Collaboration with the enemy in war conditions. Polish-Ukrainian experiences

SCIENTIFIC EDITORS:
BEATA MARIA NOWAK, PAVLO FRIS

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Beata Maria Nowak,
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Reviewers:
PhD Jacek Pomiankiewicz
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INTRODUCTION

The tasks of criminal law, which consist in: protecting the most important social relations, benefits and human interests against illegal interference causing significant harm to society and the person, as well as regulating criminal legal relations arising in the event of committing a crime between authorized state bodies and the person who committed the crime. This act takes on particular importance in situations such as a state of war. Russia's treacherous aggression against Ukraine caused a number of problems that required an immediate response from the legislator, including in the field of criminal law protection.

When talking about Russia's aggression, it should not be associated exclusively with the events that began on February 24, 2022. This was, in fact, the beginning of the second stage - the „hot stage of aggression". The aggression itself began much earlier, in 2014, with Russia's annexation of Ukrainian Crimea and a part of Donbas. However, during the 8 years of the actual state of war in the country, despite the existence of objective premises that determined the need to adapt the applicable Ukrainian criminal legislation, taking into account appropriate socially harmful acts that were not provided for in the Criminal Code of 2001 (hereinafter referred to as the Penal Code), the legislator did not carry out any appropriate changes and additions to the Penal Code The reason for this was the legislator's failure to understand the presence of significant socio-psychological characteristics of the population of the Donbas and Crimea region in comparison with the other regions of Ukraine. As a result, after the aggression began, it turned out that a significant part of the population of these regions linked their future lives with Russia.

After their annexation in 2014, part of the population of these regions either directly or secretly joined the aggressor. This was manifested in a variety of activities - from purely external ones, related to spreading slogans such as „Putin come!", burning Ukrainian passports and accepting Russian citizenship, actually switching to the enemy's side - joining armed formations created by the enemy, moving to work in the organs occupation authorities, open cooperation with Russia's intelligence and counterintelligence organs or cooperation with the „silent" and hidden support of the aggressor.

After the beginning of the active phase of aggression in 2022 and the enemy's occupation of a large part of the territory of sovereign Ukraine, various forms of cooperation with the aggressor have not changed, but their number has increased, which had quite objective reasons related to the increase in the population in the occupied territories. This situation resulted in the immediate need to adapt Ukraine's criminal legislation, which was carried out in a relatively short time. Just 10 days later, a number of changes were introduced in the Penal Code. – responsibility for joint action was established (Article 111-1 of the Penal Code of Ukraine), a number of norms of criminal law were amended in terms of increasing responsibility for committing a crime during a state of war or state of emergency, etc. It should be noted that despite the haste with which these norms were adopted , they have generally played a positive role in strengthening the fight against a number of particularly harmful acts and have given law enforcement officers the right tool to fight those who committed them.

Over time, however, it turned out that the wording of Art. 111-1 Penal Code does not cover the entire range of acts of cooperation with an aggressor that constitute criminal cooperation. In order to eliminate loopholes in the law, the Law Enforcement Committee of the Verkhovna Rada of Ukraine has established a subcommittee that is developing a number of proposals that will soon be considered by Ukrainian lawmakers. To this day, the criminal legislation of Ukraine has created a set of articles that collectively make it possible to bring criminal liability for various types of activities related to cooperation with the aggressor. As a result, during the war (since 2014) over 1,000,000 people were sentenced under various articles establishing responsibility for cooperation with the enemy, of which 817 were men and 210 women. Of these, 683 people (544 men and 139 women) were sentenced to imprisonment and 344 people (273 men and 71 women) were sentenced to alternative (non-custodial) penalties.

Russia's aggression against Ukraine became an appropriate „attention detonator" for legislators and the scientific community of many countries from different regions of the world, and above all Europe, whose governments and societies could not imagine that more than 75 years after the end of a world war that took millions of lives human beings, a new large-scale war will break out in Central Europe, unleashed by a country armed with nuclear weapons, whose ideology will be the modern xenophobic ideology of racism - the latest form of the ideology of fascism cultivated in Russia. Therefore, the legislation of many European countries did not provide for liability for cooperation with the enemy (joint action).

The above state of affairs aroused the interest of scientists from the Academy of Justice in Warsaw and the Educational and Scientific Institute of Law of the Precarpathian National University. Wasyl Stefanyk, the issue of collaboration with the enemy in war conditions. The author's team included experts in the field of criminal law, criminology, criminal law policy, historians, political scientists, psychologists and educators, which allowed us to look at the problem from different perspectives - to analyze it both historically and in the context of today's realities - in the conditions of Russian aggression. to Ukraine.

The book consists of seven chapters connected by a common thematic axis - collaboration with the enemy in war conditions. It is a coherent study, examining the subject matter in three aspects: historical, legal and psychological (including psychopedagogical).

The monograph opens with a study by Ihor Kozych, who analyzes the phenomenon of collaborationism and reviews the definition of the concept of collaboration and presents selected concepts and typologies. An interesting topic is the analysis of international humanitarian law regulating conduct during the war. The author shows the origins of the principles and procedures relating to collaboration activities and looks for traces of their consolidation in the sources of international humanitarian law.

In the next two chapters, their authors consider the issue of collaboration with the enemy from a legal perspective. The text by Grzegorz Krysztofiuk refers to the present day. From a comparative perspective, in the light of Polish and Ukrainian criminal law, the author of this study presents the currently established criminal liability for the crime of collaboration with the aggressor/occupier. The text also raises the issue of regulating this phenomenon in international law regarding warfare. The part devoted to Ukrainian law discusses significant changes introduced to the Criminal Code of Ukraine in the field of collaboration, after Russia's aggression against this country, as well as practical aspects of applying the new regulations. In the part devoted to Polish law, the author of the chapter referred to tools that could be used to prosecute collaborators, despite the lack of a separate crime of collaboration in this law. He also pointed out the need to use the Ukrainian experience to undertake studies on the need to change Polish law regarding the penalization of all forms of collaboration.

Contemporary law enforcement is also referred to in the chapter thoroughly prepared by Igor Medycki, which analyzes the legal prohibition (Article 111-1 of the Criminal Code of Ukraine) and collaboration activities with references to contemporary law enforcement, including the current practice of applying the provisions on collaboration by Ukrainian judicial authorities. The text is

enriched with the presentation of a criminological portrait of the collaborator's personality.

However, the subsequent chapters relating to collaboration activities from a legal and historical perspective are of a slightly different nature. Paweł Szabłowski discusses counteracting collaboration with the enemy in war conditions, referring to Polish experiences in this area. The author analyzes the actions taken by the Polish authorities during World War II, the aim of which was to minimize the phenomenon of collaboration with the occupier. The text describes the most important issues related to the clandestine functioning of the justice system.

In turn, the chapter prepared by Serhiy Adamovych shows the collaborationism of Ukrainians from the perspective of the Russian occupation regimes in the 20th and early 21st centuries. The author of the text refers to historical facts taking place in Eastern Galicia, during World War I and after World War II, and in 2022–2023 in the East and South of Ukraine, related to Russian repression (of a national nature) against Ukrainians. At that time, the occupation regimes accused Ukrainians who did not identify with the Russian nation of high treason, accusing them alternately of loyalty to Austria, cooperation with Nazi Germany or dependence on NATO member states. The author emphasizes that behind this there was a deep desire of the Russians to destroy the Ukrainian nation by all possible methods and means.

Collaboration with the aggressor/occupier is presented from a psychological perspective by the author of the next chapter. Pavlo Fris refers to the psychological and ideological components of the criminal law awareness of people committing crimes of collaboration in the conditions of Russian aggression against Ukraine. The author of the study, citing data from the last 9 years regarding the sabotage activities of the FSB against Ukraine, put forward the thesis that criminal law psychology and the criminal law ideology formed on its basis, as components of the criminal law awareness of people who committed collaboration activities, are the result of deliberate and long-term activities aimed at to the annexation of Ukraine by Russia. One of the elements of this activity was shaping the criminal law awareness of certain layers of Ukrainian society in order to intensify their cooperation with the aggressor.

The monograph ends with a report on research on the phenomenon of cooperation between Ukrainian citizens and the Russian occupier, conducted in Ukrainian prisons. It refers in particular to the influence of external conditions on human behavior and social relationships. The authors of the chapter, Beata Maria Nowak and Agnieszka Nowogrodzka, present the results of research on one of the important aspects - the motivations of people convicted of the crime

of collaboration. This aspect is an element of a broader study on the psycho-pedagogical aspects of collaboration with the enemy in the context of the Russian-Ukrainian war. It should be emphasized that the results relating to the emotions of collaborators, especially those related to the outbreak of the war, its course and the choice made, will soon be presented in a separate scientific publication.

We present to the Reader a very important book, which is an interdisciplinary study in which references can be found to the achievements of many scientific disciplines corresponding to its issues and related to the idea of a holistic approach to pathological phenomena, including crime[1].

A monographic approach to the phenomenon of collaboration in war conditions with the aggressor/occupier allows for its presentation in various perspectives - from historical, through legal, to psychological and psychopedagogical - and thus to highlight its complexity and multi-aspect nature. However, the presented monograph is not intended to organize knowledge or systematize scientific achievements - it is primarily an invitation to reflect on complex problems related to the attitudes and behaviors of people in oppressive, dangerous, and often extreme situations.

We hope that the content presented in the book will inspire researchers from various scientific disciplines and encourage them to undertake in-depth analyzes of various aspects and contexts of the discussed phenomenon. Therefore, we address this book to scientists, PhD students and students of various fields of study, hoping that it will arouse in them the need for in-depth reflection on the condition of modern man who has to live in difficult times, marked by armed conflicts and war turmoil. We also trust that the authors' observations of the issues presented in the monograph will become an incentive to search for new, optimal legal and administrative solutions in the field of counteracting the dangerous phenomenon of collaborative crime, which appears in special situations - aggression and occupation of annexed areas.

Scientific editors:
Beata Maria Nowak
Pavlo Fris

[1] The monograph is the result of a scientific project entitled: Collaboration with the enemy (betrayal) - legal, psychopedagogical and historical aspects. The project manager was Dr. Bartosz Kułan (Academy of Justice), and the coordinator was Iwona Jasińska (Academy of Justice).

IHOR KOZYCH[1]

COLLABORATIVE ACTIVITY: CONCEPTS, FORMS AND NORMATIVE LEGAL SUPPORT IN INTERNATIONAL HUMANITARIAN LAW

Today it is obvious to any informed person that, from the perspective of thousand year' history of wars, it is vain to hope that the presence of international regulations will lead to the utopian situation of non-cooperation with the enemy. Collaboration is a phenomenon typical of all times and periods of history, characteristic of every war. After all, it is quite clear that collaboration with the population of the occupied territory saves the aggressor state's own forces to an extreme degree, facilitates the use of resources, covers the conduct of many of the occupier's activities, etc.

The term "collaborationism"[2] is used in modern science to describe the phenomenon of cooperation between the occupied population and the occupier. The term is derived from the French word " collaboration" and literally means "cooperation".

After the First World War in France and Belgium, the term "collaboration" was used to refer to the cooperation of the local population with the German occupiers, especially during the First World War, but it did not have a pejorative meaning and was not synonymous to betrayal[3]. For example, those who collaborated

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[1] Ihor Kozych, doctor of law, head of the department of policy in the field of combating crime and criminal law of the educational and scientific Institute of Law of the Vasyl Stefanyk Precarpathian National University. His research deals with issues related to the functioning of criminal law policy. Author of four monographs and over 70 scientific articles. ORCID: 0000-0002-8746-1154

[2] When analysing apolitical, indifferent cooperation with occupation structures, the term "collaboration" cannot be used entirely rightly. Western European and US authors therefore use the terms "collaboration", "cooperation", "participation of the local population".

[3] J.E. Connolly, *Collaboration (Belgium and France)*, [in:] U. Daniel, P. Gatrell, O. Janz, H. Jones, J. Keene, A. Kramer, B. (eds.), *Nasson 1914-1918-online International Encyclopedia of the First World War*, issued by Freie Universitat Berlin, Berlin 201410-08. DOI: 10.15463/ie1418.10808.

with the German occupiers in Belgium after the First World War were referred to as "activists"[4]. During the First World War, the term "collaboration" was rarely used in French-speaking France and Belgium. According to the French Penal Code, collaboration with the enemy included the offences of "sharing intelligence/trading information with the enemy". According to the Belgian Penal Code, it is an activity detrimental to the internal and external security of the state[5]. After the First World War, hundreds of Belgians were found guilty of collaborating with Germany, especially in the political and economic sphere, and sentenced to prison and some to death, but the death penalty was replaced by lighter sentences. In France, the number of prosecutions for collaboration with Germany was much lower, with only a few dozen convicted. These were mainly sentences for denunciation, espionage and voluntary work for Germany, and the punishment was mainly symbolic, in particular the death penalty was replaced by lighter sentences[6].

The modern understanding of the term "collaborationism" as the voluntary cooperation of the local population with the occupier dates back to the Second World War. "Collaboration" became the official name for Germany's cooperation with Marshal Pétain's government ("Vichy France"). The term quickly entered other languages and was actively used by Soviet propaganda, with clearly negative connotations, to describe the cooperation of the peoples of the USSR or its particular parts with Nazi Germany[7].

The term also started to refer to the collaboration of citizens and governments during occupation by the Axis states ("Hitler's coalition"), with the result that the word took on connotations of support for Nazism and fascism[8], as well as betrayal of the state or nation[9]. Also synonymous with the word "collaborator" is the term "quisling", which spread in Europe from the name of Vidkun Quisling, the head of the Norwegian government who collaborated

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[4] D. Luyten, Dealing with Collaboration in Belgium After the Second World War: From Activism to Collaboration and Incivism, [in:] L. Israel, G. Mouralis (eds.), *Dealing with Wars and Dictatorship. Legal Concepts and Categories in Action*, 2004, 59-76, p. 65.

[5] J.E. Connolly, *Collaboration*…, op. cit.

[6] J.E. Connolly, *Collaboration (Belgium and France)*…, op. cit.

[7] Т. Іванова, *Явище білоруської колаборації з Німеччиною в роки Другої світової війни: історіографія проблеми. Актуальні питання гуманітарних наук*. Вип 24, том 1, 2019. С. 14-20.

[8] S.N. Kalyvas. *Collaboration in comparative perspective*, "European Review of History: Revue europeenne d'histoire" 2008, 15:2, 109-111.

[9] І. Дерейко. *Колабораціонізм, понятя [Електронний ресурс]* // Енциклопедія історіїкраїни: Т. 4: Ка-Ком / Редкол.: В. А. Смолій (голова) та ін. НАН України. Інститут історії України. - К.: Наукова думка, 2007.

with the Nazi German government during World War II[10]. In Belgium, those who collaborated with the Nazi regime were accused of "unpatriotic behaviour" (incivisme)[11].

The methods of warfare changed significantly during the Second World War. Propaganda and the "fifth column" began to be used on a much wider scale, making pre-war legislation unable to meet the post-war demand of countries to punish those who collaborated with an enemy state[12]. Consequently, states during the war passed laws on "collaboration" with a retroactive effect, which resonated with the legal community of the time, but was motivated by the political necessity to bring justice for the massive war crimes and crimes against humanity committed during the war. Thus, the well-known offence of "national disgrace" (indignite nationale), for which thousands had been convicted in France for their participation in the collaborationist Vichy government, was only added to the French Criminal Code in December 1944[13].

In general, prosecution for collaboration with the enemy after the Second World War was based on the use of terms already existing in law (treason) and new ones (e.g. "national disgrace" in France). Legislators faced a difficult task - distinguishing between actions that should be characterised as criminal active support of the enemy and interactions with the occupying forces that merely helped to maintain daily life.

In contemporary scholarly literature, "collaborationism" refers to the interaction of the population of occupied territories with the occupying power in a way that harms the interests of such population or the state to which it belongs[14]. An important feature of such collaboration is its voluntary nature and ideological

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[10] S. Darcy. *History and Practice of Collaboration in Armed Conflict* [in:] S. Darcy (ed.), *To Serve the Enemy: Informers, Collaborators, and the Laws of Armed Conflict,* 2019, 16-51, DOI: 10.1093/oso/ 9780198788898.001.0001, p. 16.

[11] D. Luyten. *Dealing with Collaboration in Belgium*…, op. cit.

[12] *Wartime Collaborators: A Comparative Study of the Effect of Their Trials on the Treason Law of Great Britain, Switzerland and France*, "The Yale Law Journal", August, 1947, Vol. 56, No. 7 pp. 1210-1233.

[13] V. Galimi. *Circulation of Models of epuration After the Second World War: From France to Italy*, [in:] L. Israel, G. Mouralis, (eds.), *Dealing with Wars and Dictatorship. Legal Concepts and Categories in Action*, 2004.

[14] J. Bohler, J.A. Mlynarczyk, *Collaboration and Resistance in Wartime Poland (1939-1945) - A Case for Differentiated Occupation Studies.* "Journal of Modern European History" 2018, 16(2):225-246. J. Bohler, J.A. Mlynarczyk, *Collaboration and Resistance in Wartime Poland (1939-1945) - A Case for Differentiated Occupation Studies.* "Journal of Modern European History" 2018, 16(2):225-246.

support of the occupying regime, which distinguishes it from collaboration under coercion by the occupier[15].

According to J. Pysmiesky, there is no crime of "collaborationism" in the contemporary criminal legislation of European countries. The exception is the Criminal Code of the Republic of Lithuania, which criminalises "assisting an illegal government in the establishment of the occupation or annexation of the Republic of Lithuania, in particular suppressing the resistance of the Lithuanian population or assisting the structures of the illegal government in the implementation of the occupation or annexation"[16].

Thus, the most generalised understanding of *collaboration* seems to be an action or complicity in an action that involves voluntary or coerced cooperation with the aggressor of the population of the state that suffered the aggression.

"Collaborationism" as a phenomenon of cooperation with the occupier encompasses a wide range of activities that are often intertwined but difficult to separate. As noted by O. Golovkin and I. Skazko, a significant category of citizens who, for objective reasons, are forced to stay in the annexed and occupied territories, recognise the Ukrainian government as the only legitimate authority on these lands and some of them do not cooperate with the occupiers at all - pensioners, self-employed villagers, unemployed, etc.; the other part cooperates in a limited way, i.e. does not participate in the work of bodies replacing the public authority (for example, private entrepreneurs, employees of shops, markets, public transport, housing and communal services, medicine, etc.); other insignificant group of citizens serves in illegal paramilitary formations or works in the public sector in „authorities" not recognised by Ukraine, performing functions related to the implementation of organisational and managerial or administrative and economic activities, i.e. in one way or another they represent the occupying power[17].

In the scientific literature, cooperation with the enemy is most often classified according to the spheres of its implementation: political, military, economic[18]. Also, due to the type of motivation of the participants of such cooperation: voluntary, coerced, chosen for survival reasons[19]. In terms of the types of activities, it

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15 F. Lemmes. *Collaboration in wartime France, 1940-1944*, "European Review of History - Revue europeenne d'histoire" 2008, 15:2, 157-177.

16 Є. Письменський. *Колабораціонізм у сучасній Україні як кримінально-правова проблема,* „Право України", 12 (2020).

17 О.В. Головкін, І.Р. Сказко, *Колабораціонізм в Україні: дискусійні аспекти.* „Держава і право. Серія: Юридичні науки" 2017, Вип. 78, С. 235-247.

18 S.N. Kalyvas. *Collaboration in comparative perspective*…, op. cit.

19 Ibidem.

is divided into the provision of intelligence to the enemy state in order to gain military advantage (the „informant"), participation in enemy armed formations, propaganda in the interests of the enemy, administrative cooperation (cooperation of state or local authorities with the occupying power) and economic cooperation, including trade with the enemy, work for the enemy, provision of translation services, etc.[20].

As V. Semenenko and V. Petrovsky note, as early as 1968, S. Hoffman distinguished between two fundamentally different forms of cooperation: state cooperation (voluntary or coercive) to maintain order and social life and individual cooperation, which may be ideological or for financial reasons. The authors highlight the position of the Polish historian C. Madajczyk, who divided collaboration into "useful" and "harmful", as well as the position of the Germans: Berlin had a group of experts on the problems of collaboration (O. Abetz, R. Rahn, M. von Killinger, E. Vessenmayer, R. Neubacher) who paid the least attention to its ideological aspect. For them, the problems of supplying the Reich with material and human resources were most important. It is well known how the Germans judged the collaboration: "Give me your watch and I will tell you the time"[21].

Fundamental work on the typology of collaboratios was carried out by W. Rings[22]. The author proposes a typology of collaboration based on the motivation for collaboration:

1) *Neutral cooperation, or "I accept".*
   Neutral collaborators say: "I accept because life must go on. I consciously and in my own interest act directly or indirectly in favour of the occupying power, without adhering to the political and ideological principles of National Socialism. My attitude is dictated by circumstances beyond my control. The only alternative seems to be bankruptcy, unemployment, hunger, chaos and destruction. I am determined to survive the war and the defeat of my country as best I can".
2) *Unconditional cooperation, or "Our enemy is my friend".*
   An unconditional collaborator says: "I join forces with the occupier because I support its principles and ideals. My attitude is not dictated by circumstances but by loyalty to National Socialism. I am ready for anything and any sacrifice for the sake of the occupier, as long as I can serve our common aim".

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[20] S. Darcy. *Coming to Terms with Wartime Collaboration: Post-Conflict Processes & Legal Challenges,* "Brooklyn Journal of International Law" 2019, 45, no. 1, 75-137.

[21] В.І. Семенко, В.В. Петровський, *Особливості колаборації в Україні та Західній Європі в роки Другої світової війни у компаративному аспекті (англо- та німецькомовна історіографія).* Вісник Харківського національного університету імені В. Н. Каразіна. Серія : Історія України. Українознавство: історичні та філософські науки, 2019, Вип. 28. С. 41-53.

[22] The typology refers to the World War II period, the time of Hitler.

3) *Conditional collaboration, or "I cooperate to a certain extent (up to a certain point)".*
The conditional collaborator says: "I cooperate with the occupation authorities, although I support only some aspects rather than the overall National Socialist doctrine. Provided that this condition is fulfilled, I am ready and willing to cooperate in good faith because I want to change the circumstances that drive my attitude."
4) *Tactical collaboration, or "I do, but I don't do"*
A tactical collaborator says: "I agree to cooperate despite my hostility to National Socialism and the Third Reich. I can do this for various reasons: to throw off foreign chains and regain freedom; to prevent, if possible, the mass murder of innocent people; or to implement a political idea that National Socialism prevents. In each case, the cooperation covers the resistance and is part of the struggle[23].

The research of Soviet and contemporary Russian scientists should be mentioned separately, without forgetting the specific nature of ideologised and censored research in all fields without exception. I. Suhowerska[24] analysed in detail the problems of the concept and typology of collaboration in their treatises. So the researcher, studying the approaches to the typology of collaboration points out that "…most researchers proposed to distinguish the forms of collaboration depending on the sphere in which collaboration with the enemy was carried out". According to S. Kudryashov, this includes military, political and economic collaboration. Furthermore, believing that «there is a big difference between working in military units and taking part in armed hostilities», the researcher suggested distinguishing between the passive and active military collaboration depending on the participation in hostilities. O. Makarov drew attention to the classification of collaboration applied by N. Romanichov, who distinguished four main forms of collaboration with the occupying forces: 1) political collaboration - the activity of national committees (Russian, Ukrainian, Belorussian, etc.) that pretended to be governments; 2) administrative - participation in the work of local administrative bodies established by the occupation authorities; 3) economic - work in industry and agriculture; 4) military - service with arms in hand on the side of Germany. M. Semiriaga pointed out that the range of manifestations of collaboration forms is quite extensive, emphasising internal, administrative, economic as well as military

[23] W. Rings, *Life with the Enemy: Collaboration and Resistance in Hitler's Europe 1939-1945* (J. Maxwell Browniohn tr), Doubleday & Co. 1982.

[24] І. Суховерська, *Проблеми трактуваня колабораціонізму в роки Другої світової війни у сучасній російській історіографії.* "Східноєвропейський історичний вісник" 2018, Вип. 6, С. 147-155.

and political forms. At the same time, he noted that not all of these actions "can be classified as high treason, except for the last type, namely the military and political collaboration". W. Malinowski proposed the classification of collaboration according to the criterion of the motive of interaction with the Nazis. The application of this technique made it possible to distinguish between "conscious" collaboration, which involves rejection of the Soviet state for whatever reason and a conscious desire to help the occupying forces, and "forced" collaboration, which manifests itself through cooperation and is caused by circumstances external to the subject.

A distinction must be made between these two types and "pseudo-collaborationism" - the performance of specific functions in the occupation administration or police by members of the People's Resistance. Some historians have used methods of identifying new zones of treason-collaboration to classify collaborationism. B. Kovalov proposed military, economic, administrative, ideological, intellectual, spiritual, national, child and sexual collaboration"[25].

However, these positions should be approached with caution. Firstly, the absolute control of the state by the ruling Russian elite does not lead to objective scientific research, especially on issues related to all manifestations of war. On the other hand, one should not forget the widespread introduction of the "Russian world" and other ideological narratives, which could not fail to be reflected in this research. The author rightly notes that Russian academics have reached the border of creating the impression that mass collaborators were exclusively "criminals" of other nationalities and only representatives of the Russian people, with few exceptions, never collaborated with the enemy[26].

Thus, a typology of collaboration should be made according to several criteria, the most common of which are:

1. *According to the sphere of collaboration*: military (joining the army or participating in military operations), political and administrative (working in the bodies of the occupiers or under the control of the occupiers), economic and ideological (economic activity, working in the private service industry, securing one's livelihood), information and ideological (providing information to the occupiers, as well as spreading the ideological narratives of the occupiers). Each of the aforementioned types can be made more specific, for example, information and ideological, depending on the methods (channels) of implementation, includes cultural

[25] І. Суховерська, *Проблеми трактування* колабораціонізму…, op. cit., С. 2018.
[26] Ibidem. С. 150.

and educational, media, religious and official collaboration; military can actually include military service in enemy armies, as well as being an informer or helping as a guide, etc.
2. *According to objective characteristics*: active (voluntary cooperation), coerced (cooperation under pressure), adaptive (cooperation without any particular critical analysis of the fact of cooperation, usually for the purpose of survival).
3. *According to motivation*: neutral, unconditional, conditional, tactical.
4. *According to legal effects*: punishable, unpunishable.

International humanitarian law on collaboration

A preliminary indicative analysis of the main international instruments regulating conduct in time of war (the Hague Conventions and Declarations with their annexes, the Geneva Conventions of 1949 and the Additional Protocols of 1977, etc.) shows that they do not contain any direct reference to procedures for the use of collaborators in interstate armed attacks, even though it is unlikely that at least one war in human history has taken place without them. Such a gap, of course, cannot occur due to the fact that the authors of the relevant documents probably did not pay attention to the role of collaborators in armed conflicts or perhaps "did not know" about the practice of collaboration with the enemy during war. For example, as indicated by Sh. Darcy, during the drafting of the Geneva Conventions of 1949, the Soviet delegate to the Diplomatic Conference in Geneva noted the presence of "traitors to his country" in the occupied territories during World War II and commented that the occupation authorities "used their services" [27].

In the absence of clear rules on the use of collaborators during armed conflict, the most acceptable reason why collaborators are not considered a group of persons deserving, for example, special protection or whose activities require clear regulation, is that such collaboration is voluntary and *permitted* under the existing international law on the rights and customs of war[28].

At the same time, it should be noted that international humanitarian law, while it does not prohibit the recruitment of collaborators and encouraging

[27] S. Darcy. *To Serve the Enemy. Informers, Collaborators, and the Laws of Armed Conflict*. Oxford University Press, Oxford, 2019, s. 51.

[28] Of course, we are talking about conducting such actions from the position of the occupying state (aggressor).

to cooperation, sets out a certain framework as to how such actions can be implemented. The starting point here is the prohibition of coercion. Some provisions of the above-mentioned laws state that: "(…) neither prisoners of war nor other protected persons may be compelled to serve in enemy forces or to take part in hostilities (…)", "(…) to protected persons, no physical or moral coercion may be used, in particular to obtain information from them or from third parties", "no torture, either physical or psychological, or any other form of coercion may be used in order to (…) obtain any information from them", etc.[29]. International humanitarian law therefore does not deny voluntary cooperation with the aggressor state, leaving the question of responsibility for the forced involvement of collaborators by the aggressor state within its competence; while the question of the responsibility of the collaborators themselves is in fact left to the discretion of national legislation.

In order to get a clear picture of what exactly is allowed (prohibited) and what is the framework, it seems appropriate to trace the genesis of certain rules and procedures related to collaborative actions and their entrenchment in the relevant sources of international humanitarian law, which deals with the rules (laws, customs) of warfare (aggression, armed conflict).

Typically, scholars who have studied or are studying these laws assume that they began to take shape in the mid-19th century. In particular, B. Carnahan has pointed out that "(…) the roots of modern military law go back to the 1860s"[30]; Cumin D. while accepting that the law of armed conflict has a very ancient and multi-civilisational history, at the same time begins his own chronology with the creation of the International Committee of the Red Cross (1863), pointing further to the 1st Geneva Convention of 1864, the St. Petersburg Declaration of 1868, the Brussels Conference of 1874, the Oxford Manual of 1880 and the "first codification" as a result of the Hague Conferences of 1899 and 1907[31]; E. David noted that: "(…) if war crimes are to be regarded as a serious violation of the rules applicable to international armed conflicts, the origins of this regulation in international criminal law must be sought in Francis Lieber's Code promulgated by the American government during the Civil War of 1861 – 1865"[32]. It is also interesting to note the position of M. Bettati, who,

[29] These standards will be discussed in more detail in the course of further research.

[30] B. M. Carnahan *Lincoln, Lieber and the Laws of War: The Origins and Limits of the Principle of Military Necessity*. "American Journal of International Law" 1998, 92(2):213-231. c. 213.

[31] D . Cumin *Le Droit de la Guerre [The Law of War]*. Vol II, L'Harmattan, Paris, 2015. c.

[32] E. David, *Principes de Droit des Conflits Armés [Principles of the Law of Armed Conflict]*, 5th edn. Bruylant, Bruxelles, 2012. C.

speaking of any pre-19th century texts on war issues, considered that they were not concerned with "(…) the formation of norms that are directly applicable to warfare. They only provide an ethical basis (…)"[33].

Indeed, until the mid-nineteenth century, there were no universally accepted (in today's sense - accepted by an authorised entity, signed and ratified in a country) multilateral agreements that regulated the conduct of armed conflict. However, as B. Heuser rightly points out, there are other criteria for determining that norms and traditions are in place and regulate the relevant relationship[34]. As stated in Part 1 of Article 38 of the Charter of the International Court of Justice of the United Nations, "the court charged with deciding disputes submitted to it for adjudication shall, in accordance with international law, apply:

a. international conventions, both general and partial, laying down rules expressly recognised by the participating states;
b. international customs, as evidence of general practice accepted as law;
c. general principles of law recognised by civilised nations;
d. in accordance with the provisions of Article 59, judicial decisions and the studies of the most eminent publicists of various nations, as aids to the establishment of legal norms"[35].

Thus, B. Heuser concludes that "the laws of war date back thousands of years before the advent of the Lieber Code, which is only one example (and not even the last) of unilaterally adopted and promulgated rules. Moreover, the format of such ordinances and the military regulations they contain follow a model established in the ninth century and have remained largely unchanged since then; the Lieber Code itself simply follows this format"[36]. It is worth paying tribute to B. Heuser, as she has conducted fundamental research into the origins of laws and customs of war from the ancient world.

A. Roberts takes a similar position. He does not deny that "(…) the best known early example of a national manual establishing the laws of war for use by the armed forces and one of the first attempts to codify the laws of land warfare was the *Instructions to the Government of the United States Army in the Field*,

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[33] M. Bettati, *Le Droit des Conflits Armés [The Law of Conflicts of Armies]*. Odile Jacob, Paris, 2016.

[34] B. Heuser, *Ordinances and Articles of War before the Lieber Code, 866-1863: the long pre-history of international humanitarian law*, [in:] T.D. Gill, R. Geiß, H. Krieger, C. Paulussen, (eds.), *Yearbook of International Humanitarian Law*, Volume 21. T.M.C Asser Press, 2019. pp. 139-164. https://eprints.gla.ac.uk/185448/1/185448.pdf (accessed on August 15, 2023)

[35] *Statute of the International Court of Justice*. https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf (accessed on August 15, 2023)

[36] B. Heuser, *Ordinances and Articles of War…*, op. cit.

prepared in 1863 by Dr Francis Lieber of Columbia University. This "Lieber Code" became the model for many other national manuals"[37], while "(…) no serious scholar has ever claimed that the laws of war began in 1863 or 1864. This collection of legal regulations had a long history. It attracted the attention of writers, scholars, statesmen and soldiers for millennia (…)"[38].

IT can be seen that A. Roberts, like B. Heuser, also draws attention to the long history and diversity of the formal consolidation of the laws and customs of war. The researcher also highlights certain normative manifestations in the context of the establishment of relevant norms. In particular, the work of A. Roberts draws attention to national codes, which were usually written for specific military campaigns. Thus, "(…) one famous European example of the national code that contains certain rules of conduct for the armed forces is the 150 Articles of War, signed by King Gustav II Adolphus of Sweden on 15 July 1621, on the eve of the departure of the Swedish army regiments against the Russian army in the Baltic provinces. Only six of the "Articles of War" (Articles 88, 90, 91, 95, 99 and 100) contain provisions on the classical law of war: attacks on women, unlawful attacks on towns or villages, theft, robbery or burning of churches and hospitals (…)"[39].

A. Roberts points to the events of 1847, at the beginning of the Swiss civil war between the federal government and the Sonderbund (a separatist group of seven predominantly Catholic cantons who opposed plans for a new Swiss constitution), as positive consequences of the application of such codes within the framework of national regulation. General Guillaume-Henri Dufour, who was appointed commander of the Federal Army in this war, issued a well-argued and clear set of recommendations to the commanders of his divisions on the conduct of military operations, the treatment of prisoners of war and respect for enemy society and its institutions, etc.[40]. Such a display of humanity and generosity led to completely unexpected minimal losses on both sides.

As already mentioned, there were no multilateral agreements on the conduct of armed conflicts during that historical period. However, attempts to settle certain issues at the level of bilateral agreements can be noted. For example, the 1785 Treaty of Friendship and Commerce between the United States

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[37] A. Roberts, *Documents on the Laws of War.* 3rd ed. Oxford University Press, Oxford, 2000. C. 12.

[38] A. Roberts, *Foundational myths in the laws of war: the 1863 Lieber Code, and the 1864 Geneva Convention*. "Melbourne Journal of International Law" 2019, 20(1). http://classic.austlii.edu.au/au/journals/MelbJIL/2019/7.html (accessed on August 15, 2023)

[39] Ibidem.

[40] A. Roberts, *Foundational myths in the laws of war…*, op. cit.

and Prussia[41] contained a number of clear and detailed provisions on the observance of certain basic principles in the event of the outbreak of war between the two parties. And it is in this agreement that the prohibition of actions that can be judged as collaboration is addressed. Thus, Article 20 states that "No citizen or subject of either of the contracting parties shall receive from any power with which the other party is at war any written permission or written authority to arm any vessel for the purpose of acting as a caper against the other party, under penalty of piracy"[42]. It is clear that we are talking about a prohibition on citizens engaging in cooperation for a clearly defined purpose - piracy against their own state.

In addition, the treaty made clear the need for normal conditions for the civilian population: "(…) And all women and children, scientists of all faculties, farmers, artisans, manufacturers and fishermen, unarmed inhabitants of unfortified towns or villages and in general all others whose occupation is for the common existence and common benefit must be allowed to continue their work (…)"[43]. It is clear that carrying out such activities - for common existence and the common welfare - cannot be considered as potentially punishable collaboration (as there is no manifestation of voluntary cooperation with the enemy).

While fully accepting the conclusions of A. Roberts and B. Heusser concerning the ancient history of the existence of the laws and customs of war, it is worth emphasising that, for the purposes of this study, the point of reference will be the Lieber Code of 1863[44], for it is in this code that we first encounter the provisions directly referring to collaboration, both enforced and voluntary.

These include:

1) Article 26 "Supreme commanders may make the judges and officials of an enemy country take an oath of temporary obedience or an oath of faithfulness to the victorious government or rulers, (…)"

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41 *Treaty of Amity and Commerce Between His Majesty the King of Prussia, and the United States of America*; September 10, 1785. https://avalon.law.yale.edu/18th_century/prus1785.asp. (accessed on August 15, 2023)

42 *Treaty of Amity and Commerce*…, op.cit, art. 20.

43 Ibidem, art. 23.

44 *Instructions for the Government of Armies of the United States in the Field (Lieber Code)*, 24 April 1863. https://ihl-databases.icrc.org/assets/treaties/110-IHL-L-Code-EN.pdf; (accessed on August 15, 2023) *Polish translation used source: INSTRUCTIONS for United States Army commands in the field approved by the President of the United States, 23 April 1863 (Francis Liber Code)* (based on the Washington edition of 1898. Dostęp: 8e3a2ba8938f-def01150bc49378cdc818f320680.pdf (nexto.pl) (accessed on August 15, 2023)

2) Article 33 "It is no longer considered lawful - on the contrary, it is considered a grave breach of the law of war - to compel the enemy's subjects to serve the victorious government, except on the basis of a proper proclamation by the victorious government, after the just and completed conquest of the enemy country or province, of a provision to retain the country, district or locality permanently as its own and to make it part of its own country (…)"
3) Article 39 "The salaries of officials of an unfriendly government who remain in the occupied territory and continue to work in their position, and may continue to do so under existing circumstances arising from the war - such as judges, administrative or police officers, municipal or communal officials - shall be paid out of public revenue from the occupied territory, so long as the military authorities have no reason to cease paying them in whole or in p Article "
4) Article 80 "(…) the modern law of war no longer permits any violence against prisoners of war for the purpose of coercing desired information or punishing them for giving them false information".
5) Article 89 "(…) If a citizen of the United States lawfully obtains information and betrays it to the enemy, whether he is a military officer, a civilian official or a private citizen, he shall be punished by death"; Article 90 "A traitor under the laws of war, or a wartime adulterer, is a person in a martial law locality or district who, unauthorised by the military commander, gives any information to the enemy or remains in contact with him."; Article 91 "A wartime adulterer is always severely punished. If his offence consists in betraying to the enemy everything concerning the state, security, operations or plans of the troops possessing or occupying that locality or district, he shall be liable to the death penalty."
6) Article 93 "All armies in the field need guides, whom they obtain by force if they cannot obtain them by any other means"; Article 94 "No person who has been compelled by the enemy to act as a guide shall be punished for doing so"; Article 95 "If a citizen of a hostile and attacked district voluntarily serves as a guide in favour of the enemy, or proposes to do so, he shall be considered a war profiteer and shall be liable to the death penalty."; Article 96 "A citizen voluntarily serving as a guide against his country commits treason and shall be treated in accordance with the laws of his country."
7) Article 155: "(…) The military commander of a legitimate government, in a war of rebellion, shall distinguish between a loyal citizen in the rebellious part of the country and a disloyal citizen. Disloyal citizens may be further classified as those citizens who sympathise with the rebellion without supporting it,

and those who, without the use of arms, support the rebellious enemy without being physically compelled to do so."; Article 156 "Common justice and ordinary expediency require the military commander to protect loyal citizens, in rebellious territories, from the hardships of war to the extent that they are affected by the common misfortune common to all wars. The commander shall shift the burden of war, so far as it lies in his power to do so, to disloyal citizens in the rebellious part of the country or province, subjecting them to a stricter control than that imposed on non-combatant enemies in a regular war; and if he deems it expedient, or if his government requires him to require any citizen, by taking an oath of allegiance, or some other kind of declaration, to declare his allegiance to the lawful government, he may expel, transfer, imprison or punish rebellious citizens who refuse to take an oath as citizens obedient to the law and loyal to the government. Regardless of whether this is intentional and whether such oaths can be relied upon, the commander or his government has the right to decide in this regard".

The importance of the Lieber Code can hardly be overstated. Indeed, it is not a source of international humanitarian law. Indeed, it is not an inter-state treaty such as the aforementioned agreement between the United States and Prussia. But it is in this act that we find the initial "moves" of the normative assessment of collaborationist activity.

As Sh. Darcy notes, the first treaties to codify, to some extent comprehensively, the laws and customs relating to "war on land" (in the context of collaboration) became the Hague Conventions and Declarations of 1899 and 1907 and their annexes (regulations)[45]. Before proceeding with a brief overview of these documents, however, it is worth looking at the Brussels Declaration of 1874, as the content of the Hague documents was largely based on it[46].

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[45] S. Darcy. *To Serve the Enemy. Informers, Collaborators, and the Laws of Armed Conflict*. Oxford University Press, Oxford, 2019. c. 58.

[46] On the initiative of Tsar Alexander II of Russia, delegates from 15 European states met in Brussels on 27 July 1874 to consider a draft international treaty on the laws and customs of war presented by the Russian government. The conference adopted the draft with minor amendments. However, as not all governments were prepared to accept it as a binding convention, it was not ratified. However, the draft became an important step in the movement to codify the laws of war. In the year of its adoption, the Institute of International Law, at its meeting in Geneva, set up a commission to study the Brussels Declaration and to report back to the Institute with its conclusions and additional proposals on the matter. The Institute's efforts led to the adoption of the Oxford Manual of the Laws and Customs of War in 1880. Both the Brussels Declaration and the Oxford Manual became the basis for the two Hague Conventions on Land Warfare and accompanying Manuals adopted in 1899 and 1907. The origins of many of the provisions of the two Hague Conventions can easily be traced

The Brussels Declaration was born out of the initiative to "establish by mutual consent, on the basis of full reciprocity, principles that can be binding on all governments and their armies"[47].

Again, we see the absence of prohibitions on the involvement of officials (employees) of the occupied territory in the continuation of their existing activities, with their voluntary consent. Thus, according to Article 4: "Officials and employees of any class who accept the invitation of the occupying power to continue in their functions shall enjoy its protection. They may not be dismissed or disciplined if they fail to fulfil their accepted duties and they may not be prosecuted if they justify the trust"[48].

The provisions of Article 14 of the Declaration testifying to the understanding and perpetuation of so-called information collaboration are interesting. Indeed, as a general rule, military tricks and the use of means necessary to obtain information about the enemy and the country were considered acceptable. There was only one exception: it stemmed from the provisions of Article 36, according to which "The population of the occupied territory may not be compelled to take part in armed actions against their own country". Thus, as we can see, even then, the distinguishing feature of the permitted involvement of the inhabitants of occupied territory in particular as informers was the absence of coercion. This is confirmed by the provisions of Article 37, according to which the population of the occupied territory may not be compelled to take an oath of allegiance to an enemy state[49].

The significant role of the Brussels Declaration of 1874, however, does not really lie in the final text, but in the genesis of the wording of Article 36 on the prohibition of the forced engagement of civilians. According to research by Sh. Darcy, the original draft was intended to allow the use of any means available to obtain information about the enemy and the country, except: "As long as a province occupied by the enemy is not handed over to him by a peace treaty, its inhabitants may not be compelled to participate in hostilities or similar activities to the detriment of their own country"[50].

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back to the Brussels Declaration and the Oxford Manual. https://ihl-databases.icrc.org/en/ihl-treaties/brussels-decl-1874

47 S. Darcy. *To Serve the Enemy. Informers,* Collaborators…, op. cit. p. 58.

48 *Draft of an International Declaration concerning the Laws and Customs of War.* Brussels, 27 August 1874. https://ihl-databases.icrc.org/assets/treaties/135-IHL-7-EN.pdf (accessed on August 15, 2023)

49 *Draft of an International Declaration*…, op.cit.

50 S. Darcy. *To Serve the Enemy. Informers,* Collaborators…, op. cit., pp. 58-59.

Already at the Brussels Conference, the Russian delegate and conference chairman Baron Jomini proposed a new version of the norm on coercion of the inhabitants of occupied territory: "The population of an occupied province may not be compelled to take part in armed actions against its legitimate government or in actions which contribute to the development of the war to the detriment of their own country". The German delegate, General von Voigts-Rhetz, proposed replacing the words "take part" with "take an active part" to limit this principle to participation in military operations only. Colonel Count Lanza of Italy agreed to another German proposal to remove further text in which the government undertook not to force conductors to serve, not to employ workers on lines of communication, not to force carriers to transport livelihoods and to provide other services[51].

It must be acknowledged that opposing this position was Baron Lambermont of Belgium, who expressed concern that limiting the prohibition only to an active position during military operations "could be a source of danger", as fighters could use this "to justify any action that does not fall under the proposed qualification"[52]. The committee appointed by the conference to consider these proposals partially agreed, rejecting the proposal to limit the principle to active participation in military operations, but agreed to omit the last part of the article. The committee also supported the proposal to add the words "against one's own country"[53]. This is an ambiguous decision because, while prohibiting forced participation in military operations, the commission left the forced involvement of civilians in other activities out of consideration.

According to T. L. Dowdeswell, the Brussels Conference formally ended as total failure[54]. Indeed, not only was the Brussels Declaration not ratified, but the very idea of codifying the international law of war by mutual consent of states was challenged. This is partly due to diplomatic disagreements and a general lack of political will on the part of the major powers to tie their behaviour to obscuring

[51] These delegates believed that civilians could be forced to provide information, could be engaged in forced labour or provide various other services to the occupying power (in addition to active participation in military operations).

[52] By the way, this diplomat at least once again showed his „clear head" by commenting on the above-mentioned Art. 14 on permitting the involvement of informants. He asserted that, despite its apparent leniency, this norm is undoubtedly not intended to allow immoral or criminal behaviour.

[53] See in detail *Correspondence Respecting the Proposed Conference at Brussels on the Rules of Military Warfare*, "United Kingdom Parliamentary Papers, Miscellaneous" No. I (1874) [p.-1010].

[54] T. L. Dowdeswell, *The Brussels Peace Conference of 1874 and the Modern Laws of Belligerent Qualification*. "Osgoode Hall Law Journal" 2017, 54.3: 805-850. p. 841.

new trends in international regulation rather than to the nature of the codification or the content of the proposed laws themselves. Nevertheless, the Brussels Conference had an enormous impact on the idea of law in the international arena, especially the law most closely related to state sovereignty and power. The Brussels debate brought the great powers to the threshold of a new understanding of the nature of law and its role in international relations. As a result, the ideas first presented in Brussels prevailed 25 years later when the Brussels Declaration became the basis for the Hague Conventions of 1899 and 1907. A similar conclusion was reached by Sh. Darcy who summarised his research on the 1874 conference by stating that the debates at the 1874 Brussels diplomatic conference reveal differing views on the use of civilians and reflect the broad tension between military and humanitarian considerations that was evident at the time[55].

Following the adoption of the Brussels Declaration, the Institute of International Law set up an expert group to study its content in detail[56]. Obviously, in addition to studying the text of the document, the group should have analysed the reasons for its non-ratification by state governments and, on this basis, proposed ways forward. Based on the results of the expert group's work, a collection of "Laws of War on land" was produced, more widely known as the Oxford Handbook *The Laws of War on Land* (1880)[57]. The collection was not recognised as an international treaty; the group of experts was "satisfied that he had clearly formulated and codified the commonly accepted ideas of our age, so far as seemed acceptable and possible"[58].

Unlike the Brussels Declaration, the Manual contained an introductory section (Preface) in which the authors actually set out their vision for the further development of international humanitarian law in relation to the laws and customs of war. It was established that humanity, despite all its desires, will not be able to abandon war as a means of resolving inter-state conflicts, despite all the possible protests and the horror it inspires. Despite the difficulties in reaching agreement on the principles of war, experts noted that the draft Brussels Declaration is a solemn declaration of the good intentions of governments in this regard.

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55 S. Darcy. *To Serve the Enemy. Informers,* Collaborators…, op. cit., p. 60.

56 К. І. Бусол, *Розвиток положень про недоторканність і захист історико-культурних пам'яток у період із середини XIX ст. по Газькі мирні конференції 1899 і 1907 р.р.* Митна справа. №5(89), 2013, частина 2, книга 1. С. 52-57. http://nbuv.gov.ua/j-pdf/Ms_2013_5%282.1%29__11.pdf (accessed on August 15, 2023) Ibidem.

57 *The Laws of War on Land*, Manual published by the Institute of International Law (Oxford Manual), Adopted by the Instutute of International Law at Oxford, September 9, 1880. http://hrlibrary.umn.edu/instree/1880a.htm (accessed on August 15, 2023)

58 *The Laws of War on Land*…, op. cit.

The group "gently" stressed that the international community already has certain principles, customs and rules for the conduct of military operations, which would be good to consolidate and implement[59].

The manual also contained a number of provisions that referred to joint activities in one way or another. In particular, according to Article 45, "Civil servants and employees of any class who agree to continue to perform their duties are under the protection of the occupation authority. They can always be dismissed and always have the right to leave their places of work. They should not be punished if they fail to fulfil their duties, and should only be held responsible if they violate those duties."

According to Article 46, the occupation authority may, in urgent cases, demand the cooperation of the inhabitants to meet the needs of the territorial administration.

