

УДК 343.3 /.7

DOI: <https://doi.org/10.21564/2311-9640.2023.20.292355>

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COLLABORATION ACTIVITIES IN THE FORM OF PUBLIC CALLS AND DENIALS OF ARMED AGGRESSION AGAINST UKRAINE: PRACTICE OF APPLICATION

The article is devoted to the scientific analysis of certain problems of criminal legal qualification for collaboration activities under Part 1 of Art. 111-1 of the Criminal Code of Ukraine. The author makes a criminal law analysis of this provision as one of the manifestations of collaboration activity which is criminalized in law. Some problems of qualification are considered, related to the need to distinguish between the provisions of Part 1 of Article 111-1 of the Criminal Code of Ukraine of Ukraine and parts 1 and 2 of Article 436-2 of the Criminal Code of Ukraine. The article analyzes the court decisions under Part 1 of Article 111-1 of the CC of Ukraine, and certain problems regarding application of this provision in practice, and based on this, a number of conclusions and the author's proposals were formulated. The authors point out certain flaws in the wording of Art. 111-1 of the CC of Ukraine, and associate this with the lack of the necessary scientific justification for the allocation of substantive features of collaboration activities, which the legislator would rely on when criminalizing this type of socially dangerous act. The study argues that acts in the form of public calls for illegal elections and/or referendums should be classified as criminal offenses, namely to define this form in Part 1 of Art. 111-1 of the Criminal Code of Ukraine, given that public calls, public objections are not manifestations of collaborationism in the classical understanding as cooperation with the enemy under occupation. On the basis of the studied criminal proceedings, the ineffectiveness of the application of a single punishment in the form of deprivation of the right to hold certain positions and engage in certain activities. Therefore, it is proposed to provide for alternative penalties in parts 1 and 2 of Art. 111-1 of the Criminal Code of Ukraine to provide for alternative penalties in the form of a penalty and public services.

Key words: collaborationism, collaboration activity, criminal liability, responsibility, criminal offense, public appeals, public denial.

Introduction. In the context of war, Ukraine is currently facing challenges that require the introduction of new legal prohibitions and legal measures in case of their violation. This leads to changes that the legislator promptly introduces to the criminal law. Thus, since the beginning of the full-scale invasion by the aggressor country, the Verkhovna Rada of Ukraine adopted a number of amendments to the Criminal Code (hereinafter – the CC) of Ukraine. In particular, one of the first laws since the beginning of the war, which amended the Criminal Code of Ukraine, was the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on the Establishment of Criminal responsibility for the collaborative activity» of March 3, 2022, No. 2108-IX, which not only supplemented the Criminal Code with Article 111-1, but also introduced a number of amendments to the articles of the General Part of the Criminal Code of Ukraine regulating criminal legal activities (Articles 55, 96-3, 96-9 of the Criminal Code of Ukraine), in particular punishment (respectively, deprivation of the right to hold certain positions and engage in certain activities is now imposed both as a primary and an additional punishment in case of committing a criminal offense under Article 111-1 of the Criminal Code of Ukraine, for a much longer term – from ten to fifteen years), as well as actions against legal entities (the grounds for their application have been expanded – if an individual authorized person has committed a criminal offense on behalf of a legal entity under Art. 111-1 of the Criminal Code of Ukraine, among other things, it is possible to liquidate a legal entity on this basis). Given the specifics of this criminal offense, it is under the jurisdiction of the investigative units of the Security Service of Ukraine, and in accordance with Article 297-1 of the Criminal Procedure Code of Ukraine, a special pre-trial investigation is possible. The above-mentioned law introduced comprehensive changes that relate not only to criminalization of collaboration activities, but also criminal law

response activities, as well as the procedure for pre-trial investigation upon their detection.

The issue of the need to introduce criminal liability for collaboration is not new, it has been discussed in the scientific literature since 2014, when the territory of Ukraine was annexed and some citizens found themselves in the territories temporarily occupied by the aggressor country, and the phenomenon of collaborationism was observed. The problems of establishing criminal liability for collaboration have been addressed by such scientists as M. Akimov, N. Antoniuk, O. Illarionov, T. Lysko, E. Pysmenskyi, A. Politova, M. Rubashchenko and other well-known researchers. This issue was actualized again with the beginning of military aggression against our country on February 24, 2022.

