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IMPLEMENTATION OF THE NEW COMPOSITION OF THE CRIMINAL OFFENSE "ASSISTANCE TO THE AGGRESSOR STATE" UNDER THE CONDITIONS OF THE STATE OF MARTIAL

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The article is devoted to the assistance to the aggressor state in the form of intentional actions (implementation or support of decisions and/or actions of the aggressor state, armed formations and/ or occupation administration of the aggressor state with the aim of harming Ukraine; voluntary collection, preparation and/or transfer of material resources or other assets to representatives of the aggressor state, its armed formations and/or the occupying administration of the aggressor state with the aim of harming Ukraine), which reflect the objective side. Thus, the suspicions of the commission of a criminal offense provided for in Article 111-2 of the Criminal Code of Ukraine, identified the following methods of commission: handing over to FSB of Russia any available information on servicemen of the "Azov" regiment, participants in ATO/ OOS hostilities, pro-Ukrainian citizens, law enforcement officers, volunteers, etc.; assistance to the occupiers to load grain for the so-called "export"; discrediting the state authorities of Ukraine; implementation and support of solutions aimed at the illegal integration and operation of the banking system of the Russian Federation in the territory of the region temporarily occupied by the Russian Federation, organizing the inventory of material assets of a higher educational institution and others.

Key words: *assistance to the aggressor state, aggressor state, collaborationism.*

On February 24, 2022, russia carried out open aggression against Ukraine. the russian federation has introduced armed forces into the territory of Ukraine, is using all kinds of weapons on a large scale to destroy the military potential, economic and transit potential, critical infrastructure of Ukraine and the destruction of the state administration system, as well as to intimidate the civilian population.

Instead, our state chose a strategy of "tough measures":

1) tough defense of one's positions at international negotiations in various formats;
2) committing armed resistance to the russian occupying forces;
3) conducting an aggressive and offensive information war.

A special place is given to the provision of military aid and comprehensive support of the international community of Ukraine in matters of resistance to direct russian aggression.

The initial calculation was aimed at a quick victory over Ukraine. There were hopes that there would be no collective reaction of the Western democracies to the kremlin's aggressive actions. However, the brutality of the armed attack against Ukraine left no choice for the states of the Western world, which were forced to recognize this attack as an attack on European and Euro-Atlantic democratic values.

Art. 3 of the Constitution of Ukraine stipulates that the highest social value is a person, his life and health, honor and dignity, inviolability and security. Without a doubt, human security also means ensuring the national security of the state. Recognizing a person and his safety as the highest social value, the state is required to implement measures to protect them. In our opinion, after February 24, 2022, ensuring and implementing human rights and freedoms in the field of national security is currently the most important task of the state.

The victims of the undeclared war were the civilian population, which found itself in the war zone or was subjected to terror in the occupied territories. From the beginning of the war, thousands of civilians were forced to leave their place of residence in order to avoid the consequences of the military conflict.

The war of the russian federation against Ukraine changed the life of the entire country and every person. It is obvious that effective protection against large-scale aggression of the russian federation requires the use of all means, the mobilization of all resources in order to achieve victory over the enemy. Along with the heroic efforts of the soldiers of the Armed Forces of Ukraine and other paramilitary formations of Ukraine to repel the aggression of the russian federation, the provision of humanitarian aid to persons who suffered from this aggression, etc., new types of socially dangerous acts that required criminalization appeared, as well as new forms of manifestation of already known criminal offenses. Thus, cases of evasion of conscripts from mobilization related to illegal crossing of the border, as well as cases of aiding and abetting such actions, have become more frequent; a wide range of collaborative activities was revealed; the facts of the dissemination of information about the movement of the Armed Forces troops, military equipment, etc. were established; facts of abuse of humanitarian and other aid became known; rare cases of damage to the law enforcement interests of Ukraine in repelling armed aggression, etc.

Starting from February 24, 2022, in connection with the invasion of the Armed Forces of the russian federation on the territory of Ukraine, the provisions on changes to the criminal legislation of Ukraine became important. The issue of prompt response to crimes against the foundations of national and public security has become especially relevant. Changes were actively made to the Criminal and Criminal Procedure Codes, which were mainly aimed at speeding up criminal proceedings. The process of making changes during the war was very fast. In particular, the Criminal Code of Ukraine was supplemented with a new article 111-2 "Assistance the aggressor state". Assistance to the aggressor state undermines the national security of Ukraine and poses a direct threat to state sovereignty, territorial integrity, constitutional order and other national interests of Ukraine. Today, the goal of the state is to establish a fair punishment for persons who help the aggressor state, as well as to limit the access of such persons to positions related to the performance of the functions of the state or local self-government.

The prescribed list of intentional actions aimed at helping the aggressor state (assistance), armed formations and/or the occupation administration of the aggressor state, committed by a citizen of Ukraine, a foreigner or a stateless person, with the exception of citizens of the aggressor state, with the aim of harming Ukraine. The law clearly defines the following forms of committing this crime:

1) implementation of decisions or actions of the aggressor state, armed formations or occupation administration of the aggressor state;

2) support for the decisions or actions of the aggressor state, armed formations or occupation administration of the aggressor state;

3) voluntary collection or preparation and transfer of material resources or other assets to representatives of the aggressor state, its armed forces or the occupying administration of the aggressor state [3].

In addition, a feature of the objective side of aiding the aggressor state in practice is the subject's use of a wide variety of methods of committing:

- transfer to russia FSB employees of any available information on servicemen of the Azov Regiment, participants in ATO/OOS combat operations, pro-Ukrainian citizens, law enforcement officers, volunteers;
- help to the occupiers to load grain for the so-called "export";
- discrediting the state authorities of Ukraine.

