs – is legal acknowledgment by certifying the fact of creating or terminating of a legal bodies, public formation without legal entity status, accreditation of the fact of a relevant status of a public association, trade union, its organization or association, political party, employers' organization, association of employers' organizations and their symbols, certification of the fact of acquisition or deprivation of entrepreneur status by an individual, changes in information contained in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Formations, about the legal nature and individual entrepreneur, as well as conducting other registration actions provided for by this Law (Law of Ukraine No. 755-IV, 2003).

Consequently, a mandatory prerequisite for conducting business is the registry of a person as an entrepreneur. However, such registration is not yet economic activity. As mentioned above, the norms of legislation are not applied in the temporarily occupied territory. The payment of fees (payments, etc.) for the right to use any software products in the business activities of the enterprise cannot be attributed to the economic activity. Since the wording "in interaction with the aggressor", indicated in Art. 111-1(4) of the CCU, is not identical to the wording "in interaction with an economic entity of the aggressor state", the economic entities, unlike government bodies, are not performers of functions and official representatives of the aggressor state. Participants in economic relations engaged in economic activity and exercising economic competence, possesses solitary property and are responsible for their obligations within this property, except for cases indicated by legislation, are recognized as business entities (Part 1 of Art. 55 of the CC of Ukraine).

According to Art. 55(2) of the CCU (2001), the entities of management include: 1) legal entities: economic organizations established under the Civil Code, public, communal and other enterprises established under the Civil Code, as well as any other legal entities, who are engaged in economic activity and have been legally registered; 2) natural persons-entrepreneurs: citizens of Ukraine, foreigners and stateless persons who carry out economic activity and are officially registered as entrepreneurs.

However, the submission of business and financial reports to tax authorities, statistical bodies, other similar bodies, etc., registration of lease rights under lease agreements for real estate (premises and/or land) in the corresponding registers, meeting the demand of supervisory bodies (tax, fire authorities, etc.), and appealing to judicial bodies cannot be classified as economic activity. Firstly, the very content of economic activity differs from other types of activities related to confirming or refuting legal facts, and secondly, as already mentioned above, the norms of regular legislation are not applied in the temporarily occupied territories.

According to the current law, Ukrainian citizens, foreigners, and individuals without citizenship have the opportunity to engage in economic activity under certain conditions of registration as entrepreneurs. Such activities include leasing and managing one's own or leased real property, buying and selling real estate, managing it on a contractual basis, participating in annual and unscheduled inspections of an economic entity's activities, and receiving funds from entrepreneurial activities.

Failure to comply with the above conditions casts doubt on such economic activity, as it does not comply with domestic legislation. Thus, Part 8, Art. 13 of the Law of Ukraine No. 1207-VII (2014) categorically prohibits the application of norms of regular legislation in the temporarily occupied territories. According to Art. 111-1(4), it is impossible to consider the conduct of economic activity in a broad sense by the relevant subject. Ignoring, and even more so, non-compliance with this provision can lead to adverse impact on the qualification of the said crime.

Such an incorrect approach to resolving this extremely important issue will contradict the principle of legal certainty, which requires lucidity, comprehensibility, and unambiguity of legal norms, in particular, the predictability of legislative policy in the social sphere and the stability of legal norms, meaning the absence of frequent amendments to regulatory legal acts. In accordance with the requirements of this principle, if the rules of law are ambiguous and a public authority is present in the dispute, the interpretation must be in favor of the citizen or business. This is because the state is obliged to create clear rules, and if it fails, it must bear the consequences of its failures. This principle is known as the most favorable interpretation for an unauthoritative subject (Vorobei & Kuznetsov, 2024).

The Office of the High Commissioner for Human Rights draws attention to an important aspect of normative technique, as all elements of a crime must be directly and precisely included in the legal definitions of crimes, which is not observed in Art. 111-1 of the CCU. This article enshrines criminal responsibility for conducting economic activity in interaction with the occupier or the occupation powers, but the sphere of such interaction is undefined (Zhydkov, 2024).

At the same time, there is the need to distinguish between the subject of crime and an economic entity under Russian legislation. If a citizen of Ukraine is registered as a private entrepreneur in the occupied territory according to the rules established by the occupation administration, it is obvious that he/she is an entrepreneur under Russian legislation. However, under Ukrainian legislation, he/she is not and cannot be an economic entity.

5. Conclusions

As one can see, the problem of collaboration activity indicates a number of unresolved matters connected to correct qualification, the state's criminal law policy in this area, and the respect for constitutional rights and freedoms of the individual and citizen in the temporarily occupied territory of Ukraine. Consequently, it is no coincidence that the greatest attention to this problem has been focused precisely on the activities of collaborators stipulated in Art. 111-1(4) of the criminal legislation.

Improving legislation on criminal responsibility for offenses against the national security of Ukraine will make it possible to recognize citizens who have embarked on the path of treason as guilty of committing these crimes qualitatively and without violations of the law and to prevent incorrect qualification and sentencing of those who remained in the occupied territory and are seeking means of subsistence for themselves and their families.

Based on the foregoing, it can be concluded that the Ukrainian legislation does not recognize as an economic activity the registration and conduct of business in the territories occupied by the aggressor, even if it is done for personal needs and in accordance with the order established by the occupation authorities. Because, firstly, the content of economic activity, according to the norms of economic and tax legislation of Ukraine, differs from other types of activities related to confirming or refuting legal facts. Secondly, in conformity with Part 8 of Art. 13 of the Law of Ukraine No. 1207-VII the norms of regular legislation are not applied in the temporarily occupied territory.

To address the important issue of the responsibility of persons who facilitated or are facilitating the Russian Federation (RF) in performing hostile actions, deploying military aggression against Ukraine, including supporting armed formations and occupation authorities of the aggressor, it is necessary to apply not only domestic legislation but also regulatory legal documents in the field of international humanitarian law, defining the legal position of the population in temporarily invaded areas.

If these provisions are neglected, then all Ukrainian citizens residing in the occupied territories automatically become possible perpetrators from the perspective of domestic legislation on criminal liability. Undoubtedly, this does not correspond to the humanitarian aim of the Criminal

Code of Ukraine and its obligations before international partners. As is known, Ukrainian legislation enshrines the provisions of international law; in particular, Article X of the Declaration of State Sovereignty of Ukraine states that Ukraine recognizes the primacy of universally recognized norms of international law (Verkhovna Rada of Ukraine, 1990). Active cooperation with international institutions will enable Ukraine not only to secure the citizens' rights and freedoms but also to successfully advance into the European community.

At the current stage of Ukrainian society development, it is important to recognize that collaborationism is not just a marginal form of unacceptable behavior – it is complex and widespread socio-political phenomenon that has a significant adverse effect on the preservation and progress of our state. The analysis indicated that cooperative activities threaten national security on several levels: undermine sovereignty and territorial integrity, destabilize society, violate international law and human rights, and reinforces the need for systemic reforms. Each of its numerous forms (political, information, economic, cultural etc.) has its own specific characteristics, motives, and consequences for both national security and the collaborators themselves. This requires a detailed study of each individual case to fully understand its impact. Thus, a clear understanding of these types of collaborationism is a necessary prerequisite for the adequate legal qualification of such actions and the development of effective state policy under conditions of occupation or military conflict. We must be aware that the longer our state's territories remain under occupation, the more collaborationism spreads, hindering one of the main objectives of stable development: conflict and post-conflict resolution of public security. Therefore, the research conducted in this article is intended to prevent and combat this phenomenon and ensure that our State achieves its goals and fulfills its obligations to the international community.

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