Of utmost importance are the provisions of Article 47 "The population of the occupied territory may not be compelled to swear loyalty to an enemy state"[60]; but residents who commit hostile acts against the occupying power are punished[61]. At the same time, inhabitants of the occupied territory who do not obey the orders of the occupier may be compelled to do so (Article 48)[62]. However, the occupier may not compel the inhabitants to assist in attacks or defence, or to take part in hostilities against their own country[63]. A similar requirement is contained in Article 70 concerning prisoners of war: "Prisoners of war may not be compelled in any way to take part in hostilities or be forced to provide information about their country or army".

The first Peace Conference in The Hague in 1899 was initially intended to address the general problems of maintaining international peace and curbing excessive armaments. However, in the course of the polemics, heated discussions began on the general laws and customs of war on land[64] (a similar situation also took place in Brussels).

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59 Ibidem.

60 Because occupation does not involve a change of nationality for residents.

61 Here there is a reference to Article 1, according to which martial law does not permit acts of violence. Experts most likely meant that such punishments should not be associated with excessive or unjustified violence against those who have committed hostile acts.

62 *The Laws of War on Land*…, op. cit.

63 Bearing in mind Article 4, according to which the laws of war do not recognise the unlimited freedom of belligerent parties in the means of inflicting harm on the enemy. In particular, the parties will refrain from all unnecessary harshness and all treacherous, unjust or tyrannical acts. Quite acceptable restriction for military collaboration.

64 The 1899 conference succeeded in adopting the Convention on Land Warfare, to which the Rules of Procedure were added. The Convention and Regulations were revised

The provisions of the Brussels Declaration on permissible methods of gathering information and the prohibition of forcing civilians to participate in hostilities were repeated in the 1899 Regulations, with minor amendments. Thus, Article 24 of the 1899 Hague Regulations stated that "military tricks and the use of methods necessary to obtain information about the enemy and the country are considered permissible"[65].

As in Brussels, some delegates drew attention to the overly broad formulation of this norm, as anything can in principle be considered as necessary methods[66]. Obviously, this norm should be seen in conjunction with Article 44, according to which: "Any compulsion of the population of the occupied territory to take part in hostilities against its own State is prohibited", as this provision somehow narrows the "breadth" of the interpretation of Article 24. But also on this issue, delegates had some comments. According to Sh. Darcy, after a brief reiterated debate on the scope of the prohibition, Colonel Gross von Schwarzhoff of Germany reiterated that "the provision does not deprive fighting parties of the right to compel a person to perform a particular service, such as showing a road"[67].

The result of lengthy discussions at the Second Hague Conference (1907) on these interrelated norms was the introduction (for the first time) into international law of a provision prohibiting occupying authorities from forcing civilians to act as informers. The 1907 Hague Regulations retained Article 24 on the permissibility of methods necessary to obtain information from the 1899 Regulations, but added an explicit rule prohibiting occupying authorities from forcing civilians to disclose such information. The separate provision prohibiting forced participation in hostilities in Article 44 of the 1899 Hague Regulations was replaced by Article 44 of the 1907 Hague Regulations, which provides that an occupying power may not "compel the inhabitants of the occupied territory to communicate information about the army of the other belligerent party or its means of defence" [68].

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at the Second International Peace Conference in 1907. The two versions of the Convention and Regulations (1899 and 1907) have only minor differences. And, most importantly, these changes, among others, relate to collaborationist activities.

[65] *Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land.* The Hague, 29 July 1899. https://ihl-databases.icrc.org/assets/treaties/150-IHL-10-EN.pdf (accessed on August 15, 2023)

[66] S. Darcy. *To Serve the Enemy. Informers,* Collaborators…, op. cit., p. 61.

[67] Ibidem, p. 62.

[68] *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.

It is worth highlighting another thesis, also mentioned by Sh. Darcy. When Turkey's representative Rechid Bey pointed out that the provisions in question only deal with "the compulsion to services" and that "the prohibition cannot apply to services provided voluntarily and without compulsion", the President agreed that "there can be no doubt" on this point. Accepting a favour and being compelled to provide it are two very different things." This was, and largely remains, the essence of how international humanitarian law understands collaborative action during armed conflicts[69].

Another innovation of 1907 should not be forgotten either. In Article 23, which provided for additional prohibitions compared to the 1899 legislation, paragraph "h" appeared, according to which "The hostile party may not compel citizens of the enemy party to take part in hostilities directed against their own country, even if they served on the aggressive side before the outbreak of war"[70].

Another positive aspect of the Hague Rules should be noted, which is of particular relevance to the source base of international humanitarian law on the law and customs of war. As O. Kyjiwec testifies, the states participating in the Hague Conference were generally unconvinced that the law of war could be codified[71]. Therefore, one of the most important achievements of the Hague Conferences at the turn of the 20th century was the so-called "Martens Clause"[72], the essence of which boiled down to the fact that "in cases not regulated by this agreement, the people and the fighters remain under the protection of the principles of international law as they result from established customs between civilised nations, the laws of humanity and the requirements of social consciousness"[73]. It was included in this form in the Preamble of the 1899 and 1907 Hague Conventions.

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https://ihl-databases.icrc.org/assets/treaties/195-IHL-19-EN.pdf (accessed on August 15, 2023) *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. https://ihl-databases.icrc.org/assets/treaties/195-IHL-19-EN.pdf (accessed on August 15, 2023) Ibidem.

69 S. Darcy. *To Serve the Enemy. Informers,* Collaborators…, op. cit., p. 67.

70 *Convention (IV) respecting the Laws and Customs of War…*, op. cit.

71 О. В. Київець, *Закріплення загальних принципів права в Газьких конвенціях 1899 та 1907 років.* "Наукові записки Інституту законодавства Верховної Ради України" 2011. № 2. С. 121-125. http://nbuv.gov.ua/UJRN/Nzizvru_2011_2_26 (accessed on August 15, 2023)

72 In addition, the Martens clause is contained in a number of international conventions, such as the 1980 Convention on the Prohibition of Certain Conventional Weapons (to which the UN Security Council referred when issuing its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons).

73 https://cyclop.com.ua/content/view/1030/58/1/18/#48517 (accessed on August 15, 2023)

The provision clearly traces a hierarchy of norms governing the conduct of land warfare. The norms come first. If the norms of these conventions are insufficient, the principles of the law of nations, derived from customs established between civilised nations, must be applied. In this case, we do not refer to general principles of law, but rather to general international customary law. And if there are no such norms, then the principles of the law of nations, which derive from human rights and the requirements of social morality, are applied. The obvious purpose of this formulation was to avoid a positivist approach to international humanitarian law, according to which what is not expressly prohibited is permitted[74]. It is clear that such a provision is extremely important in the context of collaborationist activities, as prohibitions and rules of engagement with populations in occupied territory are often absent altogether or presented rather vaguely.

After the Second World War, the rapid development of international humanitarian law began. Four Geneva Conventions were adopted in 1949. However, there were no significant changes regarding, for example, the use and recruitment of civilians during armed conflicts. Parties to an armed conflict could still use civilians or detainees as sources of information or informants for intelligence-gathering purposes. The basic provisions of the Hague Conventions on what is permissible and necessary for such civilian involvement have not changed.

Sh. Darcy rightly points out that the Geneva Conventions did, however, specify that the means of intelligence gathering in the context of the means of warfare are not ‚unlimited'. In addition to elaborating specific prohibitions to ensure humane treatment, the 1949 Geneva Conventions confirm that civilians and prisoners of war in the context of international armed conflict cannot be compelled to provide information[75].

Incidentally, about prisoners of war. After all, they can also engage in cooperation in different ways. The Oxford Handbook of 1880 suggested that prisoners of war should not be compelled to "provide information about their country or army"[76]. Although the Hague Conventions of 1899 and 1907 contained several rules concerning prisoners of war and their protection, none of them contained an explicit prohibition on coercing information from prisoners, as was the case with civilians in occupied territories. The 1929 Convention on the Treatment of Prisoners of War[77] stipulated that a prisoner of war should only give

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74 О. В. Київець, *Закріплення загальних принципів*…, op. cit., С. 121-125.

75 S. Darcy. *To Serve the Enemy. Informers,* Collaborators…, op. cit., p. 71.

76 *The Laws of War on Land*…, op. cit.

77 Provisions on the treatment of prisoners of war were also contained in the Hague Conventions of 1899 and 1907. However, during World War I, they revealed a number

"his true name and rank or regimental number" during interrogation. It also stated that "prisoners should not be under any pressure to obtain information about the situation in their armed forces or in their country. Prisoners who refuse to answer should not be threatened, insulted or subjected to any unpleasant or adverse situation"[78]. This rule did not prohibit the voluntary disclosure of information by prisoners, nor did it prevent the practice of compelling prisoners to obtain intelligence[79].

The Convention also contains provisions on military collaboration. According to Article 31, the work of prisoners of war must not be directly related to military activities, and in particular it is forbidden to use prisoners of war for the manufacture or transport of any weapons or ammunition, or for the transport of materials intended for combat units[80].

The Fourth Geneva Convention[81] contained a broader prohibition than the provisions of the 1899 and 1907 Hague Conventions. According to Article 31, "no physical or moral coercion shall be used against protected persons, in particular to obtain information from them or from third parties"[82]. In analysing this norm, Sh. Darcy rightly observes that the prohibition in Article 31 of the Fourth Geneva Convention on physical or moral coercion of protected persons, in particular for the purpose of gathering information, is significant both because of the wording used and because this article is broader in scope

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of shortcomings, as well as insufficient accuracy. These shortcomings were partly overcome by the special agreements concluded between the warring parties in Bern in 1917-1918. In 1921, the International Conference of the Red Cross, held in Geneva, expressed its desire to adopt a special convention on the treatment of prisoners of war. The International Committee of the Red Cross drafted a convention, which was submitted to the Diplomatic Conference convened in Geneva in 1929. The convention did not replace, but only supplemented, the provisions of the Hague Conventions. The 1929 Convention on the Treatment of Prisoners of War was replaced by the Third Geneva Convention of 12 August 1949.

78 *Convention relative to the Treatment of Prisoners of War. Geneva*, 27 July 1929. https://ihl-databases.icrc.org/assets/treaties/305-IHL-GC-1929-2-EN.pdf (accessed on August 15, 2023)

79 S. Darcy. *To Serve the Enemy. Informers,* Collaborators…, op. cit., p. 71.

80 *Convention relative to the Treatment of Prisoners*…, op. cit.

81 The Convention adopted in 1949 took into account the experience of the Second World War. A large part of the Convention (Part III - Articles 27-141) contains rules governing the status of protected persons and their treatment; these regulations distinguish between the position of foreigners in the territory of one of the parties to the conflict and the position of civilians in occupied territory.

82 *Convention (IV) relative to the Protection of Civilian Persons in Time of War.* Geneva, 12 August 1949. https://ihl-databases.icrc.org/assets/treaties/380-GC-IV-EN.pdf (accessed on August 15, 2023)

than Article 44 of the 1907 Hague Regulations and therefore represents "a huge step forward in the protection of civilians"[83].

The 1949 Geneva Conventions also explicitly criminalised military collaboration in the context of forcing persons under their protection to serve in the armed forces or participate in military operations during an international armed conflict. It should be noted that the forced engagement of civilians or prisoners of war in work unrelated to military service or unrelated to the achievement of military objectives was not prohibited. For example, the Third Geneva Convention permits forced labour of prisoners of war in the following industries: (a) agriculture; (b) industries connected with the production or extraction of raw materials and processing industries, with the exception of the metallurgical, engineering and chemical industries; public works and construction work which have no military character or purpose; (c) transport and handling of supplies which have no military character or purpose; (d) commercial enterprise, decorative and applied arts; (e) domestic services; (f) communal services which have no military character or purpose[84]. At the same time, forcing a prisoner of war (Third Geneva Convention, Article 130) or forcing a protected person (Fourth Geneva Convention, Article 147) to serve in the armed forces of an enemy state was expressly prohibited and even classified as *grave breaches*. Furthermore, the Fourth Geneva Convention (Article 51) states that an occupying Power may not compulsorily recruit protected persons into its armed or auxiliary forces and may not compel such persons "to perform any work which would involve the obligation to take part in military operations"[85].

As it can be seen, the Geneva Conventions in no way preclude voluntary service in the army of an enemy state. While the Fourth Geneva Convention prohibits "pressure or propaganda to join voluntary military service" (Article 51), it does not at the same time prohibit conscription for voluntary military service. As Sh. Darcy notes, "since those who serve the enemy by fighting for him inevitably suffer harm, both from their participation in hostilities and from the harsh consequences for themselves as collaborators, international humanitarian law seeks to exclude forced cooperation of this kind, at least in the context of international armed conflict"[86].

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[83] S. Darcy. *To Serve the Enemy. Informers,* Collaborators…, op. cit., p. 73.

[84] *Convention (III) relative to the Treatment of Prisoners of War. Geneva*, 12 August 1949. https://ihl-databases.icrc.org/assets/treaties/375-GC-III-EN.002.pdf (accessed on August 15, 2023)

[85] *Convention (IV) relative to the Protection of Civilian Persons*…, op. cit.

[86] S. Darcy. *To Serve the Enemy. Informers,* Collaborators…, op. cit., p. 80.

The Fourth Geneva Convention recognises that occupation may affect the administration of a territory, providing for possible changes in the "institutions or government of that territory" as a result of occupation (Article 47). It also recognises that national and local administrations may continue to function under the authority of the occupying power. For example, the Convention explicitly states that the occupying power "must, in cooperation with national and local authorities, promote the proper functioning of all institutions aimed at the care and education of children" (Article 50). At the same time, civil servants remained protected if they refused to work under the occupying power: "Article 54. The occupying power may not change the status of civil servants or judges in the occupied territories or in any other way apply sanctions or take any coercive or discriminatory measures against them if they refrain from performing their functions for reasons of conscience".

As far as economic collaboration is concerned, the Geneva Conventions upheld the position established in international humanitarian law that the purpose of international conventions on the laws and customs of war is not to regulate trade or economic activities between armed forces and persons or companies, leaving this matter to national law. It is then interesting to note some general rules concerning the work of individual civilians, such as interpreters. According to Article 105 of the Third Geneva Convention and Article 72 of the Fourth Geneva Convention, the accused, unless he voluntarily refuses such assistance, should be assisted by an interpreter both during the pre-trial investigation and at the trial[87]. The work of an interpreter in such cases, given its focus on the protection of human rights, is unlikely to be assessed in domestic legislation as a collaborative crime. However, according to the correct opinion of M. Baker, interpreters accompanying armed forces during hostilities or participating in the interrogation of detainees are likely to be considered as punishable collaborators[88].

The next step in international humanitarian law on the laws and customs of war was the adoption of the Additional Protocols to the Geneva Conventions[89].

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87 *Convention (IV) relative to the Protection of Civilian Persons*…, op. cit.

88 *M. Baker, Interpreters* and *translators* in the *war zone*: *Narrated* and *narrators*. "The *Translator"2010, 16(2): 197-*222, p. 207.

89 Indeed, the Geneva Conventions of 1949 significantly improved the legal protection of conflict victims. However, they mainly concerned international conflicts - wars between states. In fact, only Article 3, common to all four Conventions, dealt with internal conflicts; its adoption in itself was a major step forward, but the norms contained in this article are mostly of a general nature. Adopted on 8 June 1977, Protocols I and II are international treaties supplementing the 1949 Geneva Conventions. They significantly improve the legal

Neither of the two 1977 Additional Protocols contains articles prohibiting the use of coercion against prisoners of war or civilians for the purpose of gathering information, as is the case, for example, in the Geneva Convention, on the basis that neither of them prohibits the use of such persons as a source of information gathering during armed conflict at all. It should not be forgotten at this point that both Protocols were drafted for application during wars of national liberation and not for all conflicts taking place on the territory of a State. However, it cannot be argued that the texts of the Protocols are absolutely not related to the regulation of collaborationist activities. Such indirect regulation exists and again concerns the prohibition of coercive measures. Article 75 of the First Protocol states that "the following acts are and shall remain prohibited at all times and in all places, whether committed by the civilian or military population: a) violence against the life, health or physical or mental well-being of persons, in particular: (i) murder; (ii) torture of any kind, whether physical or mental; (iii) corporal punishment; (iv) mutilation; (b) violations of personal dignity, in particular degrading treatment, forced prostitution and all forms of moral aggression; (c) hostage-taking; (d) collective punishment; (e) threats to commit any of the above"[90]. A similar standard is contained in Article 4 of Protocol II[91].

As far as military collaboration is concerned, Article 77(2) of the First Protocol and Article 77(2) of the Second Protocol provide only that children may not be recruited into armed forces or groups or allowed to participate in hostilities. As rightly summarised by Sh. Darcy, the absence of such provisions reflects the refusal of States to transpose the law of international armed conflict, including

protection of civilians and the wounded and, for the first time, establish detailed humanitarian rules applicable during civil wars. They were adopted by states in order to make international humanitarian law more comprehensive and universal and better adapted to modern conflicts. In addition, most of the countries that gained independence after 1945 ‚inherited' the Geneva Conventions from former colonial states - so the adoption of the Protocols also provided an opportunity for them to contribute to the development of the law. In 2005, the Third Additional Protocol to the Geneva Conventions was adopted, which establishes a new emblem - the red crystal, with a status equal to the red cross and red crescent. However, this protocol, due to its content, does not affect collaborative activities. For more details: https://www.icrc.org/en/doc/resources/documents/misc/additional-protocols-1977.htm?gclid=CjwKCAjwloynBhBbEiwAGY25dJ6lar1j-CI_aT1-TcH9TdtO-Wgn0o0wj-b_8NW-39jk6hfa5X50fKRoCNTcQAvD_BwE (accessed on August 15, 2023)

[90] *Protocol Additional to the Geneva Conventions* of 12 August 1949, and relating to the *Protection of Victims of International Armed Conflicts* (Protocol I), 8 June 1977. https://ihl-databases.icrc.org/assets/treaties/470-AP-I-EN.pdf (accessed on August 15, 2023)

[91] *Protocol Additional to the Geneva Conventions* of 12 August 1949, and relating to the *Protection of Victims of Non-International Armed Conflicts* (Protocol II), 8 June 1977. https://ihl-databases.icrc.org/assets/treaties/475-AP-II-EN.pdf (accessed on August 15, 2023)

the concept of prisoners of war, to non-international armed conflict and to affirm their continuing right to recruit citizens into their armed forces[92].

Thus, as we can see, international humanitarian law on the laws and customs of war has a long history, among others, regarding the problems of collaboration. Such activity, for obvious reasons, is observed from two perspectives: those who collaborate (actually the collaborators) and those who engage them (the occupying power). As far as the activities of the aggressor state are concerned, according to the applicable provisions of the Geneva Conventions and their Additional Protocols, the occupation administration cannot engage the civilian population at its discretion. This is hindered by a large number of specific provisions, which primarily aim to prohibit forced participation in military operations or other specific activities.

At the same time, the violation of these same rights by the occupying power through coercion against the inhabitants of the occupied territory creates for these persons the risk of persecution by their own national authorities, to whom they are bound by national law. One does not even need to be a lawyer to understand the obvious fact that the obligations of the population of an occupied territory derive from the domestic legislation of the state concerned, which requires loyalty to its own government and usually provides for punishment for voluntary cooperation with the enemy. And international humanitarian law completely permits such national regulations, and furthermore "leaves" most of the question of the responsibility of collaborators to the discretion of national legislatio

[92] S. Darcy. *To Serve the Enemy. Informers,* Collaborators…, op. cit., p. 80.

GRZEGORZ KRYSZTOFIUK[1]

CRIMINAL LIABILITY FOR COLLABORATION WITH THE ENEMY UNDER WARTIME CONDITIONS IN POLISH CRIMINAL LAW COMPARED WITH UKRAINE

Russia's invasion of Ukraine on 24 February 2022 has prompted many changes in the latter country, including in its legislation. One of those changes was the adoption of a law on criminal liability for collaboration with the enemy in various fields, such as politics, information, economics, education, and the military[2]. It should be emphasized that the new types of crimes involving collaboration were established only after the full-scale aggression against Ukraine, even though Russia had attacked Ukraine back in 2014. For many years, attempts were made to pass new legislation, but to no avail. Only the full-scale aggression broke the deadlock in this regard. In my opinion, the adoption of the law and the practice of its application in Ukraine should prompt reflection on the issue of collaboration with the enemy during the war in other countries as well, especially countries such as Poland, which borders both Ukraine and Russia. Most importantly, the Ukrainian experience can serve as an inspiration for determining whether the Polish legislature should also amend the criminal law as it relates to responsibility for cooperation with the enemy. Moreover, Ukraine's practical experience may allow Poland to be better prepared, in terms of the operation of the justice system during states of emergency, especially martial law.

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[1] Grzegorz Krysztofiuk, doctor of law, judge, assistant professor at the Academy of Justice in Warsaw, author of over 100 scientific publications in the field of criminal law and European law, including co-author of a commentary on the Code of Criminal Procedure, a commentary on the Act on the upbringing and social rehabilitation of minors and a commentary on the Act on mental health, lecturer at the National School of Judiciary and Public Prosecution and the District Chamber of Legal Advisors in Warsaw. ORCID number: 0000-0001-6184-5048

[2] The first person to use the term "collaboration" in the sense of cooperation with the enemy was the French Marshal Philippe Pétain; see I. Deák, *Europe on Trial: The Story of Collaboration, Resistance, and Retribution During World War II*, Westview Press 2015, p. 55.

This paper attempts to discuss the principles of criminal liability for collaboration that are currently in force in Ukraine and Poland and draws conclusions from a comparison of the legislation of the two countries. This analysis is preceded by a consideration of the definition of collaboration with the enemy and the provisions of international law in this regard. This is because the most recent Polish experience of armed conflict is very distant in time and relates to World War II. As a result, for many years, the issue of collaboration has not been of interest to domestic representatives of the practice and theory of criminal law.

In international laws that govern the conduct of armed conflicts, there is no definition of the term 'collaboration with the enemy', and this concept is addressed only marginally. Certainly, there are no laws that prohibit the cooperation of soldiers or civilians with the aggressor. There is also no prohibition for a state waging war to recruit collaborators among the citizens of the state with which it is engaged in an armed conflict. International law on armed conflicts does not distinguish such a category of persons as 'collaborators'.[3] The provisions of international law in this area are rudimentary and limited to the prohibition of the use of certain methods by states that are parties to an armed conflict or occupy another state. Article 31 of the Geneva Convention of August 12, 1949, relative to the Protection of Civilian Persons in Time of War[4], provides for the prohibition of coercion. According to that article, no physical or moral coercion may be used against protected persons, to obtain information from them or from third parties. The final part of this provision requires special attention. Obtaining information from protected persons or third parties may constitute a form of solicitation of collaborators by the warring state. Such cooperation can be one form of collaboration with the hostile state. At the same time, the Convention does not prohibit obtaining information, but only prohibits the use of a particular method in obtaining it, namely coercion, of whatever nature, including moral (mental) coercion[5].

It is worth noting that the prohibition expressed in Article 31 of the Convention is only part of the broad package of protections that the Convention grants to civilians[6]. In addition, it should be emphasized that, pursuant to Article 27

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[3] S. Darcy, *To Serve the Enemy: Informers, Collaborations, and the Laws of Armed Conflict*, Oxford 2019, p. 1, 6.

[4] Journal of Laws of 1956, no. 38, item 171.

[5] The Convention mainly protects persons who, at any time and in any way, find themselves in the event of an armed conflict or occupation under the authority of one of the parties to the conflict or the occupying power of which they are not nationals (Article 4).

[6] G. S. Corn, K. Watkin, J. Williamson, *The Law in War. A Concise Overview*, London and New York 2023, 2nd edition, p. 159.

of the Convention, parties to an armed conflict may apply to protected persons such control or security measures as prove necessary because of the war. This provision implies that states can require protected persons to submit to imposed regulations, if they serve to ensure security in the controlled area. In this regard, they may also demand cooperation from these people if it serves to ensure security. Article 51 of the Convention prohibits forcing civilians to serve in the armed forces of the occupying state. Once again, it must be emphasized that the cited provision of the Convention does not prohibit collaboration involving service in the military of the hostile state, but only the use of a specific measure to recruit soldiers for such service[7].

A similar prohibition to the one presented above is expressed in Article 17 of the Geneva Convention of August 12, 1949, relative to the Treatment of Prisoners of War[8], according to which no physical or moral torture or coercion of any kind may be inflicted on prisoners of war in order to obtain any information from them. It is forbidden to threaten prisoners of war who refuse to answer, to insult them, or to subject them to trouble or harm of any nature[9]. It should be noted that, in accordance with the cited article, each prisoner of war is obliged to give, while being interrogated, only on his last name, first and middle names, military rank, date of birth, and military ID card number, or, in the absence of this number, other equivalent data. Again, it must be emphasized that only the use of a specific method of obtaining information from prisoners of war is prohibited under the Convention. In contrast, the Convention has no provisions on obtaining information in a voluntary manner that does not involve the use of coercive measures against prisoners of war.

The provisions of international law cited as examples do not address the phenomenon of collaboration *per se*. They concern a specific behaviour that may or may not be a manifestation of collaboration, namely the provision of information to the enemy by prisoners of war or civilians. Furthermore, the prohibition of the use of violence is the basic principle governing the recruitment of informants[10]. Disclosure of information, of course, is not the only possible form of cooperation with the enemy; other forms include fighting as a member of the enemy's armed forces, involvement in the enemy's propaganda, economic

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7 Ibidem, p. 161.

8 Journal of Laws of 1956, no. 38, item 171.

9 The Convention applies to prisoners of war, i.e., persons who are under the authority of the enemy and are members of, among others, the armed forces of a party to the conflict, as well as members of militias and volunteer units that are parts of those armed forces (Article 4). For more information, see: G. S. Corn, K. Watkin, J. Williamson, *The Law…*, pp. 187-200.

10 S. Darcy, *To Serve…*, op. cit., p. 53.

cooperation (such as trading with the enemy), providing the services of an interpreter, and providing assistance of an administrative nature[11]. The latter form especially involves representatives of the government or local administration, as well as the judiciary; hence it is also referred to as bureaucratic collaboration[12]. Of course, different forms of collaboration are not easy to separate, and can, in fact, occur at the same time.

The very concept of *collaboration with the enemy* seems to be extremely difficult to define precisely because of the multitude of possible forms of collaboration with the enemy. In defining these forms, it is important to bear in mind the need to distinguish between intentional and voluntary cooperation with the enemy and forms of cooperation arising from the exercise of the powers and duties of the hostile state to ensure order and security in the controlled territory, as well as other forms of cooperation arising from the residence, performance of work, or running of a business by persons subject to the authority of the hostile state. It is not practically possible for a person to be present in an area governed by the enemy without being associated with some form of interaction with the hostile state and its representatives. Moreover, in defining the concept in question, it is important to keep in mind the tendency to give it too broad a meaning for political purposes, to misuse the concept to fight opponents both during hostilities and after they end - in the period post-war settlements[13]. This is clearly evidenced by the European experience after World War II, especially in countries that were in the so-called 'communist camp' after the end of the war. The rudimentary nature of the provisions of international law on the matter in question is obviously not the result of negligence. It is the result of a conscious decision of the states - parties to the conventions to leave them the right to regulate collaboration in national law. Indeed, while international law on armed conflicts has little to say on the subject, the legal systems of states generally contain regulations that impose punishment for collaboration. This reluctance of states to regulate the issue of collaboration at the international level is due to the interest of states involved in armed conflicts in obtaining collaborators among the citizens of the hostile state, accompanied by firmness in punishing their own citizens who collaborate with the enemy[14]. Countries did not agree to limit their own right to regulate this matter. This, of course, does not mean complete freedom for

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11 S. Darcy, *Coming to Terms with Wartime Collaboration: Post – Conflict Processes & Legal Challenges*, "Brooklyn Journal of International Law" 2019, no. 45, p. 76.

12 S. Darcy, *To Serve…*, op. cit., p. 39.

13 Ibidem, pp. 16-17.

14 Ibidem, p. 3.

states to recruit and punish collaborators. In addition to the restrictions indicated above, which are extremely rudimentary, the provisions of international law on fundamental human and civil rights are also applicable[15]. In Europe, the extent of states' freedom to either use the assistance of or punish collaborators is defined primarily in the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950[16]. The provisions of that convention rule out the use of violence by states but mandate that everyone, including collaborators, be given a fair and honest criminal trial. With these general remarks in mind, one can define collaboration with the enemy as any intentional and voluntary cooperation with the hostile state, regardless of the reasons, which violates the duty of loyalty to the homeland, and thus detrimental to it and beneficial to the interests of the aggressor state. It is important to emphasize the voluntary nature of the cooperation, and thus exclude cases of cooperation resulting from coercion or the threat of the use of force from the scope of application of the term analysed. At the same time, historical experience has shown that not in every case does the use of these measures exclude the voluntary nature of cooperation[17].

As a conclusion for this part of the discussion, it should be pointed out that international law leaves national legislatures a wide range of discretion in regulating criminal liability for collaboration. This discretion, of course, is not complete. Restrictions in this regard arise not only from international humanitarian law, but also primarily from international human rights law[18].

At the outset of this section of the discussion, it should be emphasized that its objective is not to make a detailed analysis of Ukrainian law governing cooperation with the enemy. The aim is to outline the general situation in this regard, against the background of both the law and the practice of its application in Ukraine, so that a comparison can be made with the situation in Poland. As already mentioned, the legislation in Ukraine did not radically change until 2022.[19] The relevant changes were made as early as on 3 March 2022, about

[15] For a broader discussion of the relationship between humanitarian law and human rights law during a war, see: G. S. Corn, K. Watkin, J. Williamson, *The Law…*, op. cit., pp. 62-109.

[16] Journal of Laws of 1993, no. 61, item 284.

[17] For more information, see: S. Darcy, *Coming to Terms…*, op. cit., pp. 99-106.

[18] For more information, see: M. Martinéz, *Betrayal in War: Rules and Trends on Seeking Collaboration under IHL*, Journal of Conflict and Security Law 2020, no. 1, pp. 81-99.

[19] For information on amendments in Ukraine's criminal law after the Russian aggression in 2022, see: E. Kuzmin, *The General Part of The Criminal Code of Ukraine: A Brief Overview Of The New Wartime Amendments*; http://dspace.onua.edu.ua/bitstream/handle/11300/19752/Kuzmin%20E.%20The%20general%20part%20of%20the%20Criminal%20Code%20of%20Ukraine….pdf?sequence=1&isAllowed=y (accessed on 31 July 2023), pp. 310-312.

a dozen days after the start of Russia's full-scale invasion and the declaration of martial law by the Ukrainian president[20].

This testifies to the importance that the Ukrainian government has given to the regulation of collaboration in the conditions of armed conflict in the country's criminal law. This further demonstrates that the previously existing regulations on crimes against national security were deemed inadequate by Ukraine, because they did not cover all types of behaviour that should be criminalized. There was also an urgent need to specify how Ukrainian citizens residing in the country's temporarily occupied territories were permitted and prohibited to act. The Ukrainian parliament passed Act no. 2108-IX, amending certain legislative acts of Ukraine concerning the establishment of criminal liability for collaboration activities[21]. The new law became effective on 15 March 2022. Under this act, the Criminal Code of Ukraine (hereinafter CCU)[22] was amended by adding Article 111-1 (to the chapter containing crimes against internal security). The article, titled 'Collaborative activities', describes various forms of such activities in the fields of education, administration, the military, propaganda, and the judiciary, among others. It is a very comprehensive regulation, consisting of eight parts. According to Article 111-1 of the CCU, the penalty of deprivation of the right to hold certain positions or carry out certain activities for a period of 10 to 15 years is imposed for public denial by a citizen of Ukraine of the armed attack on Ukraine, the establishment and maintenance of temporary occupation of part of the territory of Ukraine, public appeals by a citizen of Ukraine to support the decisions and/or actions of the aggressor state, its armed formations, and/or its occupation administration, to cooperate with the aggressor state, its armed formations, and/or its occupation administration, and not to recognize the extension of state sovereignty of Ukraine to the temporarily occupied territories of Ukraine. 'Public' denial and appeals mean actions addressed to an unspecified number of people, particularly on the Internet

[20] In 2017, 2019, and 2021, draft amendments to the law in this regard were submitted, but were not passed; see M. Petrovets, *Ukraine's Plan to Prosecute Collaborators. New legislation remains open to interpretation by law enforcement agencies and judges*, interview by Svitlana Morenets, text of the interview available at: https://iwpr.net/global-voices/ukraines-plan-prosecute-collaborators (accessed on 26 July 2023). For information on an academic discussion in Ukraine on the need to supplement the code with a separate provision on collaboration, see: N. Antonyuk, *A Criminal and Legal Assessment of Collaborationism: A Change of Views in Connection with Russia's Military Aggression against Ukraine*, Access to Justice in Eastern Europe 2022, no. 3 (15), p. 140, and the literature referenced there: https://ajee-journal.com/upload/attaches/att_1660481464.pdf (accessed on 27 July 2023).

[21] https://zakon.rada.gov.ua/laws/show/2108-20?lang=en#Text (accessed on 26 July 2023).

[22] The code entered into force on 1 September 2001.

or in the mass media. A voluntary assumption by a Ukrainian citizen of a position unrelated to the performance of organizational-administrative or administrative-economic activities in the illegal authorities created in temporarily occupied territories, including in the occupation administration of the aggressor state, is punishable by deprivation of the right to occupy certain positions or engage in certain activities for 10 to 15 years with or without confiscation of property. Far more severe punishments are imposed for a voluntary occupation by a citizen of Ukraine of a position related to the performance of organizational-administrative or administrative-economic functions in illegal authorities established in the temporarily occupied territory, including the occupation administration of the aggressor state, or a voluntary election to such authorities, as well as participation in the organization and holding of illegal elections and/or referendums in the temporarily occupied territory, or public incitement to hold such illegal elections and/or referendums in the temporarily occupied territory. Such behaviour is punishable by imprisonment for 5 to 10 years, with deprivation of the right to hold certain positions or engage in certain activities for 10 to 15 years with or without confiscation of property. Activities related to participation in enemy propaganda are also severely punished. The penalty of correctional work for up to 2 years or detention for up to 6 months, or imprisonment for up to 3 years with deprivation of the right to hold certain positions or carry out certain activities for a period of 10 to 15 years was provided for propaganda by a Ukrainian citizen in educational institutions aimed at facilitating the armed aggression against Ukraine, the establishment and confirmation of the temporary occupation of a part of the territory of Ukraine, the evasion of responsibility for the armed aggression against Ukraine by the aggressor state, as well as for actions by Ukrainian citizens aimed at implementing the teaching standards of the aggressor state in educational institutions. Provision of material resources to illegal armed or paramilitary formations established in the temporarily occupied territory and/or armed or paramilitary formations of the aggressor state, and/or conducting business in cooperation with the aggressor state or the illegal authorities formed in the temporarily occupied territory is punishable by a fine of up to 10,000 untaxed minimum daily incomes of citizens or imprisonment for 3 to 5 years, with deprivation of the right to hold certain positions or carry out certain activities for 10 to 15 years and with confiscation of property. On the other hand, organization and conduct of political events and informational activities in cooperation with the aggressor state and/or its occupation administration aimed at supporting the aggressor state, its occupation administration, or its armed formations, and/or supporting them in evading their responsibility for the armed

aggression against Ukraine, in the absence of signs of treason, as well as active participation in such activities, are punishable by 10 to 12 years in prison with deprivation of the right to hold certain positions or engage in certain activities for 10 to 15 years with or without confiscation of property. Very severe penalties have been stipulated for a voluntary assumption by a Ukrainian citizen of a position in the illegal judiciary or law enforcement bodies established in the temporarily occupied territory, as well as a voluntary participation of a Ukrainian citizen in illegal armed activities or paramilitary formations established in the temporarily occupied territory and/or in the armed formations of the aggressor state, as well as for providing assistance to these formations in the conduct of armed operations against the Armed Forces of Ukraine and other military formations established in accordance with the laws of Ukraine. Such behaviour is punishable by imprisonment for 12 to 15 years with deprivation of the right to hold certain positions or engage in certain activities for 10 to 15 years, with or without confiscation of property. The most severe punishment - 15 years in prison or life imprisonment (with deprivation of the right to hold certain positions for 10 to 15 years, with or without confiscation of property) - is imposed for activities related to holding positions, participating in political rallies, holding positions in the illegal judiciary or law enforcement agencies, as well as a voluntary participation of a Ukrainian citizen in illegal armed activities or paramilitary formations, if they led to the death of people or other serious consequences.

When analysing Article 111-1 of the CCU, two elements should be highlighted. The first is the subjective scope of the provisions of the article. The subjects of most crimes regulated therein can only be citizens of Ukraine. The second element is the voluntary nature of undertaking some of the activities described in the article. Also noteworthy is the very casuistic way in which the elements of the crime of collaboration with the enemy are described. The Ukrainian legislature sought to cover all possible forms of collaboration within the scope of the article, while at the same time attempting to use sufficiently general terms so that the scope of the article would not omit any of the relevant forms of collaboration. However, this raises serious doubts about the fulfilment of the requirement of definiteness of the norms of criminal law defining the characteristics of crimes. This is because it is difficult to find unambiguous definitions of such concepts as *a position not related to the performance of organizational-administrative or administrative-economic activities* (as well as a position related to the performance of these activities), *propaganda of a citizen of Ukraine in educational institutions*, *political events*, and *information activities*. It is therefore not easy for residents of the parts of Ukraine occupied

by Russia to determine whether, for example, a village meeting constitutes a 'political event' or not, and consequently to assess whether participation in a particular event or other form of activity constitutes the crime of collaboration. It is true that the act indicates that a *political event* should be understood as a congress, meeting, rally, march, demonstration, conference, or roundtable, but this explanation itself uses very general terms. In addition, the term under analysis was defined in such a broad way that it is difficult to identify categories of meetings that would not fall under the term *political event*. The same comments can be applied to the way the act defines what is meant by 'information activities'. The Ukrainian legislature indicated that these activities include the creation, collection, receipt, storage, use, and transmission of relevant information. This definition implies that it covers any type of activity regarding information, including even storage of information; moreover, it uses another ambiguous term, *relevant information*. Thus, the Ukrainian legislature recognized in part the problem of ambiguity and generality of the expressions used to define the characteristics of collaboration, but the measures taken to mitigate this problem in the solutions adopted should be assessed as far from sufficient. It is also not difficult to see that the use of such general terms leads to the inclusion in the scope of Article 111-1 of the Code of a very wide range of activities, including those that can be considered even necessary for normal functioning in the occupied territories, the exercise of a profession there, and the conduct of any business activity. Such legitimate doubts may be raised by such activities as operating a store where the enemy's soldiers make their purchases, or a barber store whose services are used by those soldiers. Such an activity can be treated as the transfer of material resources to the enemy's armed formations in temporarily occupied territories or as economic activity in cooperation with the other side.

As indicated in the literature, the lack of clarity and conciseness of the provisions is a consequence of the practice of treason proceedings after Russia's attack against Ukraine in 2014. In these trials, the defence attorneys tried to narrow down the concept of treason. Therefore, the legislature decided to specify the behaviour covered by the term *collaboration* as broadly as possible[23].

There are also reasonable doubts about the requirement of voluntariness of the penalized behaviour, as it only applies to certain behaviours. For other behaviours, on the other hand, this requirement is not imposed. The omission of this requirement and the consequences of this omission raise objections.

[23] N. Antonyuk, *A Criminal…*,op.cit., p. 141.

This should not mean that forcing the perpetrator to take action that constitutes an act of collaboration constitutes a crime each time. An exception to criminal liability, in the case of the use of physical force or mental coercion, is regulated in Article 40 of the CCU. However, this raises the question of why the legislature imposed the requirement of voluntariness for certain behaviours.

The literature also points out that the adopted way of describing the elements of collaboration raises difficulties in distinguishing this crime from other crimes against national security, especially treason[24]. In practice, this results in similar behaviour being treated differently by law, depending on the decisions made by law enforcement agencies and courts[25]. Already in early April, barely a few weeks after the article of the criminal code that is being discussed went into effect, the Ukrainian prosecutor's office reported that more than 150 investigations had been opened for collaboration with Russia[26]. On the other hand, information provided by the Office of the Prosecutor General of Ukraine shows that from the entry into force of Act no. 2108-IX to November 12, 2022, 3361 criminal proceedings were initiated for the crime of collaboration under Article 111-1 of the CCU. Most of the investigations launched concerned holding positions in government bodies established in the temporarily occupied territories, participating in elections to these bodies, organizing elections and referendums in those territories, holding positions in illegal judiciary or law enforcement bodies established in the temporarily occupied territories, as well as voluntary participation of a Ukrainian citizen in illegal armed activities or paramilitary formations established in the temporarily occupied territory[27]. The ongoing criminal proceedings concerned, for example, behaviour involving support for the decision of the President of the Russian Federation to launch a 'special operation' against Ukraine

[24] According to Art. 111 of the CCU, Treason against the state, which is an act intentionally committed by a citizen of Ukraine to the detriment of the sovereignty, territorial integrity and inviolability, defense capabilities, state security, or economic or information security of Ukraine: desertion to the enemy during an armed conflict, espionage, assistance to a foreign state, a foreign organization, or their representatives in carrying out subversive activities against Ukraine, is punishable by imprisonment of twelve to fifteen years, with or without confiscation of property. If committed in the period of martial law, it is punishable by imprisonment for up to fifteen years or life imprisonment with confiscation of property.

[25] See: *Criminal Liability for Collaborationism: analysis of current legislation, practice of its application, and proposals for amendments. Analytical Note*: https://zmina.ua/wp-content/uploads/sites/2/2022/12/zvit_zmina_eng-1.pdf (accessed on 26 July 2023), pp. 6, 8, 12.

[26] See: *Ukraine: New Laws Criminalize Collaboration with an Aggressor State*: https://www.loc.gov/item/global-legal-monitor/2022-04-04/ukraine-new-laws-criminalize-collaboration-with-an-aggressor-state/ (accessed on 27 July 2023).

[27] See: *Criminal Liability…*, op. cit., pp. 6, 9.

in the presence of others, a public call for support of the aggressor state posted in an account in social media banned in Ukraine, starting a criminal cooperation with the occupation authorities by the manager of a state-owned enterprise and voluntarily provision of material resources to representatives of the armed forces of the aggressor state, participation of a medical student in propaganda projects in the Russian mass media, agreeing to cooperate with representatives of the Russian armed forces, and serving as head of the municipal department of emergency services[28].

On the same day as the act indicated, Act no. 2107-IX, amending certain legislative acts on ensuring liability of collaborators, was also passed[29]. Under that act, a legal basis was put in place to restrict the rights of those convicted of collaboration, including the rights to run for office in elections at all levels, to serve in the military, to have access to state secrets, and to be formal representatives of presidential candidates and candidates in local elections. The act also specifies the judicial procedure for closing legal entities whose representatives were found guilty of collaboration with the aggressor state. In addition to this part of the discussion, it should be added that the provisions of the Criminal Code of Ukraine on treason (Article 111) and sabotage (Article 113) were supplemented with an aggravating circumstance in the form of committing the crime during martial law[30]. The Criminal Code of Ukraine was supplemented with another article on collaboration on 23 April 2022. On that date, Act no. 2198-IX amending the Code of Criminal Procedure and the Criminal Code of Ukraine, with regards to increasing the liability for collaboration and the specific characteristics of the application of preventive measures to commit crimes against the foundations of national and public security came into force, pursuant to which Article 111-2 was added. The article concerns assistance to the aggressor state. It is intended to criminalize support for Russia in its aggression and armed conflict against Ukraine, and to ensure just punishment for belonging to an aggressor state and deprivation of the right to hold certain positions or conduct certain activities'.[31] The new article also deals with cooperation with the aggressor state, but it does not use the term *collaboration*. Under the new

[28] Ibidem, pp. 8-11.

[29] The act was passed on 3 March 2022, and came into force on 15 March 2022: https://perma.cc/Z3FX-VHKL (accessed on 26 July 2023).

[30] Act of 3 March 2022, amending the Criminal Code of Ukraine to strengthen liability for crimes against the foundations of national security of Ukraine during martial law: https://zakon.rada.gov.ua/laws/show/2113-20?lang=en#Text (accessed on 27 July 2023). Also, see: N. Antonyuk, *A Criminal…*,op. cit., p. 140.

[31] M. Petrovets, *Ukraine's Plan…,* op. cit.,

article, intentional actions aimed at assisting the aggressor state are penalized, including its armed formations, and/or its occupation administration 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 causing harm to Ukraine by implementing or supporting decisions and/or actions of the aggressor state, its armed formations, and/or its occupation administration; and voluntarily collecting, preparing, and/or transferring material resources or other assets to representatives of the aggressor state, its armed formations, and/or its occupation administration. These behaviours are subject to the penalty of imprisonment for 10 to 12 years, disqualification from holding certain positions or engaging in certain activities for 10 to 15 years, with or without confiscation of property. It should be emphasized that the subject of this crime can be any person capable of criminal liability, not only a citizen of Ukraine. In addition, the Criminal Code of Ukraine (in the chapter on crimes against peace, security of humanity, and international legal order) includes Article 436-2 on justifying, recognizing as legal, and denying the armed aggression of the Russian Federation against Ukraine, and glorifying its participants. The penalty of correctional labour for up to 2 years, detention for up to 6 months, or imprisonment for up to 3 years is imposed for justifying, considering as lawful, or denying the armed aggression of the Russian Federation against Ukraine, which began in 2014, by presenting the armed aggression of the Russian Federation against Ukraine as an internal civil conflict, justifying it, recognizing it as legitimate, denying the temporary occupation of a part of the territory of Ukraine, and glorifying those who carried out the armed aggression of the Russian Federation against Ukraine, which began in 2014, representatives of the armed forces of the Russian Federation, irregular illegal armed groups, armed bands and mercenary groups created, subordinated, directed, and financed by the Russian Federation, representatives of the occupation administration of the Russian Federation, consisting of its state bodies and structures responsible for the management of the temporarily occupied territories of Ukraine, and representatives of self-proclaimed bodies controlled by the Russian Federation that usurped the exercise of power in the temporarily occupied territories of Ukraine. The production and dissemination of materials containing such information is punishable by restriction of liberty or imprisonment for up to 5 years, with or without confiscation of property[32].

[32] *The Key Legislative Changes: What has changed in criminal law and procedure in 2022?*: https://www.lexology.com/library/detail.aspx?g=83d10eb2-cede-4417-9a3f-9a535949585f (accessed on 27 July 2023).

A comparison of the provisions of the Criminal Code of Ukraine presented above allows the following conclusions to be formed. First, the Ukrainian legislature recognized that the scope of application of traditional crimes against state security, such as treason, sabotage, and espionage, which are present in the Criminal Code of Ukraine, does not include all behaviours that pose danger for the country during the period of martial law with regard to cooperation with the aggressor state. It was necessary to supplement the criminal law with more types of crimes dealing directly with collaboration. Secondly, the subjects of some of these crimes, according to the decision of the Ukrainian legislature, can be not only citizens of Ukraine, but also citizens of other countries (except citizens of the aggressor state) and stateless persons. Consequently, the Ukrainian state is fighting the collaboration of not only its own citizens. Third, collaborative behaviour can take place not only in territories temporarily occupied by Russia. Such a restriction applies, for example, to holding administrative positions or positions in judicial authorities established in the territories. Other behaviours, such as, for example, supporting, denying, or justifying the aggression, providing material resources, or conducting business activities in cooperation with the enemy do not have to take place in the occupied territories. The perpetrators may operate in the part of Ukraine that is not under occupation or in the territory of other countries. Fourth, the scope of application of the new types of crimes intersects with each other and with the scope of application of traditional crimes against security. It is difficult to draw a clear line between, for example, the scope of Article 111-1 on public denial of aggression and the scope of Article 436-2 of the Code in the section on denial of the armed aggression by the Russian Federation against Ukraine. Provision of material resources to the aggressor is punishable under both Article 111-1 and Article 111-2 of the CCU. Fifth, the punishments provided for the various forms of collaboration range from very mild, even lenient, to very harsh. The Ukrainian legislature treated 'domestic' collaboration (which includes denying aggression and supporting it) most leniently[33]. These crimes are punishable only by deprivation of the right to hold certain positions or conduct certain activities for a period of 10 to 15 years. As is aptly pointed out, such a punishment has no relevance for offenders who have never held or intend to hold any public office[34]. In any case, for these people, the punishment of deprivation of the right is not an inconvenience, nor can it have a preventive effect on them. In addition, it seems that in providing for the punishment

[33] N. Antonyuk, *A Criminal…*, op. cit., p. 143.
[34] See: *Criminal Liability…*, op. cit., p. 13.

of deprivation of rights in Article 111-1 of the Code, the Ukrainian legislature did not sufficiently consider the effects of the development of communication techniques, especially social media, their spread, and their scale on the reach and effectiveness of the propaganda activities and psychological warfare waged by the aggressor. The penalty specified in the Code appears to be too lenient. In contrast, political, administrative, or military collaboration is subject to significantly harsher punishment.[35] Holding a position in the judiciary bodies or participating in an illegal army in the occupied territories is punishable by imprisonment of not less than 12 years (and up to 15 years). The lower limit of the statutory penalty was set at a very high level, and the range of punishment left to the discretion of the court is very narrow (only between 12 and 15 years). This raises doubts about the excessive limitation of judicial discretion in terms of the harshness of the punishment for the indicated manifestations of collaboration. Economic and cultural collaboration is somewhere between these extremes and is punishable by fines or imprisonment of several years. As the mass media reported: 'Until the time of the Russian invasion, however, suspended sentences prevailed, with only 6 to 20 percent including immediate imprisonment. This changed abruptly after 24 February, with more than 64 percent of sentences now being imprisonment without suspension, and an average of 70 convictions per month for collaboration'[36]. Worth mentioning as a side note is the creation by the Ukrainian authorities of a special chat room for, among other things, electronic reporting of cases of collaboration called 'EVoroh' (e-enemy).[37]

At the outset of this part of the discussion, it should be emphasized that, according to Article 82 of the Polish Constitution, *The duty of a Polish citizen is loyalty to the Republic of Poland and concern for the common good*. The duty of loyalty covers the Polish state, the principles of the system of government and basic tasks of which are defined by the Constitution. Any action against these principles is an act of treason[38]. The provisions of Chapter XVII of the Criminal Code titled 'Crimes against the Republic of Poland', are the most important in terms of combating and punishing collaboration with the enemy in Polish law. The chapter governs, among others, crimes of high treason (Article 127), assault on a constitutional body (Article 128), diplomatic treason (Article 129),

35 N. Antonyuk, *A Criminal…*, op. cit., pp. 143-144.

36 A. Łomanowski, *Ukraina: polowanie na kolaborantów*, Rzeczpospolita, electronic edition January 25, 2023.

37 https://zakon.rada.gov.ua/laws/show/2198-20?lang=en#Text (accessed on 27 July 2023).