Statement of the work. The purpose of this publication is to provide a criminal law analysis of Part 1 of Art. 111-1 of the Criminal Code of Ukraine, which establishes criminal liability for collaboration activities, and to study the problems of application of criminal law actions based on the materials of judicial practice and the formation of proposals for optimizing the regulatory definition and practice of application of these provisions.

Research results. The term «collaborationism» is interpreted in different ways. According to V. Shaykan, this is a complex, ambiguous socio-psychological and ethical phenomenon that arises as a result of the interaction of the subjects of the communication process (the population of the occupied states and the occupiers), that is, cooperation with the enemy under the occupation regime, and this phenomenon can take on various manifestations – from the individual level to military, economic, cultural, administrative, individual and political forms¹. Interestingly, some historians point out that collaborationism can be voluntary cooperation (e.g., joining volunteer military units) or forced (e.g., being appointed

¹ Shaykan, V. Kolobratsionizm v Ukraini u roky Druhoi svitovoi viiny [Collaborationism in Ukraine during the Second World War]. URL: <http://www.kby.kiev.ua/komitet/conference/Shajkan2.pdf> (accessed on 18.10.2023) [in Ukrainian].

as a village head), but they are often easily confused². In a narrower sense, collaborationism is only voluntary conscious cooperation. In encyclopedic sources, collaborationism is defined as conscious, voluntary and deliberate cooperation with the enemy in its interests and to the detriment of one's state and its allies. In the legislation of most countries, collaboration is qualified as a crime against the state, betrayal³.

An analysis of some criminal laws of European countries shows that, for the most part, collaboration is not criminalized in a separate article, and its features are covered by other articles, in particular, state treason. Only Article 120 of the Criminal Code of the Republic of Lithuania establishes criminal liability for collaboration. Thus, a citizen of the Republic of Lithuania who, under conditions of occupation or annexation, helped illegal state structures to establish occupation or annexation, suppressed the resistance of the Lithuanian population or otherwise helped an illegal government to act against the Republic of Lithuania, shall be punished by imprisonment for up to five years⁴. The specificity of this article is that the Lithuanian legislator provided for such cooperation in the form of suppression of resistance or other assistance and pointed to a specific situation – the conditions of occupation and annexation, which are constructive signs of collaborationism and provide grounds for a clear distinction from other forms of actions of citizens to the harm of the state interests.

At the level of legislative initiatives, the need to establish criminal liability for collaboration in Ukraine has been discussed since 2017.

² Pyvovarska, K. (2011). Kolaboratsionizm u Druhii svitovii viini [Collaborationism in World War II]. *1941 rik na Poltavshchyni: liudskiyi vymir trahedii ta heroizmu: zbirnyk statei za materialamy mizhnarodnoi naukovoï konferentsii (28 veresnia 2011 roku) [1941 in Poltava Region: the Human Dimension of Tragedy and Heroism: a collection of articles based on the materials of the international scientific conference (September 28, 2011)]* Poltava: POIPPO. P. 102 [in Ukrainian].

³ Hrabovsky, S.I. (2014). Kolaboratsionizm [Collaborationism]. *Entsyklopediia Suchasnoi Ukrainy: elektronna versiia [online] [Encyclopedia of Modern Ukraine: electronic version [online]]* editor-in-chief: I. M. Dziuba, A. I. Zhukovsky, M. G. Zheleznyak and others; NAS of Ukraine. Kyiv: Institute of Encyclopedic Research of the National Academy of Sciences of Ukraine. URL: https://esu.com.ua/search_articles.php?id=4446 (accessed 20.10.2023) [in Ukrainian].

⁴ Lietuvos Respublikos baudžiamojo kodekso patvirtinimo ir įsigaliojimo įstatymas. 2000 m. rugšėjo 26 d. Nr. VIII-1968. Vilnius. URL: <https://www.e-tar.lt/portal/en/legalAct/TAR.2B866DFF7D43> (accessed: 18.10.2023).