Mandatory features of each form of crime are:

a) direct intention;

b) the orientation of the subject's actions to help the aggressor state (assistance), armed formations and/or the occupying administration of the aggressor state;

c) the goal is to harm Ukraine;

d) commission of a crime by a person of any nationality (or stateless), with the exception of citizens of the aggressor state.

e) voluntariness of actions of the subject [3].

Assistance to the aggressor state should be distinguished from other types of offenses provided for in Section I of the Special Part of the Criminal Code of Ukraine "Crimes against the foundations of the national security of Ukraine" [3].

There are questions about distinguishing the components of these criminal offenses, about what the evidence should be for confirming or refuting the presence of a component of this or that criminal offense in the actions of a person. According to the position of the Criminal Court of Cassation as part of the Supreme Court, the resolution of the issue of distinguishing collaborative activity and aiding and abetting the aggressor state is complicated by the fact that these criminal offenses have a common object - the foundations of Ukraine's national security. Currently, it is proposed to distinguish between collaborative activities in the form of the transfer of material resources and assistance to the aggressor state (voluntary collection, preparation and/or transfer of material resources or other assets to representatives of the aggressor state, its armed forces and/or the occupying administration of the aggressor state) in view of the fact that , whether material resources are in the possession of a person or not.

In addition, the responsibility for collaborative activities can also rest on legal entities. If it is carried out by the manager or another authorized person of the company on its behalf, such business entity may be subject to criminal law measures, including a fine or liquidation, with or without confiscation of property. In the features of the crime of aiding and abetting, the subject is quite defined: citizens of Ukraine, foreigners or stateless persons, with the exception of citizens of the aggressor state [7].

And if in the context of the relationship with the criminal law norm on collaborative activity it is stated that the same actions can be simultaneously qualified under Art. 111-1 of the Criminal Code, most of which provide for significantly lighter punishments, and according to Art. 111-2 of the Criminal Code, the sanction of which is much stricter, then in the situation with the ratio of punishment for high treason and aiding and abetting the aggressor state, the opposite situation occurs. After all, an act identical in content can be

recognized: and provided for by Art. 111-2 of the Criminal Code by implementing or supporting the decisions of the aggressor state, for which the main punishment is imprisonment for a term of 10 to 12 years; and providing assistance to a foreign state in carrying out subversive activities against Ukraine, the commission of which under martial law entails the appointment of a much more severe punishment in the form of imprisonment for a term of 15 years or life imprisonment [6].

However, since all the signs of these crimes coincide, there is not a competition, but a collision of norms. It must be resolved according to the rules for resolving temporal conflicts. Thus, since both of these laws regulate the same issue, in addition, the crime provided for in Art. 111-2 of the Criminal Code, is less serious, then in accordance with the rules defined in Art. 58 of the Constitution of Ukraine and Art. 5 of the CCU, the law adopted later is applicable, i.e. Art. 111-2 of the Criminal Code [2].

It is worth noting that the continued performance of labor duties by an employee does not constitute a crime or a criminal misdemeanor. The Geneva Convention on the Protection of the Civilian Population in Time of War of 1949, as well as the additional protocols to it, ratified by Ukraine (hereinafter - the Convention), do not contain a general ban on the continued employment of hired workers. Therefore, in the absence of signs of the criminal offenses listed above, the continuation of the citizen's performance of his duties assigned to him by the state of Ukraine, or the performance by ordinary employees of their usual labor duties at the enterprise that is under occupation, will not be considered aiding and abetting [1]. For many of these people, being able to work and earn a living is a matter of survival. However, it is important to avoid anti-Ukrainian public statements, appeals and participation in public events in support of the russian federation and the occupation authorities, acceptance of offers to hold positions in the illegal authorities of the occupiers, and other prohibited actions. It is also important to record the facts of coercion in all possible ways. If, for example, in a certain criminal proceeding, it is proven that a person committed certain actions under the influence of physical or mental coercion, then this is a circumstance that excludes the criminal illegality of the act.

Also, the legislators not only strengthened the responsibility for aiding the aggressor state, but also completed the procedure of applying a preventive measure to the suspect.

In addition to the addition to the Criminal Code of Ukraine, the Law also amended the Criminal Procedure Code of Ukraine (hereinafter the Criminal Procedure Code of Ukraine). For example, supplemented by Art. 176 and Art. 183

of the CPC of Ukraine. Now, during criminal proceedings, in the presence of reasonable suspicion, only a preventive measure in the form of detention is used. At the same time, the investigating judge, based on the risks and other circumstances taken into account when choosing a preventive measure, has the right not to determine the amount of bail as an alternative preventive measure [4].

Thus, taking into account the fact that the armed aggression of the russian federation against Ukraine is currently ongoing, which has led to numerous human casualties, the occupation of the Autonomous Republic of Crimea and parts of the Donetsk and Luhansk regions, significant economic losses for our country. At the same time, a number of Ukrainian citizens are helping the russian federation in carrying out aggressive actions, the deployment of an armed conflict against Ukraine, including various forms of support for armed formations and occupation administrations of the aggressor state and other actions that should be qualified as assistance to the aggressor state. Moreover, currently the persons involved in the specified activity continue it, which is unacceptable in the conditions of continued armed aggression and hostilities. Aiding the aggressor state as a crime undermines the national security of Ukraine and poses a direct threat to the national interests of Ukraine, therefore one must bear the responsibility established by law.

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