38 K. Działocha, A. Łukaszczuk [in:] L. Garlicki, M. Zubik (eds.), *Konstytucja*, vol. 2, Warsaw 2016, electronic edition, commentary to Article 82, thesis no. 2.

and espionage (Article 130 of the Penal Code). There is no separate provision in the Code for collaboration. Thus, the legal situation resembles that of Ukraine before the changes made in that country in March 2022. The Code contains standard types of crimes against state security, without explicitly addressing the problem of cooperation with the enemy. Behaviour of a collaborative nature would thus have to be included in the characteristics of the crime types listed. Certainly, the most important in this regard is the crime of high treason. Pursuant to Article 127 (1) of the Criminal Code, this consists of undertaking, in concert with other persons, an activity aimed directly at achieving the goal of depriving the Republic of Poland of its independence, detaching a part of its territory, or changing the constitutional system of government of the Republic of Poland by violence.

The key characteristic is that the activities are undertaken 'in concert with other persons'. This requirement includes an agreement with any persons, including representatives of the aggressor state, its armed forces, paramilitary organizations, or occupation administration. The activities undertaken with those people can be of any nature. In this regard, the legislature has not indicated any specific behaviour, assigning key importance to the objective that the perpetrator directly aims to achieve. This allows the provision to cover a variety of collaborative activities.

However, an analysis of the provision of Article 127 (1) of the Criminal Code leads to further conclusions that significantly limit the applicability of that article to the prosecution of those who collaborate with the enemy during a war. It should be noted that the requirement to undertake activities in concert with other people rules out the application of the provision to cases of collaboration that does not involve entering into an agreement with specific persons. Behaviours such as publicly praising an aggression or occupation, justifying it, and providing information to the enemy do not have to be done in concert with the enemy. They may be an independent initiative of the perpetrator, who, for example, decides on his or her own to inform the enemy about troop movements or to provide material resources. In addition, the requirement to enter into an agreement with 'other persons' means that the perpetrator must cooperate with at least three persons[39]. Therefore, it is not possible to commit this act in a one-person configuration[40]. Collaboration, even if it is generally based

[39] S. Hoc [in:] R. A. Stefański, ed., *Kodeks karny. Komentarz*, 6th ed., Warsaw 2023, electronic edition, commentary to Article 127, thesis no. 13.

[40] J. Kulesza [in:] M. Królikowski, R. Zawłocki (eds.), *Kodeks karny. Część szczególna. Komentarz do artykułów 117–221*, vol. I, 5th ed., Warsaw 2023, electronic edition, commentary to Article 127, thesis no. V C 1.

on an agreement, does not in every case necessarily involve interaction with at least three people. As part of an agreement with other persons, the perpetrator undertakes 'activities'. This requirement implies a complex activity or a set of actions, rather than a single one[41]. Again, collaboration, as a rule, is complex and constitutes an 'activity' but this does not have to always be the case. A one-time transfer of information or provision of material resources will therefore not qualify as an 'activity'. Also noteworthy is the requirement of a direct intention to achieve an objective. This requirement has traditionally been difficult to demonstrate in practice, and the concept itself is disputable. However, it is intended to limit the scope of the perpetrator's liability. As J. Kulesza aptly pointed out, it refers to an activity that directly, without including additional elements of causality, would inevitably, in the near future, lead to the loss of independence, detachment of a part of the territory, or change of the system of government by violence[42]. Finally, the objective of the perpetrator's activities significantly limits the application of Article 127 (1) of the Criminal Code to punish collaborative behaviour. The example of Ukraine shows that collaborators explain the reasons for their behaviour in different ways, not in every case recognizing Russia's attack as a hostile aggression and, consequently, their own behaviour as an activity aimed at depriving Ukraine of independence or detaching a part of its territory. Undoubtedly, the Ukrainian experience would not be easy to transpose to Polish circumstances, but it can be assumed on the basis of this experience that not in every case is collaborative behaviour characterized by the objective that is required for the adoption of the legal qualification under Article 127 (1) of the Criminal Code. This is the greatest weakness of the provision under review in terms of the ability to apply it for punishing collaborators.

As a conclusion for this part of the discussion, it should be stated that the crime of high treason covers behaviours that are considered collaboration with the enemy only to a limited extent. Despite the generality of the definition of some of the characteristics of that crime, it does not apply to many, especially contemporarily relevant, forms of collaboration. Even less applicable are the other types of crimes specified in Chapter XVII of the Code. The crime of an assault on a constitutional body of the Republic of Poland requires undertaking an activity that is directly aimed at achieving the objective of eliminating that body (Article 128 (1) of the Criminal Code). With regards

[41] S. Hoc [in:] R.A. Stefański (red.), *Kodeks karny…*, op. cit., thesis no. 17.

[42] J. Kulesza [w:] M. Królikowski, R. Zawłocki (red.), *Kodeks karny…*, op. cit., thesis no. V A 3.

to this type of criminal act, one can only reiterate the objections related to the definition of the objective of the activity, the need to undertake a series of actions ('activity'), and the adoption of the requirement of directness. On the other hand, the offense of diplomatic treason, which involves acting to the detriment of the Republic of Poland, is subjectively limited. However, the perpetrator of that offense can only be a person authorized to act on behalf of the Republic of Poland in relations with the government of a foreign country or a foreign organization (Article 129 of the Criminal Code). In contrast, in the case of the crime of espionage, the object is defined very broadly. It involves taking part in the activities of a foreign intelligence service to the detriment of the Republic of Poland (Article 130 (1) of the Criminal Code). The aggravated type of this crime, on the other hand, consists in providing to the intelligence service of a foreign country information, the transmission of which may cause harm to the Republic of Poland (Article 130 (2) of the Criminal Code). Undoubtedly, participation in the activities of a foreign intelligence service, including the transmission of information to it to the detriment of Poland, constitutes a form of collaboration if a Polish citizen undertakes such activities (the crime itself, like the crimes of high treason and assault on a constitutional body, is universal in nature). Nevertheless, the indicated provision applies only to a very small, albeit unique part of collaborative activity, which is participation in the operations of a foreign intelligence service. The mere 'taking part in the activities of a foreign intelligence service' is itself tantamount to contributing to the activities of that foreign intelligence service. The perpetrator thus becomes a part of that service as an element of its structure, having assigned tasks and being held accountable for their completion. These tasks involve obtaining, analysing, processing, and transmitting information, documents, multimedia materials, photographs, or objects (e.g., prototypes or samples), as well as performing other tasks necessary for the operation of the intelligence service (e.g., providing elements of the intelligence infrastructure or providing premises for intelligence activities, influencing decision-making consistent with the interests of the state of the intelligence service)'.[43] The experience of Ukraine does not indicate that this form of collaboration is particularly common, although it is undoubtedly extremely dangerous. The list of crime types that could be used as a basis for punishing collaborators should be supplemented with other types of crimes not included in Chapter XVII of the Criminal Code.

[43] Ibidem, a commentary to Article 130, thesis no. V A 3.

Collaboration of a military nature may be punishable under Article 141 (1) of the Criminal Code. According to that article, it is punishable for a Polish citizen to assume military duties in a foreign army or military organization without the consent of the competent authority. It is aptly pointed out that the performance of duties in armed formations not formally being a part of the armed forces, but treated by the legislation of a country as equivalent to military service, is also treated as 'assuming military duties'.[44] This provision could thus be applied to service in military organizations created in territories temporarily occupied by the aggressor state, or other such organizations of a military nature that might be 'spontaneously' created in such territories. Various other forms of collaboration could be qualified, in specific cases, as having the characteristics of other types of crimes, including crimes against public order (e.g., public incitement to commit a crime or public praise of the commission of a crime, Article 255 (1 and 2) of the Criminal Code – information collaboration), crimes against the security of information (e.g., disclosure of state secrets, Article 265 (1) of the Criminal Code; computer sabotage, Article 269 of the Criminal Code – administrative or economic collaboration), and even crimes against property (e.g., computer fraud, Article 287 (1) of the Criminal Code – economic collaboration). Therefore, many forms of collaboration occurring during a war could be considered as meeting the criteria to be classified as various types of crimes. However, two circumstances should be emphasized. First, despite the variety of types of criminal acts, not all collaborative behaviour could be considered criminal acts under the Criminal Code. This applies in particular to collaboration of an informational nature involving propaganda activities and of an administrative nature, especially one that involves accepting and holding office in the occupation administration. Second, the penalties provided for many types of criminal acts are not adequate for the harm caused by collaborative activities during a war. This situation, however, does not constitute a statutorily defined reason to increase the harshness of the penalty. Accordingly, it should be recognized that Polish criminal law, as it currently stands, is not sufficiently prepared to combat collaboration with the enemy during wartime, given the far-reaching diversity of forms of collaboration with the enemy and the variety of motivations of the perpetrators. The types of criminal acts

[44] S. Hoc [in:] L. Gardocki, ed., *Przestępstwa przeciwko państwu i dobrom zbiorowym*, vol. 8, 2nd ed., Warsaw 2018, p. 144.

listed above allow the perpetrators to be held liable only for the most serious forms of collaboration, especially those of a political and military nature.

In conclusion, Ukraine's experience in preventing and combating collaboration with the enemy is worth analysing in any country, but this is especially true for Poland, a neighbour of the victim of Russia's invasion. Polish experience in this regard is very distant in time and relates to World War II[45]. It does not reflect the current principles and practices of warfare, including those resulting from the development of communication technologies and the related effectiveness of enemy propaganda and information activities. It does not provide knowledge that considers new fields of warfare, such as information warfare. The experience and knowledge gained more than 80 years ago are no longer sufficient, as the example of Ukraine clearly shows. It is primarily radical changes of a technological nature that do not allow the traditional solutions established in the Criminal Code for crimes against state security to be considered sufficient[46]. The time of peace should therefore be used to conduct analyses and studies on the need to make amendments to national legislation to fully criminalize collaboration during wartime. The objective of such work should be to identify those types of collaboration with the enemy that fall outside the scope of application of the offenses defined in the Criminal Code, especially in Chapter XVII. This is especially true of collaboration in the areas of informational, economy, and administration. Behaviour such as economic cooperation with the enemy or involvement in its propaganda should also be punished. Consequently, the introduction of a new crime of collaboration in the Criminal Code must be considered. Lithuania's legislation may provide inspiration for work in that direction. The criminal code of that country provides for criminal liability for collaboration in Article 120, which is dedicated exclusively to this issue. According to that article, a citizen of the Republic of Lithuania who, under conditions of occupation or annexation, provides assistance to the bodies of an illegal government in order to perpetuate the occupation or annexation, suppress the resistance of the Lithuanian population, or otherwise assists the illegal government in carrying out actions against the Republic of Lithuania is subject to the penalty of imprisonment

[45] R. Kaczmarek, *Kolaboracja na terenach wcielonych do Rzeszy Niemieckiej*, „Pamięć i Sprawiedliwość" 2008, no. 1, pp. 174-179; J. A. Młynarczyk, *Pomiędzy współpracą a zdradą. Problem kolaboracji w Generalnym Gubernatorstwie – próba syntezy*, "Pamięć i Sprawiedliwość" 2009, no. 1, pp. 103-132.

[46] N. Antonyuk, *A Criminal…*, op. cit., p. 139.

for up to 5 years[47].In addition, consideration should be given to the need for a new statutory aggravating circumstance for criminal liability in the form of committing crimes against the state during the period of martial law. This is because of the continued validity of the opinion of Francis Lieber, the author of the famous 1863 Lieber Code (instructions for the US Army), that wartime treason is always severely punished[48].

[47] Lithuania's Criminal Code of 2000. The text of the Code is available at: https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=rivwzvpvg&documentId=a84fa232877611e5bca4ce-385a9b7048&category=TAD (accessed on 27 July 2023).

[48] *Instructions for the Government of Armies of the United States in the Field, Prepared by Francis Lieber*, quoted after S. Darcy, *To Serve…,* op. cit., pp. 2-3.

IHOR MEDYTSKYI[1]

COLLABORATIONIST ACTIVITY IN UKRAINE: AN ANALYSIS OF THE CRIMINAL LAW PROHIBITION, THE MODERN ENFORCEMENT OF THE LAW, CRIMINOLOGICAL PORTRAIT OF A COLLABORATOR'S PERSONALITY

The issue of collaboration on the Ukrainian territory was discussed and addressed in the literature in any serious manner for the last time in the context of the events of the Second World War. Today, drawing obvious parallels, the Ukrainian scientific community is gradually returning to study the topic at hand, whose importance is growing every year and which affects the vector of contemporary scientific research in the field of law. These studies are primarily devoted to the occupation of a part of the Ukrainian territory by the Russian Federation and the consequences of the temporary alienation of that territory. One of these effects is the emergence of collaboration and related or similar phenomena, which are caused by only one factor – the aggression of the Russian Federation which tends to make use of a variety of hybrid warfare measures, as a result of which, since 2014, Ukraine has temporarily lost its territorial integrity, while a part of its territory (the Autonomous Republic of Crimea, some areas of the Donetsk and Luhansk regions) is still under occupation. At the same time, according

[1] Ihor Medytskyi – doctor of law, professor at the Department of Policy on Combating Crime and Criminal Law of the Precarpathian National University. Vasyl Stefanyk (Ivano-Frankivsk, Ukraine). A graduate of the Faculty of Law of the National University of Wasyl Stefanyk. The scope of scientific interests includes current problems in the development of criminological sciences and criminal law - conceptual foundations of the development of the criminological theory of the effects of crime; effectiveness and costs of criminal legislation, activities of criminal justice bodies, and the penitentiary system; issues of qualification of crimes. Author of over 180 scientific works, including 5 monographs (3 collective); 3 scientific articles in scientific journals of the Scopus and Web of Science databases; over 30 scientific articles in professional publications and over 100 theses reports at Ukrainian and international conferences. ORCID number: 0000-0002-6720-6658

to J. Pysmensky the main reasons for the temporary success of the military campaign and the relative prevalence of collaborationist behaviour in the area are the following: 1) the long-lasting and planned preparation for the occupation (external factors); 2) the peculiarities of social and political development of pre-war Ukraine (internal factors); 3) post-Soviet heritage and attachment to the ideology of the "Russian world" (historical and ideological factors).[2]

The legislative response to the armed aggression unleashed in Ukraine took the form of substantial amendments to the Act on Criminal Liability, where the special provisions were expanded as the new criminal norms emerged and the old ones were changed. What captured the interest of researchers was the inclusion of Article 111-1 to the Criminal Code of Ukraine (hereinafter referred to as the CC), whose adoption marked the beginning of a regulation aimed at counteracting criminal law influences on frequent cases of collaboration. This norm is being increasing often applied in practice, in light of the fact that the Armed Forces of Ukraine managed to liberate the area that temporarily remained outside of Ukraine's control and given considerable activity on the part of criminal law enforcement. According to the materials presented by the Office of the Prosecutor General, in 2022, 3851 offences under Article 111-1 of the CC were reported, of which in 1,090 cases a notification on suspicion of committing a crime was served, and courts handled 620 proceedings which were initiated by an indictment.[3] At the beginning of April 2023, 4,887 cases of proven collaboration had already been registered.[4] The courts of first instance (2022) dealt with 308 proceedings under Article 111-1 of the CC, of which 268 ended in a verdict. 140 persons were convicted with final and non-appealable sentences – pursuant to Part 1 of Article 111-1 of the CC; 14 persons – pursuant to Part 2 of Article 111-1 of the Criminal Code; 17 persons – pursuant to Part 4 of Article 111-1 of the Criminal Code; 1 person – pursuant to Part 5 of Article 111-1 of the Criminal Code; 4 persons – pursuant to Part 7 of Article 111-1 of the Criminal Code.[5]

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[2] Є. Письменський. *Колабораціонізм у сучасній Україні як кримінально-правова проблема*. Право України. 2020. №12. С.116.

[3] Офіс Генерального прокурора. Єдиний звіт про кримінальні правопорушення по державі (січень-грудень 2022): https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2 (дата звернення: 07.07.2023)

[4] Офіс Генерального прокурора. Злочини, вчинені в період повномасштабного вторгнення рф (2023, 4 квітня): з https://www.gp.gov.ua/ (дата звернення: 07.07.2023)

[5] Звіт судів першої інстанції про розгляд матеріалів кримінального провадження (2022). Звіт про осіб, притягнутих до кримінальної відповідальності та види

Many publications in the specialist literature have been devoted to the question of substantive conditions of the norm referred to Article 111-1 CC, in particular by A. Benitsky, M. Bondarenko, O. Dudorov, Z. A. Zagina-Zabolotenko, O. Kravchuk, V. Kuznetsov, O. Marin, R. Movchan, A. Muzyka, J. Pysmensky, M. Sijploka, M. Rubashchenko, M. Hawroniuk, V. Shablisty and other scholars. Despite such an intellectual diversity, many issues related to the criminal qualification of collaborationist activity still raise considerable doubts, which explains great interest which this topic enjoys.

Article 111-1 of the criminal code of Ukraine "Collaborationist activity". In order to justify that the adoption of the Act on Criminal Liability for collaboration was necessary, the authors argued that Russia was being supported in conducting aggressive actions and waging the armed conflict against Ukraine and that armed organisations and occupant administrations of the aggressor state received assistance as well. Collaborators continue to occupy high positions in the state, exert influence on how state policy or information space of Ukraine are shaped, which is unacceptable in the circumstances of constant armed aggression and hostilities. Collaborationism as a phenomenon undermines Ukraine's national security and poses a direct threat to state sovereignty, territorial integrity, constitutional order and other national interests of Ukraine, and for these reasons a collaborator must be held liable under the conditions ser forth in the law. Furthermore, post-conflict regulation is impossible without restoring justice and restricting rights of collaborators, and this can only be effected by way of a statute.[6]

As rightly noted by N. Antoniuk, the legislator structured the Article devoted to collaborationism in a highly complicated manner. First of all, it is divided into as many as eight parts and only the eighth part serves to describe legal qualification. All other parts (from 1 to 7) are independent components of criminal acts. At the same time, each of these parts specifies several forms in which a given offence may be committed. It is also worth noting that in the first two parts, Article 111-1 CC refers to the commission of misdemeanours, while parts 3 through 8 of Article 111-1 CC cover petty, serious and particularly serious offences. This means that only one Article of the Criminal Code points to an increase

кримінального покарання (2022): https://court.gov.ua/inshe/sudova_statystyka/zvit_dsau_2022 (дата звернення: 07.07.2023)

[6] Пояснювальна записка до проекту Закону України про внесення змін до деяких законодавчих актів (щодо встановлення кримінальної відповідальності за колабораційну діяльність): https://itd.rada.gov.ua/billInfo/ Bills/pubFile/559222 (дата звернення: 07.07.2023)

in the social danger of collaboration, which comprises the whole range of criminal acts – from misdemeanours to particularly serious crimes.[7]

The term *collaborative activity*, as well as the related *collaborationism*, *collaborator* and similar, derived from the Latin 'collaborare' (cooperation), can take on both positive and negative meanings. According to the positive connotation, collaboration refers to a joint action or cooperation; according to the pejorative connotation, on the other hand, it means treacherous cooperation with the enemy. The circumstances of the Second World War led to the negative meaning of the term being substantially altered, as it began to be perceived as offensive. New definitions emerged: *aiding the enemy*, *supporting the occupying forces*, *working against fundamental national interests*, *treason*, *high treason*, etc.

In modern criminal law, the term 'collaboration' is associated with a conduct that entails complicity or interaction with the enemy (the aggressor state), committed to the detriment of the interests of the state (constituting a separate type of high treason). It is generally accepted in international law to interpret this activity as knowingly, voluntarily and intentionally collaborating with the enemy in this enemy's interests and against his own state's interests.[8]

The *general object* of the offence referred to in Article 111-1 of the Criminal Code are social relations in the area of national security, i.e. state, information and military security being the components thereof. The offence of collaborative activity has as its direct object the order of a state, sovereignty, defence capacities and other legally protected interests, which are protected by criminal law enforcement measures. Given the rather wide and varied range of forms of collaborationist activity, the direct object in each given case is determined according to the specific form. The *additional object* of the offence is also determined according to the manner in which it is committed. Thus, for example, the additional object of collaborative activity in the form of actions aimed at implementing the education standards of the aggressor state in educational facilities is the educational system of the relevant occupied territory which constitutes a part of the educational system of Ukraine.[9]

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[7] Н. Антонюк. *Державна зрада і колабораційна діяльність: питання кримінально-правової кваліфікації.* Слово Національної школи суддів України. 2021. №4(37). С.57.

[8] *Новели кримінального законодавства України, прийняті в умовах воєнного стану* : наук.-практ. комент. / А. А. Вознюк, О. О. Дудоров, Р. О. Мовчан, С. С. Чернявський та ін. ; за ред. А. А. Вознюка, Р. О. Мовчана, В. В. Чернєя. Київ : Норма права, 2022. С.82.

[9] *Злочинна колаборація в умовах збройної агресії*: практич. порадник з кримінально-правової оцінки та розмежування / за заг. ред. В. В. Малюка. Київ : Алерта, 2023. С.105-106.

> If a Ukrainian citizen publicly denies that an armed attack against Ukraine occurred or that temporary occupation of a part of the territory of Ukraine was established or consolidated, or when he makes public appeals in support of the decisions and/or actions of the aggressor state, armed organisations and/or occupation administrations of the aggressor state, for other to cooperate with the aggressor state, armed organisations and/or occupation administrations of the aggressor state, or fails to acknowledge that the state sovereignty of Ukraine extends to the temporarily occupied territories of Ukraine, he shall be subject to a penalty of deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years (part 1 of Article 111-1 CC).

Armed aggression against Ukraine means a direct and/or indirect (hybrid) use of armed force (by the Russian Federation) against the sovereignty, territorial integrity and political independence of Ukraine. The current armed aggression against Ukraine comprises the following: 1) the take-over of the Autonomous Republic of Crimea (ARC) in February-March 2014, which marked the first episode of the Russian intervention in Ukraine (according to Part 2, Article 1 of the Act of Ukraine "On Guaranteeing Civil Rights and Freedoms and the Legal System on the Temporarily Occupied Territory of Ukraine", the ARC and the city of Sevastopol have been under the temporary occupation of the Russian Federation since 20 February 2014); 2) the launch of the armed confrontation on 7 April 2014 and the subsequent occupation by the Russian Federation of a part of the territory of the Donetsk and Luhansk regions, leading to the establishment of the so-called Donetsk and Luhansk "people's republics"; 3) the crime of aggression which commenced on 24 February 2022 and resulted in a large-scale invasion of Ukraine by the Armed Forces of the Russian Federation with the support of the Republic of Belarus.[10] Among the armed organisations of the Russian Federation, the Act of Ukraine "On Guaranteeing Civil Rights and Freedoms and the Legal System on the Temporarily Occupied Territory of Ukraine" mentioned regular forces and units subordinate to the Ministry of Defence of the Russian Federation, special units and forces subordinate to other law enforcement agencies of the Russian Federation, their advisors, instructors and irregular illegal armed forces, armed gangs and mercenary groups, created, subordinated, managed and financed by the Russian Federation, and with the assistance of the occupation administration of the Russian Federation, which comprises its state organs and structures being functionally responsible for the management of the temporarily occupied territories of Ukraine

[10] *Новели кримінального законодавства*…, op. cit., C.86.

and self-proclaimed bodies controlled by the Russian Federation that usurped the exercise of power in the temporarily occupied territories of Ukraine.

The *occupation administration* is defined as an organisation of state authorities and structures of the Russian Federation, functionally responsible for the management of the temporarily occupied territories and self-proclaimed bodies controlled by the Russian Federation that usurped the exercise of power in the temporarily occupied territories and which performed or perform functions reserved to state or local government authorities in the temporarily occupied territory of Ukraine, including, in particular, bodies, organisations, enterprises and institutions, also law enforcement and judicial authorities, notaries public and public utility bodies.[11]

Public denial is deemed to mean as an open appeal to an unspecified group of people or a public expression of one's own thoughts or beliefs, whereby certain facts or events are not being acknowledged. A speech is public when the person uttering it is aware that the information expressed therein may be freely and fully received by an unspecified group of persons. As stated in clause 1 of the note in the first part of that Article, the dissemination of appeals or expressions of denial to an unspecified group of persons, in particular on the Internet or through the mass media, is considered public. Moreover, one needs to take into consideration that a denial expressed, for instance, at a rally, a gathering of people or another mass event will also have a public character. In this case, some public denials constitute criminal acts, whereby one makes an intentional and public denies (refutes or in any way diminishes), in a sense justifying serious violations of international humanitarian law, especially an international crime of armed aggression committed by one state against another sovereign state, as well as other 'war crimes.' Public denial may concern the facts of armed aggression against Ukraine; the fact of temporary occupation of a part of the territory of Ukraine was established or consolidated.

Public appeals by Ukrainian citizens may include the following[12]:

- supporting decisions and/or actions of the aggressor state, armed forces and/or the occupation administration of the aggressor state – approval of certain initiatives or voluntary implementation of decisions of the aggressor state, illegal armed forces (including those made up of Ukrainian citizens) working for that aggressor state or pseudo-governmental bodies imposed by

[11] Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України: Закон України від 15.04.214 р. № 1207-VII: https://zakon.rada.gov.ua/laws/show/1207-18#Text (дата звернення: 20.07.2023).

[12] *Злочинна колаборація в умовах збройної агресії…*, op. cit., C.107-111.

the aggressor state under the guise of the occupation administration, which may include Ukrainian citizens, provided that such decisions and/or actions do not serve to satisfy aggressor state's obligations following from international humanitarian law. And thus, for instance, according to Article 56 of the Convention relative to the Protection of Civilian Persons in Time of War, "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties."

At the same time, other decisions of the aggressor state may pertain to both general matters (military aggression under the guise of a special military operation, establishment of pseudo-state entities in the occupied territories, annexation of the Autonomous Republic of Crimea) and local issues (involvement in the appointment of certain members of the occupation administration, taking normative measures in contravention to the law in force). Support for decisions can take the form of either specific actions or inaction (refraining from assisting the Armed Forces of Ukraine, recognising the legitimacy of authorities created by the aggressor state, recognising the superiority of pseudo-normative acts of the temporary occupation administration over legal decisions of local authorities of Ukraine and their officials). Acts performed when coerced or when motivated by the desire to preserve life in the occupation during a state of extreme necessity cannot be regarded as voluntary support for decisions within the meaning of Article 39 of the Criminal Code (e.g. observance of a curfew), if such acts do not constitute another offence as provided for in the special part of the Criminal Code of Ukraine;

- cooperation with the aggressor state, armed forces and/or occupation administration of the aggressor state – a specific set of actions which have been voluntarily performed by a Ukrainian citizen in the interest of and/or jointly with the aggressor state, illegal armed forces (including those made up of Ukrainian citizens) working for that aggressor state or pseudo-governmental bodies imposed by the aggressor state under the guise of the occupation administration, which may include Ukrainian citizens. Cooperation may take the form of organisational or voluntary activities, or be in the nature of intellectual assistance (providing advice on how to satisfy particular needs, carrying out instructional or legal actions);

- failing to acknowledge that the state sovereignty of Ukraine extends to the temporarily occupied territories of Ukraine (hereinafter referred to as TOT) – utterances or actions aimed at promoting the assertion of sovereignty of the aggressor state; committed in order to hinder the exercise of Ukraine's sovereignty in the occupied territories or other territories in the interests of the aggressor state. Contributing to the establishment of the sovereignty of the aggressor state may entail involvement in the establishment of local authorities on the temporarily occupied or other territories of our country, submission to the legislation of another aggressor state on the territory of Ukraine. Obstructing the exercise of the sovereignty of Ukraine on the occupied or other territories in the interests of the aggressor state may consist in the refusal to implement decisions of legitimate state authorities of Ukraine, obstructing the performance of their duties.

Clause 7 in Part 1 of Article 1-1 of the Act of Ukraine "On Guaranteeing Civil Rights and Freedoms and the Legal System on the Temporarily Occupied Territory of Ukraine" defines the territory of Ukraine temporarily occupied by the Russian Federation (TOT) as a part of the Ukrainian territory where armed forces of the Russian Federation and the occupation administration of the Russian Federation have established and exercise effective control or within which borders armed forces of the Russian Federation have established and exercise overall control in order to set up the occupation administration of the Russian Federation.[13]

As regards the first and second types of actions, i.e. ideological and cultural/educational collaboration, an indispensable part of the objective features thereof is that the offence is committed *publicly*. The public commission of these actions means that they can be described as increasing public danger. When defining what constitutes public commission of an act, one must take into account a set of circumstances which include the time, place, environment when appeals were made, etc. The number (circle) of persons which make up the public, although deemed unspecified, should include at least two persons, but the definition of a public does not provide for any upper limit at all. Public appeals addressed to one specific person may be considered as incitement to commit an offence.[14]

> Voluntary occupation by a Ukrainian citizen of a position unrelated to the performance of organisational and managerial or administrative and economic functions

[13] Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України: Закон України від 15.04.214 р. № 1207-VII: https://zakon.rada.gov.ua/laws/show/1207-18#Text (дата звернення: 07.07.2023).

[14] *Новели кримінального законодавства*…, op. cit., C.90-91.

> in bodies unlawfully established on the temporarily occupied territory, including in the occupation administration of the aggressor state, is subject to a penalty of deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years, with or without confiscation of property (Part 2, Article 111-1 CC).

The law of Ukraine does not specify what exactly is meant by occupying positions. Simultaneously, if one were to study normative legal acts, in particular the Act of Ukraine "On the Civil Service," it would become clear that the phrase "occupying a position" is quite frequently used therein in the context of preparatory measures to appoint a certain person to a position within civil service ("competition process for a position in the civil service," "candidates for positions in the civil service") and is, as a matter of fact, linked with such appointment. In other normative legal acts, the term "occupying a position", "occupied position" sees quite wide use and implies a legal fact where a person is appointed to hold a specific position in the manner prescribed by the laws of Ukraine, which is accompanied by an employment relationship being officially registered. In light of the wording of clauses 2, 5 and 7 of Article 111-1 CC, a collaborator must occupy a position in a body that was established unlawfully; it does not suffice to perform work unrelated to one's profession. On the other hand, "position" is indeed defined in the Ukrainian law. For instance, according to part 4 of clause 1 in Article 2 of the Act of Ukraine "On the Civil Service," a position in the civil service constitutes a basic organisational unit of a state authority with a defined structure and list of staff, having official duties established in accordance with the law and having the powers as specified within the limits set by the law.[15]

Participation in the activities of unlawful organs, branches, forces established by the aggressor state is defined as *voluntary* if it occurs on the own initiative of the collaborator, provided such an individual had the opportunity to freely express one's will[16].

In the context of the objective features of this collaborationist behaviour[17] there are several aspects of Ukrainian's citizens activity, which must be ascertained for an individual to be held criminally liable. Firstly, the person occupies positions in unlawful authorities established within TOT, including

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[15] З. А. Загиней-Заболотенко. *Добровільне зайняття громадянином України посади у незаконних органах влади, створених на тимчасово окупованій території, а також в незаконних судових або правоохоронних органах як форми колабораційної діяльності.* Юридичний науковий електронний журнал. 2022. №6. С.319.

[16] *Новели кримінального законодавства* України…, op. cit., C.103.

[17] *Злочинна колаборація в умовах збройної агресії* …, op. cit., C.112-115.

the occupation administration of the aggressor state. Secondly, the position is not related to the performance of organisational and managerial or administrative and economic functions.

Examples of such positions include office worker, legal advisor, accountant, maintenance worker, human resources worker, civil protection officer. Persons performing purely professional (doctor, statistician, social worker, etc.), industrial (e.g. driver, jeweller or employee of the housing and economic sector, other similar municipal structures), technical (printer, technical secretary, security guard, conductor, etc.) functions *de jure* can be performed by persons occupying positions not related to the performance of organisational and managerial or administrative and economic functions (if these positions are provided for within the structures and organisational units of the unlawful authorities). However, since they carry out secondary (auxiliary) functions, the relevant actions can be described as immaterial within the meaning specified in Part 2 of Article 11 of the Criminal Code.[18]

Article 43 IV of the Convention with respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, drawn up on 18 October 1907 (it entered into force in Ukraine on 24 August 1991) provides that where the authority of the legitimate power has in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country. This provision is confirmed by Article 9 of the Law of Ukraine Act of Ukraine "On Guaranteeing Civil Rights and Freedoms and the Legal System on the Temporarily Occupied Territory of Ukraine," which stipulates that any authorities, their officers and officials of TOT and the measures undertaken thereby are deemed illegal if these authorities or persons have been established, elected or appointed in a manner not provided for by law. Any act (decision, document) issued by certain authorities and/or persons is invalid and has no legal effect, except for documents confirming the fact of birth, death, registration (dissolution) of marriage of a person on the area of TOT, which are attached to the application for state registration of the relevant civil status record.[19]

With regard to the performance of organisational and managerial or administrative and economic functions, the Plenum of the Supreme Court of Ukraine

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[18] *Новели кримінального законодавства* України…, op. cit., C.104-105.

[19] Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України: Закон України від 15.04.214 р. № 1207-VII: https://zakon.rada.gov.ua/laws/show/1207-18#Text (дата звернення: 07.07.2023).

in Resolution No. 5 of 26.04.2002 "On judicial practice in bribery cases" established that organisational and managerial duties are those which are related to the management of an industry, work collective, workplace, production activities of individual employees in enterprises, institutions or organisations regardless of the form of ownership (chiefs of ministries, other central executive bodies, state or private enterprises, institutions and organisations, heads of structural subdivisions and others). Administrative and economic duties are deemed to mean duties related to the administration or disposal of state or private property (making decisions on the manner of storage, processing, sale, ensuring control over these activities, etc.). Such rights, to one extent or another, are vested in the chiefs of departments and services of economic planning, procurement, finance, managers of warehouses, shops, their deputies, heads of enterprise departments, department auditors and controllers.

The fact that a citizen voluntarily holds a position presupposes his or her employment or joining the service in an unlawful state authority established on the area of TOT, including within the occupation administration of the aggressor state, committed without coercion and of his or her own free will, as well as the performance of such functions in a reorganised state body that has become unlawful as a result of organisational and personnel changes.

> A Ukrainian citizen who expresses propaganda in educational institutions, regardless of the type and form of ownership, the purpose of which is to make it easier to wage an armed aggression against Ukraine, to establish and consolidate temporary occupation of a part of the territory of Ukraine, to evade responsibility for perpetrating an armed aggression against Ukraine by the aggressor state as well as the actions of citizens of Ukraine aimed at introducing educational standards of the aggressor state in educational institutions shall be subject to a penalty of community service for up to two years or to detention for up to 6 months or deprivation of liberty for up to 3 years, along with deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years (Part 3, Article 111-1 of the Criminal Code).

The term of propaganda which when expressed leads to being held legally liable under Part 3 of Article 111-1 CC should be interpreted in a negative (destructive) sense. It constitutes a form of communication with participants of an educational process, which consists in manipulating their awareness to impart in them such ideas and stances that justify the support for armed aggression against Ukraine, the establishment and consolidation of temporary occupation of a part of the territory of Ukraine, the evasion of responsibility for perpetrating an of armed aggression against Ukraine by the aggressor state. The pertinent ideas and stance are

praised rather than condemned, and their expression is presented as behaviour that can be imitated and spread.[20]

The *expression of propaganda* is the dissemination, in an intentional and active manner, of specially selected arguments, facts, opinions, statements and other forms of information with the aim of ideologically influencing public opinion and imparting certain views and beliefs on the relevant sections of the population or on social, national or other groups. At the same time, propaganda is to be distinguished from, for instance, calls (appeals), as it has a predetermined ideas and views which were agreed upon with representatives of the aggressor state or the occupation administration, such ideas and views to be disseminated by ideological means, based on a defined programme and, if necessary, with the use of relevant materials. In the context of Part 3 of Article 111-1 CC, the purpose of propaganda is: 1) to facilitate an armed aggression against Ukraine; 2) to establish and consolidate the temporary occupation of part of the territory of Ukraine; 3) to evade responsibility for the perpetration of armed aggression against Ukraine by the aggressor state.[21]

A mandatory objective feature of the offence provided for in Part 3, Article 111-1 CC is the location where the offence is committed – an educational institution (regardless of the type and form of ownership). According to the Act of Ukraine "On Education", an educational institution is a legal entity operating pursuant to public or private law, whose principal object of activity is education (Article 1(1)(6)):[22]

- an institution of higher education of a relevant type, which performs educational, scientific, technical science, innovative and teaching activities, provides the organisation of the educational process and facilitates the acquisition of higher education by individuals, or scientific institutions providing higher education for university students at the tertiary (educational and scientific) level of higher education;
    - a vocational and technical training facility of a relevant type, which satisfies the needs of citizens for vocational and technical training, obtaining qualifications in a relevant profession and specialty according to their interests, abilities and state of health;

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[20] *Новели кримінального законодавства України*…, op. cit., C.97.

[21] *Злочинна колаборація в умовах збройної агресії:* практич. порадник з кримінально-правової оцінки та розмежування / за заг. ред. В. В. Малюка. Київ : Алерта, 2023. С.116.

[22] Про освіту: Закон України від 05.09.2017 р. № 2145-VIII: https://zakon.rada.gov.ua/laws/show/2145-19#Text (дата звернення: 07.07.2023).

- a general educational facility of a relevant type, regardless of reporting and form of ownership, forming a part of the general secondary education system;
- a pre-school educational facility of a relevant type, regardless of reporting and form of ownership, forming a part of the pre-school education system.

"Measures aimed at the implementation of the educational standards of the aggressor state in educational institutions" include those that signify the process of departing from national educational standards in educational institutions of Ukraine with a simultaneous or gradual transition to the educational standards of the aggressor state. The analysis of the problematic aspects of the application of Part 3 of Article 111-1 CC has proven that this form of collaboration consisting in "introducing educational standards of the aggressor state in educational institutions" is construed in various ways, which requires further clarification. In particular, the scope and nature of measures, the entirety of which forms "introduction", as well as the question of the group of persons who are the subjects of this offence, have been associated with a variety of interpretations.

The objective features of the offence under Part 3 of Article 111-1 of the Criminal Code comprise performing actions aimed at implementing these educational standards in educational institutions. Actions of employees and officials of unlawful authorities in the field of education, the management of educational institutions, initiative groups of pedagogical employees aimed at providing education in accordance with the educational standards of the aggressor state could include the following: establishing educational standards in the temporarily occupied territories, preparing typical educational programmes, typical educational plans, their approval, ensuring control of the implementation of these standards, plans, programmes. In other words, the implementation of educational standards should be deemed to mean an activity which facilitates the implementation of certain requirements as regards the content of educational activities. This means that it is a matter of ensuring a certain level of compliance with educational standards of the aggressor state by participating in the preparation of the educational programme and/or educational plan (relevant elements thereof), approving them and issuing instructions regarding their performance. In this context, it is important to draw attention to the fact that the implementation of educational standards of the aggressor state in specific institutions is effected not only by officials of these institutions holding the relevant organisational and administrative positions (school principals, rectors, pro-rectors and other authorised persons), but also by those teachers and other pedagogical

staff who could assist the occupant in preparing the educational plan and/or educational programme of the aggressor state.[23]

> The transfer of material resources to unlawful armed or paramilitary forces established in the temporarily occupied territory and/or to armed or paramilitary forces of the aggressor state and/or performing economic activities in cooperation with the aggressor state, unlawful bodies established in the temporarily occupied territory, including by the occupation administration of the aggressor state shall be subject to a penalty of a fine of up to ten thousand of non-taxable minimum income of citizens, or to a penalty of deprivation of liberty for the period from three to five years, along with deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years and confiscation of property (Part 4, Art. 111-1 of the Criminal Code).

The category of *material resources* has not been clarified in any regulation, which means that it can encompass any type of material resources whatsoever, any means of any nature that can be used when needed: financial (cash, movable or immovable property, property rights certified by appropriate documents, etc.), natural (land, subsoil, water and other natural resources, objects of the animal world), energy (current legislation classifies energy of any kind as a material resource) and other assets.[24] In the context of Part 4 of Article 111-1 CC, material resources comprise objects of the material world, appropriate premises and buildings, materials or other services, energy resources, equipment, tools, machinery, etc., necessary to satisfy material needs of unlawful armed or paramilitary forces formed on the area of TOT and/or an armed or paramilitary forces of the aggressor state.

Transfer consists of providing material resources to representatives of the aggressor state, its armed forces and/or the occupying administration of the aggressor state. Transfer of resources covers not only the transfer of material resources for one-time (food, ammunition) or constant (vehicles, uniforms) use, which is accompanied by the transfer of ownership for the benefit of unlawful armed or paramilitary forces established on the area of TOT and/or armed or paramilitary forces of the aggressor state. Granting the temporary right to use any of the above may also be considered as transfer of material resources.[25]

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[23] *Злочинна колаборація в умовах збройної…*, op. cit., C.119.

[24] І. Медицький. *Колабораційна діяльність і пособництво державі-агресору: «дотичність» та розмежування в ході кримінально-правової кваліфікації.* Кримінальне право України перед викликами сучасності і майбуття: яким воно є і яким йому бути : матеріали міжнар. наук. конференції, м. Харків, 21-22 жовт. 2022 р. / редкол.: В. Я. Тацій, Ю. А. Пономаренко, Ю. В. Баулін та ін. Харків : Право, 2022. С.64.

[25] *Злочинна колаборація в умовах* збройної…, op. cit., C.121-123.

Performing economic activity (either personally or via an economic organisation formed for this purpose) in cooperation with the aggressor state, such activity being related to the production (manufacture) and/or sale of goods, performance of works, provision of services, for the purpose at generating revenue, constitutes a voluntary activity of a citizen of Ukraine under Part 4 of Article 111-1 CC. Such economic activity is considered to be a type of collaboration since it is carried out in cooperation with the aggressor state, unlawful authorities established on the area of TOT, including the occupation administration of the aggressor state. The cooperation may consist in the fact that the economic activity:

- is carried out by a business entity in the interest of one of the institutions specified above;
- is run by a joint venture between Ukraine and the aggressor state or occupying power;
- is carried out under the direction of a Ukrainian citizen within an enterprise of the aggressor state or an enterprise established in the occupied territory.[26]

The law in force defines *economic activity* as "the activity of economic actors, pertaining to public production, with the aim of manufacturing and selling products, performing works or providing services of a valuable nature, for which specific prices have been imposed" (Part 1 of Article 3 of the Commercial Code); "the activity of a person related to the production (manufacture) and/or sale of goods, performance of works, provision of services, for the purpose at generating revenue, carried out by a person independently and/or through separate branches, or by any other person who acts on behalf of the former person, in particular on the basis of contracts of mandate, powers of attorney and agency agreements" (Article 14(1)(36) of the Tax Ordinance). The fundamental difference between the normative guidelines referred to above lies in the purpose of the procedure – the Tax Ordinance requires that income be obtained, while the Commercial Code, as far as income is concerned, distinguishes between commercial and non-commercial activity (Article 3(2) of the Commercial Code).[27] Thus, economic activity has a specific purpose, objective structure and conditions of performance. The Act defines economic actors as follows: 1) business organisations – legal entities established in accordance with applicable regulations and other legal entities engaged in economic activity and registered in accordance with the law; 2) citizens of Ukraine, foreigners and stateless

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[26] *Злочинна колаборація в умовах* збройної…, op. cit., C.130-131.

[27] Господарський кодекс України від 16.01.2003 р. № 436-IV: https://zakon.rada.gov.ua/laws/show/436-15#Text; Податковий кодекс України від 02.12.2010 р. № 2755-VI: https://zakon.rada.gov.ua/laws/show/2755-17#Text (дата звернення: 08.07.2023)

individuals who engage in economic activity and are registered in accordance with the law as entrepreneurs (Part 2 of Article 55 of the Commercial Code).

O. Kravchuk and M. Bondarenko point out that when determining whether economic activity is being conducted, it is necessary to establish who acted and made decisions on behalf of the economic actors. First of all, it could be the manager, the person performing his or her duties or any other person who acted on behalf of the economic actor (during negotiations, when concluding and signing agreements, in the delivery of goods, works, services). Persons performing technical functions (salesmen, warehousemen), depending on their intentions, may be accomplices to such an offence, or their actions may not satisfy the objective features of the offence (performance of economic activity).[28]

> Voluntary occupation by a Ukrainian citizen of a position related to the performance of organisational and managerial or administrative and economic functions in unlawful authorities established on the temporarily occupied territory, including the occupation administration of the aggressor state, or being voluntarily elected to such authorities, as well as participation in the organisation and holding of illegal elections and/or referendums in the temporarily occupied territory, or public incitement to hold such unlawful elections and/or referendums in the temporarily occupied territory shall be subject to a penalty of deprivation of liberty for a period from five to ten years, along with deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years, with or without confiscation of property (Part 5 of Article 111-1 CC).

This sub-type of collaborationist activity is similar to that referred to in Part 2 of Article 111-1 of the Criminal Code, except for the nature of the position occupied by an individual. Part 5 qualifies the voluntary occupation by a Ukrainian citizen of a position in unlawful state bodies established in the area of TOT, including in the occupation administration of the aggressor state, if this is related to the performance of organisational and managerial or administrative and economic functions. Therefore, in order to correctly qualify an individual's actions, i.e. as to whether is satisfies the objective features of the offence, it is necessary to extract (obtain) data on the organisational and personnel structure of the institution and on the individual's functional duties performed at that position.

Examples of such positions include: the head of the illegitimate government and his or her deputies, the chief physician of a clinic, the general manager of an enterprise whose management falls within the sphere of activity

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[28] О. Кравчук, М. Бондаренко. *Колабораційна діяльність: науково-практичний коментар до нової статті 111-1 КК*. Юридичний науковий електронний журнал. 2022. № 3. С. 200.

of the illegitimate government, the head of the personnel department, the head of the finance department, the chief sanitary physician, the veterinary service laboratory manager, the departmental auditor[29].

Voluntary election to the illegitimate government established on the area of TOT, including the occupation administration of the aggressor state, occurs when an individual is not directly appointed to hold a given position, but takes part in an election, voluntarily submits his or her candidacy, and based on the results of this election takes up positions in the illegitimate government established on the area of TOT, including the occupation administration of the aggressor state. Collaborationist activity of this sort will be considered to have occurred upon the individual commencing the performance of duties at the position for which he or she was elected. The mere participation in an election as a candidate for the positions in the illegitimate government established on the area of TOT, including in the occupation administration of the aggressor state, depending on the other circumstances of the case, may be considered an attempt to commit the offence provided for in Part 5 of Article 111-1 of the Criminal Code.[30]

As a rule, during the elections of the President of Ukraine, deputies to the Parliament of Ukraine and the pan-Ukrainian referendum, voting by citizens of Ukraine on the area of TOT is not organised nor carried out. Citizens of Ukraine living in the temporarily occupied territory are to be provided with the conditions for free expression of their will during elections of the President of Ukraine, deputies to the Parliament of Ukraine and the pan-Ukrainian referendum in another territory of Ukraine. In the case of elections of deputies to the Supreme Council of the Autonomous Republic of Crimea, deputies to local councils, mayors of villages, municipalities, cities, any other elections and referenda held on the area of TOT, including with the assistance or participation of state bodies and bodies of local self-government established in accordance with the Constitution and laws of Ukraine, it should be taken into account that in accordance with Part 5 of Article 9 of the Act of Ukraine "On Guaranteeing Civil Rights and Freedoms and the Legal System on the Temporarily Occupied Territory of Ukraine", they are invalid and have no legal effects.

Participation in the organisation and conduct of illegal elections and/or referenda implies active action to organise or conduct them. Participation in the organisation and conduct of illegal elections and/or referendums on the area of TOT involves participation in bodies carrying out illegal elections, referendums, i.e.:

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[29] *Новели кримінального законодавства…*, op. cit., C.105.