These draft laws were analyzed in detail by A. Politova and M. Akimov⁵, who considered the essence of the concept of collaborationism and the need for its criminalization in Ukraine. They concluded that most projects use the terms "aggressor", "occupying state" or "enemy" and do not define these terms, which makes it difficult to reveal the essence of collaborationism. Therefore, the authors believe that collaborationism is a complex phenomenon that cannot be criminalized, and criminal liability for all types of collaborationism is not necessary, since there are many other relevant articles of the Criminal Code of Ukraine in the sections on crimes against the foundations of national and public security. They propose, like O. Illarionov⁶, to introduce into the legislation the definition and signs of collaborators, but to settle this issue at the international level⁷.

In his turn, Professor E. Pysmenskyi reasonably argues that criminal law has not fulfilled its prognostic function in relation to criminal law regulation. Since the peculiarities of criminal law assessment of the behavior of persons in the occupied territory in their relations with the occupier were not considered independently and accentuated in legal science, at the beginning of military aggression against Ukraine there was no scientifically based model of legal regulation of actions related to collaborationism⁸. At the same time, the legislator was forced to respond to collaborationism, including by establishing criminal liability for such activities-collaboration. One of the first laws to be adopted after the beginning of the full-scale invasion of the Russian Federation was the one that supplemented the

⁵ Politova, A. & Akimov, M. (2020). 'Criminal Liability for Collaborationism: is There a Need to Establish it in Ukraine?' *Modern achievements of EU countries and Ukraine in the area of law*, part 2. P. 406–422 (Baltija Publishing 2020).

⁶ Illarionov, O. (2018). Zakhyst vid kolaboratsionizmu: sproba druha [Defense against collaborationism: attempt two]. URL: <https://blog.liga.net/user/aillarionov/article/29863> (accessed October 20, 2023) [in Ukrainian].

⁷ Politova, A. & Akimov, M. (2020). 'Criminal Liability for Collaborationism: is There a Need to Establish it in Ukraine?' *Modern achievements of EU countries and Ukraine in the area of law*, part 2. P. 406–422 (Baltija Publishing 2020) P. 420.

⁸ Pysmenskyi, Y. (2020). Collaborationism in modern Ukraine as a criminal law problem [Kolaboratsionizm u suchasni Ukraini yak kryminalno-pravova problema]. *Law of Ukraine [Pravo Ukrainy]*. № 12. P. 126. [in Ukrainian].

Criminal Code of Ukraine with Article 111-1 "Collaboration Activities" and is now actively used in practice.

Thus, since the entry into force of the Law of Ukraine No. 2108-IX until the time of preparation of this publication (from March 15, 2022 to October 2023), more than 6.5 thousand criminal offenses under Art. 111-1 of the Criminal Code of Ukraine "Collaboration Activities" have been registered. At the same time, for the partial year of 2023, the number increased by more than 1 thousand such criminal offenses⁹. However, it is noteworthy that this year the number of notifications of suspicion among the registered criminal offenses under Part 1.2 of Article 1-1 of the Criminal Code of Ukraine has significantly decreased compared to 2022 (from 42% to 33%).

At the time of writing, the Unified Register of Court Decisions contained 899 guilty verdicts¹⁰ with actual sentencing upon conviction of persons of a criminal offense under Article 111-1 of the Criminal Code of Ukraine. The vast majority of verdicts are guilty verdicts on the fact of committing a criminal offense under Part 1 of Article 111-1 of the Criminal Code of Ukraine (838 decisions)¹¹. The analysis of these guilty verdicts shows that in most cases the trial is conducted in a simplified procedure (since it is a consideration of criminal misdemeanors) or in the procedure of concluding a plea agreement between the prosecutor and the accused.

Already in the first scientific studies-commentaries to Art. 111-1 of the CC of Ukraine attention was drawn to the complexity of its legislative wording, the

⁹ Pro zareiestrovani kryminalni pravoporushennia ta rezultaty yikh dosudovoho rozsliduvannia / Ofitsiyni veb-sait ofisu Heneralnoho prokurora [On registered criminal offenses and the results of their pre-trial investigation / Official website of the Prosecutor General's Office]. URL: <https://gp.gov.ua/ua/posts/pro-zareyestrovani-kryminalni-pravoporushennya-ta-rezultati-yih-dosudovogo-rozsliduvannya-2> (accessed on 18.10.2023) [in Ukrainian].