[30] *Злочинна колаборація в умовах збройної…*, op. cit., C.134-135.

electoral commissions or other similar bodies, other participation in the conduct of elections, e.g. as a candidate, observer on behalf of a candidate, participant in a pre-election campaign. Public calls for such illegal elections and/or referendums on the area of TOT occur when an entity publicly calls for conducting illegal elections or referendums on the area of TOT. The offence is committed when an individual makes the appeal. At the same time, liability should arise regardless of whether or not an illegal election or referendum has indeed taken place.[31]

> Organising and conducting political events, performing informational activities in cooperation with the aggressor state and/or its occupation administration with the aim of supporting the aggressor state, its occupation administration or armed forces and/or evading responsibility for the armed attack against Ukraine, in the absence of features pointing to treasonous nature of the act, active participation in such activities shall be subject to a penalty of deprivation of liberty for a period from ten to twelve years, with deprivation of the right to hold certain positions or carry out certain activities for a period of ten to fifteen years, with or without confiscation of property (Part 6 of Article 111-1 of the Criminal Code).

According to clause 2 of the note to Article 111-1 CC, political events include congresses, assemblies, rallies, marches, demonstrations, conferences, roundtables, etc. Specifically, this term applies to a free, public expression of political views, where it is possible to make demands, adopt resolutions, make other appeals regarding various matters related to public life, at a meeting anyone can attend, held in the form of congresses, assemblies, meetings, rallies, marches, demonstrations, pickets, conferences, roundtables or at any combination of the above, the purpose of which is to arrange the political life in a society, on the initiative of natural or legal persons.

The organisation of a political event is a set of activities related to its creation, establishment, preparation, development, implementation, support, carried out thanks to the involvement of others in specific activities and in the event as a whole. Holding an event comprises a set of activities, the purpose of which is to ensure that the event's programme is effectively implemented and that its objectives are achieved. Holding an event is narrower in scope than the 'organisation of an event' and form a part of it. In the context of Part 6 of Article 111-1 CC, holding an event begins when the event is opened and ends when it is completed, and is used to refer to its most substantive, active and public part.[32]

According to Part 3 of Article 111-1 of the Criminal Code, the performance of informational activities implies the creation, collection, acquisition, storage,

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31 Ibidem, C.136-137.

32 *Злочинна колаборація в умовах збройної*…, op. cit., C.138.

use and dissemination of relevant information. Informational activities can be deemed to mean as a type of professional, political or public vigilance of certain persons, which consists in: a) informational interaction with authorities, civic associations, corporations or natural persons; b) creation of and facilitating access to public information; c) organisation of informational resources; d) development of information and telecommunication infrastructure, means of communication and information security.

Active participation in events of a political nature is a type of activity which implies that a person is involved in the processes occurring in the course of organisation and holding of events of a political nature, their interaction with the participants in the process, and may be manifested in actions, whose purpose is to publicly and actively support the agenda or the implementation of the decisions, resolutions, conclusions, etc. which were issued, holding relevant positions, performing assigned duties, and other types of participation. Active participation in events of a political nature may also consist in fulfilling tasks set by the organiser, carrying out campaigns, holding a relevant stage of such an event, facilitating premises, speakers, an audience for the event, supporting the chairman, participating in debates, putting forward initiatives, formulating motions, resolutions, etc. Mere attendance at an event of a political nature, without taking the aforementioned and other active measures, does not constitute an offence under Part 6 of Article 111-1 of the Criminal Code. It is important to understand that criminal liability under Part 6 of Article 111-1 of the Criminal Code is imposed, in the absence of features point to treason.[33]

> Voluntary occupation by a Ukrainian citizen of a position in unlawful judicial or law enforcement authorities established on the temporarily occupied territory as well as voluntary participation of a Ukrainian citizen in illegal armed or paramilitary forces established on the temporarily occupied territory and/or in armed forces of the aggressor state, or providing such forces with assistance in conducting hostilities against the Armed Forces of Ukraine and other military forces established in accordance with the laws of Ukraine, volunteer forces formed or self-organised for the purpose of protecting the independence, sovereignty and territorial integrity of Ukraine shall be subject to a penalty of deprivation of liberty for a period from twelve to fifteen years, along with deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years, with or without confiscation of property (Part 7 of Article 111-1 of the Criminal Code).

[33] *Злочинна колаборація в умовах збройної…*, op. cit., C.139-140.

Judicial authorities in contravention of the Ukrainian law are invalid, as are the decisions issued thereby. At the same time, the instance and range of cases adjudicated by an unlawfully established court is of no consequence. Authorities that perform functions similar to those recognised by Ukraine as law enforcement on the temporarily occupied territories will be deemed as unlawful law enforcement authorities.

Voluntary occupation by a citizen of a position in an unlawful judicial or law enforcement authority entails his/her employment or joining the service of a relevant authority, institution, organisation, committed without coercion and of his or her own free will, as well as occupation of such a position in a reorganised body, institution, organisation, that has become unlawful as a result of organisational and personnel changes made by representatives of the aggressor state or the occupying administration. Thus, for example, remaining as a judge in a judicial authority that has been reorganised and incorporated into the system of the occupying state shall be subject to a penalty, as the Ukrainian state make it possible for judges who have worked in Ukrainian courts established within TOT and have expressed a desire to relocate in connection with the temporary occupation by the Russian Federation to be transferred to a position as a judge in a court in another territory of Ukraine. At the same time, a judge who has not demonstrated a desire to relocate to a non-occupied part of Ukraine has the option to resign from the unlawful judicial authority and refrain from performing collaborationist activity.[34]

As noted by N. Antoniuk, this part pertains not only to judges, since the competences in the judicial authorities are manifestly distributed between those who are directly responsible for the administration of justice, i.e. judges, and the judicial apparatus (court clerks, court assessors, bailiffs, etc.) being constitutes a structural component of court's operation.[35]

According to O. Kravchuk and M. Bondarenko, the presence of organisational and managerial or administrative and economic functions is necessary in order for an offence of voluntary occupation of a position in unlawful judicial or law enforcement authorities established in the temporarily occupied territory to have been deemed committed. Otherwise, being employed at positions which do not involve such functions will be qualified as set forth in Part 2 of Article 111-1 of the Criminal Code.[36] M. Hawroniuk expressed a similar view in that he evaluated relevant positions in terms of whether they involve activities akin to that

[34] *Злочинна колаборація в умовах збройної…*, op. cit., C.142-143.
[35] Н. Антонюк. *Державна зрада і колабораційна діяльність* …, op. cit., C. 63.
[36] О. О. Кравчук, М. С. Бондаренко. *Колабораційна діяльність* …, op. cit., C. 202.

of a judge or law enforcement officer. The occupation of a position of a court assessor, bailiff or any other position in the judicial apparatus, prosecutor's office, etc., should, in his opinion, qualified as falling within the scope of Part 2 of Article 111-1 CC, i.e. as occupation of a position not related to the performance of organisational and managerial or administrative and economic functions.[37]

J. Pysmensky and R. Mowczan, on the other hand, expressed a position to the opposite, as they suggested that Part 7 of Article 111-1 of the Criminal Code should to used to evaluate activities of a person occupying any positions in unlawful judicial or law enforcement authorities established in the temporarily occupied territory, including those which are do not involve organisational and managerial or administrative and economic functions, but without which the performance of a relevant function would not be possible: positions of court administrator, judge's assistant, court clerk, court registrars, human resources or accounting departments, etc. At the same time, the authors rightly note that there is no provision in Part 7 of Article 111-1 CC, similar to the one included in Part 5 of the note, whereby liability would arise only for the occupation of positions related to relevant functions.[38] Secondly, Part 7 of Article 111-1 CC comprises a special structure of an offence concerning the acts described in Part 2 and Part 5 of Article 111-1, as it refers to a separate type of unlawful authorities established in the temporarily occupied territory (an additional feature).[39]

O. Marin emphasises that a Ukrainian citizen incurs the greatest liability for holding a position in unlawful judicial authorities established in the temporarily occupied territory of Ukraine and unlawful law enforcement agencies there created. He states that joining the service in the "people's militia", any quasi-state security service or prosecutor's office, serving as a judge, court assessor, any other functions (*without specifying which those are* – I.M.) in quasi-judicial authorities in the temporarily occupied territory of Ukraine constitutes a particularly serious crime and is subject to liability under Part 7 of Article 111-1 of the Criminal Code of Ukraine.[40]

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[37] Є. О. Письменський, Р. О. Мовчан. *Новели кримінального законодавства України про колабораційну діяльність: дискусійні питання та спроба їх розв'язання*. Юридичний науковий електронний журнал. 2022. №6. С.358.

[38] Є. О. Письменський, Р. О. Мовчан. *Новели кримінального законодавства України*…, op.cit., С.358, 360.

[39] *Новели кримінального законодавства*…, op. cit., С. 108.

[40] О. К. Марін. *Кримінальна відповідальність за роботу в інтересах держави-агресора. Теоретико-прикладні проблеми юридичної науки на сучасному етапі реформування кримінальної юстиції (пам'яті В. П. Колгана):* збірник тез Міжнародної

Z. Zaginei-Zabolotenko explains that holding a position by a Ukrainian citizen in any authority unlawfully established in the territory of TOT and the subsequent performance of the duties assigned to that post will be qualified, taking into account the totality of circumstances, under Part 2, 5 or 7 of Article 111-1 and clause 1 or 2 of Article 111 of the Criminal Code "High treason". It is only such an assessment on criminal law grounds that will satisfy the principle of completeness of qualification and will ensure that collaborators face inevitable criminal liability. At the same time, taking into consideration the imposition of martial law or the period of armed conflict during which the treason occurred, these actions should be qualified as providing assistance to a foreign state, foreign organisation or their representatives in carrying out diversionary actions against Ukraine or as transferring to the side of the enemy under the conditions of martial law or armed conflict.[41] A similar position on the criminal law qualification is presented by N. Antoniuk.[42]

To *participate in illegal paramilitary or armed forces is to join that criminal association*, to be a part of them and to continue to carry out, within their framework, any action in support of the aggressor state. Joining illegal paramilitary or armed forces means agreeing to be involved in them. A person may be appointed to a specific position, receive a weapon, a pass, a military uniform, receive a call sign, take an oath, affix a signature, be assigned functional duties in the force, etc. Voluntary participation implies the absence of coercion that would preclude the free expression of will (threats, blackmail, etc.) when making a decision on such an involvement[43].

It is necessary to distinguish the participation of a citizen of Ukraine in illegal armed or paramilitary forces crated on the temporarily occupied territory and/or in the armed forces of the aggressor state (Part 7 of Article 111-1 CC) from the participation in the operation of paramilitary or armed forces which were not set forth by the law (Article 260 CC) based on the following criteria: 1) *the subject of the offence* – in the case of collaboration, it can only be a citizen of Ukraine; 2) *the place* of creation of relevant forces or their affiliation to the aggressor state – it is of no consequence, as regards the qualification of an act under Article 260 CC, where and how the paramilitary or armed

науково-практичної конференції (м. Хмельницький, 27 травня 2022 року). Хмельницький : Хмельницький університет управління та права імені Леоніда Юзькова, 2022. С.20.

41 З. А. Загиней-Заболотенко. *Добровільне зайняття громадянином України* …, op. cit., С.321.

42 Н. Антонюк. *Державна зрада і колабораційна діяльність* …, op. cit., С.60.

43 *Злочинна колаборація в умовах збройної* …, op. cit., С.144.

forces were created or if they are affiliated with a particular state, i.e. Article 260 CC applies to participation in any such forces.[44]

In the context of Part 7 of Article 111-1 of the Criminal Code, the conduct of hostilities involves the operation of paramilitary or armed forces, the purpose of which is to kill people, destroy combat equipment or military facilities of the Armed Forces of Ukraine and other military forces established in accordance with the laws of Ukraine, including volunteer forces formed or self-organised for the purpose of protecting the independence, sovereignty and territorial integrity of Ukraine, to take control of the occupied territory, to repel the attack or assault and to maintain the territory seized by their troops. They may be defensive, offensive (counter-offensive) or aggressive (seizure of foreign territory) in nature. In the case of aggressive hostilities, civilian infrastructure buildings may be affected, as well as the civilian population. Providing assistance in the conduct of hostilities implies making steps to support the interests of Ukraine's military adversary, which: (1) facilitate or enable the effective conduct of hostilities by illegal armed or paramilitary forces established on the temporarily occupied territory or armed forces of the aggressor state; (2) complicate, prevent or diminish the effectiveness of combat operations of the Armed Forces of Ukraine and other military forces established in accordance with the laws of Ukraine, volunteer forces formed or self-organised for the purpose of protecting the independence, sovereignty and territorial integrity of Ukraine.[45] This includes, for example, removing obstacles to the activities of illegal armed or paramilitary forces, providing them with the necessary information, transport services, repair work, financing, etc.[46]

The fact that Article 111-1 is absent from the list specified in Part 2 of Article 22 of the Criminal Code means that liability for collaborationist activity requires a *subject* to reach 16 years of age. The current state of affairs raises no reservation and is confirmed by practice.

A literal interpretation of Parts 4 and 6 of Article 111-1 of the Criminal Code, in the absence of any mention that an unlawful act was committed by a Ukrainian citizen, indicates that any person, regardless of nationality, who transfers material resources to specific recipients and/or conducts economic activity with them will be subject to criminal liability (Part 4); or organises and conducts political events, carried out informational activities in support of the aggressor state,

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44 *Новели кримінального законодавства*…, op. cit., C.108.

45 *Злочинна колаборація в умовах збройної* …, op. cit., C.145-146.

46 *Новели кримінального законодавства*…, op. cit., C.109.

its occupation administration or armed forces and/or evades responsibility for an armed attack against Ukraine, takes an active part in such activities (Part 6).

The legal doctrine has not reached any significant consensus as regards the interpretation of the provisions referred to above. And thus V. Kuznetsov and M. Sijploki suggest to take into account the well-established similarities between collaboration and high treason and to consider that only a Ukrainian citizen may be the subject of the relevant offences (Articles 1 and 6 CC); in light of how Part 4 of Article 111-1 of the Criminal Code is applied as well as legislative drafting principles, O. Zaytsev and V. Bodeiko consider it reasonable to clarify that this Part requires Ukrainian citizenship, so as to avoid any misinterpretation by attributing it to a subject *in genere*; J. Pysmensky emphasises that the subject of collaboration is a citizen of the state whose territory is occupied. Meanwhile, O. Kravchuk and M. Bondarenko state that the subject of the offences under Parts 4 and 6 of Article 111-1 CC is a person who does not necessarily have the status of a citizen of Ukraine. At the same time, the scholars emphasise that the subject of all offences which make up collaboration must, as a rule, meet such characteristics as belonging to the local population or having other permanent ties to the relevant occupied territory (residence, place of registration, place of business or other activity); A. Benitsky points out that due to the fact that the legislator expanded the catalogue of subjects as regards some forms of collaboration, the subjects of the specific forms under Parts 4 and 6 of Article 111-1 of the Criminal Code may be either citizens of Ukraine or foreigners or stateless persons; A. Muzyka takes the view that collaborationist activities are intentional actions (…) committed by a citizen of Ukraine, a foreigner (with the exceptions of citizens of the aggressor state) or a stateless person, in the absence of features point to treason.[47]

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[47] В. В. Кузнецов, М. В. Сийплокі. *Кримінальна відповідальність за колабораційну діяльність як новий виклик сьогодення. Науковий вісник Ужгородського Національного університету. Серія ПРАВО. 2022. Випуск 70. С.386; О. В. Зайцев, В. А. Бодейко.* Щодо встановлення суб'єктивних ознак колабораційної діяльності (узагальнення матеріалів судової практики). *Вісник Луганського державного університету внутрішніх справ ім. Е. О. Дідоренка. 2022. Вип. 4 (100). С.107; О. О. Кравчук, М. С. Бондаренко.* Колабораційна діяльність: науково-практичний коментар до нової статті 111-1 КК. *Юридичний науковий електронний журнал. 2022. №3. С.199-201; Є. О. Письменський.* Колабораційна діяльність у сфері освіти: проблеми тлумачення та вдосконалення кримінального закону. Право України. 2022. № 11. 12-23. С.55; А. Беніцький. Особливості кримінально-правової кваліфікації злочинів, передбачених ч. 4 ст.111-1 Кримінального кодексу України та розмежування їх із суміжними складами злочинів. Право України. 2022. № 11. 12-23. С. 90-91; А. Музика Норми про відповідальність за колабораційну діяльність потребують актуальних поправок. *Кримінально-правові*

However, the first position referred to above is preferable as it corresponds to the real intention (spirit) and goals for adopting the draft Act of Ukraine regarding amendments to certain legislative acts (on the establishment of criminal liability for collaboration) dated 24.02.2021 No. 5144 and to the needs of law enforcement practice. Sharing the understanding of collaboration (J. Pysmensky et al.), i.e. as cooperation of a citizen of a state whose territory is (fully or partially) occupied with the occupant state or its representatives, we consider it appropriate to acknowledge that the subject of collaborationist activity (Parts 4 and 6 of Article 111-1 CC) can only be a citizen of Ukraine, while similar actions committed by stateless persons or foreigners, should there be grounds therefor, should be qualified in accordance with other Articles of the Code, primarily Chapter I of the Special Part.

It will also be proper to consider separate features, since a comprehensive examination of the objective composition of collaborationist activities will be incomplete without analysing additional features: 1) activities undertaken by citizens of Ukraine to implement the education standards of the aggressor state in educational institutions (Part 3 of Article 111-1); 2) carrying out economic activities in cooperation with the aggressor state, unlawful authorities established on the temporarily occupied territory, including the occupation administration of the aggressor state (Article 111-1(4)); 3) voluntary occupation by a citizen of Ukraine of a position related to the performance of organisational and managerial or administrative and economic functions in authorities established on the temporarily occupied territory, including the occupation administration of the aggressor state (Article 111-1(5)); 4) voluntary occupation by a citizen of Ukraine of a position in unlawful judicial or law enforcement authorities established on the temporarily occupied territory (Part 7 of Article 111-1 of the Criminal Code).

In the context of liability for propaganda (clause 3 of Article 111-1 CC), N. Antoniuk notes that such activities may be performed not only by teachers or other persons working in relevant educational institutions, regardless of the form of ownership, but also by any person who takes advantage of an educational institution for propaganda purposes. Furthermore, the Article is not only concerned with the impact on pupils, students or other wards, but also with the impact on

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відповіді на виклики воєнного стану в Україні: матеріали міжнар. наук. конф., м. Харків, 5 трав. 2022 р. / упоряд. та заг. ред.: Ю. В. Баулін, Ю. А. Пономаренко; Нац. юрид. ун-т ім. Ярослава Мудрого; Нац. шк. суддів України; Громад. орг. «Всеукр. асоц. кримін. права»; НДІ вивч. проблем злочинності ім. акад. В. В. Сташиса. Харків: Право, 2022. С. 113.

the teaching staff working in an educational institution. While it is not difficult to distinguish between the subject that is being taught and possible propaganda during a mathematics or a chemistry course, the situation is much complicated in the case, for example, of a history lesson. N. Antoniuk rightly believes that should a history teacher go on to teach about the history of the Russian Federation or express the view that Ukrainians as a nation and Ukraine as a state never existed, such actions and informational activity towards students or other pupils is socially dangerous. After all, the authority of the teacher and his/her views oftentimes has a decisive impact on the development of the student's awareness.[48]

The act of implementing educational standards of the aggressor state in educational institutions can be committed by a subject who is a citizen of Ukraine, who has power, granted by the occupation administration of the aggressor state, to implement educational standards (most of all, a director of an educational institution, his or her deputies, heads of structural units tasked with implementing educational standards, members of teaching, pedagogical and scientific councils).[49] Scholars have also arrived at the following reasonable conclusions: 1) teachers who do not perform organisational and managerial duties and are not involved in the implementation of educational standards in their capacities cannot be regarded as subjects of the act of implementing educational standards of the aggressor state; 2) the direct teaching of subjects based on previously implemented educational standards of the aggressor state in the occupied territories does not meet the legal definition of the offence under Part 3 of Article 111-1 CC (i.e. the implementation of educational standards of the aggressor state). Thus, the direct teaching of subjects based on the standards of the aggressor state, which were already implemented by relevant officials in the occupied territories, does not satisfy the objective side of the offence under Part 3 of Article 111-1 CC, that is "actions aimed at implementing educational standards of the aggressor state". Teaching does not constitute implementation of the requirements concerning content of educational plans.[50]

Based on the normative interpretation specified above, the particular subject referred to in clause 4 of Article 111-1 of the Criminal Code must fulfil a mandatory requirement of being entered into the governmental register of economic activity, regardless of where and under what conditions this has been

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48 Н. Антонюк. *Державна зрада і колабораційна діяльність* …, op. cit., C.61.

49 Є. О. Письменський *Колабораційна діяльність в сфері освіти*…, op. cit., C.54-55.

50 *Злочинна колаборація в умовах збройної* …, op. cit., C.120.

effected, whether or not it occurred in accordance with the requirements set forth by Ukrainian law in force and on the territory controlled thereby or in cooperation with the aggressor state, unlawful authorities of state power established on the temporarily occupied territory, including the occupation administration of the aggressor state, whereby the requirements of "occupational legislation" have been met. It is important that the unlawful conduct of this kind may also take place on the territory of the Russian Federation.

In the context of voluntary occupation of a position in unlawful judicial or law enforcement authorities created at the area of TOT, we support the view that the subject must perform organisational and managerial or administrative and economic functions. The social danger of this unlawful behaviour (whose formal embodiment is manifested in the sanction contained in a criminal norm) is determined by its nature (content) and consequences, which, although removed from the scope of Part 7 of Article 7 of the Criminal Code, does remain, however, in direct connection with the administration of justice or the provision of law enforcement services. It would be difficult to logically justify the opinion that the legislator regards the conduct of persons whose function is determined by a position they occupy in unlawful judicial and law enforcement authorities, where such position is not related to the performance of organisational and managerial or administrative and economic functions in the area of the administration of justice or law enforcement activities, as so dangerous that the state imposes the penalty of deprivation of liberty for a period from twelve to fifteen years, along with deprivation of the right to hold certain positions or carry out certain activities for a period from ten to fifteen years, with or without confiscation of property. Otherwise, the legislator's actions would be completely incomprehensible and illogical, since a lighter punishment would, as a matter of fact, be reserved for subjects within the confines of unlawful authorities, who as part of their status occupy the aforementioned positions (Part 5 of Article 111-1 CC), as compared to persons who belong to the same authorities (judicial and law enforcement) whose scope and effects of unlawful activity are not associated with such capacity (Part 7 of Article 111-1 CC). Finally, the Act defines unlawful judicial and law enforcement authorities as constituting a part of the system of state authorities and structures of the Russian Federation, which are functionally responsible for managing the temporarily occupied territories, which is impossible without the relevant powers and functions.

Each form of complicity can only be committed intentionally, while the intention can only be direct if the subject is aware of the socially dangerous nature of his or her action (act or omission), foresees its socially dangerous

consequences in the form of increasing the capacity or granting further opportunities of the aggressor state, the occupant or the armed forces that are involved in the armed aggression against Ukraine and wishes such consequences to occur.

Purpose is a mandatory feature of the subjective side of such types of collaborationist activity as:

- conducting propaganda activities in educational facilities with the aim of facilitating the conduct of an armed attack against Ukraine, establishing and consolidating the temporary occupation of a part of the territory of Ukraine, evading responsibility for carrying out an armed attack against Ukraine by the aggressor state (Part 3 of Article 111-1 CC);
- any action, the purpose of which is to implement the educational standards of the aggressor state in educational institutions (Part 3 of Article 111-1 CC);
- organising and performing activities of a political nature, the purpose of which is to support the aggressor state, its occupation administration or armed forces and/or evading responsibility for the armed attack on Ukraine (Part 6 of Article 111-1 of the Criminal Code);
- performing informational activities, he purpose of which is to support the aggressor state, its occupation administration or armed forces and/or evading responsibility for the armed attack on Ukraine (Part 6 of Article 111-1 CC).

In the case of other forms of collaboration, neither the purpose nor the motive constitute mandatory features that determine the composition of the offence, but they definitely need to be established, as they become important for the successful resolution of other criminal law issues (mainly related to the imposition of punishment). Analysing and taking these subjective manifestations into consideration should ensure that one takes a proper approach to the extremely necessary (at least from the perspective of the practical implementation of the principle of justice) individualisation of liability.[51]

Part 8 of Article 111- CC contains 2 qualifying features that pertain to the acts stipulated in Parts 5 to 7 of this Article. These are: acts by individuals or decision-making that led to fatalities; performed by persons in the form of acts or decisions that led to other serious consequences.

The term 'fatalities' in the context of Article 111-1 of the Criminal Code of Ukraine is to be understood as causing the death of at least one person (or several of them) as a result of the commission of the offences provided for in Part 5, Part 7 of Article 111-1 of the Criminal Code. This view is based on the provisions of paragraph 21 of the Resolution of the Plenum of the Supreme

[51] *Новели кримінального законодавства*…, op. cit., C.117-118.

Court of Ukraine of 12.06.2009 No. 7 "On the practice of application of law by the courts of Ukraine in cases of crimes against the safety of production," which states that fatalities are deaths of one or more individuals. At the same time, it is necessary to establish a direct link between decisions of a person who commits the offence referred to in Parts 5-7 of Article 111-1 of the Criminal Code and fatalities or other serious consequences.

According to Part 4 of the note to Article 111-1 of the Criminal Code, in Part 8 of this Article, damage that exceeds a non-taxable minimum income of citizens one thousand or more times is considered to be serious. The non-taxable minimum income of citizens, as defined in the regulation on the emergence of administrative and criminal liability, is set at the level of the tax social benefit being 1/2 of the subsistence minimum for able-bodied persons as of 1 January of the current year. The non-taxable minimum income of citizens at the level of social benefits from 1 January 2023 is UAH 1342.[52] Taking into consideration that the note grants a specific meaning to the term 'serious consequences' for the purposes of Article 111-1 CC, other types of damage (e.g. those leading to a serious injury, etc.) do not constitute the grounds to qualify the act as the offence under Article 111-1 of the Criminal Code. At the same time, when in the course of activities performed or decisions taken other types of damage are caused that satisfy the features of the offences under Parts 5-7 of the Criminal Code, it is necessary to account for the issue of a set of relevant offences.

Current practice in the application of the provisions on collaborationist activity by judicial authorities

The empirical basis for the research performed for the purposes of this paper was the generalisation of judicial practice materials in cases concerning collaborationism, obtained by the author through free access to the Consolidated State Register of Judicial Decisions, which, as of 24 January 2023, contained 150 sentences referring to Article 111-1 CC, issued by the courts of Ukraine in the period from April 2022 to January 2023 against 152 persons: Part 1 of Article 111-1 of the CC – 99 offences (65.1%); Part 2 of Article 111-1 of the Criminal Code – 32 (21%); Part 4

[52] PLN 149.73 according to the exchange rate as of 22.08.2023 – translator´s note

of Article 111-1 CC - 11 (7.3%); Part 5 of Article 111-1 CC – 3 (2%); Part 6 of Article 111-1 CC – 2 (1.3%); Part 7 of Article 111-1 CC – 5 (3.3%).

Part 1 of Article 111-1 CC (99 sentences, or 65.1%). Practice shows that in the absolute majority of cases pertaining to analysed unlawful behaviour under consideration there is a symbiosis – a simultaneous combination of public denials and appeals (replacing the conjunctive 'or' with 'and (or)' in Part 1 of Article 111-1 CC seems to be justified - I. M.), whose content may vary and entail: failing to acknowledge that the state sovereignty of Ukraine extends to the temporarily occupied territories of Ukraine, stating that cities of Ukraine are in fact Russian, and also expressing the view that it is necessary to hold referendums to determine their affiliation to a certain state; providing information materials discrediting the Armed Forces of Ukraine (hereinafter referred to as AFU), where the Ukrainian army is accused of destroying civilian infrastructure and killing civilians, and which glorify supporters of the "Lugansk People's Republic" and the "Donetsk People's Republic", as well as the armed forces of the Russian Federation in the armed aggression against Ukraine; form an opinion in society about the legitimacy of the actions of the authorities and officers of the Armed Forces of the Russian Federation on the invasion and occupation of the territory of Ukraine; express an opinion that the existence of Ukraine as a sovereign state is impermissible and that the Russian Federation expanding its sovereignty to the area of TOT was legal; reject the fact that the Russian Federation is the initiator of the international armed conflict, etc.

Public nature is associated with committing an offence in public places/places of concentration of citizens, both standard ones (public transport stops, commercial and catering establishments, cultural establishments, enterprises, institutions and organisations, etc.) and rather non-standard ones (isolation ward of Kharkiv State Investigation Facility, a judgment issued by the Zhovtneve District Court of Kharkiv on 07.08.2022 in case no. 639/1837/22).[53] Attention should be paid to the high (40.4%) percentage of instances when the illegal behaviour in question is committed by distributing material on social networks to groups who make use of online resources (including the banned 'Vkontakte', 'Odnoklassniki'), Telegram channels, etc. Despite the fact that the 40-54 age category of collaborators (41%) is the most criminogenic (according to the information of the General Prosecutor's Office), their technical and communication skills are at a level which is sufficient to achieve the intended purpose. Especially if one were to take into

[53] Вирок Жовтневого районного суду м. Харкова від 08.07.2022 р. у справі № 639/1837/22: https://reyestr.court.gov.ua/Review/105146407 (дата звернення: 08.07.2023)

account the need to overcome the blocked social networks of the aggressor state by means of virtual private networks (VPNs) or by other means

Part 2 of Article 111-1 of the Criminal Code (32 convictions, or 21%). It concerns holding positions which are not related to the performance of organisational and managerial or administrative and economic functions in the rural, residential district, municipal or related subdivisions of the occupation administration and the performance of the following functions: the chairman or secretary of the relevant council (creating lists of persons and collecting their passport data, distribution of humanitarian aid among the population, distribution of propaganda products with appeals to support the decisions and measures of the aggressor state and the overthrow of the constitutional system of Ukraine, etc.); an employee of housing and communal services department (drawing up lists of procurement needs for fuel and greases, candidates for work in community teams, etc.); an official (issuing certificates, keeping records and storing documents, registering incoming and outgoing documents, receiving citizens, etc.); a social worker (visiting pensioners and persons with disabilities to provide home assistance, providing medicines when needed; receiving pensioners, drawing up lists of payments of cash assistance to pensioners from the Russian Federation, issuing certificates and disability renewal confirmations, etc.); health worker (checking on the activities of the Department of Housing and Communal Services, preparing lists of needs for the purchase of fuel and lubricants, candidates for work in community teams, etc.); a healthcare professional (reviewing the activities of health institutions, enterprises and establishments, supplying the population with medicines and medical products, etc.); education department employee (organising cultural and mass events for students of educational facilities, organising group work, working with documents, etc.).

In some circumstance, the criminal qualification in the situation of the actual concurrence of offences seems incomplete. And thus, the fact that "the accused not only performed the functions of the secretary to the chairman of the village council, but also, in the course of these functions, publicly denied Russian armed aggression against Ukraine and called for supporting the decisions and actions of the aggressor state and its armed forces" was overlooked by the Globynskiy District Court of the Poltava region"(judgment of 11 October 2022, case no. 527/2285/22).[54]

[54] Вирок Глобинського районного суду Полтавської області від 11.10.2022 р. у справі № 527/2285/22. URL: https://reyestr.court.gov.ua/Review/106689367 (дата звернення: 08.07.2023)

Part 4 of Article 111-1 CC (11 sentences, or 7.3%). As court documents indicate, at present, the provision of material resources to the aggressor state is not systemic, being limited to isolated cases of providing food to representatives of the opponent's military forces; alcoholic beverages; industrial goods; fuel; up-to-date information on the whereabouts of soldiers of the Armed Forces, representatives of the territorial defence, participants in hostilities and citizens with an active pro-Ukrainian attitude; assistance in the construction of block posts; hiding representatives of the armed and paramilitary formations of the aggressor state on the territory controlled by Ukraine. The specified unlawful behaviour is mainly due to the desire to secure privileges from the representatives of the occupational authorities enabling further long-term residence in the occupied territory, free movement within it and conducting economic activity.

The mandatory qualifying feature of the offence is entry intro the state register of economic activity, regardless of where and under what conditions this has been effected, whether or not it occurred in accordance with the requirements set forth by Ukrainian law in force and on the territory controlled thereby or in cooperation with the aggressor state, whereby the requirements of "occupational legislation" have been met. It is important that the unlawful conduct of this kind may also take place on the territory of the Russian Federation, as exemplified by the qualification for Part 2 of Article 28, Part 4 of Article 111-1 of the Criminal Code concerning actions of persons who "rendered advisory services in the field of IT modernisation and ensured that accounting databases of enterprises were operational via the 1C software – this also applies to companies that were located on the territory of the Russian Federation and the Donetsk region" (judgment of the Pecherskyi District Court of Kyiv, of 26.09.2022, case no. 757/15806/22-k)[55].

The court practice in this context is ambiguous, and it was objectively determined by a number of factors, including the 'short-lived' standard of Article 111-1 CC itself, the absence of appropriate explanations from higher instances, divergent positions in criminal law doctrine and in law enforcement. The courts are not uniform when defining the parameters, including also what entails performing business activity, in some cases confirming that the objective side of the offence takes the form specified above, while in others using the simpler term 'transfer of material resources' or combining both types of conduct.

The activities of PERSON_4, who was engaged in entrepreneurial activity since 26.04.2000, living in the village of Shevchenkove in the Kupyansk

[55] Вирок Печерського районного суду м. Києва від 26.09.2022 р. у справі № 757/15806/22-к: https://reyestr.court.gov.ua/Review/107694567 (дата звернення: 17.02.2023)

poviat of the Kharkov region, were qualified as performing business activity in cooperation with the aggressor state, including the occupation administration of the aggressor state, established on the temporarily occupied territory. In March 2022, due to the military aggression of the Russian Federation, the territorial community of Kupyansk poviat of Kharkiv region, including the village of Shevchenkove, was occupied by units of the aggressor state. From the end of February to the beginning of May 2022, the defendant continued to carry out business activities, in particular the sale of Ukrainian-made goods through the "INFORMATION_3" shop. In July 2022, while staying in the village of Shevchenkove in the Kupyansk poviat of the Kharkiv region, he received documents from an unidentified representative of the so-called "tax service" operating under the occupation administration, where his registration as a business entity in the village of Shevchenkove was confirmed and which granted him a permit to carry out business activities in the territory of the village in cooperation with the occupation administration of the aggressor state and being exempted from taxation until the end of 2022 (judgment of the Kyiv District Court in Kharkiv of 26 December 2022, case No. 953/7065/22)[56].

In other cases, we do not observe such detailed qualifications. The court deemed as transfer of material resources to illegal armed or paramilitary forces established in the temporarily occupied territory and to armed or paramilitary forces of the aggressor state (Part 4 of Article 111-1 CC) the following prohibited act. PERSON_3 was proactive in appealing to representatives of the armed, paramilitary forces of the aggressor state, conducting activity as a sole trader, running a shop for ten years engaged in the sale of food and industrial goods. He agreed to donate material resources in the form of foodstuffs, alcoholic beverages and industrial goods, and therefore had privileges in obtaining diesel fuel for further sale to the local population (judgment of the Burinsky District Court of Sumy Oblast of 01.12.2022, case no. 574/368/22).[57] It seems that it would be more justified to consider the mere conduct of a business as a conduct that was in contravention of the law. Cooperation between an individual and military personnel of the Russian Federation, which in fact consisted only in the sale of fuel and grease, grain and foodstuffs in order to receive profit, was subjected to an additional criminal law assessment as "joint economic activity". At the same time, the defendant's economic activity lacks the necessary features (record

[56] Вирок Київського районного суду м. Харкова від 26.12.2022 р. у справі № 953/7065/22: https://reyestr.court.gov.ua/Review/108377777 (дата звернення: 17.02.2023).

[57] **Вирок** Буринського районного суду Сумської області від 01.12.2022 р. у справі № 574/368/22: https://reyestr.court.gov.ua/Review/107641030 (дата звернення: 17.02.2023).

or registration, separate property of the enterprise, etc.) – these were not specified by the court in the judgment (judgment of the Kyiv District Court in Kharkiv of 20 December 2022, case no. 953/6434/22).[58]

Part 5 of Article 111-1 of the Criminal Code (3 convictions, or 2%). This concerns cases of voluntary employment/being elected to positions, related to organisational and managerial or administrative and economic functions in unlawful authorities established in the area of TOT (chief of a municipal enterprise, leading specialist in the humanitarian aid department of the occupation administration).

Part 6 of Article 111-1 of the Criminal Code (2 convictions, or 1.3%). Organisation of political events and implementation of informational activities in cooperation with the aggressor state is deemed to include placing the flag of the Russian Federation with the slogan "Odessa, a Russian city" on the building of an apartment block, as well as taking photographs and films for the purpose of their further transfer to representatives of the Russian Federation (judgment of the Kiev District Court of Odessa of 25 November 2022, case no. 947/26981/22);[59] performance of information activities comprises the manufacture of leaflets lifting the 'spirits of Russian soldiers', along with their further distribution on the territory of the Luhansk region (judgment of the Dzerzhinsky District Court of the city of Kharkiv of 28.12.2022, case no. 638/7303/22).[60]

Part 7 of Article 111-1 of the Criminal Code (5 convictions, or 3.3%). Only one verdict concerned a person who voluntarily occupied a position in an unlawful law enforcement authority – "an acting deputy prosecutor of the Novopskov district of the General Prosecutor's Office of the Lugansk People's Republic"(judgment of the Ivano-Frankivsk City Court of the Ivano-Frankivsk Oblast of 13.12.2022, case no. 344/10333/22).[61] The judgment did not touch upon the issue of whether or note the defendant, in his position, performed organisational and managerial or administrative and economic functions. Other cases pertain to the provision of assistance to armed or paramilitary forces of the aggressor state or similar forces established in the area of TOT in conducting hostilities against the Armed

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[58] Вирок Київського районного суду м. Харкова від 20.12.2022 р. у справі № 953/6434/22: https://reyestr.court.gov.ua/Review/107960245 (дата звернення: 17.02.2023).

[59] Вирок Київського районного суду м. Одеси від 25.11.2022 р. у справі № 947/26981/22: https://reyestr.court.gov.ua/Review/107502058 (дата звернення: 17.02.2023)

[60] Вирок Дзержинського районного суду м. Харкова від 28.12.2022 р. у справі № 638/7303/22: https://reyestr.court.gov.ua/Review/108152933 (дата звернення: 17.02.2023)

[61] Вирок Івано-Франківського міського суду Івано-Франківської області від 13.12.2022 р. у справі № 344/10333/22: https://reyestr.court.gov.ua/Review/107850847 (дата звернення: 17.02.2023)

Forces of Ukraine and other military or volunteer forces by providing information on the deployment of units of the Armed Forces of Ukraine, their numbers, armament and movement of military equipment, the place of residence of military personnel.

The criminological portrait as regards employment status

Within the structure of a person's criminological features, four components (substructures)[62] are traditionally distinguished: 1) socio-demographic (information on gender, age, education, citizenship, social position, origin and occupation, marital status, permanent employment or lack thereof and place of residence (registered residence), sources of livelihood (income), belonging to urban or rural population, etc.); 2) social role – a set of activities undertaken by an individual in the framework of the social relations system (at work, in the family, as regards health and age); 3) moral and psychological – used to describe a person's worldview, spirituality, views, beliefs, attitudes and value orientations (views, beliefs, aspirations and life expectations, intellectual, volitional and emotional features, mental disorders); 4) criminal law related (motives for committing the offence, direction and duration of the subject's criminal behaviour, group or individual nature of the socially dangerous act, role played in the commission of the offence (perpetrator, organiser, instigator, co-conspirator), methods chosen to achieve the criminal objective, attitude of the person guilty of the offence committed,

[62] Н. П. Ждиняк. Особистість злочинця. Велика українська юридична енциклопедія : у 20 т. Т. 18 : Кримінологія. Кримінально-виконавче право / редкол.: В. І. Шакун (голова), В. І. Тимошенко (заст. голови) та ін.; Нац. акад. прав. наук України ; Ін-т держави і права імені В. М. Корецького НАН України ; Нац. юрид. ун-т імені Ярослава Мудрого. 2019. С. 325; Є. Гладкова. Особа *(особистість)* злочинця. Велика українська кримінологічна енциклопедія. У 2 т. Т. 2: М-Я / рекол.: В. В. Сокуренко (голова), О. М. Бандурка (співголова) та ін. ; наук. ред. О. М. Литвинов. Харків : Факт, 2021. С.225; *Кримінологія* : підручник / А. М. Бабенко, О. Ю. Бусол, О. М. Костенко та ін. ; за заг. ред. Ю. В. Нікітіна, С. Ф. Денисова, Є. Л. Стрельцова. 2ге вид., перероб. та допов. Харків : Право, 2018. С.135; *Кримінологія*. Академічний курс / Кол. авторів ; за заг. ред. О. М. Литвинова. К.: Видавничий дім «Кондор», 2018. С.83; І. Г. Богатирьов. *Кримінологія* : підручник / заг. ред. І. Г. Богатирьова, В. В. Топчія. Київ : ВД Дакор, 2018. С.80; *Кримінологія: Загальна та Особлива частини*: підручник / І. М. Даньшин, В. В. Голіна, М. Ю. Валуйська та ін.; за заг. ред. В. В. Голіни. 2-ге вид. перероб. і доп. Х.: Право, 2009. С.37-40.

repetition (recidivism), the provision used to classify the offence, type and severity of the penalty, etc.

I. Danshin distinguishes 7 groups of signs and features of a criminal's personality: socio-demographic; role-personal; socio-psychological; traits and qualities of legal and moral consciousness; hereditary (genetic) and mental deviations and anomalies; criminal law traits; general positive human qualities.[63]

In the fundamental "Course of Modern Ukrainian Criminology", A. Zakaluk, describing in detail the personality structure of a criminal, refers to:

- signs of formation and socialisation of an individual (education; occupation; information on traits acquired in the parental family, length of stay in the parental family, etc.);
- expressions of social status and social roles (social position, occupation, nature of production (education); marital status; socio-housing conditions, etc.);
- signs of the personality's orientation (needs, interests, interests, and interests);
- signs of the personality's social status and social roles (social status, occupation, type of production (education); marital status; social and housing conditions, etc.);
- direct signs of personality orientation (needs, interests, social values, activity in the principal areas of life);
- demographic qualities with social and psychological significance;
- psychophysiological characteristics (adaptive reactions, motor activity, type of higher nervous activity, etc.);
- indicators of physical health (general condition; physical disabilities; chronic somatic diseases);
- indicators of mental health (pathology that excludes capacity to perform acts at law; anomalies that limit capacity to perform acts at law;);
- individual psychological traits (character traits; positive and socially desirable traits; willpower); 9) features related to the commission of an offence by a person.[64]

In addition to the aforementioned summary of court decisions in cases of collaborationism, we also processed the data provided by the General Prosecutor's Office regarding perpetrators of crimes, according to which the year of 2022 there were 3,851 collaborationism-related offences recorded – 949 offences (Parts

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[63] И. Н. Даньшин. *Общетеоретические проблемы криминологии:* Монография. Х.: Прапор, 2005. С.110.

[64] А. П. Закалюк. *Курс сучасної української кримінології: теорія і практика:* У 3 кн. К.: Видавничий Дім «Ін Юре». 2007. Кн. 1: Теоретичні засади та історія української кримінологічної науки. С.258-262.

1, 2 of Article 111-1 CC) and 2,902 crimes (Parts 3, 4, 5, 6, 7, 8)[65]; 726 collaborators were identified[66]. A comprehensive analysis of this statistical information will provide the best possible criminological perspective and will allow to evaluate the circumstances prevailing at the present time.

Socio-demographic area. Criminal activity in the form of voluntary cooperation with the aggressor state is, for the most part, committed by men: 62.5% and 68%. According to the General Prosecutor's Office, the age breakdown of the 726 collaborators identified in 2022 is as follows: 0 under 14 years of age; 14-15 years of age – 0; 16-17 years of age – 0; 18-28 years of age – 49; 29-39 years of age – 177; 40-54 years of age – 298; 55-58 years of age – 71; 60 years of age and over – 131. This indicates that the 40-54 years of age category (41%) is the most criminogenic, while young people aged 18-28 are the least likely to collaborate (6.7%).

The legislative structure of Article 111-1 CC (with the exception of Parts 4 and 6) directs the attention of the law enforcement officer to the fact that collaborationism may be committed only by citizens of Ukraine; moreover, neither court materials nor the data of the General Prosecutor's Office contain information about foreigners or stateless persons. Also noteworthy is the fact that in 13.8% of judgments, the perpetrator of the offence was a citizen of Ukraine born on the territory of the Russian Federation (21 persons), in 5.3% - born on the territory of Moldova, Uzbekistan, Georgia, Hungary, Belarus, Turkmenistan or Abkhazia (8 persons).

According to the court judgements, among the collaborators, individuals with higher education account for the greatest share (27%). Allowing for 18 persons (11.8%) with special secondary education, which at the moment is equivalent, at the educational and professional level, to a bachelor's degree, and 2 persons with incomplete higher education (1.3%), we have arrived at a conclusion that offenders are characterised by a high level of education – persons with higher and vocational education account for 40.1% of the total number of convicts. A significant number of sentences concern individuals with secondary education (26.3%) and vocational education (9.9%); there was no information about the level of education of the defendant in 23.7% of judgements. According

[65] Єдиний звіт про кримінальні правопорушення по державі за січень-грудень 2022 року. Офіс Генерального прокурора: https://gp.gov.ua/ua/posts/pro-zareyestrovani-kriminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2 (дата звернення: 23.02.2023).

[66] Єдиний звіт про осіб, які вчинили кримінальні правопорушення за січень-грудень 2022 року. Офіс Генерального прокурора: https://gp.gov.ua/ua/posts/pro-osib-yaki-vchinili-kriminalni-pravoporushennya-2 (дата звернення: 23.02.2023).

to the data provided by the General Prosecutor's Office, in 55.7% of the cases, the collaborators at the time of committing the crime had higher and vocational education, 11.7% – vocational and technical education, and 32.5% – a secondary basic and profiled education.

Information about professional employment of persons convicted of collaborationism is as follows: 46.7% were at that time unemployed, 13.8% were retired at the time of committing the offence, 19.1% had a permanent job, while in the case of 20.4% of sentences there was no information about employment status. According to data from the General Prosecutor's Office with regard to employment status, among employment, individuals without any disabilities who at that time were not working or studying (349 or 48.1%) as well as unemployed persons (70 or 9.6%) constituted the greatest share. Individuals employed in the socio-political and labour area performed work and duties in the capacity of deputies to oblast, poviat, town and village councils (23/3.2%), civil servants (6/0.8%), local government officials (11 / 1,5%), officials of the poviat state administration (1 / 0.1%), officials of the judiciary (6 / 0.8%), employees of law enforcement agencies (21 / 2.9%), officials and employees of other state bodies (2 / 0.3%), pupils and students of educational institutions (3 / 0.4%).

The socio-demographic characteristics of collaborators can also be described using traits referring to the sphere of family and marital relations. 31% of the cases concerned persons in a registered marriage, 25% of the convicts were single, and in 4% of the cases the persons' marriage was dissolved, 1.3% of convicts were widowers, while in 38.8% of the judgments there is no data about marriage. In 13.8% of the sentences issued, the convicted persons had minor/minor children or other persons (disabled) as dependents.

Criminologists associate moral and psychological characteristics of a criminal with several important subgroups: world-view (views, beliefs, habits, attitudes, expectations, etc.); intellectual qualities (level of mental development, range of knowledge, life experience, limited or, on the contrary, wide range of views, their direction, diversity of interests, etc.); orientation towards human values and socially significant moral qualities and characteristics, which belong to the "deep" personality traits; emotional and volitional qualities (state of will, temperament, character, initiative, abundance of energy or lability, feelings, emotions, etc.), psychophysiological traits (innate and acquired properties of the psyche, bodily organisation of the person, including physical anomalies)[67].

[67] *Потерпілий від злочину (міждисциплінарне правове дослідження)* / колектив авторів / за заг. ред. Ю. В. Бауліна, В. І. Борисова. Харків : Вид-во Кроссроуд, 2008. 364 с.

When looking for the main reasons that ensured the success of the operation carried out by the Russian Federation against Ukraine in 2014, with the subsequent relative prevalence of collaborationist behaviour, J. Pysmensky distinguishes, *inter alia*, the post-Soviet legacy and attachment to the ideology of the "Russian world" (historical and ideological factors). The researcher concludes that at the root of collaborationist practices in the occupied territories of Ukraine as well as the loyalty identified among a part of the local population to the occupation regime lie tendencies to adhere to post-Soviet ideas which are governed by the "Russian world" motto (political and ideological grounds) as well as more economical motivations (egoism, desire, sometimes deceptive, to enrich oneself) or base qualities (vanity, revenge)[68].

Contemporary law enforcement practice only confirms and builds upon the considerations referred to above. Being citizens of Ukraine and living on its territory, collaborators demonstrate anti-national ideological and political preferences, rejecting the current Ukrainian government and approving the policy of the aggressor state, advocating ideas of pro-Russian orientation and following the geopolitical interests of the Russian Federation, which envisage the presence of Ukraine in its sphere of influence. All this occurs despite the obvious awareness of the forms of genocide committed in Ukraine by the Russian Federation, including: 1) mass murder of civilians in the temporarily occupied territories of Ukraine (in Bucha, Irpen, Mariupol, Borodianka, Gostomel and many other locations), abduction and imprisonment, torture, rape, mockery; 2) systematic creation of such living conditions for civilians which are aimed at annihilation; 3) forced deportation of civilians to the territory of the Russian Federation, as well as the taking of Ukrainian children to be raised in a foreign environment in order to destroy their identity; 4) physical and psychological violence against civilians, representatives of state and local authorities, social organisations, local activists, journalists, clergy and other persons known for their social and political position; 5) weakening of the country's economic potential and security as a result of the destruction of economic infrastructure (energy and gas industry infrastructure, grain storage facilities, obstruction of the sowing activities, blockade of maritime trade routes, etc.)[69].

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[68] Є. О. Письменський. *Колабораціонізм як суспільно-політичне явище в Україні (кримінально-правові аспекти)* : наук. нарис. Сєвєродонецьк, 2020. С.39-42.

[69] Про Заяву Верховної Ради України «Про вчинення Російською Федерацією геноциду в Україні»: постанова Верховної Ради України від 14.04.2022 р. № 2188-IX: https://zakon.rada.gov.ua/laws/show/2188-20#Text (дата звернення: 24.02.2023).

This is best illustrated by the judgment of the Poltava District Court of the Poltava Oblast of 10.11.2022 in case no. 545/5177/22. The defendant, in the period from 24.02.2022 to 11.09.2022, acting intentionally, personally, voluntarily and on her own initiative, in support of the armed aggression of the Russian Federation on the territory of Ukraine, being aware of the unlawful nature of her actions, anticipating socially harmful effects and wanting them to occur, in a public and open manner vis-à-vis the population of the rural community had constant contact with the military of the aggressor state – the Russian Federation, and repeatedly, voluntarily and gratuitously provided material means to the soldiers for each shift of the occupation army of the Russian Federation, namely food, alcoholic beverages, and also prepared food and other things for them. At the same time, the defendant, in the period when this location was occupied, did not provide any material assistance to the local population, thus putting the interests and needs of the occupants above the fellow citizens)[70].

Criminal law area. A collaborator performs the unlawful conduct in an individual capacity, and this reaches an almost absolute level, considering in as many as 96% of judgments issued by courts, it was established that perpetrators did indeed commit the offence they were charged with, without involvement of any other person (accomplices) in fulfilling the objective features of the offence. For the remaining 4% of cases, accomplices usually performed without any detailed division of tasks (simple participation). According to the General Prosecutor's Office, 12 (1.7%) of identified collaborators committed offences as part of a group, of which 5 (0.7%) acted as part of an organised group or criminal organisation.

Those convicted of collaboration comprise individuals with no criminal record – this concerns as many as 94% of the sentences (including 6.5% of persons deemed as having no criminal record pursuant to Article 89 CC). A further 4.6% of collaborators were previously held criminally liable and had criminal record (unexpunged), and in a further 1.3% of cases the court did not provide any information about the subject in this regard. An analysis of convictions for collaboration shows that individual for the most part committed the offences out of personal interest and with the use of violence, such offences being: 54.3% – offences against property; 13% – offences against public safety; 11% – offences of trafficking in narcotic drugs, psychotropic substances, their analogues or precursors and other offences against public health; 11% – offences against the administration of justice; 8.7% – offences against human

[70] Вирок Полтавського районного суду Полтавської області від 10.11.2022 р. у справі № 545/5177/22: https://reyestr.court.gov.ua/Review/107246755 (дата звернення: 24.02.2023).

life and health; and 2.8% – offences against public order and accepted principles of morality. According to the data of the General Prosecutor's Office, out of the total number of collaborators identified by the General Prosecutor's Office, 25 individuals (3.4%) had criminal record, of which 12 (1.5%) had their criminal record unexpunged.

The courts decided to impose punishment on those convicted of collaboration, mainly within the limits of the sanctions set out in Article 111-1 of the Criminal Code of Ukraine:

a) Part 1 of Article 111-1 CC – 99 convictions (100 persons) (penalty of deprivation of the right to hold certain positions or carry out certain activities for a period from 10 to 15 years): 10 years – 74 sentences (74%); 11 years – 9 sentences (9%); 12 years – 9 sentences (9%); 13 years – 3 sentences (3%); 14 years – 1 sentence (1%) and 15 years – 3 sentences (3%);
b) Part 2 of Article 111-1 CC – 32 convictions (penalty of deprivation of the right to hold certain positions or carry out certain activities for a period from 10 to 15 years, with or without confiscation of property): 10 years without confiscation – 19 sentences (59.4%); 10 years with confiscation – 3 sentences (9.4%); 12 years without confiscation – 2 sentences (6.3%); 12 years with confiscation – 3 sentences (9.4%); 13 years without confiscation – 3 sentences (9.4%); 15 years without confiscation – 1 sentence (3.1%) and 15 years with confiscation – 1 sentence (3,1%);
c) Part 4 of Article 111-1 CC – 11 convictions (12 persons) (sanction in the form of a fine of up to 10,000 untaxed non-taxable minimum income of citizens or deprivation of liberty for a period from 3 to 5 years, with deprivation of the right to hold certain positions or carry out certain activities for 10 to 15 years and confiscation of property): deprivation of liberty and rights – 8 sentences (72.7%); imprisonment without confiscation – 1 sentence (9.1%); fine and deprivation of rights – 2 sentences (18.1%);
d) Part 5 of Article 111-1 CC – 3 convictions (deprivation of liberty for a period from 5 to 10 years with deprivation of the right to hold certain positions or carry out certain activities for a period from 10 to 15 years, with or without confiscation of property: deprivation of liberty and rights, with confiscation of property – 2 sentences; deprivation of liberty and rights, without confiscation of property (with application of Article 69 CC) – 1 sentence;
e) Part 6 of Article 111-1 CC – 2 convictions (deprivation of liberty for a period from 10 to 12 years with deprivation of the right to hold certain positions or carry out certain activities for a period from 10 to 15 years, with or without confiscation of property); deprivation of liberty and rights;

f) Part 7 Article 111-1 CC – 4 convictions (5 offences) (deprivation of liberty for a period from 12 to 15 years with deprivation of the right to hold certain positions or carry out certain activities for a period from 10 to 15 years, with or without confiscation of property): deprivation of liberty and rights, with confiscation of property – 2 sentences (50%); deprivation of liberty without confiscation of property – 2 sentences (50%).

The effectiveness of punishment for collaboration depends to a large extent on both the legislative structure of the norm and the practice of application, provided it is legal, legitimate and fair.

Flaws in the structure of sanction under Article 111-1 CC

The sanction set forth in clauses1 and 2 of Article 111-1 CC provides for a non-alternative penalty in the form of deprivation of the right to hold certain positions or carry out certain activities. At the same time, as R. Mowczan rightly points out, it is overlooked that the corresponding offence is most often committed by a person who does not hold any position and does not carry out any activity, and therefore is actually unable to bear any actual punishment.[71] We have already mentioned the percentage of persons convicted under Part 1 of Article 111-1 CC who were not working or were already retired (60.5% in total). Moreover, deprivation of the right to hold certain positions or to carry out certain activities for a certain period of time as a main or additional penalty, as emphasised by W. Szablisty, should be imposed only when the offence satisfies the specific objective features, and not as currently, considering judges when sentencing are simply forced to deprive individuals, who do not have any such authority, of the right to hold positions related to the performance of state or local government functions. These crimes were, and continue to be, committed without making use of any special authority or in connection with a specific function (almost all convicts were antisocial, did not study or work anywhere).[72] Other

[71] Р. О. Мовчан. Кримінальна правотворчість воєнного часу: аналіз концептуальних помилок. Кримінальне право України перед викликами сучасності і майбуття: яким воно є і яким йому бути : матеріали міжнар. наук. конференції, м. Харків, 21-22 жовт. 2022 р. / редкол.: В. Я. Тацій, Ю. А. Пономаренко, Ю. В. Баулін та ін. Харків : Право, 2022. С.21.

[72] В. В. Шаблистий. Теоретичні проблеми кримінальної відповідальності за колаборацію діяльність. Кримінальне право України перед викликами сучасності

scholars (O. Ryabchinskaya, Z. Zaginei-Zabolotenko, O. Yevdokimova) note the controversial position taken by the legislator. When imposing the penalty under Part 1 of Article 111-1 CC, judges act, as it were, "with reference to the future." For instance, in the judgment of the Korolovsky District Court of Zhytomyr of 16 January 2023 in case no. 296/298/23, it was stated that "… at the time of committing the crime PERSON_3 was not working. This means that the collaborationist activity of PERSON_3 was not related to their function or employment in a certain role. However, in the court's view, individuals who publicly call for supporting decisions and actions of the aggressor state should be barred from participating in any form of state and local government administration".[73] In such cases, the main goal of the penalty is not achieved and the preventive effect of the punishment is negligible. It is precisely this goal, however, which should be treated as a priority, especially since R. Babanli's research on contemporary works devoted to the problem of adjudication in other countries with developed penological theory allowed to acknowledge that treating penalties as a remedial and preventive measure for new offices should be criticised as an approach.[74] O. Ryabchinskaya has considered whether to include the penalty of community service to the sanction provided for in Part 3 of Article 111-1 CC. Imposing this type of penalty on educators (pedagogues) who supported armed aggression, justified it, promoted anti-Ukrainian ideology among the young generation would be very inappropriate, to say the least. This kind of punishment cannot also be imposed on individuals whom occupants involved in the educational process, but who do not have pedagogical training or relevant experience[75].

Sentencing practice. When imposing the penalty for the offence provided for in Part 2 of Article 111-1 CC, the courts have elected to apply the additional penalty in the form of confiscation of property in 21.9% of cases. But it is worth emphasising that in light of the provisions of Part 2 of Article 59 of the Criminal

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і майбуття: яким воно є і яким йому бути : матеріали міжнар. наук. конференції, м. Харків, 21-22 жовт. 2022 р. / редкол.: В. Я. Тацій, Ю. А. Пономаренко, Ю. В. Баулін та ін. Харків : Право, 2022. С.61.

[73] Вирок Корольовського районного суду м. Житомира від 16.01.2023 р. у справі №296/298/23: https://reyestr.court.gov.ua/Review/108401700 (дата звернення: 24.02.2023).

[74] Р. Ш. Бабанли. *Призначення покарання в Україні* …, op. cit., С.194.

[75] О. П. Рябчинська. Заходи кримінально-правового характеру за колабораційну діяльність: реалії та перспективи. Кримінальне право України перед викликами сучасності і майбуття: яким воно є і яким йому бути : матеріали міжнар. наук. конференції, м. Харків, 21-22 жовт. 2022 р. / редкол.: В. Я. Тацій, Ю. А. Пономаренко, Ю. В. Баулін та ін. Харків : Право, 2022. С.72.

Code,[76] confiscation of property may not be pronounced if collaborationist activity was committed as an misdemeanour (Part 2 of Article 111-1 CC).

In the context of liability under Part 4 of Article 111-1 CC, in 72.7% of the sentences the courts acknowledged that the penalty could be conditionally suspended pursuant to Article 75 CC, in three cases imposing a lighter sentence than provided by law (Article 69 CC). Analysing how the legal mechanism of conditional suspension of penalty is being executed in practice, R. Babanli draws the correct conclusion that this mechanism is not always used for its intended purpose. Given how significant an impact this mechanism can have on the execution of punishment, it is unreasonable to apply it as this leads to an imbalance and makes the process of punishment irrational.[77] It is our position that it is impossible to apply Article 75 CC when sentencing due to the nature of the criminal act, i.e. if the act was committed in the conditions of martial law

In 84.2% of the sentences handed down (out of 130), the courts considered the sincere remorse of the convicted persons as a mitigating circumstance, which allows us to conclude that this is confirmed according to a formalised, 'mechanistic' approach, without additional argumentation and analysis. When the vast majority of the offences in question were committed, the large-scale Russian invasion of Ukraine was already underway, during which law enforcement agencies as well as public and international organisations recorded and reported in the mass media the numerous war crimes committed by the Russian occupants, in particular the murder and torture of the civilian population, rape, looting, destruction of residential and social infrastructure, etc. In such circumstances, guided by the principle of justice, the courts are obliged to be more selective in their approach to the issue of penalty, opting, if necessary, to impose punishment whose severity will approach the upper limit.

The question arises whether the courts use such a 'liberal' approach only to collaborators, or is it part of a more widespread and dangerous tendency to punish a whole range of crimes in a manner which violates the very foundations of Ukraine's national security? A similar parallel can be found in the data provided by V. Batyrgarieva concerning a criminological analysis of justifying, recognising as legitimate or denying the armed aggression of the Russian Federation and glorifying its participants, which constitutes a new challenge to the security of Ukraine's information space. Almost nine out of ten people (87.5%) are exempted from having to serve a suspended sentence. Leniency

[76] О. П. Рябчинська. Заходи кримінально-правового характеру за колабораційну діяльність…, op. cit., C.73.

[77] Р. Ш. Бабанли. *Призначення покарання в Україні*…, op. cit., C.425.

towards the guilty is generally explained by the fact that these individuals express sincere remorse for what they did and assisted the law enforcement authorities in the course of the investigation. The scholar correctly assumes that such post-criminal conduct is merely an outward expression of having accepted 'rules of the game,' an adaptation mechanism to the unfavourable conditions in which the person has found themselves when faced with the investigation and the trial. After all, a person's ideology, views, moods are not so easily and quickly subject to change. A conclusion should thus be drawn that such an approach is nothing more than a desire to reduce the severity of criminal consequences.[78] The question we have posed could only be answered in the future following a comprehensive criminal law and criminological analysis of offences against the state

Criminological information on a collaborator's personality, the persons' socio-demographic, moral-psychological and criminal law traits will have direct consequences both in the course of further legislative refinement of the norm set forth in Article 111-1 of the Criminal Code and the development of effective general and specific prevention measures for this type of offences. The generalisation of the statistical data of the judicial authorities has made it possible to present the following criminological portrait of the personality of a collaborator: predominantly male, aged between 29 and 54, with a sufficiently high level of education – with tertiary and vocational education; able to work, but not working or retired; sharing anti-national ideological and political views, rejecting the legitimate authority of Ukraine and approving of the policy of the aggressor state; having no previous criminal record and presenting individualistic unlawful behaviour.

[78] В. С. Батиргареєва. До кримінологічного аналізу виправдовування, визнання правомірною або заперечення збройної агресії рф та глорифікації її учасників як нового виклику безпеці інформаційного простору України. Інформація і право. 2022. №4(43). С. 43.

PAWEŁ SZABŁOWSKI[1]

PREVENTING COLLABORATION WITH THE ENEMY IN WARTIME –POLISH HISTORICAL AND LEGAL EXPERIENCES

The current conventional-warfare invasion by the Russian Federation on the Republic of Ukraine is the first full-scale armed conflict in Europe since World War II. With the tragedy of the war in Ukraine, problems related to the collaboration of citizens of the attacked state with the invaders which in recent decades had been purely theoretical, have returned. Therefore, I will try herein to synthetically present the issue of preventing cooperation with representatives of the occupying state, based on the Polish experience from 1939–1945 in the areas occupied by the German Third Reich.

In 1939, the Republic of Poland was a territorially vast country of nearly 390,000 km^2 with almost 35,000,000 citizens. Moreover, the Republic of Poland was at that time a multi-ethnic country, where ethnic Poles accounted for nearly 70% of the total population. Especially in eastern and south-eastern areas the population of Ukrainian and Russian origin dominated, while in urban centres there were large groups of Jewish people.[2]

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[1] Paweł Szabłowski - assistant at the Institute of Legal Sciences of the Academy of Justice in Warsaw. He graduated in history and law. In his research, he deals with issues in the field of the history of law and the history of justice. ORCID number: 0000-0002-2206-6815

[2] During the interwar period, the Republic of Poland faced enormous internal problems related to the attempts of Polonisation of their eastern lands. Now, retrospectively, we know that the repressive measures used at that time did not bring the intended results related to the Polonisation of the inhabitants of the eastern regions of the Republic of Poland, and they can even be considered counter-productive. This is significant in the context of collaboration, insofar as there was a large group of Polish citizens who did not recognise the state as their own, and thus saw no need to support it in a war situation. Furthermore, certain pieces of memoir literature from the September campaign describe actions against Polish Army soldiers undertaken by residents of the eastern lands of the Republic. It is also beyond question that after September 17, 1939, some Polish citizens greeted Soviet soldiers as liberators by building special welcome gates in their honour.

The several-week defensive war in 1939 ended with the defeat of the Polish Army. As a result of the attack of the Third German Reich and the subsequent invasion of the Soviet troops, the Polish State was crushed. The President fled to Romania, together with the Cabinet and the supreme military command. Due to the relevant provisions of the Constitution in force at that time,[3] it was possible to maintain the continuity of the most important public offices and to organise the Polish Government in Exile in France. That government remained the political representation of the Polish state until the end of the war, recognised by major member states of the anti-Nazi coalition.[4]

After the end of hostilities in 1939, the territory of the Polish state was divided between the German Reich and the USSR.[5] It was divided along the line of the rivers Pisa, Narew, Bug and San. The eastern area, covering 202,000 km^2 with a population of 13.4 million, was incorporated directly into the USSR and its individual parts were attached to particular Soviet republics, with the exception of the Vilnius Voivodeship with the City of Vilnius itself, which were handed over by the Soviets to Lithuania. On the other hand, the area occupied by the Germans, covering 186,000 km^2 with 21,800,000 inhabitants, was divided into two parts.[6] An area of approx. 90,000 km^2 was incorporated directly into the Reich by a decree of the Chancellor of the German Reich.[7] In the remaining

[3] According to Article 24 of the Constitutional Act of 23 April 1935 (Journal of Laws of 1935, No. 30, item 227), in the event of war, the term of office of the President of the Republic shall be extended to three months after the conclusion of peace; the President of the Republic will then appoint a successor by a separate act, announced in the government official journal, in case the office is vacant before the conclusion of peace. President Ignacy Mościcki used this option and resigned in favour of Władysław Raczkiewicz. On 30 September 1939 Raczkiewicz, exercising his right to appoint and dismiss the President of the Council of Ministers (Prime Minister), appointed General Władysław Sikorski, who had already been in France.

[4] After the Third Reich ,s attack on the USSR in 1941, diplomatic relations between the Polish Government and the USSR normalised. However, diplomatic relations broke down in 1943 after the German authorities revealed that mass graves of Polish officers had been found in Katyn Forest. Until the end of the war, the Soviet Union did not grant recognition to the Polish Government in Exile.

[5] On August 23, 1939, a non-aggression treaty was signed in Moscow between the German Third Reich and the Union of Soviet Socialist Republics, commonly known as the Ribbentrop-Molotov Pact. The document signed in Moscow included also a secret protocol on the division of Polish lands in the event of the outbreak of war. The final division of these lands took place under the German–Soviet Boundary and Friendship Treaty of 28 September 1939.

[6] B. Szyprowski, *Sąd kapturowy przy komendzie głównej ZWZ w Warszawie (sierpień 1940-listopad 1941)*, Warszawa 2016, p.22.

[7] The lands of Pomerania, Greater Poland, Silesia, the western part of Łódź Voivodeship, the northern part of the Mazovian Voivodeship and Suwałki Region were then annexed by

area of about 96,000 km^2, which was under German control, the General Government[8] was established. This situation changed in the second half of 1941 when Germany invaded the USSR.[9]

As early as in September 1939, a decision was made in the top circles of Polish military brass that resistance against German and Soviet occupation had to continue. On 27 September 1939, a resistance organization called 'Service for Poland's Victory' (*Służba Zwycięstwu Polski*) was established, which was later transformed into the Union of Armed Struggle (*Związek Walki Zbrojnej,* ZWZ). The ZWZ was an organisation that was established directly by order of the Chief Commander of the Polish Armed Forces.[10] The establishment of these organisations marked the beginning of the creation of the so-called Polish Underground State, i.e., secret military and administrative structures intended to carry out, in cooperation with the Polish Government in Exile, various public tasks aimed at the fight against the invader, including those related to the fight against collaboration with the enemy.

After the end of hostilities in 1939, the Germans started to build their own administration in the occupied territories. As early as on September 1, 1939, the Commander-in-Chief of the German Ground Forces, General Walther von Brauchitsch, wrote an address to the Polish people, as follows: 'The executive power in the areas occupied by German troops has been taken over by the supreme commanders of individual armies. Their orders and the instructions of all German military authorities must be strictly observed. The armed forces do not see the civilian population as their enemy, all the rules of international

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the Reich. An estimated 10 million people lived in the area incorporated into the German Reich, 600 thousand of whom declared as ethnic Germans.

8 General Government, in German: Generalgouvernement (GG), an administrative entity established on October 26, 1939 by the decree of the Chancellor of the German Reich of April 12, 1939, formed of the German occupied Polish lands which were not incorporated directly into the German Reich. It covered an area of about 96,000 km^2 and was inhabited by about 11.2 million people. The GG was administered by a Governor-General, which office was held by Hans Frank, with the Governor's residence being located at the Wawel Castle in Krakow. The GG was originally divided into five districts: Kraków, Radom, Lublin and Warsaw. In August 1941, the District of Galicia was added.

9 Once the Germans captured all the lands of the Polish state from before 31 August 1939, the General Government was extended to include the former voivodeships of Lwów, Tarnopol and Stanisławów. The so-called Białystok area was incorporated into East Prussia, and the Reich Commissariat East and Reich Commissariat Ukraine were established respectively in the north-eastern and eastern territories

10 T. Pełczyński (red.), *Instrukcja gen. K. Sosnkowskiego dla płk. S. Roweckiego z dnia 4 grudnia 1939 r.*, see: *Armia Krajowa w dokumentach 1939–1945. T. 1, Wrzesień 1939 – czerwiec 1941*, Wrocław 1990, p.10.

law will be respected. The economic life of the country and the administration continue to work or will be organised anew. Any refusal to work is forbidden, passive resistance and sabotage of any kind will be considered as an hostile act directed against the German armed forces, and it will be fought by all means. Everyone should follow orders issued in the interests of the individual and the community.'[11] The Germans expected that Polish citizens would follow the instructions of the German military authorities. The refusal to cooperate was supposed to be fought by all means, by which it should be understood that the Germans declared that they would use force, including killing people who would not adhere to their orders and instructions. When the General Government was established in October 1939, Hans Frank, who had assumed the position of the head of that entity, declared in his act of proclamation that everyday life would be carried out according to the existing social rules. But he also stipulated that Polish citizens were required to fulfil the general duty of work for the benefit of the German Reich.[12]

Contrary to these declarations, the Germans pursued a ruthless policy of terror from the first days of the war. Even during the hostilities, the Luftwaffe massively bombed and strafed columns of civilian refugees. Other war crimes were also committed. By the end of 1939, in the Polish territories incorporated into the German Reich, approx. 40,000 members of the Polish elite were murdered,[13] and nearly one million people were forcibly resettled in the General Government. The policy of terror was widespread and was organised in such a way that it could affect not only those involved with the underground, but also completely random people. Such action was aimed at intimidating Polish society and forcing it into submission to the German authorities.

Every war situation causes changes in human mentality. People get used to tragic events and become accustomed to death. The negative aspects, otherwise hidden deep down inside, are also revealed. It was no different after the defeat of the Polish Army in autumn 1939. Society was devastated by the defeat in the defensive war. The economic situation in the General Government was very difficult. There were food shortages, prices in shops were disproportionate

[11] Z. Polubiec (red.), *Okupacja i Ruch oporu w Dzienniku Hansa Franka 1939-1945. Tom I 1939–1942*, Warszawa 1972, p. 99.

[12] *Proklamacja Generalnego Gubernatora Hansa Franka z 26 października 1939 r.*, 'Ilustrowany Kurier Codzienny' no. 282 dated 26 October 1939.

[13] The largest mass executions in the region of Pomerania were carried out by the Germans in Piaśnica Forest. The massacre started as early as in October 1939 and lasted through spring of 1940. According to different estimates, no less than 12,000 to as many as 60,000 people were murdered there.

to wages and people faced starvation. Robberies became common and crime increased. These aspects fostered and allowed collaborationist activity to develop in Polish society. There was no institutionalised collaboration of Poles with the German occupant as there was in Norway or France, but it cannot be denied that certain individuals, for various reasons and motives, decided to cooperate with the occupant in a confidential form by becoming Gestapo agents, or openly supporting the occupation authorities.

Combating the manifestations of collaboration was one of the important tasks of the Polish underground judiciary, which began to be organised as soon as in the late autumn of 1939. Building an underground justice system was a very difficult task in conditions of conspiratorial secrecy. It was necessary to have personnel with adequate legal training and practical experience, who at the same time would guarantee the impartiality and absolute secrecy of the whole project. It was also necessary to ensure, at least to a minimum extent, procedural guarantees for the accused person in such a way that the underground court did not become merely a sentencing machine. It was also necessary to ensure proper housing conditions to hold secret hearings.

In the first place, however, it was necessary to establish a formal framework for the activities of the underground judiciary. The legal requirements applicable before 1 September 1939 concerning the organisation and system of the judiciary and procedural issues were impossible under the conditions of the German occupation. New forms of work for the underground justice system therefore needed to be established.

As early as in January 1940, the initiative of creating summary courts in the occupied territories was submitted by ZWZ's top brass to the Government in Exile.[14] In April 1940, the Committee of Ministers for Home Affairs adopted a resolution[15] on the establishment of summary courts (in Polish: *sądy kapturowe*).[16] Pursuant to the resolution, the summary courts were authorised to issue death sentences against people who persecuted Polish citizens,

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[14] L. Gondek, *W imieniu Rzeczypospolitej: wymiar sprawiedliwości w Polsce w czasie II Wojny Światowej*, Warszawa 2011, p. 42.

[15] *Uchwała Komitetu dla spraw Kraju z dnia 16 kwietnia 1940 r. w sprawie sądów kapturowych w Kraju*, see *Armia Krajowa w dokumentach 1939–1945. T. 1, Wrzesień 1939...*, op. cit., p.220.

[16] The name *Sąd Kapturowy* (literally: 'court of hooded men') refers to noblemen's courts convened in Poland beginning in the 14th century during the periods of interregnum. The judges were required to wear black hoods as a sign of mourning after the monarch's death. These courts existed until the mid-18th century. See B. Szyprowski, *Sąd kapturowy...*, op. cit., p.45.

as well as traitors and agents provocateurs.[17] The idea was to establish two types of summary courts, a military one subordinate to the ZWZ, and the other subordinate to the Government Delegation for Poland[18] for persons who were not resistance members. The summary courts of the ZWZ were in operation by 1940, while those subordinate to the Government Delegation started operating only at the end of 1942 or early 1943,[19]and were given the designation 'Civil Special Court'.

In May 1940, the Code of Summary Courts of ZWZ (*Kodeks sądów kapturowych ZWZ*)[20] was drawn up, which set out the procedural rules of operation of these courts. According to the Code, a summary court should be composed of a prosecutor (*prokurator*), an investigating judge (*sędzia śledczy*) and the Adjudicating Panel (*Sąd Wyrokujący*). The Adjudicating Panel was composed of three members. It was headed by a competent ZWZ commander[20] and the composition was complemented by two permanent members, one of whom had to be a professional judge, or in certain exceptional instances an advocate or other legally educated person. It was assumed that the function of prosecutor could be fulfilled by a prosecutor or a military judge, whereas the role of the investigating judge and the defence counsel could be held by people with legal training. In addition, each of the persons who were part of the summary court had to be a member of the ZWZ.[21]

The procedure was as follows: upon the request of the competent ZWZ commander, the investigating judge would initiate an investigation into a specific case. The investigation was to be carried out quickly and secretly. The evidence thus collected was then submitted to the public prosecutor, who either sent it back for completion or decided to draw up an indictment and refer the case

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17 L. Gondek, *W imieniu Rzeczypospolitej…*, p. 44; *Armia Krajowa w dokumentach 1939–1945. T. 1, Wrzesień 1939…*, op. cit., p. 200.

18 The Government Delegation for Poland – an underground body of the Polish Government in Exile, established in 1940, the responsibility of which was to organise the civilian administration and provide the conditions for regaining power by the government once the hostilities end. It was headed by the Government Delegate for Poland.

19 P. Majewski, *Z frontu walki cywilnej. Przyczynek do dziejów Kierownictwa Walki Cywilnej i Kierownictwa Walki Podziemnej na obszarze Generalnego Gubernatorstwa w latach 1939 - 1945.*, „Kwartalnik Historyczny" vol.119, no 4, 2012,, pp.714–715.

20 *Kodeks sądów kapturowych Z.W.Z.*, see *Armia Krajowa w dokumentach 1939–1945. T. 1, Wrzesień 1939…*, op. cit., pp. 229–233.

21 *Kodeks sądów kapturowych Z.W.Z.*, paragraphs 4–6, see *Armia Krajowa w dokumentach 1939–1945. T. 1, Wrzesień 1939…*, op. cit., pp. 229–233.

to the chairman of the summary court. The chairman would immediately convene the hearing. Witnesses and, in exceptional circumstances, the accused could also be summoned to the hearing. At the hearing, the reporting judge presented the collected case file. After hearing the witnesses and presenting the evidence, the prosecutor and the defence counsel or the accused took the floor. At the conclusion of the hearing, the panel of judges met for a deliberation to discuss the case. Voting was held during the meeting, but only on the guilt of the accused. The accused could be found guilty and then sentenced to death, or he or she could be acquitted, and no other decision than that of guilt or innocence could be handed down by the court. This is why the Code of Summary Courts stipulated that 'A judgment of conviction should be issued with great caution and only based on facts and evidence beyond a reasonable doubt.' There was no appeal against a conviction. However, it was subject to approval by the competent Government Delegate. Only upon approval did the presiding judge order the enforcement of the judgment. The executors were specially selected ZWZ members.[22]

Interestingly, together with the Code of Summary Courts of the ZWZ, a document called 'Substantive Regulations'[23] was issued. The document defines the crimes of treason,[24] espionage,[25] provocation,[26] denunciation,[27] inhumane treatment, and harming the Polish population.[28] All these crimes were punishable by death.

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[22] *Kodeks Sądów Kapturowych Z.W.Z.*, paragraphs 7–13, see *Armia Krajowa w dokumentach 1939–1945. T. 1, Wrzesień 1939…*, op. cit., pp. 230–232.

[23] *Przepisy materialne*, see *Armia Krajowa w dokumentach 1939–1945. T. 1, Wrzesień 1939…*, op. cit., pp. 233–234.

[24] The crime of treason is committed by a citizen of the Polish State who reveals to another person secrets of the ZWZ or secrets of the Polish State concerning the defence of the State or its Armed forces, see *Przepisy materialne…*, op. cit., p. 233.

[25] The crime of espionage is committed by anyone who provides information, messages, documents or other objects to the government of a foreign state concerning the existence or activity of the ZWZ, the Polish Armed Forces, the organisation and affairs of Polish associations, unions, institutions and authorities, which may be used by that foreign country against the ZWZ, the Polish state or nation, see *Przepisy materialne…*, op. cit., p. 233.

[26] The crime of provocation is committed by anyone who, in agreement with the authority of a foreign state or on one's own initiative, without the order of the Polish organization, urges, incites or instigates acts or activities against a foreign country in order to reveal them, see. *Przepisy materialne…*, op. cit., p. 234.

[27] The crime of denunciation is committed by a Polish citizen who accuses or runs prosecution for acts against a foreign country before the authority of the foreign country, see *Przepisy materialne…*, op. cit., p. 234.

[28] Anyone who, by acting or managing, persecutes or harms the Polish population in an inhuman manner contrary to the natural sense of justice, commits crimes of inhumane persecution and harm to the Polish population, see *Przepisy materialne…*, op. cit., p. 234.

Judgments of conviction by the court were subject to the approval of the competent Government Delegate. Once approved, the judgment became final and non-appealable, and the chairman of the panel would verbally order execution of the judgment. The Code of Summary Courts did not specify in detail how the judgment should be carried out, leaving it to the executioners themselves.[29]

The accused was not notified of the judgment of conviction or the reasons behind it, and the accused was not present during the hearing. Most often, neither was the sentence itself published, but there were cases in which information about the actual execution of a particular person was published in the underground press. The sentence was usually carried out by shooting, although there were isolated cases of execution by hanging or stabbing. There is a commonly shared view that before execution, the executioner spoke the words 'On behalf of the Republic of Poland…'. However, according to some accounts from the executioners, there were also cases when the execution was carried out by surprise, without speaking to the sentenced person. Special units were deployed to execute the sentences.[30]

There are also cases of liquidation of Polish citizens by resistance troops that were not preceded by a trial in underground court.[31] According to the guidelines of the Chief Commander of the ZWZ, it was possible to liquidate a person who posed a direct threat to the organisation where the delay to do so could have negative consequences. It was probably according to this special procedure whereby Igo Sym was shot on March 7, 1941. Sym was an actor who, after Germany's victory in 1939, began a large-scale collaboration with the occupier. He became the director of the Theatre der Stadt Warschau and also managed the cinema 'Helgoland'. He used to hire Polish actors to participate in German propaganda films and advised the occupation authorities on cultural activities. Sym was suspected of being an agent of the German secret services even before 1939, and in February 1941 he was found to be a Gestapo agent. The planned Sym's trip to Berlin made the need for his liquidation more urgent. He was killed

[29] *Kodeks Sądów Kapturowych Z.W.Z.*, paragraph 13, see *Armia Krajowa w dokumentach 1939–1945. T. 1, Wrzesień 1939…,* op. cit., p.232.

[30] B. Szyprowski, *Sąd kapturowy…*, op. cit., pp. 84–85.

[31] General Rowecki, in a report to General Sosnkowski in March 1940, referring to the proposal for the establishment of summary courts, made certain remarks about the structure being too centralised. At the same time, he informed his superior that since December the SZP/ZWZ had been carrying out liquidation operations against those suspected of espionage, see *Meldunek gen. Roweckiego do gen. Sosnkowskiego z dnia 7 marca 1940 r., Armia Krajowa w dokumentach 1939–1945. T. 1, Wrzesień 1939…*, op. cit., pp. 152–153.

in his apartment on Mazowiecka Street in Warsaw. Igo Sym's death provoked severe repression by the occupation authorities. Over the next few days, several actors were arrested on suspicion of involvement in the conspiracy, and 21 people were shot in retaliation.[32] The Polish military leadership in London responded to the situation. General Sosnkowski wrote in a cable to General Rowecki as follows: 'a) the military organisation may carry out a terrorist action on its own initiative only for its own defence, b) the death sentences issued by summary courts of the Union are subject to the approval of the Government Delegate, d) a general terrorist action beyond the framework of the necessary protection of the Union may be ordered only by the Government Delegate and is to be carried out strictly in accordance with his instructions, e) the Government Delegate and the Commander of the military organisation in Poland shall determine the advisability of the terrorist action, while always being obliged to consider whether or not it is better to abandon the type of terrorist acts like Igo Sym's assassination due to the victims they may entail. We must prevent unauthorised terrorist acts from taking place.'[33]

A significant deterioration in the moral level in Polish society could be seen in the second half of 1941. This was an effect of widespread terror, shortages in basic goods, including food, and the military successes of the Third Reich. In autumn of 1941, Germany was at the height of its military power, controlling most of continental Europe and threatening the USSR. In November 1941, General Rowecki, the ZWZ's Chief Commander, asked in a report to the Commander-in-Chief for a correction of the activities of underground courts. Rowecki saw the need for changes in the judiciary as a response to changes in public sentiment. He wrote: 'I was motivated to change the statutes of [the summary courts] by both the experience of our two-year activity under occupation and the observations made against the background of the deteriorating morals in society, caused by the occupier's extermination policy, and growing poverty in the general population. [--] On this basis, crime began to spread, especially common crime, denunciation has flourished, cases of criminal collaboration between certain individuals and the occupier became more vivid. [--] This situation could not leave, to a certain extent, our own ranks unaffected. [--] In order to prevent and combat crime among military personnel, to ensure the security of our actions

[32] B. Szyprowski, *Sąd kapturowy…*, op. cit., p.43.

[33] Depesza z 21.03.1941 r. gen. K. Sosnkowskiego, as cited in: B. Szyprowski, *Sąd kapturowy…*, op. cit., p. 43.

and to maintain the proper level of discipline, I have decided to amend the statute of the summary courts as necessary.'[34]

One of the main changes was the issue of the name of the underground court. The ZWZ's commanders believed that the name '*sąd kapturowy*', despite the historical reference to courts of the nobility, carries mostly negative connotations as a 'kangaroo court' that serves only to issue convictions. At that time, the scope of jurisdiction of these courts was also changed. Summary courts could only adjudicate on culpability by sentencing to death or acquitting the accused, while the Military Special Courts, on the other hand, were given the authority to collect dossiers of cases which the court did not find punishable by the death penalty, but the social harmfulness of such offences was so grave that after the end of the war the offenders were to be held criminally liable.[35]

In theory, the reorganisation of underground courts and the approval of the statutes of the Military Special Courts took place on February 14, 1942. In practice, however, the new rules had already been applied before that date. According to the findings of B. Szyprowski, in September 1941 the Summary Court at the Main Headquarters of the ZWZ ruled on the basis of the statutes of the Military Special Courts, which was not yet approved at that time.[36]

The underground common criminal justice system was not as efficient as the military one. It is estimated that it was not until 1943 that the Civil Special Court was firmly established. The literature on the subject suggests that one of the reasons for this delay was the opposition by some of the civilian lawyers involved in the activities of the Polish Underground State, who disagreed with the concept of a court authorised to issue death sentences, while under no obligation to collect testimony from the accused.[37]

It was also at the beginning of 1943 when the establishment of the Judicial Commissions of Civil Struggle was initiated.[38] Subordinated to the Directorate of Civil Struggle, the Judicial Commissions of Civil Struggle were set up to deal with infractions and minor crimes committed by Polish citizens. According to the provisions of the Rules of Procedure of the Judicial Commissions, 'The aim of the Commissions' activity is to remove the harmful symptoms of social life under the occupation by legally stigmatising the acts of individuals and groups

[34] T. Pełczyński (red.), *Meldunek nr 88 gen. Roweckiego do Naczelnego Wodza gen. Sikorskiego z dnia 20 listopada 1941 r.*, *Armia Krajowa w dokumentach, 1939–1945. T. 2, Czerwiec 1941 – kwiecień 1943*, Wrocław 1990, pp. 149–150.

[35] L. Gondek, *W imieniu Rzeczypospolitej…*, op. cit. pp. 46–47.

[36] B. Szyprowski, *Sąd kapturowy…*, op. cit., p. 55.

[37] P. Majewski, *Z frontu walki cywilnej…*, op. cit., pp. 714–715.

[38] With time, these bodies were renamed to Judicial Commissions of Underground Struggle.

that are incompatible with the raison d'état of the Polish State and Nation, and with our national dignity.'[39] It can be assumed that the jurisdiction of the Commission included all infractions and crimes that were not covered by the powers of the underground judiciary. The Commissions consisted of three-person panels, but a representative of the Directorate of Civil Struggle, who acted as the prosecutor, also took part in the Commission's meeting. The Commissions could impose the penalties of admonition, reprimand, or infamy. In 1944, flogging and destruction of property were also added to the catalogue of penalties. Corporal punishment was applied to those whose conduct was not corrected by other punishments and, importantly, could not result in a permanent injury or death. It is worth quoting an excerpt from W. Grabowski, who set out what directives were used for each type of punishment: 'The admonition was used in cases of minor offences which could be thought to have been committed recklessly. The reprimand was be imposed for minor offences which, however, constituted a deliberate and serious infraction. The infamy used to be imposed for serious offences contrary to the state and national interests of Poland.'[40]

It is pointed out that the Commissions were intended to stigmatise those whose behaviour was far from that which manifested the proper civic attitude and which represented opposition to the occupant. The activity of the Commissions had a largely symbolic or warning dimension and did not lead to really severe punishments. However, the functioning of the Commissions was necessary to maintain the appropriate morale of the society that had been struggling with the hardships of occupation and a dramatic economic situation for almost 4 years, under the conditions of a prolonged war.[41]

At the end of 1940 the Directorate of Civil Struggle (*Kierownictwo Walki Cywilnej*, KWC) was established within the structures of the ZWZ in order to organise and maintain social resistance against the occupant. The main objective of the KWC was to encourage Polish citizens to commit acts of sabotage against the occupier, but without the use of weapons and through passive resistance to the orders of the German authorities and by boycotting entertainment institutions and the Polish-language press published by the Germans. Through

[39] *Regulamin Komisji Sądzących*, L. Gondek, *W imieniu Rzeczypospolitej…*, op. cit., p.206.

[40] W. Grabowski, *Podziemny rząd – Delegatura Rządu RP na Kraj – Walka Cywilna PPP*, 'Pamięć i Sprawiedliwość' 2015, no. 22/1 (49), p.155; W. Grabowski, *Sądy Kapturowe Delegatury Rządu na Kraj. Przyczynek do działalności Polskiego Państwa Podziemnego,* 'Czasopismo Prawno-Historyczne', Poznań 2007, vol. 59, part 2, pp. 257–267.

[41] P. Majewski, *Z frontu walki cywilnej…*, op. cit., p. 715.

the KWC, the Polish Government-in-Exile wanted to induce Poles to actively engage in resistance against the occupants and to increase the morale of the society.

In 1941, a document called the Civic Morality Code was drawn up in the underground.[42] The Code was created by the Department of Justice of the Government Delegation.[43] It contained descriptions of 25 acts that were considered despicable by the Polish community. As the authors of the code themselves wrote in the commentary: 'The purpose of the Code is to stop the process of abandoning by society, on the one hand, certain legal norms, the violation of which constitutes a crime in the strict sense, and on the other hand certain ethical standards which should apply to every Pole during wartime. It is therefore about drawing the legal and ethical boundaries which the Pole must not trespass. For these reasons, the Code operates somewhat in two areas: legal and ethical. It should be noted that the legal area is wider than that provided for by existing legislation.'[44]

The Code was divided into four sections. The first section addressed crimes of treason against the Polish state and nation, for which the death penalty could be imposed.[45] The second section pointed to crimes against the Polish national affiliation. These offences were not punishable by death, but the court could sentence the offenders to the loss of public or civic rights and prohibit them from practising a specific profession. The third section dealt with offences related to violations of civic morality. The fourth section contained provisions for offences against civic dignity, the commission of which was punishable by penalties that entailed the loss of civic honour, such as infamy, public stigmatisation, and social ostracism. Information about these penalties was to be published in the underground press.

In 1942, the 'Information Bulletin' published 'The Ten Commandments of Civil Struggle'.[46] This decalogue contained guidelines on how the Polish citizen should behave during the occupation. Above all, everyone was required to keep in mind that the fight against the Germans was not yet over, and therefore it should be carried out even in the occupied country in the form of civil struggle, which should be fought by everyone, regardless of whether they belong to the underground structures or not. It was also important to respond to situations where someone was breaking the rules of resistance against the occupying

42 The content of the Code has been attached in the Annex.
43 B. Szyprowski, *Sąd kapturowy…*, op. cit., p. 31.
44 T. Szarota, O*kupowanej Warszawy dzień powszedn*i, Warszawa 1988, p. 432.
45 P. Majewski, *Z frontu walki cywilnej…*, op. cit., pp.717–718.
46 *Biuletyn Informacyjny*, no.18 of May 7, 1942.

power. Then one should try to 'convert' such a person to proper behaviour. If this proved to be unsuccessful, the underground authorities were to be notified.

The text ends with the proclamation: 'Fellow Poles! The degree of our compliance with these rules and regulations will be a test of our civic value to future generations. Remember that when the days of freedom come, we will all have to account for our current attitude and our deeds.'[47]

In conclusion, the German occupation of Polish lands in World War II brought great devastation to society. The tragedy of war resulted in the materialisation of the most negative aspects of human characters. Throughout the occupation period, the leadership of the Polish Underground State attempted to mobilise the population against the occupying forces. Despite these efforts, there were cases of individuals who decided to collaborate with the enemy.

The problem of collaboration with the occupier was very complex and had various roots. This was the reason for which the underground authorities established an underground justice system that functioned almost for the entire period of occupation. Initially, these were the summary courts (*sądy kapturowe*) of the ZWZ, which were authorised to issue death sentences. Over time, the summary courts were transformed into Military Special Courts, and Civil Special Courts were also established. These bodies had the power to issue death sentences, but they could, once the evidence was collected, postpone the sentence until after the end of the war in the event that the death penalty would be disproportionate to the acts committed by the person concerned. As part of the civilian justice system, the Judicial Commissions of Civil Struggle were also established, later transformed into the Judicial Commissions of Underground Struggle, which also issued judgments in cases concerning collaboration with the occupying power. These were usually cases of minor gravity, often involving moral and ethical issues. These commissions could sentence an offender to a penalty of admonition, reprimand, infamy and, over time, to a corporal punishment of flogging.

The structures of the Polish Underground State also prepared a number of documents intended to help and encourage proper behaviour in daily life during the period of occupation, in particular the Code of Civic Morality and The Ten Commandments of Civil Struggle. One of those rules which did not concern issues of espionage or betrayal, while still being very important for proper civil behaviour in the circumstances of occupation, was to abstain from romantic or social relations with the representatives of the occupying power.

[47] Ibidem.

All of these measures seem to have produced the desired effect, and the Polish people as a whole, despite the long and very harsh period of occupation, did not opt for collaboration, and on the whole they refused to accept the new regime. It is clear, however, that this fact was also influenced by a number of other factors, which are impossible to fully elaborate in a short text like this one.

SERHIIY ADAMOVYCH[1]

UKRAINIAN COLLABORATIONISM FROM THE STANDPOINT OF THE RUSSIAN OCCUPATION REGIMES IN THE XX AND EARLY XXI CENTURIES

Russian imperial power presented the Russian monarchy, the Bolshevik dictatorship, or Putin's state based on normative legal acts or masquerading under the mythologies of creating a single „Soviet" nation – has always been trying to destroy the Ukrainian nation. Accordingly, Ukrainian national self-identification was sufficient to accuse a person of collaborating with the enemy. According to this concept, the Russian government throughout the 20th and early 21st centuries systematically and consistently destroyed centers of Ukrainian culture, political structures, and bright personalities who produced and were the exponents of the Ukrainian national idea.

The Political Unreliability of the Greek Catholic Clergy and Ukrainian Elite During the Russian Occupation of Eastern Galicia 1914-1917

With the beginning of the First World War, the lands of Eastern Galicia became the territory of fierce battles and repressive measures of the Russian occupation

[1] Serhiy Adamovych, doctor of historical sciences, professor, head of the Department of Theory and History of the State and Law of the Vasyl Stefanyk Prycarpathian National University of Prykarpattia (Ivano-Frankivsk). Researcher of the history of the First World War, the national liberation struggle of Ukrainians against the Soviet punitive and repressive political regime in the 40-50s of the 20th century, the formation of Ukrainian statehood in the late 20th and early 21st centuries, war crimes by Russians in the Russian-Ukrainian war 2014-2023 He is the author of 216 scientific works, including 7 individual monographs, 81 scientific articles in specialized publications and 137 abstracts of reports at conferences. ORCID: http://0000-0003-4236-741X

authorities. Ukrainian historian and statesman M. Hrushevsky compared this period in the history of Eastern Galicia and Bukovyna with the „Ruin" of the second half of the 17th century[2].

The Russians were helped in their annexation policy by Moscow-phile organizations created on the eve of the First World War with the financial support of the Russian special services, which defended the kinship of the residents of western Ukraine with the Russian people. Only the repressive policy of the Russian occupation regime in Eastern Galicia in 1914-1917 against the local population and the war crimes of the Russian army showed the civilizational and ethnic difference of Russians.

Researchers of the activities of the occupation administration in Eastern Galicia during the First World War are unanimous that the actions of the Russian authorities, in addition to ensuring the needs of military structures and preserving socio-economic and political stability, were aimed at the annexation of Eastern Galicia through repression of the Ukrainian Greek-Catholic priesthood, public facilities, and education for the integration of the region into the Russian Empire[3].

It should be noted that due to the Battle of Galicia in the summer autumn of 1914, the western Ukrainian lands were almost entirely occupied by Russian troops and were under the control of the Russian authorities almost until June of the following year, 1915. According to the „Temporary Regulation on the Management of the Austro-Hungarian Regions Occupied by Law of War," military structures, including the Supreme Commander-in-Chief's Staff, he played the leading role in the organization and management of the occupied territory. The headquarters of the commander of the South-Western Front were subordinate to him, and the governor-general was appointed as the head of the Russian occupation administration[4]. Governors, heads of counties, and mayors formed the Provisional General Governorate staff on August 22, 1914, in the Ukrainian territories captured by Austria-Hungary. Despite various assessments of the professionalism of Russian officials, they committed numerous abuses

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[2] М. Грушевський, *Новий період історії України за роки від 1914 до 1919,* Либідь, Київ, 1992, с. 8.