¹⁰ Iedynyi derzhavnyi reiestr sudovykh rishen [Unified State Register of Court Decisions]. URL: <https://reyestr.court.gov.ua/Page/1> (accessed October 18, 2023).

¹¹ Ibid.

combination of different provisions in one article, the competition of norms within the article itself, the lack of clarity of wording, etc.¹².

Indeed, Art. 111-1 of the Criminal Code of Ukraine covers as many as 7 independent corpuses (parts 1-7), one is a qualified corpus (part 8), which contains qualifying features – death of people or other grave consequences, in case of committing actions or making decisions provided for in parts 5-7 of this article. The acts provided for in parts 1 and 2 of Article 111-1 of the Criminal Code of Ukraine are criminal misdemeanors, as they provide for the main punishment of deprivation of the right to hold certain positions or engage in certain activities for a period of ten to fifteen years, parts 3 and 4 are minor crimes, part 5 is a serious crime, and parts 6-8 are especially serious crimes. It should be noted that the very definition of criminal acts characterizing collaboration is quite variegated, each act provided for in certain parts of the article contains several forms, is information-saturated, which, of course, complicates their comprehensibility¹³, leads not only to a complicated mental perception of various manifestations of collaborationism for which criminal liability arises by ordinary citizens, but may also lead to misclassification. This state of affairs is primarily due to the state's attempts to respond in some way to the phenomena occurring in the context of military aggression without a clearly defined, scientifically based and balanced concept of regulating actions related to the social phenomenon of collaborationism, as mentioned above.

First of all, the phenomenon of collaborationism, in view of previous scientific, historical and social research, is associated with various forms of *cooperation* of citizens under occupation with the enemy in its interests and to the

¹² Antoniuk, N. (2021). Derzhavna zrada i kolaboratsiina diialnist: pytannia kryminalno-pravovoi kvalifikatsii [High treason and collaboration: issues of criminal legal qualification]. *Slovo natsionalnoi shkoly suddiv [Word of the National School of Judges]*. № 4(37). 56–68. [in Ukrainian]; Metodychni rekomendatsii z pytan kryminalno-pravovoi kvalifikatsii, operativno-rozshukovoi diialnosti ta kryminalnoho provadzhennia za st. 111-1 KK Ukrainy «Kolaboratsiina diialnist» [Methodical recommendations on criminal legal qualification, operational and investigative activities and criminal proceedings under Art. 111-1 of the Criminal Code of Ukraine "Collaboration activity"] / S. Albul, T. Voloshanivska, A. Marchenko, H. Mudretska, H. Reznichenko, I. Fedorov, I. Chekmariova. Odesa: Odesa State University of Internal Affairs, 2022. 67 [in Ukrainian].

¹³ Musychenko, O.M. (2021). Zrozumilist suchasnoho kryminalnoho zakonu: monohrafiia [Clarity of modern criminal law: monograph]. Mykolaiv: Ilion. P. 265 [in Ukrainian].

detriment of their state. If we analyze the forms of such cooperation criminalized in Art. 111-1 of the Criminal Code of Ukraine, we can see the following: voluntary occupation by citizens of Ukraine of various positions in illegal authorities, judicial or law enforcement bodies established in the occupied territories; voluntary election to illegal authorities (parts 2, 5, 7); propaganda by a citizen of Ukraine in educational institutions and the introduction of education standards of the aggressor state in educational institutions (part 3); transfer of material resources to the enemy; conducting economic activities in cooperation with the enemy (part 4); participation in the organization and conduct of illegal elections and/or referendums in the temporarily occupied territory (part 5); organizing and conducting political events, carrying out information activities in cooperation with and in support of the enemy, active participation in such events (part 6); voluntary participation of a citizen of Ukraine in illegal armed or paramilitary groups established in the temporarily occupied territory and/or in the armed groups of the aggressor state; providing such groups with assistance in conducting hostilities against the Armed Forces of Ukraine and other military formations established to protect the independence, sovereignty and territorial integrity of Ukraine (part 7). As we can see, not all of these forms of cooperation must be committed by citizens of the state (as defined by the Lithuanian legislator), and not all forms of cooperation can be committed in the temporarily occupied territory. It depends on the definition of the objective side of a particular act criminalized by the legislator. Therefore, one should not count on a common understanding and common signs of collaboration, as each part requires a detailed linguistic and systematic analysis for proper qualification.