[3] С. Адамович, Українська історіографія про діяльність російської окупаційної влади у Східній Галичині в 1914–1917 рр., [в:] *Олександр Карпенко – історик Української революції: До 100-річчя від дня народження : колективна монографія,* за ред. М. Кугутяка, Прикарпат. нац. ун-т ім. В. Стефаника, Івано-Франківськ, 2022, с.230-231.

[4] І.Ільницький, *Нормативні та ідейно-концептуальні основи організації управління західноукраїнськими землями у період Першої російської окупації (серпень 1914 – червень 1915 рр.),* „Проблеми історії України XIX – поч. XX ст.", 2013, №21, с.362.

and immoral acts. Thus, in a letter dated January 8, 1915, the Ternopil governor claimed that „(…) some district leaders arrest and detain various persons accused of one or another crime, without the necessary documents being drawn up"[5]. When conducting assimilation policy in the occupied territories, Russian officials were guided mainly by the principles of personal enrichment. Thus, the assistant to the head of the Lviv mayor's office, P. Yakutevich, was prosecuted for property abuse. A court case was also opened against the mayor of Lviv, Colonel A. Skalon, who received up to 60,000 rubles only through bribes[6]. The Russians themselves pointed out that the personnel of their administration in Galicia spread the local population's dissatisfaction with the Russian government[7].

At the same time, the occupation Russian policy was oriented towards the final accession of Eastern Galicia and Northern Bukovina to the Russian Empire. This process was accompanied by an ideological campaign based on the view of the Ukrainian lands of Galicia as historically Russian territories. Thus, in the fall of 1914, Russian Emperor Nicholas II, in conversations with representatives of the diplomatic corps, claimed that Russia had the right to include Galicia and Northern Bukovina as a result of the war, which would allow it to „(…) reach its natural borders - the Carpathians"[8]. Such views were spread in Russian power structures with the help of representatives of the so-called Russian nationalist movement, including Galician Muscophiles.

As V. Gaiseniuk noted, the Muscovite movement entered the First World War with hopes and concrete steps to implement plans for the incorporation of Galicia into the Russian Empire, embodied, in particular, in the activities of the „Carpatho-Russian Liberation Committee"[9] created at the beginning of the war. Appointed as temporary governor-general of the occupied regions of Austria-Hungary, Count G. Bobrynsky first filled his administration with Galician Muscophiles, who received directives from destroying the „mazepins," i.e., Ukrainians[10].

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5 С. Адамович, *Станиславів у часи лихоліть Великої війни (1914 – 1918 рр.),* Лілея-НВ, Івано-Франківськ, 2013, с.44.

6 І.Кучера, *Політика російської окупаційної адміністрації в Східній Галичині в 1914–1917 рр.,* „Вісник Прикарпатського університету. Історія", 2013, №23-24, с.195.

7 І.Лозинська, *Організація російського цивільного управління у Галичині (серпень-вересень 1914 р.)*, „Східноєвропейський історичний вісник"*, 2017,* №2, с.28.

8 І. Ільницький, *Нормативні та ідейно-концептуальні основи…,* op. cit., с.369.

9 В. Гайсенюк, *Москвофільство в Галичині та на Буковині в роки Першої світової війни*: (дис. канд. іст. наук: спец. 07.00.01 – історія України), Чернівці, 2015, с.184.

10 Д. Дорошенко, *Мої спомини про недавнє-минуле (1914-1920,* Українське видавництво, Мюнхен, 1969, с.308.

It should be noted that the analysis of H. Bobrynskyi's orders regarding the ban on Ukrainian-language literature, measures to introduce teaching in educational institutions in the Russian language, and support for aggressive religious policy allows us to determine that they even went beyond the regulatory and legal field of the occupation administration („Rules on localities declared on martial law" (1892), „Regulations on the Field Management of Troops in Wartime" (1912), „Temporary Regulations on the Management of the Austro-Hungarian Regions Occupied by Law of War"[11].

The language of court proceedings was determined to be Russian, but Polish could also be used temporarily. With the arrival of the Russians, schools with the Russian language of instruction, Russian language courses for teachers, and textbooks were printed in Russian. Education in primary schools was to be conducted in Russian, except in cities with a predominantly Polish population, where Polish private schools would be allowed.

Thanks to the activities of Muscophile leaders V. Bobrynskyi, D. Chikhachev, Yu. Yavorskyi, V. Dudykevich, and others, appeals, instructions, and explanatory pamphlets were spread in Eastern Galicia, emphasizing that „(…) Eastern Galicia and Lemkivshchyna are not a separate part of greater Russia, and the population in these lands was „Russian"[12].

In parallel with the Russification processes, repressions unfolded, the basis for which was sufficient Ukrainian identification and loyalty to the Austrian state. According to the report of the head of the temporary gendarmerie in Galicia, Colonel Mezentsev, during several months of 1914-1915, 1,200 arrests, more than 1,000 searches were carried out in Galicia, and 578 people (including 34 Greek-Catholic priests) were deported to the Russian Empire. Thus, in February-March 1915, in Eastern Galicia, lawyers A. Tchaikovsky, D. Stakhur, ambassador T. Starukh, employees of the insurance company „Dniester" - S. Britan, O. Kuzmych, M. Gubchak, S. Fedak, were arrested. Prof. V. Okhrimovych, director of „Narodnaya tradni" M. Zayachkovskyi, director of the national museum I. Svientsitskyi, editor of „Prosvity" publications Yu. Balytskyi. In the report of H. Bobrynskyi on his activities in the post of temporary governor-general, it is stated that in 1914–1915, 1,962 people were deported from Galicia, and 2,364 people were resettled in the eastern regions of the empire[13].

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[11] І. Ільницький, *Нормативні та ідейно-концептуальні основи…,* op. cit., c.368.

[12] І. Баран, *Політична діяльність російської окупаційної адміністрації в Галичині (1914–1915 рр.),* „Вісник Прикарпатського університету. Історія", 2010, № 17, с.154.

[13] І. Ільницький, *Нормативні та ідейно-концептуальні основи…,* op. cit., c.372.

However, the heads of the points often carried out the arrests and deportations without the sanction of the leadership, so today, it is difficult to establish the number of deportees. Presumably, the number of victims was huge because only about 15 thousand people passed through Kyiv prisons on the way to the east of Russia[14]. The Russians often took hostages and sent the most respected citizens of the cities to Siberia before their retreats[15].

A component of the anti-Ukrainian policy of the Russian authorities was the persecution of publishing houses, the public, and sports associations of a Ukrainophile orientation, in particular, „Prosvity," „Sichey," „Sokola," the bookstore and museum of the National Academy of Sciences, Taras Shevchenko National Society, the insurance company „Dniester," etc., whose activities were defined as „dangerous for Russia," as well as the banning of the Ukrainian-language press, in particular the newspapers „Dilo," „Ruslan", „Hromadsky Golos"[16]. Thus, together with other Ukrainian societies, the „Sichi" were banned, of which there were 813 in Eastern Galicia at the beginning of the war. A search was conducted in Lviv, and the society board was sealed. In the villages, Russian soldiers destroyed the property of the Sichovs, and used their awards as trophies[17].

The basis of the Russification policy of the empire traditionally also remained the repression in the religious sphere, which became especially acute in Eastern Galicia—with the entry of Russian troops into Galicia, the Synod of the Russian Orthodox Church immediately sent to Galicia, the fanatics of Russian Orthodoxy - Bishop Anthony Hrapovytskyi from Kharkiv and Bishop Yevlogius from Kholm. The main task of their „mission" was the destruction of the Greek Catholic Church in Galicia. Instead of the Greek-Catholic one, it was planned to create an Orthodox metropolis with the center in Lviv[18]. It should be noted that even modern Russian scholars admit that the Orthodox priests who came to lead the Galician parishes behaved unceremoniously and were ready to introduce Orthodoxy by force, which was complained not only by their Uniate colleagues but also by some Russian observers[19]. Bishop Yevlohiy could remove

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[14] І. Кучера, *Політика російської окупаційної адміністрації…,* op. cit., с.198.

[15] С. Шпунд, *Жахіття, скоєні росіянами в Станиславові,* Лілея-НВ, Івано-Франківськ, 2023, с.47.

[16] І. Ільницький, *Нормативні та ідейно-концептуальні основи…,* op. cit., с.372.

[17] І. Баран, *Політична діяльність…,* op. cit., с.157.

[18] С. Адамович, *Наддніпрянська політична еміграція в суспільно-політичному житті західноукраїнських земель (1914 –1918 рр.),* Місто-НВ, Івано-Франківськ, 2003, с. 116.

[19] Д. Парфирьев, *От лоялизма к сепаратизму: трансформация украинского движения в Цислейтании (1914–1918 гг.)*: (диссертация канд. истороку наук: спец. 07.00.03 – всеобщая история, Москва, 2021, с. 112.

a Greek-Catholic priest from a busy parish on suspicion of „Mazepinism" (belonging to Ukrainians). A hint from the parishioners or the displeasure of the district chief was enough to send the suspect to the depths of Russia without investigation. The activities of Archbishop Evlogiy took such brutal forms that, in the end, Count Bobrynsky agreed to send Orthodox priests at the request of even a minority of parishioners[20].

The Lviv newspaper „Dilo" reported that 22 priests from Lviv, Rohatyn, Radekhov, Lyshchyna, and Przemysl were arrested and died in the Lviv Diocese during the Russian occupation. In the Przemyśl eparchy, the authorities arrested and tortured 33 priests, in the Stanislaviv eparchy - 5[21]. It is worth noting that the actions of the Russian Church were supported in every possible way by the head of the gendarmerie, Colonel O. Mezentsev, who sometimes acted behind the governor general's back[22]. As the Basilian sisters from the Stanislavsky Monastery recalled, „(…) the new Moscow military government at first (…) was very unpleasant and first of all paid attention to our priests. Frequent audits began, searches for „Austrians," classrooms and school offices were sealed - and then arrests of prominent spiritual dignitaries and sending them to the depths of Russia"[23].

The rulers of tsarist Russia were particularly worried about the activities of Metropolitan A. Sheptytskyi. He was seen as the personification of Ukrainian political and religious separatism. He was the main object of denunciations of Muscophiles. Already on September 6, 1914, A. Sheptytsky preached a sermon in the Church of the Assumption of the Blessed Virgin Mary in Lviv, in which he called on Lviv residents to defend their faith before the Russian offensive[24]. After such a speech on September 11, the metropolitan's chambers were searched, repeated on September 12 and 14, and from September 15, A. Sheptytskyi was already under house arrest[25]. On September 19, 1914, A. Sheptytskyi was imprisoned taken to Kyiv, and Nizhny Novgorod, Kursk, Suzdal, and Yaroslavl.

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[20] І. Баран, *Політична діяльність…,* op. cit., с.159.

[21] І. Берест, *Репресивні акції щодо населення Східної Галичини в роки Першої світової війни,* „Вісник Національного університету Львівська політехніка", 2007, №584, с. 55.

[22] І. Баран, *Антиукраїнська політика представників Руської православної церкви в Галичині у 1914-1915 роках*, „Грані", 2014, №4, с. 153.

[23] С. Сабол, *Укрита фіялка – сестра Василія Глібовицька. ЧСВВ,* Словацьке педагогічне видавництво в Братіславі, Братиславі, 1992, с.120.

[24] В. Лаба, *Митрополит Андрей Шептицький: його життя і заслуги,* Люблін, 1990, с. 50.

[25] Я. Заборовський, *Митрополит Андрей Шептицький. Матеріали та документи /1865 – 1944 рр.* Львів -Івано-Франківськ, 1995, с.30.

Sheptytsky stayed in the Spaso-Evfimovsky Monastery of Suzdal until the February Revolution of 1917.

The defeats of the Russian Imperial Army in 1915 and the apparent shortcomings committed by the administration of the Provisional Military Governor General of Galicia forced Russian politicians to change the main directions of national policy in the region. As a result, the official position of the Russian authorities towards the Ukrainians as the second occupation regime was announced in July 1916 in a letter from the Chief of Staff of the Supreme Commander-in-Chief to the Governor General of Galicia and the commander of the South-Western Front, O. Brusilov. It stated that „(…) no mass repressions against Ukrainians as such for belonging to the so-called Ukrainian party are foreseen, if, of course, they behave sufficiently loyally towards Russia and its interests, and if they reconcile with those orders that will be introduced in the newly formed Governor General"[26].

Instead, on September 4, 1916, the Minister of Public Education, Count P. Ignatiev, warned in a letter to Governor-General F. Trepov that it would not be necessary to „(…) teach in the artificial Little Russian language" at the state expense in educational institutions and that „(…) the language of the winners (…) for the benefit of those who will live under the Russian State." However, despite the criticism of the ministry and Muscophiles, in the approved „Temporary Regulation on the Establishment of an Educational Unit in the Austro-Hungarian Regions Occupied by Law of War" dated October 14, 1916, it was stated that „(…) teaching is permitted in all local languages except German and Hebrew[27]". At the same time, the Russian authorities abandoned harsh, repressive measures against the Greek Catholic clergy but continued teaching Orthodoxy.

So, in 1914-1915, the Russians interpreted Ukrainian national identification as treacherous and hostile, artificially created by Austrian state factors. They tried to resist the Ukrainian national movement through repression and bans on Ukrainian public and political organizations. Also, they took care of destroying the Greek-Catholic church clergy and establishing Russian Orthodoxy. Russification was also carried out by banning Ukrainian book printing, closing Ukrainian-language schools, and expanding the Russian-language educational network. To eradicate Ukrainianism in Eastern Galicia, the Ukrainian intelligentsia, civil servants, and Greek-Catholic clergy were exiled to distant provinces

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[26] С. Адамович, *Станиславів у часи лихоліть…*, с.58.

[27] В. Любченко, *Генерал-губернаторство областей Австро-Угорщини, зайнятих по праву війни (1916–1917 рр.)*, „Проблеми історії України XIX – початку XX ст.: Зб. наук. Праць", 2011, №19, с. 361-363.

of the empire. The Russification of the region under the influence of the imperial tendencies dominant in the Russian elite and the assurances of Muscophiles about the Russianness of the area became an essential task for the Russian occupation administration in Eastern Galicia in 1914-1915.

Only the defeats of the Russian Imperial Army on the Eastern Front in 1915 and the shortcomings committed by the administration of the Provisional Military Governor General of Galicia forced the Russian authorities in 1916, after returning to Eastern Galicia as a result of the Brusylov breakthrough, to abandon overt forms of repressive policy against Ukrainians and the forcible introduction of Orthodoxy in the country.

Persecution of the Ukrainians of Eastern Galicia by the Soviet punitive and repressive system in the 40s and 50s of the XX century

The arrival of the Soviet occupation in 1939 and 1944 in Galicia was accompanied by searches for people who cooperated with enemy states. This time, Ukrainian self-identification, which was immediately tarnished by cooperation with the „fascist regime" of Germany, was also enough to hang the label of collaborator.

The priority task of the state authorities of the USSR in Eastern Galicia was the desire to implement the rapid Sovietization of the western Ukrainian lands, which was accompanied by terror against the Ukrainian intelligentsia, clergy, wealthy sections of society, and soldiers of the Ukrainian insurgent army. For this purpose, structures of the political apparatus, substantial military forces, and already formed repressive and punitive bodies were sent to Eastern Galicia. Despite the reports and plans for the liquidation of the Ukrainian movement, the confrontation between the Soviet authorities and the latter took place intensively in the late 1940s.[28]

Repressions against Ukrainians, in particular, unfolded after the end of the Second World War, when the USSR authorities concentrated all the necessary resources on destroying the opposition to the communist regime of the Ukrainian Insurgent Army and the Organization of Ukrainian Nationalists. As noted by I. Andruhiv,

[28] В. Ільницький, *Радянські карально-репресивні органи: особливості формування в Карпатському краї*, „Актуальні питання гуманітарних наук", 2015, №13, с.21-45.

the Soviet party authorities unleashed „mass terror against the Ukrainian people"[29] in the western regions of Ukraine, according to the data of the well-known researcher I. Patrylyak, during the years of the struggle, the communist punishers destroyed 563 OUN leaders of various levels, including the Main Leader, 10 regional leaders, 32 regional and district leaders, 84 supra-district leaders, 436 district leaders, 1,888 armed underground groups, 155,108 insurgents were killed, sympathizers of the rebels and random persons[30].

Ukrainian women detained by the Soviet special services were sentenced to be shot or received court sentences of up to 25 years in prison, mainly under Article 54 of the Criminal Code of the Ukrainian SSR (Article 54-1 „a" - treason to the Motherland; Article 54-11 - participation in a counter-revolutionary organization). In the court records, the accused were still labeled fascist-Nazi sympathizers, although the Second World War had already ended. But we note that the residents of Eastern Galicia were not citizens of the USSR and, therefore, could not be held accountable for treason to the Motherland.

That is why Ukrainians, in some places, refused the rehabilitation that unfolded in Ukraine after the collapse of the USSR. Thus, in March 1992, during the review of the criminal case, Orest Dychkovsky, who was convicted under Art. 54-1 „a" to 25 years of correctional labor camps, confirmed the 1947 shows, and explained that he did not need any rehabilitation. During the interrogation on March 23, 1992, he told the investigator: „I was an enemy of the Soviet government in Ukraine. He led an armed struggle for the formation of an independent Ukraine. I committed the specified actions due to my convictions, knowingly, as I was brought up in such a spirit by my parents (…) I fully confirm my testimony"[31].

Any manifestation of sympathy or support for pro-Ukrainian structures was the basis for sentencing to long-term prison terms. For example, many residents of Knyazhoy in the Snyatyn region suffered from punitive and repressive measures of the Soviet regime, not even for military aid to the resistance movement. Thus, Anna Vakaruk received a ten-year prison term for having a collection point for products and messages at her home, washing the linen of Ukrainian rebels,

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[29] І. Андрухів, А. Француз, *Правда історії. Станіславщина в умовах терору і репресій: 1939 – 1959 рр., історико-правовий аспект. Документи і матеріали*, Івано-Франківськ, 2008, с.412.

[30] І. Патриляк, *«Перемога або смерть»: український визвольний рух у 1939 – 1960 х рр.,* Часопис, Львів: Часопис, 2012, с.498.

[31] С. Адамович, Р.Кобильник, Л.Щербін, *Нереабілітована пам'ять*, „Лілея-НВ, Івано-Франківськ", 2017, №1, с.83, 85.

and hosting them in her home. Iryna Maksymjuk and Mykola Kybych „earned" their ten years because there were bunkers in their farms where rebels hid[32].

It should be noted that the Soviet investigation used interrogation methods that forced the subject to give „necessary evidence" against himself: falsification of testimony in protocols, reduction of food standards, threats to witnesses, hoaxing of executions, offers to „turn in" comrades, deprivation of the right to receive letters, dangers of deportation of relatives, long-term and night interrogations, use of force to sign the protocol, use of physical violence, temperature torture, etc.[33]

After the illegal detention of persons, employees of the internal affairs and state security bodies often used inhumane torture on the arrested persons. So, employees of the Bogorodchansky district police department Yurisov and Bespalov, on February 7-9, 1946, in the village of The residents of Lyakhiv, arrested M. Snitya, suspected of collaborating with nationalists without a warrant. After the beating, she was returned to her parents, where she died. In Tlumatsky district in January 1946, the head of state welfare Knyazev, as the representative of the district council of the village of Hrynivtsi, detained M. Andriyova, abused her, doused her genitals with diesel fuel and was going to set them on fire with a match. In addition, he burned the woman's left buttock with a red-hot metal circle[34].

After applying extrajudicial influence to the arrested, which led to their death, they still considered them guilty despite the absence of a verdict. This is what happened to the wounded insurgent Mykola Dyakiv from the village of Slobidka Bilshivtsivska, whose guilt in the indicted crimes was not established by the court, and he died in the hospital of the Stanislav prison[35]. In the early summer of 1947, a native of the village of Bovshiv, Yaroslav Kurlyak, was not charged. The case has no explanations, but the Ukrainian was still found guilty posthumously[36].

A separate page among the criminal activities of the Soviet authorities was the mass deportations of the population of Galicia, which began in 1944 and were already criminal in themselves, and even during their implementation, violations of the law on the part of the Soviet law enforcement officers were recorded.

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[32] С. Адамович, *Нереабілітована пам'ять*, „Лілея-НВ, Івано-Франківськ", 2020, №2, с.55.

[33] Г.Савчин, *Система виконання покарань у західних областях України в період 1944–1953 рр.: монографія*, Львів 2016, с. 142.

[34] Державний архів Івано-Франківської області, фонд Р-584, оп. 1, спр. 12, арк. 161.

[35] Галузевий державний архів Управління Служби безпеки України в Івано-Франківській області, фонд 4, спр.18.

[36] Галузевий державний архів Управління Служби безпеки України в Івано-Франківській області, фонд 4, спр. 386.

Formally, the reasons for the deportations were the wealth of the peasants as an obstacle to collectivization, support of the Ukrainian insurgent army, belonging to the Ukrainian intelligentsia, and the Greek-Catholic priesthood. But in fact, the categories of people who were evicted constituted the backbone of the Ukrainian nation in the region. Therefore, they were a priori considered potential traitors and a threat to the Soviet empire.

Thus, on March 26, 1945, the leadership of the NKVD of the Stanislav Region informed the head of the Stanislav Regional Council of Workers' Deputies, Ryasichenko, in a memo that in April of the same year, the „eviction of bandit families" would take place, and to gather the deportees in the cities of Stanislav, Kolomyia, and Kalush, special points[37]. Instead, following the Decree of the Council of Ministers of the USSR No. 3214 of September 10, 1947, not only the families of the participants and sympathizers of the OUN but also „Kurkul-nationalists and their families" were subject to eviction. Operation „West," carried out in October 1947, is considered the most extensive Soviet resettlement campaign.

Previous forms of repression were permitted by the resolution of the Council of Ministers of the USSR dated October 4, 1948, on the eviction of the families of bandits and nationalist elements, and the resolution dated April 5, 1950, declaring the persons deported in 1944-1949 to be exiled forever[38]. In the fall of 1949, a forced resettlement campaign began to help collective and state farms in the southern regions of Ukraine. In January 1951, the Council of Ministers of the USSR issued a resolution „On the eviction of kulaks with their families from the territory of the Volyn, Drohobytsk, Lviv, Rivne, Stanislavsk, Ternopil, Chernivtsi, and Zakarpattia regions of the Ukrainian SSR." During the deportation, the property of the kulaks was subject to confiscation[39].

There were cases when all the inhabitants of the village were evicted. In February 1950, Soviet punitive units surrounded and destroyed the town of Posich. The villagers were taken to Siberia and Odesa, and a military training ground was set up on the site of the ruined settlement. Witnesses of the terror recall that people were not given time to gather, and the entire household remained at home. Peasants were taken to prison, and they were sent by train to their destination.

As G. Savchyn notes, the materials of the cases filed against the families of the rebels often did not have sufficient evidence of their „subversive" activities. Still, people were taken out and arrested[40]. The groundlessness of the depor-

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37 Державний архів Івано-Франківської області, фонд 295, оп. 3, спр. 32, арк. 4.

38 В. Тацій, А. Рогожин, *Історія держави і права України*,Т.2, Київ, 2000, с.379.

39 Г. Савчин, *Система виконання покарань*…, op. cit., с.133.

40 Г. Савчин, *Система виконання покарань*…, op. cit., с.128.

tations of many people is evidenced by the fact that sometimes, the competent authorities did not permit deportation. In some places, they were even forced to return people. As of mid-1946, out of 996 materials submitted to the police to obtain a sanction for arrest and eviction in the Stanislav region (today's Ivano-Frankivsk region), sanctions were given to 446, and 520 were refused. According to the materials, detentions and deportations were sanctioned, 76 people were illegally approved, and 76 people had to be returned from places of exile. Thus, in 1944, the Voyniliv Ministry of Internal Affairs deported the family of F. Durkal to the Arkhangelsk region. It was believed that he was in the Ukrainian Insurgent Army. In December 1945, he returned from the Red Army, he did not find his family or property, and a police officer lived in his house and did not move out, despite the letters from the prosecutor's office. Such cases were not unique to the [41]

From 1944–1949, 50,453 families of 143,141 people were deported from the western regions of the Ukrainian SSR. The terror unleashed by the regime against the population of Western Ukraine led to the fact that on January 1, 1953, the number of Ukrainians in concentration camps increased 2.4 times, and the number of insurgents reached 175 thousand people[42].

So, the Soviet punitive and repressive bodies in the 40s and 50s of the 20th century pursued the goal of destroying the Ukrainian elite in Eastern Galicia. A nationally conscious Ukrainian society that lived in the Polish state under the conditions of a market economic system, the Ukrainian intelligentsia and Greek Catholic priests could spread their Ukrainian-centric worldview values to the rest of the population of Ukraine. Even without documented manifestations of anti-state activity, these population categories were considered potential traitors to the Motherland. That is why the Soviet party officials sought to destroy or isolate the nationally active part of the population of Western Ukraine through repression. This goal was achieved through imprisonment, physical destruction, or deportation of the strata of society hostile to the communists and forcefully overcoming any resistance.

41 Державний архів Івано-Франківської області, фонд Р-584, оп. 1, спр. 12, арк. 153.
42 Г.Савчин, *Система виконання покарань*…, op. cit., с.131-133.

„Ukrainian collaborator" during the modern Russian-Ukrainian war

The Russians once again tried to destroy the Ukrainians in 2014. As a result of the annexation of Crimea and the outbreak of war in the Ukrainian Donbas, the Russian Federation killed all existing international legal mechanisms for maintaining peace in the world, and 2022 launched a bloodbath on a scale not seen since the Second World War invasion of Ukraine. The actions of the Russian military under the leadership of its military-political leadership in Ukraine provide grounds for the international community to recognize Russia as a terrorist country and its military's actions on Ukraine's territory as crimes against humanity[43].

To subjugate the Ukrainians, the Russians widely used indiscriminate shelling of civilian infrastructure and deprived people of sources of food, water, and medicine. Ukrainians who came under the control of the Russians were executed, illegally kept in captivity, tortured, filtered, deprived of their property, and their dignity was mocked. At least some Ukrainian self-identification was enough for persecution. The testimonies of the victims of Russian persecution allow us to claim that the actions of the Russian military and the occupation administration are aimed at genocide against Ukrainians[44].

It should be noted that V. Putin personally granted the right to accuse and persecute his subordinates only for manifestations of belonging to the Ukrainian nation. So, in July 2021, the Russian president denied the existence of the Ukrainian nation: „(…) When I was asked about Russian-Ukrainian relations, I said that Russians and Ukrainians are one people - a single entity. These words were not driven by any short-term considerations or prompted by the current political context. I have said this many times and firmly believe this"[45]. To consolidate the Russian electorate, the Russians intimidated it with Ukraine's dependence on NATO member states and a military threat to Russia itself. Accordingly, the Russian military believed

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[43] S.Adamovych, Y.Mykytyn, L.Prystach, N.Savetchuk & I.Kozych, *Prospects for Punishing Citizens of the Russian Federation for War Crimes in Ukraine in 2014-2,* „Pakistan Journal of Criminology", 2023, vol.15, nr 02, s.238.

[44] С. Адамович, *Притягнення до відповідальності вищого військового і політичного керівництва росії за геноцид проти українців,* „Law & Society", 2022, №6, с. 7.

[45] *Стаття Володимира Путіна „Про історичну єдність росіян і українців".* 12.07.2021: https://web.archive.org/web/20211210002245/http://en.kremlin.ru/events/president/news/66181 (дата звернення 01.05.2022).

that they had „sent to liberate"[46] Ukraine, and people with a pro-Ukrainian orientation were interpreted as traitors to the Motherland and criminals. In the records of the testimonies of people who survived the Russian occupation, it appears that pro-Ukrainian views, and not manifestations of disloyalty to the Russian Federation, were sufficient grounds for detention and repression. Prosecutor Oleksandr Kud said why or for what purpose the Russian military tortured the residents of Kherson: „The first is a pro-Ukrainian position. The second is belonging to law enforcement agencies or law enforcement agencies. And the third is coercion to cooperate with the enemy"[47].

As Lyudmila Sklyar, a resident of the occupied village of Markivka, Starobil district, Luhansk region, recalls, „In general, they took all activists, teachers, everyone with a pro-Ukrainian position for questioning"[48]. So, in May 2022, the occupiers beat the doctor Volodymyr Matsk from Velika Bilozerka for his pro-Ukrainian position; he was immediately admitted to the intensive care unit, his office was ransacked, and his laptop was taken away[49]. They interrogated people even if they found Ukrainian symbols or, in their opinion, suspicious information in people's phones[50]. At the same time, the occupiers and collaborators provoked pro-Ukrainian people to leave their homes and put pressure on them „(…) because there will be no Ukraine here"[51].

Today, in the cities of Ukraine freed from Russian troops, from Buchi to Izyum, Ukrainian law enforcement agencies and international institutions are investigating the places of torture and documenting numerous war crimes

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[46] В. Стешенко, с. Нижня Дуванка Нижньодуванської селищної ради Сватівського району Луганської області. Опитано свідка 17.07.2023 р. Архів Навчально-наукового юридичного інституту Прикарпатського національного університету імені В.Стефаника.

[47] С. Андрушко, *Струм, протигаз, «кат-спеціаліст». Свідчення херсонців про російські катівні*. URL: https://www.radiosvoboda.org/a/skhemy-deokupovanyy-kherson/32165900.html (дата звернення 01.05.2023).

[48] Л. Скляр, с.Марківка Старобільського району Луганської області. Опитано свідка 30.01.2023. Архів Навчально-наукового юридичного інституту Прикарпатського національного університету імені В.Стефаника.

[49] Т. Базна, с. Велика Білозерка Василівського району Запорізької області. Опитано свідка 17.03.2023. Архів Навчально-наукового юридичного інституту Прикарпатського національного університету імені В.Стефаника.

[50] Р. Кунафін, м. Херсон Херсонської області. Опитано свідка 11.01.2023. Архів Навчально-наукового юридичного інституту Прикарпатського національного університету імені В.Стефаника.

[51] В. Ковтун, м. Херсон Херсонської міської ради Херсонського району Херсонської області. Опитано свідка 13.05.2022 р. Архів Навчально-наукового юридичного інституту Прикарпатського національного університету імені В.Стефаника.

committed by the Russians against Ukrainians only because of their nationality. Russian troops commit war crimes on a massive scale, and the statements of the highest state leadership of the Russian Federation are evidence that the state policy of this country is carried out with the intention of wholly or partially destroying Ukrainians as a nation. Bringing to justice the perpetrators of war crimes by the Russians and the military-political leadership of Russia should stop the genocidal policy of the Russians towards the Ukrainians and other totalitarian regimes from trying to subjugate other nations to their power through force; will condemn racism with its „Russian peace" as an ideological phenomenon; will allow the diversification of the Russian people and the destruction of the last Eurasian empire.

In conclusions, during the occupation of Eastern Galicia by the Russian Empire during the First World War, the Russians interpreted the Ukrainian nation as non-existent, artificially created by the Austrians, and hostile. To destroy it, Ukrainian organizations were banned, the Greek-Catholic clergy were killed, Russian Orthodoxy was planted, the cultural and educational spheres of life were Russified, and the Ukrainian intelligentsia, civil servants and Greek-Catholic clergy were exiled to remote provinces of the empire.

The occupation of Eastern Galicia by the USSR in 1939 again led to the destruction of the Ukrainian elites in the region by the Soviet punitive and repressive bodies. Even without documented manifestations of anti-state activity, Ukrainian business people, intelligentsia, and Greek Catholic priests were considered potential traitors to the Motherland (now tools of the Nazi regime) and a threat to the empire's existence. Soviet party officials tried to destroy or isolate them using imprisonment, physical destruction, or deportation.

In turn, the ideological basis of Russia's large-scale military invasion of Ukraine in February 2022 became the spread of Putin's mythologies about the unity of the Ukrainian and Russian peoples. Today, Ukrainians are accused of betraying the interests of the „fraternal Russian people" in favor of the whims of NATO member countries. The actions of the Russian military and the occupation administration in Ukraine are aimed at genocide against Ukrainians. Manifestations of any Ukrainian national identification are sufficient for restricting rights and brutal repression by the Russians against Ukrainians.

So, during the 20th - beginning of the 21st century, the Russian Empire, the Soviet Union, and Putin's Russia during the First World War and after the Second World War in the territories of Eastern Galicia, and in the modern Russian-Ukrainian war in the East and South of Ukraine, carried out repression against Ukrainians based on national identity. Ukrainians who refused

to identify themselves with the Russian people were accused of treason. Regardless of the political regime in the country, the Russian people, infected with imperial consciousness, accused Ukrainians alternately of Austro-loyalism, cooperation with Nazi Germany, or dependence on NATO member countries. But behind these groundless accusations was a deep desire of the Russians to destroy the Ukrainian nation by various methods and means.

PAVLO FRIS[1]

PSYCHOLOGICAL AND IDEOLOGICAL COMPONENTS OF THE CRIMINAL LAW CONSCIOUSNESS OF THE PERSONS WHO COMMITTED A CRIME OF COLLABORATION AMID THE RUSSIA'S INVASION OF UKRAINE

(basis for shaping and characteristics)

What is described nowadays as criminal collaboration[2] have been known since ancient times. In the old days, collaboration with the enemy was not yet called ‚collaboration', but it was already regarded as a clear manifestation of contempt for one's own people and the homeland, and was condemned and persecuted by society. These actions got their modern name after the World War I. Collaboration was particularly evident during the World War II and had already earned a legal response in the verdict of the Nuremberg Military Tribunal in the portion

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[1] Pavlo Fris – doctor of law, professor, corresponding member of the National Academy of Legal Sciences of Ukraine, academician (full member) of the National Academy of Sciences of Higher Education of Ukraine, Honored Worker of Science and Technology of Ukraine, professor of the Department of Policy in the field of combating crime and educational and scientific criminal law Law Institute of the Precarpathian National University. Wasyl Stefanyk. Graduate of the Law Institute of the Lviv National University. I. Franki. The field of scientific research is policy in the field of combating crime, theory of criminal law, and criminology. Author of 18 monographs, textbooks and training manuals and over 300 other scientific publications. ORCID number: 0000-0003-4979-051X

[2] Collaborationism (from the French collaboration - „cooperation") is a modern term political lexicon... in a broad sense - cooperation of people or citizens state with an enemy in the interests of the invading enemy to the detriment of the state itself or his allies and participation in the persecution of patriots of the country of which he is a citizen collaborator: https://uk.wikipedia.org/wiki/%D0%9A%D0%BE%D0%BB%D0%B0%D0%B1%D0%BE%D1%80%D0%B0%D1%86%D1%96%D0%BE%D0%BD%D1%96%D0%B7%D0%BC ((dostęp z dnia: 14 lipca 2023 r.)

convicting Seyss-Inquart for his collaborationism[3]. Criminal trials of collaborators took place in many European countries in the post-war era, as almost all countries occupied by Nazi Germany faced them. Poland was the only country that hardly experienced such trials. As noted by the prominent World War II historian Anthony Beevor: ‚Poland is one of the few countries in which there was virtually no collaboration with the occupier'[4].

It should be noted that nearly 70 years of peace in Europe have, as it were, sidelined the question of the legislative definition of the term ‚collaboration' and the introduction of criminal liability for it. Currently, there is no clear definition of ‚collaboration' in the criminal legislation of most European countries, and national approaches to understanding the concept in criminal law theory differ considerably. This issue has not been addressed in the legislation of Ukraine and Poland. The only country to define this concept in its criminal legislation and to introduce criminal liability for collaboration was the Republic of Lithuania[5].

Each country has its own approach to the structure of national legislation, which it implements by defining its main principles and institutions. Russian aggression has become a driver of change in the field of the Ukrainian legislative process, including criminal law. Concurrently, the issue of liability for collaborationism, which had not been given enough attention by the legislature during the time of the Ukrainian SSR and in the 30-year period after regaining independence, was put on the agenda.

The legislation of the Stalin era (Criminal Code of the Ukrainian SSR of 1928) addressed the issue of responsibility for collaboration with the enemy in a simplified manner - without formulating the term "collaboration", by envisaging responsibility for it in a number of provisions found in the Article 58 with the corresponding indices. However, some of these norms represented nothing

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[3] Seyss-Inquart was an Austrian politician and lawyer that became a German statesman of the Third Reich after the Germany's annexation of Austria in 1938, a National Socialist, SS Obergruppenführer (20 April 1941), a ruler of Austria, occupied Poland and the Netherlands, a war criminal, executed by the Nuremberg Tribunal for his crimes against humanity.

[4] Е. Бівер, *Друга світова війна* / Ентоні Бівер ; Пер. з англ. Е Горбатько. К. : Вид. група КМ-БУКС, 2022. С. 68. The issue of assessing the actions of Ukrainian citizens who actively cooperated with the authorities.

[5] The Lithuanian Criminal Code defines collaboration as the actions of citizens of the Republic of Lithuania that consist in assisting the illegal government in legitimising the occupation or annexation of the Republic of Lithuania, in suppressing the population's resistance or in assisting the illegal structures of power in carrying out the occupation or annexation. Lietuvos Respublikos baudžiamasis kodeksas: https://www.infolex.lt/ ta/66150: str120. (dostęp z dnia: 14 lipca 2023 r.)

more than a manifestation of Stalin's dictatorship and had nothing to do with the concept of collaboration as formulated by contemporary criminal law theory and criminal legislation. A clear example of the questionable value of these provisions can be found in Article 541B of the Criminal Code (hereinafter the CC), worded a follows: "In the event of a soldier's defection or departure abroad, adult members of his/her family who in any way assisted in the planned or committed treason, or who at least knew about it but failed to report it to the authorities (…)"! The possibility of being held criminally responsible for treason against the Homeland (and thus for collaboration) after attaining the age of criminal responsibility was extended to all Soviet citizens (and possibly to foreigners), in the circumstances provided for in Chapter 1 of the specific part of the CC. It is not the place or time to analyse the criminal and legal policies of the Stalin era, yet I believe that it is important to point out that the entire nations – Crimean Tatars, Chechens, the Ingush - were persecuted for their alleged collaboration with the Nazis. A mass deportation of the population of western Ukraine and the Baltic states to remote areas of Russia was being prepared. This calamity was only prevented by the dictator's demise.

Along with the change in criminal legislation in 1958, the approach to the legal definition of collaboration remained unchanged – any collaboration with the enemy was considered to be an act of treason against the homeland under Article 56 of the Criminal Code of the Ukrainian SSR.

The current Criminal Code of Ukraine, at the time of adoption (2001), did not define the concept of "collaboration", relying on the approach found in previous legislation. This is understandable, because no one would have thought that a violent aggression against an independent, peace-loving state would be carried out by the bloodiest means in the centre of the 21st century Europe.

Today, the term "collaboration" can be found in Article 111^1 of the Criminal Code of Ukraine. It should be noted that the legislation was amended in haste, with the legislature being driven by the urgent need for a criminal law response, prompted by the launch of the active phase of the Russian invasion of Ukraine. However, it quickly became apparent that this definition was neither exhaustive nor perfect. At the time of this paper preparation, several draft acts aimed at improving the design of the legislation concerning this issue have been submitted to the Verkhovna Rada of Ukraine. This publication is not aimed at analysing the concept of "collaborationism" as defined in Article 111^1 of the CC, nor is it intended to elaborate on it, but is rather aimed at analysing the psychological,

legal and ideological components of criminal law consciousness predisposing the commission of the crime of collaboration[6].

In order to define the nature of this concept, one should first trace the 'consciousness – criminal law consciousness' concept chain. As noted by the prominent consciousness researcher O. Spirkin: "Consciousness is a higher function of the brain inherent only in human beings and related to language, which involves communication, evaluation and purposeful reflection as well as constructive creation of reality, pre-imagined design of actions and anticipation of their consequences, and the reasonable regulation and self-regulation of human behaviour"[7]. More precisely, it can be observed that consciousness is directly related to the various mental processes that take place in the human body, which involve the perception of the external world, one's place in it as a physical being, the place and role of the other physical beings, the events taking place with the conscious entity and other entities, their analysis, evaluation and planning how to respond to these events. Philosophy considers consciousness in a broad and narrow sense. In a broad sense, consciousness is "The mental reflection of reality, irrespective of the level at which it is made – biological, social, sensory or rational", and in a narrow sense it is "The higher function of the brain, inherent only in human beings, which consists in the generalised and purposeful reflection of reality, the initial imaginative construction of actions and the anticipation of their consequences, and in the intelligent regulation and self-control of human behaviour through reflection"[8]. Social consciousness is therefore a feature of social life, reflecting the processes of its

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[6] See theoretical approaches to how one should understand the term ‚collaborative activity': Письменський Є. О. *Колабораціонізм як суспільно-політичне явище в Україні (кримінально-правові акспекти): наук. нарис* / Є. О. Письменський. Сєвєродонецьк, 2020. 121 с.; Буряк О. О. *Колабораційна діяльність: загальні засади кримінально-правової кваліфікації: практич. порадник* / О. О. Буряк, Д. О. Олейніков, М. В. Членов / за заг. ред. засл. юриста України А. З. Швеця. Харків: Право, 2022. 98 с.; Кравчук О. О., Бондаренко М. С. *Колабораційна діяльність: науково-практичний коментар до нової статті 111-1 КК.* Юридичний науковий електронний журнал. 2022. Вип. 3. С. 198-204. URL: https://ela.kpi.ua/bitstream/123456789/46990/1/Kravchuk_Bondarenko_Art._111-1_CCU.pdf (дата звернення 16.05.2023); Кузнєцов В. В., Сейплокі М. В. *Кримінальна відповідальність за колабораційну діяльність як виклик сьогодення.* Науковий вісник Ужгородського національного університету. Серія «Право». 2022. Вип. 70. С. 381-388. URL: https://dspace.uzhnu.edu.ua/jspui/bitstream/lib/40900/1 (дата звернення 16.05.2023); *Злочинна колаборація в умовах збройної агресії: практич. поряднк з кримінально-правової оцінки та розмежування* / за заг. ред. В. В. Малюка. Київ: Алерта, 2023. 312 с. та ін.

[7] А. Г. Спиркин, *Сознание и самосознание*. Политиздат, 1972. С. 83.

[8] А. Г. Спиркин, Философия. Что такое сознание: https://www.gumer.info/bogoslov_Buks/Philos/Spirk/50.php (dostęp z dnia: 14 lipca 2023 r.).

formation and functioning. It should also be mentioned that social existence is always fundamentally material and formulates the ideal – ideas, values, norms that regulate social existence of a particular individual and the entire community. This in turn determines the historical form of social consciousness, which corresponds to the stage of the historical development of society. Simultaneously, based on the fact that social existence is conscious, social consciousness is not separate from it, but is a product and a function or it. Consciousness does not always correspond to social existence – it can precede the development of social existence, anticipate it or, conversely, follow it. This is due to the presence of its own logic of development and its own nature of heredity[9].

Social consciousness throughout the life of an individual dominates his/her individual consciousness, often amending it or even radically changing it. However, individual consciousness is not completely suppressed, but has a significant impact on the social activity of a specific person. Public consciousness varies according to a number of criteria. We will only cover one of its forms - legal consciousness, which is shaped by the legal existence of society.

The study of the categories of legal consciousness in the former USSR and Ukraine has a fairly long history. Researchers present no uniform opinion on the stages of scientific research of this problem. O. Mygushchenko delved into thousands of years in analysing this issue and identified three cycles in the study of legal consciousness: the first stage – before the Tatar and Mongol invasion; the second stage – until 1917; the third stage – after 1918[10]. It should be noted that this approach cannot be considered scientifically valid for two reasons. First of all, the study of the categories of legal consciousness is the prerogative of the philosophy of law and legal theory, and second of all, the legal sciences were formed in the Russian Empire only in the 18th century, so it is unwise to speak of previous philosophical and legal or theoretical research[11].

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[9] Фарбер И. Е. *Правосознание как форма общественного сознания.* Юридическая литература. М., 1963. С. 108.

[10] О. Н. Мигущенко, *Историческое и логическое в понимании правосознания.* „История государства и права" 2006. № 9. С. 24–26.

[11] As P. Degai noted in his time 'Until the time of Tsar Oleksiy Mikhailovich, it was impossible to name a single Russian lawyer'. Дегай П. *Пособия и правила изучения российских законов или материалы к энциклопедии, методологии и истории литературы российского права.* М., 1831. С. 118. Цит. за Г. С. Фельдштейн. Главные *течения в истории науки уголовного права России.* М.: Зерцало, 2003. С. 27. This also fully applies to Ukraine. Therefore, nobody conducted any research on the matters of legal consciousness *before the legal sciences have been recognised as an independent branch of the social sciences.*

According to N. Juraszewicz, the study of legal consciousness should be divided into four stages: the first stage – from 1917 to the mid-1930s.; the second stage – from the mid-1930s to the mid-1950s; the third stage – from the mid-1950s to the late 1970s; the fourth stage – from the early 1980s until today[12]. This periodisation is more sensible, but it can only be accepted when talking about Soviet times and present-day Russia. When speaking about the periodisation of the research on the issue of legal consciousness in the territories of the former Russian Empire, it is appropriate to include the period from the 17th century as the first stage up to 1917. It is also considered necessary to separate the period from 1991 until today for Ukraine. During this time, a number of studies have been carried out in Ukraine on the issue of legal consciousness from the perspective of Ukrainian national law and the national characteristics of its formation.

The scientific understanding of the concept of legal consciousness has evolved over the years. As M. Cherkas notes: "In Soviet legal science, the place of legal consciousness in the development of science kept changing. In the period from 1917 to1920, it was studied as a revolutionary legal consciousness that was regarded as the source of law based on the interests of the working class and peasantry. Between the 1930s and 1950s, the theory of legal consciousness was almost never studied as this issue was irrelevant in totalitarian regime. Since the 1950s, there has been a trend towards in-depth, systematic studies of legal consciousness, which has survived to this day as part of the now-independent Ukrainian legal science"[13].

For the sake of objectivity, it should be noted that the genuine research on this form of social consciousness only began in the USSR in the early 1960s. Until the 1960s, it was not only immaterial to speak of legal consciousness, but it was also downright dangerous to do so under the reign of Stalinist legal doctrine, which did not allow for any interpretation of the postulates of Marxism-Leninism to be carried out by anyone other than authorised political party and state officials. Whoever failed to adhere to this principle faced repressions. Khrushchev's Thaw lifted the taboo on the scientific interpretation of philosophical and legal issues, including the issue of legal consciousness. The first fundamental study of legal consciousness entitled "Legal consciousness as a form of social consciousness",

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[12] Н. М. Юрашевич, *Эволюция понятия правового сознания.*"Правоведение" 2004. № 2. С. 165–181.

[13] М. Є. Черкас, *Правосвідомість та її функції в механізмі правового регулювання :* монографія. Х. : Право, 2015. С. 11.

authored by I. Farber, was published in 1963[14]. It was obviously based on the Marxist-Leninist theoretical postulates of legal theory, yet it constituted a breakthrough in the study of the issue. Over the past 60 years, dozens of monographs and hundreds of other research papers have been written and published in Ukraine, in which this issue is analysed thoroughly and comprehensively from different angles.

Contemporary Ukrainian legal theory views legal consciousness as "(…) A set of subjective elements of legal regulations: ideas, theories, emotions, impressions and legal guidance that reflect legal reality, shape attitudes towards law, legal practise, general perspectives and directions of the development of the legal system"[15].

In view of the above, the following should be considered as the main manifestations of legal consciousness:

- it is an independent form of social consciousness reflecting the legal existence of society;
- it represents a set of legal ideas, theories, emotions, impressions, feelings and legal guidance;
- it is created on the basis of assessments of existing law and its application;
- is shapes perspectives on the development of the legal system, both as a whole and in the context of specific areas of law, legal institutions, norms and legal practice[16].

In order to understand the further part of the publication, it is necessary to reflect on the issue of the forms of legal consciousness.

According to the generally accepted approach, legal consciousness is reflected in legal psychology and legal ideology. I. Farber was the first person to analyse this issue. Farber divided legal consciousness according to this criterion into legal psychology, which is "(…) A set of feelings, beliefs, habits and motives for legally significant volitional actions that reflect various legal phenomena in social consciousness of society"[17] and legal ideology, which he understood

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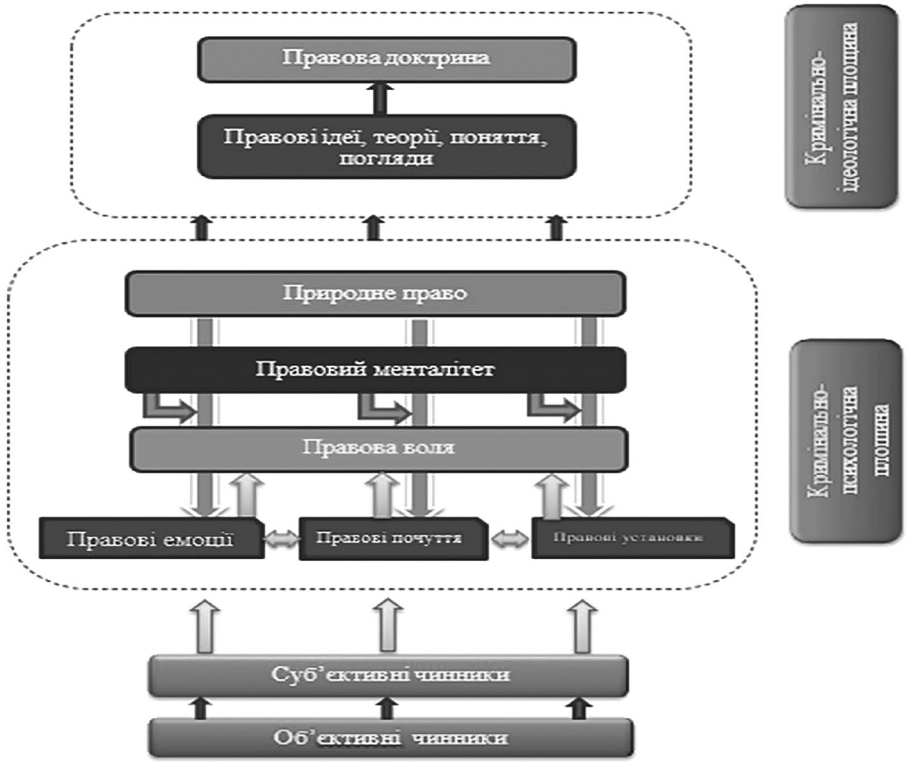
[14] И. Е., Фарбер *Правосознание как форма общественного сознания.* Юридическая литература. М., 1963.

[15] Правосвідомість. *Велика українська юридична енциклопедія* : у 20 т. Х. : Право, 2016. Т. 3 : Загальна теорія права / редкол. : О. В. Петришин (голова) та ін. ; Нац. акад. прав. наук України ; Ін-т держави і права імені В. М. Корецького НАН України ; Нац. юрид. ун-т імені Ярослава Мудрого. 2017. С. 593.

[16] *Ідеологія кримінально-правової політики* : монографія / Павло Львович Фріс. Івано-Франківськ : Супрун В. П. 2021. С. 21: https://ivpz.kh.ua/wp-content/uploads/2021/ (dostęp z dnia: 21 lipca 2023 r.)

[17] І. Ю. Фарбер, *Правосознание как форма общественного сознания.* Юридическая литература. М., 1963 С. 70.

as the cognitive side or (…) A system of legal ideas reflecting the interests and needs of the group"[18]. In general, legal consciousness can be depicted diagrammatically in the following way.



Ryc. 1 General legal awareness

Legal psychology is "An expression of one's mental attitude towards the law and legal institutions and includes elements such as (a) the public interest; (b) the motives of certain social groups resulting from their place in society; (c) psychological structure defined as a set of habits, traditions and beliefs; (d) legal concepts that have developed under the influence of one's mental composition; (e) feelings and emotions associated with the law; (f) the ways in which moods, feelings and emotions are formed"[19].

[18] Ibidem., C. 96.

[19] *Теория государства и права* : учебник / под ред. С. А. Комарова, А. В. Малько. М. : НОРМА-Инфра, 2003. С. 295.

The factors for the development of legal psychology are diverse – the political, economic, cultural, religious life of society, the process of creating and enforcing the law, information resources and the entire social life of society.

Legal psychology, as a holistic concept, is important for legal policy as the latter must address those legal feelings, emotions and moods that are formed in society in a sensible way. Legal policy should constantly "monitor" them in order to be able to provide an immediate response to any changes through appropriate legislative activity. Nowadays, these changes are taking effect very actively and quickly, due to the rapid development of IT, which exerts an unprecedented impact on the psyche of each individual, shaping relevant concepts, emotions and attitudes. "This is particularly the case in the field of legal regulations and legal protection. Present-day society perfectly understands the role and importance of the law in everyday life, and the influence exerted on society another always begins with the formation of relevant psychological feelings, emotions, etc., which formulate the requirements for legal regulations and protection. It is also worth noting that the interaction of legal psychology and news agencies is a two-way communication process, in which each party influences the other – mass media develop legal psychology and legal psychology influences mass media"[20].

A sufficiently strong influence on the processes of the formation of legal psychology is exerted by the scientific research of lawyers, which reflects the theoretical legal psychology of this social group. It should be noted that the standpoints of legal scholars have become more accessible due to the development of IT and now they influence society and the individual in a more active way. These standpoints used to be of interest only to specialists due to the limited number of copies, the limited ways of disseminating established standpoints, emotions and attitudes in information networks. They used to be somewhat of a product to be consumed only by the fellow lawyers, but nowadays they have become common knowledge. Theoretical legal psychology develops as a fusion of theoretical views, standpoints, emotions and attitudes, which occurs under the influence of the theoretical search of relevant legal specialists, as well as under the influence of everyday life, since all scholars are members of society and they are the objects of the influence of external processes that take place in society.

The reflection and shaping of legal psychology takes place through the development of legal ideology. Surely it cannot be concluded that they reflect legal psychology of the entire society, as it is essentially impossible. In the best case scenario, legal psychology and legal ideology of the majority of society are reflected in legal

[20] П. Л. Фріс, Цит. праця. *Ідеологія кримінально-правової політики* С. 38

norms. They are usually reflected in the part of society that is in charge. History has proven this time and again. Legal norms should reflect the most prevalent legal perceptions, emotions, ideas and thoughts, but this is not always the case. In this respect, it is very important to quickly identify the requirements placed upon the law and its application in order to recognise and eliminate the "scissors" that develop between the "base" – legal consciousness – and the "upward extension" – legal norms.

Legal psychology and legal ideology are also shaped and manifested by the practical actions of individual people. Most actions performed by people are reflected in the minds of other members of society who observe them. This is reinforced in their consciousness and directly or indirectly affects their own feelings, emotions, judgements, etc. Another component part of legal consciousness is legal ideology,[21] representing the interests of large social groups, formulated in the form of ideas, opinions, etc., in which a conceptual attitude towards public and national life is reproduced.

Ideology, as a system of conceptually formulated views and ideas, plays a major role in the everyday life of each society, as it sets the main directions of its development. Legal ideology is equally important as it constitutes the foundation for the development of a legal mechanism for the evolution of society. Legal ideology is the cornerstone of legal consciousness, the basis for shaping the norms within the legal system.

Criminal law, which is the basis for combating crime and defining the features of criminal offences, is grounded in the relevant ideological platform prevalent in a given society – the criminal law ideology. It is based on an assessment of a specific human behaviour from the perspective of its harmfulness to society. The understanding of this ‚indicator' has changed throughout the ages, transforming with whoever made such an assessment. Criminal law ideology was at the root of it and still prevails at a certain stage of human development or in a certain society. It is, in general terms, a system of conceptualised views and ideas expressing the interests of various strata of society, social groups, in which the attitude to criminal law, the practice of its implementation is realised and evaluated, which sanction the prevailing approaches to the construction of criminal law prohibitions in society (conservative criminal law ideology), or justify the need to change them (radical, revolutionary criminal law ideologies).

[21] The concept of 'ideology' was first brought to the world of science by the French philosopher and economist Antoine Louis Claude Destutt de Tracy in 1801 in his work *‚Éléments d'idéologie'*.

The underlying purpose of criminal law ideology is to protect society and the individual from the potential harm. It is important to note that in every society, due to the presence of various social groups with different interests, opinions, attitudes, etc., there is room for different criminal law consciousness' and criminal law ideologies. This affects, to some extent, those who collaborated amid Russia's invasion of Ukraine.

Every ideology is based on philosophical, economic, political and other human sciences.

The structure of criminal law ideology includes:

- concepts and understanding of criminal law and criminal law phenomena in society;
- ideas and categories of criminal law to reveal the nature of criminal law, the law of criminal responsibility and the outlook for the development of criminal law;
- theories and studies of criminal law that determine the development of criminal law and legislation on criminal responsibility;
- applicable criminal law doctrine.

The following functions of criminal ideology can be distinguished:

- *informative function*, involving the dissemination of an appropriate body of criminal law knowledge concerning the state of criminal law protection, the scope of criminal responsibility, the principal criminal law institutions, etc.;
- *regulatory function*, which is implemented through legal stances and legal value orientations that incorporate all criminal law ideas and theories constituting the basis of criminal law regulations;
- *predictive modelling function* – it involves the development of appropriate models of criminal law protection, which are generally considered to be socially necessary[22].

Legal consciousness, as a complex phenomenon, can be divided into separate types, which are arranged according to the areas of a given country's legal system. Accordingly, one can distinguish between constitutional consciousness, civil law consciousness, criminal law consciousness, etc. Each of them includes a collection of relevant ideas, views and experiences related to the issue of legal regulations and law enforcement practice in a given area of law.

[22] П. Див. Фріс, *Ідеологія кримінально-правової політики та кримінальне законодавство*. http://lib.pnu.edu.ua:8080/handle/123456789/2456 (dostęp z dnia: 23 lipca 2023 r.)

In this respect, criminal law consciousness is a component part of social legal consciousness, which is a set of legal views, opinions, ideals and concepts. Criminal law consciousness is of a normative nature and includes both knowledge of criminal law phenomena and their evaluation from the perspective of social justice, as well as emerging legal requirements for the improvement of criminal law regulations and legal protection of social relations, benefits, values and interests, and their practical application to reflect the economic and political needs and interests of the social development[23].

Legal consciousness is the basis for the development of a given country's legal policy. Such a statement, however, is way too general. Realistically, national legal policy is a collection of sectoral legal policies[24]. In this context, criminal law policy is understood as a system of theories, beliefs and ideas, based on the national crime enforcement ideology, aimed at understanding and punishing crime, defining approaches to the country's legal response to crime, regulating and protecting social relations, benefits and interests through legal norms and their implementation through the activities of authorised entities[25].

With the concept of criminal law consciousness defined, we can proceed to analyse the processes that influenced the formation and content of criminal law psychology and the criminal law ideology of the persons who committed the acts of collaboration.

The foundations for the formation of the psychological component of criminal law consciousness can be divided into three main groups: ethno-social; socio-political; socio-economic;

Ethno-social factors. As we know, the Russian aggression against Ukraine began in 2014 with the annexation of two regions – parts of the eastern region of Ukraine (Donbas)[26] and Crimea. The obvious question arises: "Why these regions?" It should be noted that they are more or less the same, despite being shaped by different demographic processes that were based on different factors.

Eastern Ukraine. These are ancestral Ukrainian lands that have always belonged to Ukraine, regardless of their official name – "Little Russia", "Ukrainian People's

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23 П. Л. Фріс, Цит. праця «*Ідеологія кримінально-правової політики*», С. 44

24 This publication will not explore the issue of legal policy theory or its structural elements, as these issues are beyond the scope of the paper.

25 П. Л. Фріс, Цит. праця «*Ідеологія кримінально-правової політики*». С. 187

26 It should be noted that Russia's intentions were not restricted to the Donbas region, but involved the entire eastern and southern regions. Russia attempted to create a corridor to the border with Moldova and to cut Ukraine's access the Black Sea, as clearly demonstrated by the active phase of the war that began on 24 March 2022.

Republic", the Ukrainian SSR within the USSR or Ukraine. These lands have been historically inhabited by Ukrainians. However, the turbulent events of the 20th century, starting with the Ukrainian War of Independence, had a significant impact on the demographic characteristics of the region and the entire country. The bloody clash between the Bolsheviks and the supporters of the old regime along with the campaigners for an independent Ukraine, which took place primarily in Left-Bank Ukraine, including in the Donbas region, consumed millions of Ukrainian lives. It caused the first, hitherto slight, flow of migrants from Russia and the other Soviet republics to the Donbas region, which was the main provider of coal for the country. This process was particularly evident during the period of so-called "industrialisation".

The policy of collectivisation was perceived very negatively by the Ukrainian peasantry and provoked numerous acts of resistance, including armed resistance. In response, the totalitarian USSR government organised a deliberate mass starvation in Ukraine, which physically destroyed millions of Ukrainians, especially peasants who were the bearers of Ukrainian national identity. However, such politics had negative implications for the USSR government – a major manufacturer of agricultural products was virtually destroyed. To mitigate the negative implications of the famine, the USSR government organised a mass resettlement of millions of peasants from various regions of the USSR, mainly from the Russian SFSR, to Ukraine. This is reflected in the numbers associated with this process. We will cite but a few numbers that absolutely do not represent the big picture, which is far more dreadful. From mid to late 1933, 109 echelons (trains) with displaced persons from those regions were sent from the Western region of the Russian SFSR to the Dnipropetrovsk region, 80 echelons were sent from the Central Black Sea region of Russia to the Kharkiv region, 44 echelons were sent from the Ivanovo region to the Donetsk region, 61 echelons from the Belarussian SSR and 35 echelons from the Gorkovsky region were sent to the Odessa region. Entire villages and kolkhozes were resettled. This significantly undermined national identity in the most economically developed regions of Ukraine at the time.

Another serious blow to the population, including the population of eastern Ukraine, was linked to the "Great Terror" campaign carried out in the USSR between 1937 and 1939, when millions of people were physically destroyed and sent to the camps erected by the Main Directorate of the People's Commissariat for Internal Affairs (NKVD), which effectively bled the region of its population.

Nazi Germany's invasion of the USSR forced the mass conscription of millions of people into the ranks of the army. The USSR army's contingent in Ukraine

mainly consisted of peasants and the working class. Most of them died on the frontlines, and after the war there was yet another shortage of farmers and miners to rebuild the destroyed mines of the country's main coal mining region. The government once again employed a proven method – resettlement to Ukraine. The echelons once again left the villages of Russia and the Kemerovo region. The Ukrainian identity of eastern Ukraine was yet again impacted, although it wasn't completely destroyed.

In the 1970s and 1980s, due to the demographic crisis and labour shortages (especially in the mines of the Donbas region), the employers started to use convicted felons (conditionally referred to work on farms) and conditionally early released offenders. The Donbas region has once again attracted a large contingent of new arrivals, which was far from optimal in moral and legal terms.

Indeed, the ethnic composition of Ukraine's eastern regions has changed significantly. While a large part of the population considered themselves Ukrainians by virtue of their citizenship, they were mentally oriented towards Russia. Furthermore, many of them still maintained family ties with Russian citizens. This was particularly the case for the urban population. All this constituted the basis for the emergence of a distinctive, minority-oriented subculture in the region.

Crimea. The Crimean Peninsula, conquered by the Russian Empire in the 18th century during the reign of empress Catherine II, was never politically linked to Ukraine until 1954, when Crimea was officially transferred to the Ukrainian SSR, despite being economically linked to it very closely due to its geographical location. Throughout its history, Crimea has been the home of the Crimean Tatars, who in 1944 were subjected to repression and were virtually all deported to remote areas of Kazakhstan and Russia. Germans, Bulgarians, Greeks, Karaites and Jews, who has populated the Crimean Peninsula since time immemorial, were expelled along with the Crimean Tatars. This resulted in a significant decrease of the peninsula's population – 1,630,000 people lived in Crimea on the onset of the Russian Civil War; after the German occupation and repression (133,000 civilians were killed, 65,000 and 85,500 were deported to Germany) and the Stalinist deportation, only 500,000 citizens remained on the peninsula. The situation was critical and the Soviet government employed an already tested scheme – resettlement of peasants from Russia. In 1944 alone, 62,000 peasants arrived from five Russian (Voronezh, Kursk, Orlovsk, Tambov and Rostov) and four Ukrainian (Kyiv, Vinnytsia, Zhytomyr and Podolsk) regions. Demobilised soldiers also arrived in Crimea. They settled in the ruined estates of expelled Tatars. A genuine ethnic cleansing was committed in Crimea – in 1959,

the peninsula's population of 1.2 million was made up of Russians (71%), Ukrainians (22%) and a tiny fraction of Belarusians and Jews[27].

The transfer of the Crimean Peninsula to Ukraine was driven by its dire economic condition. Russia was de facto unable to administer the Crimean economy, which was in a terrible situation. It was much easier for Ukraine to exercise such administration due to its geographical location. Consequently, Ukraine has immediately made a major difference to the economic situation on the peninsula, primarily by supplying it with water via the constructed North Crimean Canal[28].

The fact that Crimea was part of Ukraine after the collapse of the Soviet Union has been noted internationally in a number of corresponding international documents and has never been disputed by anyone.

Socio-political factors. Ethno-social processes have significantly influenced the socio-political developments in the regions in question.

Eastern Ukraine. The demographic situation has significantly affected the voting preferences, legal assessments, opinions and interests of the eastern Ukrainian population. In fact, as of 1991, the politicians and parties oriented towards close cooperation with Russia, both on the economic and socio-cultural level, enjoyed maximum electoral support in the presidential and parliamentary (Verkhovna Rada) elections. Maximum support in legal consciousness was gained for draft bills submitted by MPs representing Russia-oriented political forces, with minimal support for legislative initiatives by MPs elected from other political parties. To provide a retrospective assessment of the 32-year history of independent Ukraine, it must be acknowledged that for a long time the state has been run by representatives of political forces oriented towards cooperation with Russia, both politically and economically. This attitude was clearly demonstrated in the activities of Ukrainian President V. Yanukovych and his ‚Party of Regions', which, following the Revolution of Dignity (2013–2014), changed its name to 'OPFL' (Opposition Platform ‚For Life'), headed by the Kremlin's agents. These forces used the sentiment of the eastern regions' population towards Russia's historical memory (glorification of its contribution to the victory in World War II, recovery of the national economy after World War II, successes in the exploration of space), historical ties between the countries, existence

[27] Крим 1941-2014: від нацистської окупації до російської.: https://prm.ua/krim-1941-2014-vid-natsistskoyi-okupatsiyi-do-rosiyskoyi/#:~:text (dostęp z dnia: 28 lipca 2023 r.) Як Україна відбудовувала Крим після війни і депортації. https://www.istpravda.com.ua/articles/4d61ab91438ae/ (dostęp z dnia: 28 lipca 2023 r.)

[28] The former North Crimean Canal named after the Leninist Communist League of Youth of Ukraine, which was supplied with water from the Kakhovka Reservoir (destroyed in June 2023 by Russian military forces).

and development of economic ties between Ukraine and Russia, and more. Particular attention should be drawn to the shaping of an extremely negative, hostile attitude of the population of these regions towards the heroic struggle of the OUN-UPA (Ukrainian Insurgent Army of the Organisation of Ukrainian Nationalists) for the independence of Ukraine, often with the use of false information and supported by the battle against the introduction of the Ukrainian language as the official language in the country.

Crimea. The population of Crimea (excluding the Crimean Tatars), as evidenced by the processes described above, has always been oriented towards Russia due to the fact that 70% of the population of the peninsula was non-indigenous[29]. The Crimean Peninsula, referred to as the "pearl" of Ukraine (and formerly of the USSR), was an attractive place to live. The legislative practice of the USSR should be mentioned here, according to which the soldiers of the USSR's Armed Forces, after being released from their military obligations, had the right to choose to live in any region of the country, and the local authorities were bound to provide them with housing without undue delay. The Baltic, Crimean and North Caucasus regions stood as the most attractive for this group of citizens.

Given the fact that Crimea was for a long time the deployment base of the USSR Black Sea Fleet, most of the retired officers remained in Crimea. They were joined by the former members of the military personnel who, having retired from other regions of the USSR, chose Crimea as their place of permanent residence. That is why there are no detailed statistics on the number of officers, warrant officers and contract servicemen of this category settled in Crimea[30]. However, there are entire villages where the majority of residents fell into this group. Indeed, a Russian enclave was established in Crimea, made up of hundreds of thousands of former Russian soldiers ("hurrah-patriots of the USSR"), brainwashed by communist ideologists. They never identified as Ukrainians and were completely oriented towards Russia as the successor state of the USSR. Therefore, unlike western and central Ukraine, which for the most part were more oriented towards the West and the political and economic cooperation between the countries while preserving the socio-political status of Ukraine, the political orientation in Crimea was related to the incorporation of the Crimean Peninsula into Russia (at the Ukrainian's expense). These sentiments were continually ‚stirred

[29] К. А. Черенцов, *Крым бандитский*. «Человек и закон». М., ЗАО Изд-во Центрполиграф, 1998. С. 6

[30] Ibidem, C. 9

up' by Russia through various methods, including by shaping the population's legal consciousness.

The conflict around the island of Tuzla in the Kerch Strait (2003), which can be regarded as Russia's combat reconnaissance, was the harbinger of the future events, an attempt to learn more about Ukraine's reaction. 2003 Tuzla Island conflict clearly indicated Moscow's annexation intentions [31].

Moscow's intention to annex Crimea was clearly manifested at an official level for the first time in a speech by the former mayor of Moscow Luzhkov in Sevastopol in 2007 during the celebrations of the opening of Moscow's official representative office in Sevastopol. The speech questioned the status of the Crimean Peninsula as a part of Ukraine. This took place in parallel with the opening of several branches of the leading Moscow universities (about 10 universities in total, including Lomonosov Moscow State University and Moscow Institute of Physics and Technology) in Sevastopol, the expansion of Russian companies' investments in the economy of Sevastopol, which was Russia's main hub in Crimea. Pro-Russian political forces and politicians were particularly popular in both Crimea and eastern Ukraine. This and many other facts provide first-hand confirmation of Russia's deliberate activity in Crimea to shape (and strengthen) the legal preferences, orientations, values and interests of the population towards the annexation of the peninsula and its incorporation into Russia.

In terms of the political component of the shaping of the collaboration-oriented legal consciousness in Crimea, it should be reminded that Sevastopol served as the headquarters of the Russian Black Sea Fleet, which was located there on the basis of "The Agreement between Ukraine and Russia on the Black Sea Fleet in Ukraine" dated 28 May 1997, advocated by pro-Russian political forces[32]. Various sabotage centres operating under the guise of intelligence, counter-intelligence and ideological structures of the Black Sea Fleet, aiming to sever the peninsula from Ukraine, were extremely active among the population.

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[31] It is worth noting that this and subsequent provocations took place shortly after Vladimir Putin rose to power.

[32] The so-called 'Kharkiv Agreements' – agreements between Ukraine and Russia regarding the presence of the Russian Federation's Black Sea Fleet in Ukraine since 21 April 2010 – were signed in Kharkiv. This led to an increase in military equipment and personnel of the aggressor state's armed forces, which were used during the annexation of the Republic of Crimea and Sevastopol in 2014. Many former high-ranking Ukrainian officials were charged by the Security Service of Ukraine for their involvement in the execution, ratification and implementation of these agreements, which constituted a crime under Article 111 of the Criminal Code of Ukraine, i.e. high treason, while former President of Ukraine V. Yanukovych was arrested *in absentia*.

Socio-political reasons include the fact that Ukraine, which is traditionally an Orthodox country, remains divided into three camps – followers of the Russian Orthodox Church (ROC), followers of the Ukrainian Orthodox Church – Kyiv Patriarchate (UOC-KP) and followers of the Greek Catholic Church. While the latter two channel their pastoral activities into advocating Ukraine's independence, its integration with Europe and Ukraine's membership of NATO, the Russian Orthodox Church, which is under the FSB's control, and is in fact the FSB's Ukrainian branch, acts for the benefit of Russia in its quest to advocate the annexation of Ukraine. It is difficult to overestimate the ideological impact of the ROC's activities, including on the process of shaping the psychological component of criminal law consciousness.

Economic factors. Regardless of the detailed analysis of Ukraine's economic relations with Russia, I believe that it is important to note that they have played a very important, if not decisive role. Let us recall that the USSR's economy was founded on the principle of integrating economic ties between the republics, which in many respects were preserved after the dissolution of the USSR. At the same time, the eastern part of Ukraine was the country's most developed region and had close ties with Russian companies. Based on this, citizens developed a belief that Ukraine's economy would suffer a devastating blow and collapse if ties with Russia were severed. At the same time, an attitude of supremacy over all other regions of the country was developed among the eastern population through slogans such as: "Donbass feeds Ukraine!" or "Donbass does not waste money"[33], which caused a division in the legal consciousness of society and shaped a sense of superiority over the western Ukraine.

As regards Crimea, its economic foundation was overwhelmingly dependant on tourism and light industry, which did not play a decisive role in the shaping of this component. Soon after Ukraine declared independence, the Crimean Peninsula saw "Ungrounded from a legal point of view attempts of dividing and redistributing a large and perhaps the most valuable piece of property – holiday and health centres"[34]. Most of them fell into the hands of Russian and Ukrainian businessmen.

It is appropriate to mention the formation of the psychological component of criminal law consciousness that determines a person's collaborative attitude,

[33] The word is a figure of speech. Literally, it can be translated that Donbas does not chase empty coal wagons, but in another sense it can be interpreted that all the region's inhabitants are champions of their cause, highly skilled and their words mean a lot.

[34] К. А. Черенцов, Цит. праця. *Крым бандитский*. С. 8

taking into account the criminogenic background underlying all the above-mentioned processes.

Criminogenic background. It is somewhat conditional to distinguish this group, but given the known criminogenic phenomena of the 1990s and their consequences, the need to consider them in the overall context of the problem analysis is evident.

The 1990s in the former USSR are often referred to as the "turbulent nineties". It was the time of rampant crime, the main centres of which were located in the most economically developed regions of the country - Kiev, Crimea and the eastern Ukraine. It is where powerful organised criminal groups (OCGs) were formed and started their operation. The said groups, in addition to racketeering, thuggery, personal and other crimes, were actively involved in the processes of privatisation of state assets, redistribution of property through raids, gang attacks, murders and so on. These groups often operated under the control of, or in close cooperation with, similar groups from Russia. Often Russian OCGs ("Solntsevskaya", "Dolgoprudnenskaya", "Izmailovskaya" and others[35]) organised "incursions" on Ukrainian territory and operate independently. The activities of the OCGs were generally conducted under the control of the senior gang members, the absolute majority of whom originated from Russia and obviously acted in line with the interests of Russia. The close ties of the Ukrainian and Russian OCGs was particularly evident in Crimea through the activities of the two main OCGs, "Bashmaki" and "Seylem". Many of the current political leaders of Crimea have been associated with these formations. Organised criminal groups, with hundreds and thousands of members, had a profound effect on the psyche of the population, and, being politically oriented towards Russia, promoted these beliefs among the population.

A number of high-profile crimes of those years were linked to the operations of the OCGs. The activities of the OCGs in Ukraine and Russia were in many instances closely linked through various economic schemes that generated enormous revenues. In the early 2000s, Ukraine's crime enforcement authorities managed to stem the crime wave. However, a group of former leaders of these formations (who managed to evade criminal responsibility or survived gang-related violence) had already formed by then, converting their acquired wealth into legitimate business and rising to a correspondingly elevated position in the social hierarchy, becoming owners of large, often strategic, enterprises. It must be reminded that the USSR's economy was created under the scheme

[35] Names of powerful criminal organisations operating in Russia in the 1990s.

of economic separation of production and economic cooperation, when the manufacture of end products was contingent on the activities of a number of enterprises located in the various SSR's. Ukrainian enterprises (especially in the military industry) occupied one of the key positions in these chains. This, among other things, has resulted in the existence of formidable pro-Russian interests among a large part of the political elites in eastern Ukraine and Crimea, which exerted a significant influence on the formation of the psychological component of criminal law consciousness and legal collaborative orientation.

It is also worth noting that the activities of OCGs have always been a concern of the Russian Federation's security services. In many instances, the activities of OCGs were controlled (or perhaps even managed) by the security services. By utilising the availability of the above-mentioned schemes, the authorities of Russia's Federal Security Service were well aware of the state of organised crime in Ukraine and its key figures. As plans to invade Ukraine unfolded (the first steps were taken in this direction as early as the mid-1990s), these groups and their leaders began to attract particular attention. Some of them became agents answering directly to the Federal Security Service, while others became agents of influence. These people have actively promoted the image of Russia as a country able to provide a high standard of living, a country that is the only sanctuary of peace on the planet, the bearer of the historical memory of victory in World War II, the defender of the Russian people's historical identity and supremacy over other nations.

Much has already been written and will be written in the future about the role of the Federal Security Service (FSB) and the Main Intelligence Directorate (commonly known by its previous abbreviation GRU). Now we just want to point out that the consequences of these individuals' and their agents' actions in Ukraine have not been fully mitigated to this day. An extensive intelligence network was indeed established in Ukraine to promote a positive image of Russia, to juxtapose it against the created negative image of Ukraine, to call for close cooperation with Russia, to change the country's vector of development from west to east and to create an image of Russia as the main and only defender of Russians and all Russian speakers. In fact, both President V. Yanukovych and the Head of the Presidential Administration V. Medvedchuk, were Russian agents. Citizens of the Russian Federation were in charge of the Ministry of Defence of Ukraine, the Security Council of Ukraine and other structures. These activities consumed billions of American dollars. And despite the fact that a considerable chunk of these funds were simply embezzled, some were used as intended and served their purpose!

The impact on the legal psychology of criminal law consciousness was intensified after the occupation of parts of the Luhansk and Donetsk regions and Crimea in 2014. The Russian Federation began active campaign activities in these areas, aimed at reviving the socio-legal relations and legal regulations that existed under the USSR, which corresponded to the legal concepts, values and attitudes of a large part of these regions' population. Various ideological and political, legal and cultural and agitation measures were applied. It is important to note one of the measures that introduced an expedited procedure to obtain the Russian Federation's passports in these regions. Yet it cannot be concluded that the characteristics of the unrecognised so-called Donetsk People's Republic (DPR), Luhansk People's Republic (LPR) and Crimea are equal. Their distinctive feature was their own subculture creating during the Soviet era and developed between 1991 and 2014, which is characterised, among other things, by its superiority over other parts of Ukraine (especially western Ukraine), over their culture, history and historical figures. The issue of language has become particularly sensitive - they were reluctant to use Ukrainian language, which is the only language recognised by the Constitution of Ukraine, even at the official level. By contrast, the Crimea simply saw a revival of Soviet criminal legal consciousness, as this legal consciousness has always been dominant and, as mentioned above, it remained unchanged in relation to the population's socio-political peculiarities.

These and other processes became the basis for the expansion of the psychology and ideology of collaboration, the formation of the relevant legal interests, values and attitudes that underlie the criminal legal consciousness of the collaborators, the main features of which are related to:

- hatred or rejection of the legitimate government in the country;
- love for the aggressor state, recognition of its supremacy over Ukraine;
- the matters of nationality - a demeaning attitude or hatred towards the people of Ukraine;
- describing the Ukrainian nation as a "younger brother" of the Russian nation, denying its right of self-determination and the right to choose its own national identity;
- failure to accept Ukraine's pro-Western direction of development;
- denying the independence (and generally the existence) of the Orthodox Church of Ukraine and the Ukrainian Greek Catholic Church.

These are the main features that determine the psychological component of the criminal law consciousness of collaborators. This psychology has become

the foundation on which the criminal law ideology of collaborators is shaped – an ideology that justifies and excuses their actions.

The ideology of the so-called "Russkiy Mir" (the "Russian world") became the basis of the ideological component of the criminal consciousness of collaborators. It is rooted in the philosophical views of "Moscow - the third Rome", which originated in the 18th century and has already justified the expansionary and aggressive foreign policy of the Russian Empire. In the future, these views (with some interpretations) have been further developed in the ideological platform of so-called "grassroots workers"[36] – M. Danylevsky's concept of cultural-historical types, Russian messianism and imperial chauvinism, as well as the ideological concepts of the Soviet era concerning the ‚politics of memory', the creation of a new historical community – the Soviet nation, in which the Russian nation was assigned a leading role.

The concept of the "Russian world", in the modern sense of the term, was developed in the mid-1990s. As we understand it today, the concept of the "Russian world" emerged in the mid-1990s as a reaction of certain social groups in Russian society to the dissolution of the Soviet Union, the loss of Russia's international influence and the deep internal political and economic crisis in Russian society. It found its basic justification in the intellectual environment focused around the famous economist and philosopher S. Chernyshov and the publicist G. Pavlovsky. The basic idea behind this philosophical doctrine was formulated by S. Gefter in his article "The World of Worlds: Russian Beginnings"[37] published in the 'Others' collection (1994). The term "Russian world" was used for the first time in the afterword to the article prepared by G. Pavlovsky. The author believes that Russia should evolve into a complex civilised country on its quest to become one of the worlds among other worlds. Further development of the concept is linked to the activities of the ‚Russian Institute', established in 1996, but it received its final touch in ‚The Russian World' article, which was prepared by philosopher

[36] Grassroots workers — the literary course and direction of social and philosophical thought in Russia in 1860s. This worldview is based on the ideas and concepts of the so-called ‚young editorial board' of the 'Moscovian' journal (1850–1856), directed by Apollon Grigoriew. The proponents of this concept are referred to as grassroots workers (fundamentalists). V. Zakharov, who was a literary critic, points out that the term ‚grassroots workers' is pretty modern - Dostoevsky and his like-minded followers did not call themselves grassroots workers, but voiced the same opinions. URL: https://ru.wikipedia.org/wiki/%D0%9F%D0%BE%D1%87%D0%B2%D0%B5%D0%BD%D0%BD%D0%B8%D1%87%D0%B5%D1%81%D1%82%D0%B2%D0%BE (dostęp: 1 sierpnia 2023 r.)

[37] С. М. Гефтер *Мир Миров – российский зачин*: https://flibusta.org.ua/b/18603 (dostęp: 1 sierpnia 2023 r.)

P. Shchedrovytsky and political strategist J. Ostrovsky in 2002. In the article, the concept of the "Russian world" is defined as "(…) a network of large and small communities that think and speak Russian"[38].

The concept of the ‚Russian world' (‚RW') has become Russia's state ideology ever since it was embraced as the underlying basis of V. Putin's programme during the 2006 election campaign. V. Putin has defined the ‚Russian world' in his political programme as Russia's universal basis. In a speech he delivered in November 2006, V. Putin specifically noted that "The Russian world can and should unite all those who value the Russian language and Russian culture, regardless of where they live, in Russia or beyond its borders, and regardless of their ethnicity". Therefore, starting from 2007, this approach of the Russian leadership has made the concept of a ‚Russian world' the main ideological foundation of the Russian totalitarian regime. All the mass media and the "fighters of the ideological front" began to actively use this concept to indoctrinate society. It should be noted in the context of the issue in question that its vector was not only "inward", but also "outward". At that point it became an instrument of Russia's preparations for aggression against the post-Soviet states. Russian ethnic groups in the young independent states, as well as representatives of relevant communities whose interests, for whatever reason, cantered around Russia, became the main objects of influence. The main goal of Putin's regime was to rebuild the USSR, the collapse of which, according to the dictator from Moscow, was the greatest geopolitical catastrophe of the 20th century. In Ukraine, eastern Ukraine and Crimea have become the primary objects of this ideological influence based on the ethno-political and economic characteristics of these regions, as mentioned above. It is also important to note that special attention was paid to Ukraine and that it was given a unique place in the process of the USSR's reconstruction. It was based on an argument that has been pursued throughout Russian history in its internal politics and which was formulated in a coherent form by one of the Bolshevik leaders, L. Trotsky – "Without Ukraine there is no Russia. Without Ukrainian coal, iron, ore, bread, salt, the Black Sea, Russia cannot exist: it will suffocate, and the Soviet government along with it"[39].

V. Lenin, in turn, commented: "To lose Ukraine is to lose the head!". But J. Stalin, who considered the complete destruction of the Ukrainian people, was

[38] П. Щедровицкий. *Русский мир и транснациональное русское*. Библиотека культурной политики, управления и предпринимательства. АТШ, 1999 URL: https://shchedrovitskiy.com/russkiy-mir/ (dostęp z dnia: 1 sierpnia 2023 r.)

[39] https://ru.citaty.net/tsitaty/477895-lev-davidovich-trotskii-bez-ukrainy-net-rossii-bez-ukrainskogo-uglia-zhele/ (dostęp z dnia: 1 sierpnia 2023 r.)

even more tough-minded. Namely, he signed the order stating: "The Ukrainian nation should not exist"[40].

The concept of the "Russian world" is also associated with an attempt to justify the special status of a Russian national – in the "Russian world", such a person belongs to the superior race. In 2012, the former Russian Minister of Culture, V. Medinsky, in an interview with the San Francisco's "Russian Newspaper", stated that Russians "have an extra chromosome" that distinguishes them from all the nations and peoples of the world. "I believe that after all the calamities that befell Russia in the 20th century, from World War I to the Perestroika (Russian: restructuring), the fact that Russia has survived and thrived proves that our nation has an extra chromosome" – said V. Medinsky in the interview, which has gained wide publicity.

In practice, this should be viewed as an attempt to reinstate the well-known theories underlying the ideological concepts of the Third Reich, which justified the uniqueness of the Aryan race and its superior position among the other nations of the world. The prominent Ukrainian politician M. Tomenko, when characterising this statement, noted: "(…) This is utter madness. It is not only a war crime, but rather a new and negative phenomenon, which we can refer to as "rashism"[41]. A mixture of misanthropic ideologies blended with a belief in ‚uniqueness' of the Russian nation - all this gave rise to the phenomenon of "rashism".

On 2 May 2023, the Verkhovna Rada of Ukraine adopted a draft bill "On the application of the ideology of rashism by the political regime of the Russian Federation, condemnation of the principles and practices of rashism as totalitarian and misanthropic"[42]. According to this law, manifestations of rashism include militarism, personality cult and sacralisation of state institutions, elevation of the Russian Federation through brutal oppression and/or denial of the other nations' rights to exist, imposition of Russian language and culture on other nations, promotion of the idea of a "Russian world", as well as methodical violation

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[40] Ukrainian hackers have recently broken into the secret archive of the Russian FSB's Stalinist section, where they discovered this and other documents. URL: https://t.me/+xantqqx8f_tkNGRk (dostęp: 1 sierpnia 2023 r.)

[41] This is a newly-coined term in the Ukrainian language, coming from the word ‚fascism' combined with the name of the invader country in English – Russia. It denotes fascist sentiment among modern Russians (not to be confused with racism) – translator's note.

[42] Проект Постанови «Про Заяву Верховної Ради України «Про використання політичним режимом російської федерації ідеології рашизму, засудження засад і практик рашизму як тоталітарних і людиноненависницьких», (реєстр. №9101). URL: https://www.rada.gov.ua/news/razom/236006.html. (dostęp: 11 sierpnia 2023 r.)

of the norms and principles of international law, the sovereignty of other states, their territorial integrity, internationally recognised borders and more.

The Russian Orthodox Church and its head Patriarch Kirill occupy a special place in the promotion of the ‚Russian world' ideology. It stems from historical and ethno-social processes, some of which have been analysed above, while others are characterised below.

Ukraine adopted Christianity in 988 and effectively became its source in Eastern Europe. The Grand Duchy of Moscow (that was the name of the Russian state in early 18th century) adopted Orthodox Christianity from Ukraine. After the Pereiaslav Council, the liquidation of the Metropolis of Kyiv was immediately set in motion. The authorities in Moscow clearly understood the importance of the Orthodox Church for Ukrainians and assigned absolute precedence to the resolution of this issue. This led to Dionysius IV of Constantinople issuing a synodal letter in 1686, which gave Moscow the right to ordain the Metropolitan of Kiev. Eventually, the Metropolis of Kiev became one of the Moscow Patriarchate's dioceses in 1722, when Peter I appointed Varlaam as the new archbishop.

Meanwhile, the Ruthenian Uniate Church, established in 1596 by some hierarchs on the basis of the Union of Brest and under the auspices of the pope, was operating in Ukraine. The Moscow Patriarchate waged a perpetual war with this church and eventually it was completely abolished across the Russian Empire in 1839 by virtue of the Polotsk Council's decision. In 1875, the last parishes of the Diocese of Chelm were forced to join the Orthodox Church. From then on, the Moscow Patriarchate began to completely dominate the areas of Ukraine that once formed the Russian Empire. In western Ukraine, which at that time was initially a part of Poland, and later a part of the Austro-Hungarian Empire, there was the United Greek Catholic Church, a successor to the Ruthenian Uniate Church. After World War II and the western Ukraine's final accession to the Ukrainian SSR, the Soviet authorities decided to abolish the Greek Catholic Church. To this end, the USSR's state security authorities held a church council in Lviv in March 1946, to which some of the Greek Catholic Church's clergy were escorted. The council's quorum was complemented by representatives of the Moscow Patriarchate's clergy. This 'church council' decided on the abolition of the Greek Catholic Church. From that moment on, the entire territory of Ukraine fell under the Moscow Patriarchate's ideological influence. The Greek Catholic Church went underground and thousands of its clergy were subjected to repression.

The Soviet authorities made it virtually impossible for any denomination other than the Orthodox Church of the Moscow Patriarchate to operate in Ukraine

and used it to exert ideological influence on the population. Representatives of other churches were persecuted, as these churches were considered "cults", and their activities were described as criminal.

Putin's Russia has followed the same path. It was Putin's Russia that began to actively promote and instil the concept of a "Russian world" in the minds of parishioners. The absolute majority of the clergy were either agents of Russia's FSB or simply followed the orders of their superiors, who all hailed from Russian intelligence services. This is confirmed by the numerous instances of Ukrainian Security Service's detection of anti-state activities performed by the clergy of the Ukrainian Orthodox Church of the Moscow Patriarchate, which ranged from agitation, espionage and financing of anti-state activities to creating caches of weapons and financing of terrorism.

The head of the Russian Orthodox Church, Patriarch Kirill (Vladimir Mikhailovich Gundiaev), who is notorious for being a long-time employee of the USSR's Committee for State Security (and later of the FSB), operating under the alias "Mikhailov", plays a special role in promoting the idea of a "Russian world". Back in 1994, when he was not yet the head of the Russian Orthodox Church, but rather the Department for External Church Relations of the Moscow Patriarchate (DECR) (until August 2000: Department for External Church Relations), he was appointed as a host of the weekly TV programme "The Shepherd's Word" aired on the Channel One Russia. This programme, which was broadcast on Sundays during prime time, became a powerful tool for influencing the believers' consciousness by introducing the ideology of the uniqueness and supremacy of the Russian nation, its special role in the historical development of the entire society, the need to unite all Russian nationals under the Russian leadership, regardless of their place of residence. It also developed a sense of dissatisfaction with the activities of the governments of the young nation states established on the ruins of the USSR (most notably the Baltic states and Ukraine) and criticised the other denominations. Even after the notorious events surrounding the granting of a *tomos* to the Ukrainian Orthodox Church, the influence of the Ukrainian Orthodox Church of the Moscow Patriarchate diminished, but did not disappear completely. It was particularly strong in the eastern and southern regions of Ukraine (the part of the country exhibiting the most acts of collaboration).

A special place in the shaping of the ideological component of the criminal consciousness of collaborators was occupied by the Russian means of mass propaganda, most notably the Ostankino TV Tower, with its poisonous messaging related to the "Russian world". The patterns of population distribution in eastern Ukraine and Crimea were analysed above. The population was

targeted for ideological influence through the mass media. Russian television programmes became packed with programmes about the special role of Russia in the victory over Nazi Germany, the post-war revival of the national economy, victories in space exploration, and such like, which allowed the Putin's regime to shape feelings and attitudes in the minds of citizens, which were placed in the concept matrix of the "Russian world". This has been further bolstered by thematic TV programmes such as "I serve Russia", "Tank Biathlon" and other various programmes aimed at shaping a particular image of the Russian army as the world's second army and the protector of the "Russian world". Dozens of TV series, such as "Sea Devils" and "Dikiy", were designed to shape a positive image of special forces units and law enforcement agencies.

A special position in influencing legal consciousness was occupied by the specialised political programmes of the Russian Television (RT). The RT enjoyed an incredibly large audience in Ukraine.

The propaganda of the "Russian world", which permeated all of RT's analytical broadcasts, targeted audiences in eastern and southern Ukraine and Crimea. Nearly all news programmes promoted these ideas in one way of another, and Ukrainian politicians were criticised from the perspective of the "Russian world". RT's analytical political broadcasts were entirely devoted to the "Russian world" propaganda. The state-controlled *Russia Today* TV outlet, established in 2005, was designed to communicate the ideology of the "Russian world" to viewers around the world. It includes the main English-language news *channel RT International, RT Arabic, RT Español, RT France, RT DE*, as well as the English-language documentary channel *RT Documentary* and Russian-language channel *RT Doc*[43]. The repulsive political commentators, such as V. Solovyov, M. Simonian, V. Skobieeva, and many other TV agitators have made a name for themselves using the 'Russian world' propaganda. Billions of dollars, mostly state budget funds, were spent each year to fund these programmes. Although, to be fair, these activities have produced the intended effect, they have significantly influenced the consciousness of significant parts of the Ukrainian population. They have also contributed to the shaping of the criminal legal consciousness of the analysed region's population.

Russia has used all the resources at its disposal to establish a network of spies in Ukraine. According to the RUSI institute's findings, "In order to establish divisions of Russian intelligence networks in Ukraine, the FSB recruited martial

[43] https://ru.wikipedia.org/wiki/RT (dostęp z dnia: 13 sierpnia 2023 r.)

artists, criminals (especially drug traffickers) and former employees of special services, security companies and detective agencies".

Furthermore, according to the Border Service, there are close ties between Russian officers and trafficking networks in Ukraine. The flow of cash, on the other hand, has been facilitated by the diplomatic missions of Russia's top allies[44].

Sadly, these efforts have been successful. Without having regard to the Russian audience, which is not the subject of this paper, the audience in Ukraine, which was mainly concentrated in the eastern and southern regions and the Crimea, responded favourably to the propaganda. It can be confidently concluded, on the basis of an analysis of various sources, that the relevant investigation units of the Russian Academy of Sciences and the Russia's FSB have been involved in these activities. All this eventually led to the situation where Putin's undercover soldiers were greeted with "Putin, come!" words coming from the population of Donbas and Crimea in 2014.

Clearly, much has changed in the legal consciousness of the relevant part of the regions' population over the past 9 years – the absolute majority of the totalitarian Russian government's promises have proved to be nothing but a lie. The population has experienced a significantly lower quality of life compared to Ukraine, no protection of basic civil rights and freedoms, complete control over all aspects of life, and the omnipotence of law enforcement agencies. This has cooled the enthusiasm of a certain, unfortunately small, part of the population. The absolute majority (particularly in the cities), even if they do not support Russia, still believe that Ukraine's active resistance to Russia's invasion makes things worse, as they are the ones who have to be evacuated from the combat zone and bear the other adverse consequences of war. They are not interested in the fact that Russia is the aggressor and Ukraine is the victim. Many of them still believe Putin's propaganda, which claims that the war was caused by NATO and the United States and that they incited Ukraine to wage this war. All this on top of the ‚Solovyov's garbage massage', Russian TV series and political programmes caused ordinary people with average intelligence to have a clear picture of the unfolding events – the entire world is ready to attack miserable, poor Russia, and Ukraine is its instrument. This was based on patterns developed by watching and listening to the certain TV programmes, especially TV series as the most successful form of propaganda aimed at an ordinary person[45].

[44] https://www.radiosvoboda.org/a/zvit-rusi-merezhi-ahentiv-pidryvna-diyalnist-kremlya-v-ukrayini/32342055.html (dostęp z dnia: 13 sierpnia 2023 r.)

[45] Thus, in the ‚Sea Devils' series, which spanned many seasons, in each episode a group of FSB special navy forces fight agents of the CIA and other NATO countries' intelligence agencies, always defeating their enemies.

Thousands of FSB and Russian Foreign Intelligence Service agents have been working on Ukrainian territory. According to some figures, the FSB has spent approximately USD 5 billion over the past 9 years on sabotage operations against Ukraine[46]. The propaganda-related activities have proven to be quite effective – under its influence, a set of psychological emotions, feelings and attitudes was shaped in a fairly large part of the Ukrainian population, on the basis of which ideological (collaborative) approaches to criminal law assessment were developed.

Most importantly, it affected the attitude towards assessing a particular activity as harmful on a national scale. The vast majority of people prosecuted for the crime of collaboration tried to justify their actions during the preparatory proceedings with difficult life circumstances that forced them to collaborate with the aggressor. However, a close examination of their behaviour prior to the annexation of Crimea in 2014, confirmed their anti-Ukrainian stance and their support for the "Russian world" ideology through specific statements and actions. As the acclaimed journalist O. Nevzorov rightly observed: "It's funny to see provincial poets, discoloured librarians, UR[47] and ONF[48] activists, and ostentatious rural school principals listening to their own malice, upload videos to the internet in ‚support of their own government. They hope for the regime's everlasting protection"[49]. The list of these categories should be extended to include law enforcement officers, judges, employees of municipal services, etc. Meanwhile, we separate those who joined the aggressor's army due to the difficult living conditions they found themselves in, under the pressure of the physical massacres of loved ones, acquaintances, etc., from those who did so deliberately to support the ideals of the "Russian world", for their careers and other selfish motives.

The criminal law consciousness of these persons precludes the recognition of collaborative actions as socially harmful and their criminalisation. They believe that their behaviour is socially beneficial, as they collaborate in the best

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[46] https://dailylviv.com/news/polityka/putin-dv-5-milyardiv-dolariv-na-pyatu-kolonu-v-ukrayini-komu-97592; а також https://www.volynnews.com/news/all/5-mlrd-vytracheno-marno-putin-rozsliduye-rozkradannia-koshtiv-vydilenykh-na-stvorenniakh-piatoyi-kolony-v-ukrayini-zmi-/ (dostęp z dnia: 14 sierpnia 2023 r.)

[47] UR ('United Russia') - a Russian political party that serves as the backbone of the Putin's regime.

[48] The All-Russian People's Front (ONF) or All-Russian public movement People's front 'For Russia', is a political coalition in Russia started in 2011 by then-Prime Minister of Russia Vladimir Putin as a united front of various political actors whose aim was to push Russia forward through joint efforts.

[49] Newzorow. https//t.me\nevzorovtv (dostęp z dnia: 17 sierpnia 2023 r.)

interests of the socially restricted groups of the Ukrainian population who, due to historical circumstances, should live together with Russia in the areas that once belonged to the Russian Empire and the USSR. Their position is based on the absence of the elements of high treason in their actions (Article 111 of the Criminal Code of Ukraine, hereinafter referred to as the 'CC'). They believe that the acts described in Article 111[1] of the CC should be decriminalised.

In conclusion, it should be noted that the criminal law psychology and ideology formed on the basis of criminal law consciousness of those who commit acts of collaboration resulted from a deliberate long-term actions carried out within the framework of a special programme. The programme's ultimate objective was, and still is, the annexation of Ukraine by Russia. One of the elements of this programme was to shape the criminal law consciousness of certain strata of Ukrainian society in order to encourage them to collaborate with the aggressor. It was actually a programme designed to create a "fifth column" in Ukraine amongst supporters of the "Russian world".

BEATA MARIA NOWAK[1] AGNIESZKA NOWOGRODZKA[2]

PSYCHO-PEDAGOGICAL ASPECTS OF COLLABORATION WITH THE ENEMY IN THE CONTEXT OF THE RUSSIAN-UKRAINIAN WAR

Motivations of ukrainian citizens to collaborate with the russian occupier - research communication

The Russian-Ukrainian war which has been continued since 2014, has renewed important discussions on human behaviour in conflict situations and the experience of trauma. One controversial topic that continues to generate debate is

[1] **Beata Maria Nowak,** DSc in Humanities in the discipline of pedagogy, Associate Professor Director of the Institute for the Social Foundations of Penitentiary Science at the Academy of Justice (in 2020-2022, Vice Rector for Scientific Research). Author of four scientific monographs, more than 100 articles in national and international scientific journals and scientific editor of 11 collective monographs. Expert, NIK (Supreme Audit Office) expert in the field of re-adaptation and social reintegration of convicted persons and manager/member of many teams implementing Polish and international scientific and research projects. Current academic and research interests focus on the broadly understood society at risk, the crisis of the modern family, penitentiary science, re-adaptation and social reintegration of former prisoners and their families. In the years 2017-2019, member of the Pedagogical Research Methodology Team and the Education for Safety Team at the Committee of Pedagogical Sciences, Polish Academy of Sciences. In 2012-2013, member of the Scientific Council of the Institute for Interdisciplinary Studies in Brno. Since 2020, member of the Scientific Council of "Štúdie Zo Špeciálnej Pedagogiky" (publisher: Prešovska univerzita v Prešove, Slovakia). Since 2016, member of the editorial board of the scientific journal "Social Pathology and Prevention" and "Ošetřovatelské Perspektivy" (publisher: Slezská Univerzita v Opavě, Czech Republic). In 2010-2014, thematic editor and then (until 2016) member of the editorial board of the semi-annual journal "Rehabilitation in Poland" [Polish name: "Resocjalizacja Polska"]. ORCID: https://orcid.org/0000-0002-9607-4500

[2] **Agnieszka Nowogrodzka**, psychologist, psychotherapist, assistant at the Institute for the Social Foundations of Penitentiary Science, Chair of Penitentiary Management, Academy of Justice. She is a doctoral student at the Poznan University of Medical Sciences. Author of dozens of scientific articles and chapters in scientific monographs. Research interests: personality disorders, psychomotor hyperactivity, change in human behaviour and attitudes as a result of therapeutic, rehabilitation interventions. ORCID: https://orcid.org/0000-0003-0036-4018

the question of collaboration with the enemy, i.e. cooperation with an occupying power or aggressor. The notion of collaboration, which became common in such a context after the Second World War, is now used in conflicts ranging from Iraq to cooperation with the Israeli authorities. The term often carries strong adverse connotations and can be used as a tool for political and social persecution of those suspected of collaborating with the enemy. It is therefore worth undertaking an attempt to understand this phenomenon from a psycho-pedagogical perspective in order to be able to recognise the motivations and causes of individuals' behaviour in difficult situations.

For a long time, the term collaboration had a neutral connotation and meant cooperation. Nowadays, however, as sociologist Jan Tomasz Gross notes[3], the word has taken on a negative connotation, meaning *treason*. Understood in this way, it referred mainly to the behaviour of citizens of countries occupied by the Third Reich. Today, on the other hand, the term *collaboration* is not only used in the context of the Second World War. Some historians also use it to describe any form of cooperation between the conquered population and the occupying power[4]. However, such an interpretation proves insufficient to understand social behaviour under foreign rule. Indeed, in its expression, it refers to any type of activity associated with the occupying forces. On the other hand, it is not sufficient to describe the motivation of the behaviour of individuals or groups, since it does not take into account the external circumstances influencing the taking of an action or, ultimately, does not address the consequences of the acts and actions taken[5].

An excessively broad framing of the phenomenon blurs the term in question and its meaning in the context of war. Indeed, it is worth noting that a variety of human activities that are undertaken with the consent of the occupying power, i.e. charity work, work in state institutions or denunciation, could be labelled in this way. This is why it is so important to study the phenomenon of cooperation with the enemy and particularly the motivation of those who engage in it. It is worth emphasising that there is a fundamental difference between cooperation with an occupier arising from the exercise of one's profession, which serves to sustain the operation of public institutions or to ensure one's own existence

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[3] J.T. Gross, *Polish Society Under German Occupation: The General government, 1939-1944*. Princeton, 1979, pp. 117-120.

[4] G. Hirschfeld, *Fremdherrschaft und Kollaboration: Die Niederlande unter Deutscher Besatzung 1940-1945*, Stuttgart 1984, pp. 7-8.

[5] J.A. Młynarczyk, *Between cooperation and treason. The problem of collaboration in the General Government - an attempt at synthesis*. "Memory and Justice" 2009, 1(14), pp. 103-132.

and activities whose main purpose is solely to achieve one's own benefit, often at the expense of others. Accordingly, in the remaining part of this paper the term *collaboration* will be used to refer to cooperation with the occupying power that clearly violates the interests of the particular state and/or citizens, which puts the person who collaborates with the aggressor/occupier in a negative light, according to the opinion of many fellow citizens. In this sense, the term collaboration will be understood in accordance with the wording proposed by Klaus-Peter Friedrich[6].

Owing to the above explanations, one can better understand the differences and context of the concept of collaboration and its evolution in different historical periods. Nevertheless, this chapter focuses on selected psycho-pedagogical aspects related to collaboration activities in the context of the ongoing Ukrainian-Russian war. The aim of the paper is to explore this complex and controversial issue and to analyse research data obtained from surveys conducted on a group of individuals suspected of committing the crime of collaboration with the enemy and acting against the Ukrainian people during the ongoing armed conflict. It will attempt to address the question of how the difficult external conditions associated with warfare can affect human behaviour and social relations. It should be pointed out that there is little discussion of the phenomenon of collaboration in both psychological and pedagogical literature. In contemporary terms, the concept is primarily referred to cooperation and the benefits of undertaking cooperation both in teams based on the resources of different (competing) companies and the cooperation of groups consolidating various professional specialities. These phenomena, however, do not seem to fit with the conceptualised issue. However, it is interesting to see how they relate to the phenomena of cooperation with an aggressor and the social behaviour revealed under such circumstances.

While approaching the subject of collaboration, it is important to address the experience of Ukraine as a nation, particularly its southern and eastern regions, which have long been inextricably linked to Russia, both culturally and economically. This has had a significant impact on the difficulties of building a Ukrainian national identity. In addition, competition between various oligarchic clans has generated an increased importance of these areas in the country's internal policy. It is also worth noting that their inhabitants often sought to have their cities recognised as centres equivalent to Kiev. This phenomenon illustrates

[6] K.-P. Friedrich, *Kollaboration und Antisemitismus in Polen unter deutscher Besatzung (1939-1944/45). Zu den verdrangten Aspekten eines schwierigen deutsch-polnisch-judischen Verhaltnisses*, "Zeitschrift fur Geschichtswissenschaft" (hereafter: ZfG) 1997, vol. 45, p. 819.

the deep-rooted beliefs in the cultural and historical independence of the two Ukrainian regions, South and East[7].

In view of the foregoing, it seems relevant to refer to social identity theory, developed by Henri Tajfel[8] and John Turner[9], which plays an important role in the analysis of social cohesion. According to this theory, people form their identity based on their membership in various social groups. Social identity is related to an individual's identification with a particular group and affects building of his or her self-esteem. Group membership is perceived from the perspective of intergroup comparisons, which can lead to elevating one's own group above others. This theory assumes that people strive to maintain a positive self-esteem, which is built through identification with the group with which they identify. An important element is the highlighting of the difference between one's own group and foreign groups. In the process of identification, value-burdened attributes and issues of prestige are emphasised, which influences the way members of other groups are (often negatively) perceived[10].

Returning to the substance of the issue under discussion - the social identity theory can be helpful in understanding the complex social and political relations within Ukraine, especially in the context of national identity formation and political changes. Owing to this theory, it is possible to better understand why some social groups in Ukraine identify with Russia, while others seek to build an independent national identity.

The subject of collaboration undertaken in the context of the Ukrainian--Russian war requires an analysis of the impact of external conditions on human behaviour and social relations. War violence can trigger both selfish and empathetic or noble behaviour. Usually, however, it unifies the society and strengthens social bonds, since in such a situation both individuals and social groups can behave in socially expected ways, but also in paradoxically different, negative ways[11].

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7 O. Jastrzębska, *Geo-economic motives of Russia's actions towards Ukraine*. "Ante Portas - Security Studies", 2015, 2(5), 137 - 148.

8 H. Tajfel, J. Turner, *An Integrative Theory of Intergroup Conflict* [in:] M. Jo Hatch &M. Schultz (ed.) *Organizational Identity*, Oxford, 2004, pp. 56-65.

9 Turner J.C., Brown R.J., Tajfel H., *Social comparison and group interest in ingroup favouritism* [in:] "European Journal of Social Psychology" 1979, Vol. 9, 187-204, pp.187-204.

10 E. Białopiotrowicz-Buczko, W. Baryla, *Stereotypes and prejudice in the military-civilian environment of the Polish Navy*, [in:] Colloquium of the Faculty of Humanities and Social Sciences Quarterly 2/2013, 2013, pp. 84-86.

11 A. Czerniak, *Psychosocial paradoxes of violence*. "The state and the society" 2014, XIV(2), pp. 49-64.

An example of the behaviours and bonds indicated above is the relationship between victims and perpetrators of violence. This phenomenon is known as the *Stockholm syndrome* or the *Sambo mentality*. The latter term may even seem more appropriate in relation to the topic described because of the reference (in the original sense of this phraseology association) to the master-slave relationship. Indeed, the slave bond had a clearly marked element of childlike attachment to its owner. In this way, he perceived his master as omnipotent, benevolent. Due to this attachment, he was able to show obedience to him and engage in the tasks (often too extensive for his abilities) assigned by him[12].

As indicated above, victims may develop attachment or gratitude towards their abusers, which is difficult to understand from an observer's perspective[13]. Psychological mechanisms such as regression and identification with the aggressor can partly explain this phenomenon. Victims often become submissive and identify with their aggressors, which allows them to maintain a sense of security. There are also other psychological mechanisms, such as emotional swing, reciprocity norm and cognitive dissonance reduction, which can influence the behaviour of violence victims (due to the complexity of the phenomenon and the limitations of the chapter volume, these will not be described in this paper). However, it is important to pay attention to the bond between victims and perpetrators of violence, which is a relationship rather than a one-sided feeling. In such situations, permanent emotional volatility occurs, as well as lack of sufficient and objective information and the need to ensure security. From this point of view, situations such as crises, difficult conditions, negotiations and the development of bonds between victims and perpetrators can have a significant impact on the development of these relationships. The Stockholm syndrome is not clearly defined as a psychiatric diagnosis. Its background consists of post-traumatic disorders which, in a general assessment, become a substrate for the choice of inadequate or harmful behaviour. Nevertheless, this phenomenon is still an interesting area of research into the psychology of human behaviour in extreme situations such as armed conflict or domestic violence[14].

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[12] E. Gruszecka, *Human beings in the face of harm - behaviour of victims, perpetrators and observers* [in:] E. Martnowicz (ed.), *From a sense of subjectivity to being a victim. Problems of the contemporary world - what can psychology say about them?*, Kraków 2006, pp. 55-83.

[13] A. Grygorchuk, K. Dzierżanowski, T. Kiluk, *Psychological mechanisms occurring in the victim-perpetrator relationship of violence*. "Psychiatry" 2009, 6(2), pp. 61- 65. D. Dolinski, *Hyper-dependence*, [in:] M. Lewicka, J. Grzelak (eds.), *An individual and the society*, Gdańsk 2002, pp. 103-116.

[14] A. Czerniak, *Psychosocial paradoxes of violence*…, op.cit.

The issues raised also require a brief reference to the laws strengthening the Ukrainian system of social resistance to the Russian occupier. At the beginning of 2022, the Act "On Introducing Amendments to Other Legal Acts on the Guaranty of Criminal Liability for Collaborative Activity" came into force, which introduced a new category of crime known as collaborative activity into the Criminal Code of Ukraine. Pursuant to this Act, a sentence of 10 to 15 years' imprisonment is provided for collaboration with the aggressor state, the occupying administration and/or its armed and paramilitary formations, as well as for promoting views justifying the Russian aggression. On the other hand, the second Act "On Determining the Responsibility of Collaborators" refers to the disqualification of collaborators from holding positions in the central and local government and the seizure of their property. Both acts of law are preventive since they inform citizens of the absolute punishment of those who collaborated with the occupying forces, along with their deprivation of the right to participate in political and social life. In addition, their aim is to mobilise the population to assist law enforcement agencies in identifying collaborators or those who support the Russians[15].

Since the beginning of the Donbas war (2014), Ukraine has prosecuted its citizens for supporting Russia, while Ukrainian courts issued approximately 30 sentences per month. Since Russia's full-scale assault on 24 February 2022 more than 70 sentences have already been issued per month. Following the signing of the aforementioned Act by Ukrainian President, Volodymyr Zelensky, the Ukrainian Criminal Code was amended on 3 March 2022 and Article 111 on collaborative activity was introduced, for which the penalties became more severe. Moreover, Ukrainian citizens who collaborate with the enemy are more likely to receive sentences without suspension. Pursuant to Article 111 of the Criminal Code, by mid-November 2022, Ukrainian courts issued 112 sentences. It should be emphasised that bringing collaborators to justice is difficult due to the fact that many of the suspected perpetrators stay in or have already left the Russian-controlled territory[16].

Collaboration as a phenomenon referring to cooperation with the enemy is a complex process and at the same time a mechanism, requiring the description of psychological, sociological, socio-economic, pedagogical or historical conditions. It is a phenomenon that combines many elements and can

[15] https://i.pl/wojna-obronna-ukrainy-drugi-front-walka-ze-zdrajcami-i-kolaborantami/ar/c1-17136183 (access date: 17.09.2023)

[16] https://i.pl/wojna-obronna-ukrainy-drugi-front-walka-ze-zdrajcami-i-kolaborantami/ar/c1-17136183 (access date: 17.09.2023)

arise from a variety of complex motivations. A review of the current literature shows that there is currently no accurate description of the problem identified. Hence, the research communication presented in this chapter is, from a psycho-pedagogical perspective, an attempt to signal the problem of Ukrainian citizens cooperating with the enemy in the situation of the ongoing war between Russia and Ukraine and to identify the motives that drive them to commit this type of crime.

Research strategy

The subject of the presented study is the collaborative behaviour of Ukrainian citizens during the ongoing Russian-Ukrainian war and the occupation of eastern Ukraine by the Russian aggressor. The aim of the broadly designed research project was an attempt to identify the psycho-pedagogical aspects of collaboration with the enemy, including the most common motivation prompting Ukrainian citizens to cooperate with the Russian occupier and the emotions experienced by them upon the outbreak of war and throughout its duration. However, due to the limitations of the volume of this chapter, only the aspect concerning the motivation of the respondents to engage in collaborative action is presented. The paper focuses on two aspects: the identification of the reasons prompting the respondents to collaborate and the way in which the collaboration was initiated (intrinsic *vs* . extrinsic motivation). Data on respondents' indicated reasons for their arrest, legal grounds for prosecution and deprivation of liberty were also analysed. The results of research data analyses covering other aspects of the study will be presented soon in other scientific sources.

The methodological assumptions of the study presented were based on a constructivist model (interpretative paradigm, idiographic approach, qualitative strategy). This model is one of four elements of the classification of research paradigms by Egon Guba and Yvonne Lincoln (positivism, post-positivism, critical theory, constructivism and participation), developed on ontological (realism and relativism), epistemological (objectivity and subjectivity) and methodological assumptions[17]. For the constructivist model adopted, an idiographic approach

[17] M. Cupryjak, *Paradigms in the perspective of social change. Outline of the problem*. "Yearbook of Andragogy" 2016, 23, 251-254.

is typical, focused on understanding individual behaviour and looking for unique and individual characteristics. The interpretative paradigm, on the other hand, exposes the subjective experience of individuals, taking into account a social reality that is changeable and human-created. It should be emphasised that the qualitative strategies associated with the constructivist model, with their idiographic explanatory features, require the researcher to have deep knowledge of the subject. Moreover, caring for preserving the idiomatic approach, the research proceedings should be designed so that they are fit to the identified idiom of the research subject and its contexts[18]. However, qualitative research is an art of improvisation and cannot be subjected to strict methodological formalisation [19].

Taking into account the foregoing, it was decided to use the diagnostic survey method and conduct categorised interviews with persons suspected of collaboration with the enemy or convicted and incarcerated in penal institutions of the Odessa and Mykolaiv regions of Ukraine. In the study, a research tool in the form of interview instructions was used. At the same time, the risks associated with conducting research activities during currently ongoing hostilities were taken into account. The study was carried out by the Department of Execution of Punishments of the Ministry of Justice of Ukraine in May and June 2023 [20].

The presented part of the study attempts to address the research problem formulated in the form of a question: What are the most common motivations of Ukrainian citizens to commit a crime threatened by penalty under Article 111 of the Criminal Code of Ukraine[21]?

A total of 146 inmates in penitentiary units of the Odessa and Mykolaiv regions of Ukraine (including 41 women and 105 men), suspected or convicted of the crime of collaboration with the Russian occupying forces (purposive - random sampling of the research sample), took part in the study. The respondents agreed to participate anonymously in the study and to respond in writing to the questions asked in the research tool - the interview instructions. Due to incomplete data, 5 feedback instructions received were rejected.

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[18] D. Kubinowski (2017). *Qualitative research as idiomatic cognition.* "Qualitative Pedagogical Research" 2017, vol. II, 2, 65-78.

[19] More in: D. Kubinowski, *Qualitative pedagogical research. Philosophy. Methodology. Evaluation*. Ed. UMCS, Lublin 2010.

[20] Our acknowledgements to prof. Pavel Fries, through whom the consent to conduct the study was issued.

[21] Article 111. Collaborative activity: https://zakon.rada.gov.ua/laws/show/2341-14#Text (access date: 7.09.2023). Our acknowledgements to Tomasz Barna for his assistance in translating the text into Polish.

Therefore, the subject of analysis comprised 141 written statements, drawn up according to the model research tool provided by the Polish researchers. The vast majority of the statements of the interviewed collaborators resonated in Ukrainian (85 respondents, i.e. 60.3%). Russian was used by 47 respondents (33.3%). Only 9 persons (6.4%) used Ukrainian and Russian interchangeably.

The most numerous groups of respondents were those included in the 36 to 45 age category (47 persons) and the 46 to 55 age category (42 persons). Young people aged from 20 to 35 accounted for less than one-fifth of the total number of the respondents (of which two people aged 20 were recorded). The group of seniors was the least sizeable: 13 persons aged from 56 to 66 and four persons aged over 66. The oldest person was a 73-year-old respondent. On the other hand, data concerning age was missing for 7 responding convicts.

The distribution of the data on education level was interesting. Well-educated people constituted the vast majority of those suspected or convicted of collaboration with the enemy - the total of 125 people, of whom 64 declared secondary education and 61 - a university degree. There were 11 convicts with a vocational level of education, while only 5 respondents had primary education.

Almost half of the respondents (48.2%) reported having a spouse (44 men and 24 women). Another group included unmarried people: 34 people who have never been in a formal relationship, including 7 women, and 28 divorced people, including 6 women. Widowed people were the least represented (5), including 4 widows and one widower. The question on marital status was not answered by 6 respondents, including 2 women.

More than 72% of those convicted of collaboration declared that they had children (missing data was recorded for 2 persons). They mainly included those with only one child (almost one third of respondents) or two children (one fifth of respondents) and 12 persons with three children.

The largest number of respondents reported the place of birth in Kharkiv (35) and Kherson (34) regions, as well as Odessa (24) and Mykolaiv (14) regions. Four persons reported Russia as their place of birth. Others indicated, among others: the Vinnitsa, Luhansk, Sverdlovsk, Poltava, Khmelnytskyi, Krasnokut region or the Autonomous Republic of Mordovia.

More than half of the respondents identified Russian as their primary language (53.2%). Ukrainian is spoken exclusively by one-fourth of the respondents, while less than one-fifth of the total respondents declared two primary languages, Ukrainian and Russian. Only 6 people admitted that their primary language was

the Odessa dialect (4 people) and the Moldovan language and the Kamchatka dialect (1 person each, respectively).

Respondents were also asked to refer to their national identity. The vast majority of respondents (125 persons) indicated Ukrainian nationality (78.5%), while one-fifth emphasised their affiliation to the Russian nation. Only 2 people declared another nationality - neither Ukrainian nor Russian (Cossack and Gagauz).

Results of the survey

When asked why they were deprived of their liberty and the type of crime they were charged with, respondents were mostly aware of the reasons for their arrest and imprisonment and provided details of the indictment. They cited specific articles of the Criminal Code of Ukraine or described their situation and feelings in the oppressive situation they experienced. This question was not answered by 10 people.

Respondents most often referred to Article 111-1, concerning their collaboration activities for "Public denial by a Ukrainian citizen of the commission of armed aggression against Ukraine, the establishment and recognition of temporary occupation of part of the territory of Ukraine, or public exhortation by a Ukrainian citizen to support the decisions and/or actions of the aggressor state, armed forces and/or occupation administration of the aggressor state, to cooperate with the aggressor state, armed forces and/or occupation administration of the aggressor state, not to recognise the extension of state sovereignty of Ukraine to the temporarily occupied territories of Ukraine (…)". In this part of the quoted article, the term *public* is considered as the dissemination/recalling or expression of open dissent to an unspecified number of people, in particular on the Internet or through the mass media[22] (15 people).

On more than one occasion, inconsistency was noted in the statements of those indicating the reason for arrest under Article 111-1. When asked why they were arrested, they responded by downgrading the seriousness of their crime:

> I posted information about the location of Ukrainian troops on the social network "Odnoklassniki". I did it out of stupidity, I had no bad intentions. I did not know

[22] Article 111-1. Collaborative activity…, op. cit. (Internet source)

the consequences [male, 66 years old, secondary education, divorced, born - no answer, Russian nationality].

I corresponded via Telegram on my phone. I was asked for help [male, 73 years old, vocational education, divorced, born in Odessa region, Ukrainian nationality]

Because of the suspicion of publishing video material on the Telegram channel (…) I do not agree that I have committed the crime I am accused of [male, 51 years old, university education, married, born in Kharkov, nationality].

I was asked for help. I corresponded via Telegram on my phone because I don't want a war [male, 73 years old, vocational education, divorced, born in Odessa region, Berezovskaya district, Zavodivka village, Ukrainian nationality]

It should be noted that Ukrainian citizens who publicly support Russia's aggression against their country usually receive light penalties. In such cases, the most common penalty is a ban on holding public office for an average of 10 years.

Respondents also pointed to Article 111-2 (concerning their complicity in aggression) which reads as follows: "Deliberate actions aimed at providing assistance to the aggressor state (complicity), armed formations and/or occupation administration of the of the aggressor stateby a citizen of Ukraine, a foreigner or a person without citizenship, except for citizens of the aggressor statewith the aim of causing damage to Ukraine by: implementing or supporting the decisions and/or actions of the aggressor state, armed formations and/or occupation administration of the aggressor state; voluntarily collecting, preparing and/or transferring material resources or other assets to representatives of the aggressor state, its armed formations and/or the occupying administration of the aggressor state shall be punishable by imprisonment for a term of ten to twelve years with disqualification from holding specified positions or carrying out specified activities for a period of ten to fifteen years and with or without seizure of property"[23] (12 persons).

Three persons, however, referred to Article 111-7: "Voluntary occupying by a citizen of Ukraine positions in illegal judicial or law enforcement bodies established in the temporarily occupied territory (…) - shall be punishable by deprivation of liberty for a period of twelve to fifteen years with deprivation of the right

[23] Article 111-1. Collaborative activity…, op. cit. (Internet source)

to hold certain positions or carry out certain activities for a period of ten to fifteen years and with or without seizure of property"[24]. One of them stated:

> I worked as a police officer (…) for political reasons [male, aged 43, university education, divorced, born in Kupyansk - Kharkov region, Russian nationality].

Only one person cited Article 111-3, under which they were arrested and convicted. It refers to the practice of "(…) by a citizen of Ukraine of the propaganda in educational institutions, regardless of types and forms of ownership (…), as well as the actions of citizens of Ukraine aimed at the introduction of the educational standards of the aggressor state in educational institutions - shall be punished by community service for up to two years, or by arrest for up to six months, or by deprivation of liberty for up to three years with deprivation of the right to hold certain positions or carry out certain activities for a period of ten to fifteen years"[25]:

> I have been accused because of enactment of the new Act based on which the education process is the cause of hostilities. I educated my children in the occupied territory according to the standards of the occupying state [female, aged 40, university education, married, born in Kherson region, Ukrainian nationality]

Respondents also referred to Article 111-4 which reads as follows: "The transfer of material resources to illegal armed formations or armed formations of the of the aggressor state, established in temporarily occupied territory, and undertaking economic activities in cooperation with the the aggressor state, illegal authorities established on the temporarily occupied territory, including the occupying administration of the aggressor state - shall be punishable by a fine of up to ten thousand of a citizen's untaxed minimum income or by deprivation of liberty for a period of three to five years, with disqualification from holding certain positions or carrying out certain activities for a period of ten to fifteen years and with the seizure of property"[26]. Among others, the respondents explained that:

> There was a raid and seizure of the enterprise/company assets. I only took care of the functioning of the city based on the provisions of the Geneva Convention [female, aged 47, university education, married, born in the southern region, Ukrainian nationality].

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[24] Ibidem.
[25] Article 111-1. Collaborative activity…, op. cit. (Internet source)
[26] Article 111-1. Collaborative activity…, op. cit. (Internet source).

> I was arrested and tried for working for the occupiers during the occupation of Kherson [male, 50 years old, secondary education, divorced, born in Kherson, Ukrainian nationality].

Among the respondents, there were also 11 persons suspected or sentenced to imprisonment under Article 111-5 for "(…) the voluntary assumption by a citizen of Ukraine of a position related to the performance of organisational and orderly or administrative and economic functions in illegal bodies of authorities established in the temporarily occupied territory, including in the occupation administration of the aggressor state, or voluntary election to these bodies, as well as participation in the organisation and holding of illegal elections or referenda in the temporarily occupied territory or public incitement to hold such illegal elections or referenda in the temporarily occupied territory - shall be punishable by imprisonment for a period of five to ten years with deprivation of the right to hold certain positions or exercise certain activities for a period of ten to fifteen years and with or without seizure of property[27]". In most cases, respondents only indicated the quoted article, while some described their actions:

> During the occupation, I worked for the Russian Pension Fund (the equivalent of the Polish ZUS) [male, aged 65, secondary education, single, born in the Nikolaev region, Ukrainian nationality].

> I worked as acting head of the Escort Service Group (convoy) of the Ministry of the Interior in the military administration [male, aged 27, secondary education, divorced, born in Kupiansk - Kharkiv region, Ukrainian nationality].

> I was arrested for organising a referendum … to survive [female, aged 54, secondary education, divorced, born - no answer, nationality - Chuvashka].

14 people arrested for the crime of espionage (Article 114-2[28]) have pleaded guilty to the charge of: "Transmitting or collecting for the purpose of transmitting to a foreign state, a foreign organisation or their representatives information constituting a state secret, if the act is committed by a foreigner or a person without citizenship - punishable by imprisonment for a term of ten to fifteen years with or without seizure of property"[29]. Again, as in the case of the charges under Articles 111-1 and 2, most of the respondents ignored their actions and did not admit guilt:

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27 Ibidem.

28 Article 111-1. Collaborative activity…, op. cit. (Internet source).

29 Ibidem.

> I was deprived of freedom because I recorded on my video camera the movements of the troops of the Armed Forces of Ukraine and I was accused of providing information about the movements of the troops of the Armed Forces of Ukraine with the possibility of detecting their location. Articles 114-2 part 2 of the Criminal Code of Ukraine. I do not consider it a crime, it is a misunderstanding. I was not aware that I was committing a crime, that I would be charged and arrested for video recording [male, 36 years old, secondary education, single, born in Odessa region, Ukrainian nationality]

> I was arrested, imprisoned and charged with spying for Russia. So says the SBU. I corresponded in the chat room … I did not commit a crime, I do not consider myself guilty [female, 26 years old, university education, married, born in Mykolaiv, Ukrainian nationality]

> I am criminally responsible for betraying the motherland - informing the occupying power about the actions of the SBU and the court [male, 46 years old, university education, married, born - "*I was not born in Ukraine*", nationality - no data]

> For providing information on where the Armed Forces of Ukraine are located [male, 46 years old, secondary education, divorced, born - no data, Ukrainian nationality]

There were also prosecutions for crime against peace, security of the society and the international legal order (Chapter 10 of the Criminal Code of Ukraine). Isolation punishment was imposed on 5 respondents, convicted under Article 436 (propaganda of war), which states that a person charged with "Public incitement to aggressive war or to cause a war conflict, as well as the preparation of materials with incitement to commit such acts with a view to their distribution or the distribution of such materials, shall be punishable by remedial work for up to 2 years or arrest for up to 6 months or imprisonment for up to 3 years". Moreover, two persons were convicted of terrorism (Article 258 of the Criminal Code[30]).

A limited number of respondents were convinced that they had lost their freedom as a result of fabrication of evidence and unlawful actions by the court and law enforcement agencies (4 persons). On the other hand, others (especially women) indicated slandering and gossip as the reason for their arrest, accusation of collaboration with the enemy and imprisonment (3 people):

[30] Article 111-1. Collaborative activity…, op. cit. (Internet source).

> Because of the panic of rumours (there are some false witnesses who know something). I was accused of treason. However, I do not understand who or what I have betrayed. I have not committed a crime. I do not consider myself guilty [female, aged 53, secondary education, married, born in Kharkiv region, Ukrainian nationality]

> There are a lot of "good" people in the village. They reported me to the police and criminal proceedings were initiated against me [female, aged 37, primary education, single, born - *southern region*, Ukrainian nationality]

Some respondents did not understand the reasons for their deprivation of liberty and the indictment for the crime of collaboration with the enemy (9 persons) and did not recognise their guilt:

> I myself do not know why I was deprived of my liberty, as I presented direct evidence of my innocence in court. I did not commit a crime and I do not acknowledge my guilt [female, aged 54, vocational education, widow, born in Poltava region, Ukrainian nationality]

> For no reason, since I was helping lonely elderly people so that they wouldn't die. I am not guilty [female, aged 49, secondary education, divorced, born in Kharkiv region, Ukrainian nationality]

> I do not understand why I am suspected of collaboration. [Specific name and surname provided by the respondent] offered me to go to work in the new police force, I refused. I have not committed any crime [male, aged 46, secondary education, married, born in Krasnokutsk region (district), Ukrainian nationality]

> To date, I myself have no idea for what reason I was arrested. I would say that is a mistake! I have not committed anything of what I am accused of! [male, 23 years old, secondary education, married, born in Odessa region, nationality - *I am Gagauz*[31]]

The analysis of the research material also made it possible to distinguish two categories of motivation to cooperate with the enemy, each of which consists of three subcategories.

1. Internal collaboration (uninitiated by third parties)

More than a half of respondents (57) admitted that no one urged them to collaborate. These individuals do not perceive any criminal elements in their actions.

[31] Gagauzia is an autonomous area located in the southern part of Moldova.

The analysis of the research data made it possible to identify a subcategory of motivation uninitiated by third parties.

a) **motivation for ideological or political motives** (identification with the Russian nation)

Persons placing themselves in this sub-category do not feel that they are traitors. They refer to the provisions of Ukrainian and international law indicating that they are victims of hostilities:

> I have the conscience, consciousness and worldview of a Russian and a Soviet man. I betrayed what I had never sworn an oath of allegiance to in the days before the war (Article 111 of the Criminal Code). I was deprived of my liberty unlawfully and illegitimately, which contradicts Article 29 of the Provisionally Established Territorial Unit. I have not committed any crime, as my contacts with a person of unknown identity have not caused any material damage and there are no victims [male, 55 years old, university education, widower, born in the USSR, Russian nationality]

> I had the right to defend my life and to protect the lives of the loved ones and of my family. I acted in accordance with my rights and in accordance with the Geneva Convention. Local self-government bodies failed to fulfil their obligations to protect the population during an international armed conflict [male, aged 43, secondary education, married, Ukrainian, born in the southern part of Ukraine, Ukrainian nationality]

> I reported to the Security Service of Ukraine that the President's behaviour fell under the provisions of Article 111 of the Criminal Code of Ukraine. I independently fulfilled the constitutional duty of a Ukrainian citizen because his actions led to the Ukrainian people being deprived of their fighting capacity [male, university education, single, born in the central part of Ukraine, Ukrainian nationality]

> "I did it for political reasons. I worked as a police officer. I was accused of carelessness in action" [male, aged 43, divorced, born in Kupyansk - Kharkiv region, Russian nationality]

> I acted out of ideological motives and support Russia's actions [male, aged 38, university education, married, born in Kharkiv, Ukrainian nationality]

b) **existential motivation** (lack of work and livelihood)

> I saved my son and family from starvation and death. I am accused because we survived! We did not abandon our homes and land (…) I simply saved the children and the family so that we had something to eat and could survive! [female,

aged 32, vocational education, married, four children, born in Kherson region, identity affiliation - Ukrainian]

I acted of my own free will. I had to help my parents and educate my daughter [female, aged 32, secondary education, married, no place of birth provided, Ukrainian]

Because me, my husband and the children were in a difficult situation, with no money, so I had to go to work. I was deprived of my liberty for participating in the work of the referendum organising committee. I wanted to earn at least some money to buy food and nappies for the children! [female, aged 25, secondary education, married, one child, born in Kherson, Ukrainian nationality].

c) **emotional motivation** (related to impulsive action, under the influence of emotions, not taking into account possible consequences)

I was accused of passing on information about the movements of troops of the Armed Forces of Ukraine with a possibility of detecting their location. I do not consider it a crime, it is a misunderstanding. I was not aware that I was committing a crime, that I would be prosecuted and arrested for video recording. [male, 36 years old, secondary education, married, born in Odessa region, Ukrainian nationality]

I was detained and accused of collaboration because of correspondence with a person who was considered to be a member of my family (…) I was in a state of strong agitation and did not realise what I was doing and how I could be penalised for it [man, aged 30, university education, one child, born in Kharkiv region, Russian nationality]

I was arrested for (…) posting information about the location of troops. I did not know about the consequences (…) it was out of stupidity, I had no bad intentions [male, aged 66, secondary education, divorced, two children, Russian nationality]

I ended up in detention because I was accused of attempted treason. It was a provocation. Please be aware that people claiming to be Russian citizens or soldiers can also trick you on Telegram. They can do this by sending messages, offering money or preaching pro-Russian ideology (…) To create an account on Telegram, you only have to use your SIM card once - either Ukrainian or Russian. Then, in order to exchange text messages from your room at work, all you need is the Internet, Coca-Cola and popcorn [male, aged 39, university education, single, born in Mykolaiv region, Ukrainian nationality]

> I have been accused of treason, since the Ukrainian Nazism has crossed all boundaries, and the reason for the armed conflict is the USA and the entire Satanic West [male, aged 48, secondary education, single, born in the Autonomous Republic of Crimea, Russian nationality].

2. Externally inspired collaboration (by third parties)

On the other hand, 45 respondents admitted that they had been forced to collaborate by others or that cooperation with the occupying forces had been established as a result of external circumstances. Downgrading own guilt and absolving oneself of the deed committed resonate in the statements of those respondents.

a) situational motivation (influence of external circumstances)

> During the occupation, I took part in compiling lists of pensioners who should have received 10,000 Russian roubles each (a one-off allowance). The pensioners themselves asked me to help them. It was also [specific name and surname provided by the respondent] the deputy chairman of the interim administration. This was a manifestation of mercy towards pensioners who were not receiving a pension and had become hostage to the situation they faced. They did not threaten, but they embarrassed me by saying that people believed in me. I worked in the Ukrainian equivalent of the Social Security Institution (Pension Fund) for 33 years and 6 months [female, aged 65, secondary education, widow, one child, born in Kharkiv region (city of Vovchansk), Ukrainian nationality]

> Our medical centre operated during the occupation, since many people needed the help of a dentist, orthodontist and gynaecologist. I was the director of the medical centre, they threatened to close it [woman, aged 67, secondary education, widow, two children, born in Kharkiv region (Kupyansk city), Russian nationality]

> During the occupation, I worked at the City Hall, where I had worked before. The mayor has told us that the administration would be established instead. I was forced to work because I was dependent on my parents who are both pensioners (my father is disabled). I also run a home animal shelter (35 cats and 5 dogs). The Russians said they would take me to the site of the aggregate factory, where their headquarters had been located during the occupation. There was also a prison and an execution house for those who did not want to cooperate [female, aged 46, university education, single, born in the Kharkiv region, Ukrainian nationality]

> I was forced to do so by the occupation authorities and the FSB. I wanted to preserve the lives of my family and the community, the people who, with their families, were trying to survive during this difficult time. I was forced by [specific name and surname provided] to keep the high school. I wanted (…) to prevent the destruction of my educational facility, so that nothing was stolen from there.

I wanted to prevent the destruction of the territory around the school and I wanted to help. I tried to survive during the occupation because my father does not get out of bed. The prosecutor's office tried to tell us that we should call 102 if we were harmed, but the phones were not working and could not be reached. I was accused of not starving to death and of surviving with my entire family. I believe that I am not guilty of anything. I protected our high school for our Ukrainian children (…) The residents wanted to survive rather than die of hunger. The authorities abandoned us, left the city leaving us with no living means [female, age 41, university education, married, childless, born in Kherson, Ukrainian nationality]

I was induced to collaborate by the authorities who ruled the Kherson region for 8 months. Under pressure from the authorities of the aggressor state, I educated my children in the occupied territory according to the standards of the occupying state. They threatened to take my husband away from me and send him where his brother went [woman, aged 40, university education, married, two children, born in the Kherson region, Ukrainian nationality]

b) assurance motivation (protection of children and family)

It was not a specific person, but the life circumstances that occurred over several months under occupation. I feared for my family, I was looking for options on how to survive on my own so that my family and friends would not die. It was reported to the chairman of the occupation administration that my older son was a soldier in the Ukrainian National Guard. The main aim of all my activities during the occupation was trying to ensure that my family survives. In addition, owing to the fact that I could work, there was an opportunity to help the inhabitants of the city [female, aged 43, secondary education, married, three children, born in the Kharkiv region, Ukrainian nationality]

I was arrested for transferring material resources. I was forced to do it by the Russians. I had no choice. My family, my mother or my child were threatened (they said they would kill them or rape them) [woman, aged 31, married, one child, born in Kharkiv region, Ukrainian nationality]

I was pushed into committing the crime by soldiers of the Russian Federation who occupied my city. I was threatened that they would kill my family. I committed a crime to preserve my life and the lives of my children [female, aged 46, university education, married, two children, born in the Kharkiv region, Ukrainian nationality]

I am suspected of taking a position on a voluntary basis. My manager (boss) insisted and I could not remain without material support. I took the position, I wrote an application to take it, I did no harm. I did so because of the difficult life situation my family faced. My wife was ill and I had no means of subsistence at all

[male, aged 57, secondary education, married, childless, born in Kherson region, Ukrainian nationality]

c) avoidance motivation (fear for own life)

Representatives of the police of the Lugansk People's Republic (LRL) threatened to cope with me, arrested me and locked me in detention. They said they would kill [male, aged 54, secondary education, married, born in Kharkiv region, village Lviv Novaya, Ukrainian nationality]

I'm afraid I'll accuse someone innocently, I don't remember, but I was persuaded to understand that I would be taken to the Russian army's firing positions. They came to my house with guns, did a search, took me for interrogation. I had good intentions, I helped people, I listened to people and I did as I was told. It was spiritually exhausting for me [male, aged 35, university education, single, born Kharkiv region, Ukrainian nationality]

[Specific name and surname of person provided by the respondent] threatened me that if I did not cooperate, my life and health would suffer (…) that they would lock me up in the commandant's office, where the management inflicted bodily harm, (…) that they would take me to prison in Crimea or lock me up in the detention centre and beat me [female, aged 32, university education, single, born in Kherson, Ukrainian nationality]

The results of the study presented above are burdened by the subjective assessment by the respondents and the associated attributional distortions that usually appear in atypical situations[32], which include prison isolation and its negative effects, especially physical and psychological enslavement.

The above results of the study should therefore be approached with caution, since the survey was conducted under highly oppressive conditions, conducive to the concealment of some inconvenient facts by the subjects and attempts at manipulation. In such situations, prisoners feel anxious about the actual use of the information obtained by the researcher, use deception techniques and tend to distort the information provided[33].

[32] W. U. Meyer, R., Reisenzein A. Schützwohl, *Toward a Process Analysis of Emotions: The Case of Surprise*. "Motivation and Emotion" 1997, 21(3), 254-274, p. 258.

[33] Kamiński, citing: B.M. Nowak, *(Non-)condemned to exclusion. From pathology to the norm of social behaviour.* Ed. DiG and SWWS, Warsaw 2020.

Summary and conclusions

As the literature review and the research results presented both show, , the motivations of perpetrators of crimes against their own nation are multi-faceted and are underpinned by both historical and political, situational and emotional factors.

Ukraine's contemporary history is complex and reveals Russian influence. As a consequence, some people who are citizens of Ukraine do not feel nationally affiliated to Ukraine, and their motivations for collaborating with the Russian occupier are most often based on political and ideological convictions. On the other hand, people who are nationals of Ukraine collaborate with the Russian aggressor as a result of situational and emotional entanglement.

From a psychological perspective, of particular interest is the internal, evasive and emotional motivation of those engaging in collaborative activities with the enemy. Respondents' explanations referring to the motivations indicated above show how important a person's internal states are in undertaking criminal (collaborative) actions. Indeed, some of the respondents declared that when experiencing emotional states, they did not perceive the distant consequences of their own behaviour - they acted in relation to a given situation. In addition, those suspected of collaborating with the enemy or convicted of the specific crime indicated experiencing strong fear (for themselves and for their family) and negative emotions towards other individuals or groups who persuaded or coerced them to act in the interests of the occupying power. Similar experience of identification with the enemy or other entities are described in the literature as the Stockholm syndrome or the Sambo mentality. Indeed, they show how rational choices can be swayed by internal emotional states.

When referring to intrinsic motivation, it is worth bearing in mind that the research conducted and presented was carried out under conditions of prison isolation, i.e. under repressive conditions that may have forced the respondents to seek explanations for their own criminal behaviour in a way that allowed them to maintain a higher level of self-esteem.

The problem addressed in this chapter is complex and requires further in-depth empirical research aimed at understanding the complexity of human attitudes and behaviour in oppressive, dangerous, often extreme situations.

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APPENDIX

Code of Civic Morality of 1942 [1]

Section I - Crimes of betrayal of the state and nation:

1. Whoever denies his own people.
2. Who actively cooperates with the enemy in his fight against the State and the Polish Nation and its allies.
3. Who turns to the enemy with denunciations against his compatriots.
4. Whoever does not provide necessary shelter or does not provide emergency assistance to a person pursued by the enemy because of his service to the State and the Polish Nation.
5. Who, in order to weaken the defensive spirit of the Polish Nation, undertakes actions that may weaken this spirit.
   It is punishable by death.

Section II - Crimes against belonging to the Polish nation:

1. Who, without irresistible compulsion, serves the enemy.
2. Who, while serving with the enemy, is able to provide assistance or act in the interest of the State and the Polish Nation, but does not undertake such actions.
3. Whoever is obliged to participate in the fight by virtue of his position during the fight against the enemy, remains completely passive.
4. Whoever takes advantage of the enemy's orders and the impunity in their application for his own benefit and to the detriment of the State and the Polish Nation.
5. Whoever, out of negligence, vanity or recklessness, discloses the details of independence work through his conduct, thereby causing damage to the State and the Polish Nation.

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[1] T. Szarota, *Okupowanej Warszawy dzień powszedni*, Warszawa 1988, s. 432–435.

It is punishable by loss of public and civil rights, honorary rights and the right to practice a profession.

Section III - Crimes against civic morality:

1. Whoever maintains intimate acquaintance or love relations with an enemy.
2. Who, without a serious and justified need, ridicules and criticizes the devices, laws and customs of the Polish Nation towards the enemy or in public.
3. Whoever, for financial gain, takes advantage of the forced position of another person and uses violence against him or her by threatening to turn to the enemy or comply with his orders.
4. Who, without irresistible compulsion, takes an active part in theater, theater and film performances and in other events organized by the enemy.
5. Whoever, having appropriate material resources, refuses to help his compatriots who are harmed by the enemy's activities or orders.
6. Who, having sufficient means of subsistence, takes the work of others, who does not feel active national solidarity.
7. Whoever attends a Gaming Casino or other establishments run by the enemy.

The penalty is the inability to hold any social, local government or social positions

7. Who gives in and does not fight the disastrous habit of drinking too much, forgetting about the constant obligation to maintain a decent moral attitude.
8. Who behaves loudly and inappropriately in public places and premises.

It is punishable by social boycott and, in particularly egregious cases, partial confiscation of property.

Section IV - Acts detrimental to the dignity of a citizen

1. Who pretends to be a German to enjoy a passing convenience.
2. Whoever, taking advantage of the special conditions created by the occupation, changes the course of action customarily adopted in Poland.
3. Who expresses satisfaction and praise at any of the enemy's decrees.
4. Who throws away money to please himself, seeing human misery all around.
5. Who attends cinemas and entertainment events whose proceeds go to the enemy.
6. Who does not limit himself to buying and reading newspapers only when necessary.

10 COMMANDMENTS OF CIVIL COMBAT [2]

1. Poland is fighting enemies not only outside the country's borders, but also on its currently occupied lands.
2. Until an armed trial begins, the expression of war on Polish lands is civil combat.
3. Participation in civil combat is the obligation of every Polish citizen.
4. The basic order and obligation is to respect the legitimate Polish authorities in exile and to obey the orders of the Authorizing Factors in the country.
5. The order of civil struggle against the occupier is to boycott his orders and calls, to impede any action within the limits set by the Leadership of Polish Life and an absolute boycott in commercial, cultural and social relations.
6. There is a need for society's solidarity and support for our fellow Poles wherever they are threatened with loss or poverty.
7. The sense of national honor should be maintained at the highest level and one should act in accordance with this honor.
8. In rare cases, Poles' deviations from the rules of conduct that apply to them should be prevented by means of persuasion, admonitions, social boycotts, and finally, recording the wrong facts and forwarding them to the appropriate Polish authorities.
9. Apostates and dissenters must be boycotted as if they were an enemy, and they must be registered as traitors.
10. It is the duty of every Pole to care for saving and preserving Polish in all its forms, i.e. human, cultural and material, as forces needed to win freedom and rebuild the Homeland.

Polish citizens! The degree of compliance with the above rules and orders will be a test of our civic value towards future generations. Remember that in the days of freedom we will all have to give an account of our present position and our actions.

[2] Biuletyn Informacyjny r.4, nr 18 z dn. 7 maja 1942

The monograph is an interesting attempt to present the phenomenon of collaboration in war conditions with the aggressor (occupier) on the basis of Russian aggression against Ukraine. The study is a summary of the interests of scientists from the Academy of Justice in Warsaw and the Educational and Scientific Institute of Law of the Precarpathian National University Vasyl Stefanyk in Ivano-Frankivsk. The author's team included experts in the field of criminal law, criminology, criminal law policy, historians, political scientists, psychologists and educators, which allowed us to look at the problem from different perspectives and analyze it both historically and in the context of today's realities in the aspect of Russia's aggression to Ukraine.

PhD Jacek Pomiankiewicz

The subject matter of the study fits into current research on the functioning of society at the group and individual level in war conditions. The common thematic axis of the monograph is the issue of collaboration with the enemy in war conditions. However, the diversity of the issues discussed is reflected in the fact that the mentioned topics are discussed in three aspects: historical, legal and psychological.

Prof. Iwona Niewiadomska

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