In addition to the usual established understanding and interpretation of the word "cooperation" as "joint activity with someone"¹⁴, the legislator also criminalized such acts that the legislator refers to as collaboration as "public objections, public appeals", which is not quite assessed as cooperation itself. We

¹⁴ Slovník ukrajskoi movy (1978). [Dictionary of the Ukrainian language] / ed. I.K. Bilodid. Vol. 9: S. Kyiv: Naukova Dumka, 1978. P. 519 [in Ukrainian].

are talking about the forms of certain acts provided for in Part 1 of Art. 111-1 of the Criminal Code of Ukraine, which we will analyze in more detail below, and one of the forms of acts provided for in Part 5 of Art. 111-1 of the Criminal Code of Ukraine – public calls for illegal elections and/or referendums in the temporarily occupied territory. The latter is classified by the legislator as a serious crime along with the following forms of cooperation in the classical sense: voluntary holding of a position by a citizen of Ukraine in illegal authorities established in the temporarily occupied territory; voluntary election to such authorities; participation in the organization and conduct of illegal elections and/or referendums in the temporarily occupied territory. We believe that, compared to the defined forms of cooperation, public calls for illegal elections and/or referendums pose less of a public danger, and therefore should be classified as criminal offenses, as well as other "public calls" that the legislator associates with collaboration.

The objective side of the criminal offense under Part 1 of Art. 111-1 is expressed in the following two forms:

1) public denial of: a) the commission of armed aggression against Ukraine, b) the establishment and confirmation of the temporary occupation of a part of the territory of Ukraine;

2) public calls for: a) support for decisions and/or actions of the aggressor state, armed groups and/or the occupation administration of the aggressor state, b) cooperation with the aggressor state, armed groups and/or the occupation administration of the aggressor state, c) non-recognition of the extension of Ukraine's state sovereignty to the temporarily occupied territories of Ukraine.

The subject of this criminal offense can only be a citizen of Ukraine.

Publicity is an evaluative feature, and the question of its presence should be decided on a case-by-case basis, taking into account the time, place, and circumstances of the objections or appeals. Traditionally, in scientific and practical commentaries, public appeals are understood by their content as oral or written appeals or speeches to a specific audience, as well as an indefinite number of

people at demonstrations, rallies, meetings, on radio, television, and Internet sites¹⁵.

The note to Art. 111-1 of the CCU clarifies what is meant by public: dissemination of calls or expressions of objection to an indefinite number of persons, in particular on the Internet or through the media.

The term «indefinite number of persons» requires a separate interpretation to properly qualify it. An appeal to an indefinite number of persons should be considered an appeal to persons who cannot be counted and who may potentially hear or see the information. Publicity is also associated with this concept. In the majority of verdicts under Part 1 of Article 111-1 of the Criminal Code of Ukraine, public objections, public appeals (61% of the court decisions studied by the sample method) with relevant information were made through social networks such as Odnoklassniki, Facebook, etc. In addition, the statements were often made in shops, on the streets, near the houses where the person lived, near bomb shelters, at markets, bus stops, even from the window of their own apartment. In two decisions, the courts of Kharkiv determined that the accused persons publicly called for support for the decisions and actions of the aggressor state in the pre-trial detention center, indicating that the appeals were directed "to an unlimited number of people, namely cellmates who were with him"¹⁶. In our opinion, this interpretation of publicity and an indefinite circle of persons is not correct, so such actions should be incorrectly qualified under Part 1 of Article 111-1 of the Criminal Code of Ukraine.

In practice, the question of the correct qualification may arise when a criminal offense is committed in the form of denial. This is due to the fact that the

¹⁵ Kryminalnyi kodeks Ukrainy. Naukovo-praktychnyi komentar: u 2 t. (2013). [Criminal Code of Ukraine. Scientific and practical commentary: in 2 vols] V. Tatsiy, V. Pshonka, V. Borisov, V. Tyutyugina. 5th ed. Kharkiv: Pravo., Vol. 2: Special Part / Yu. Baulin, V. Borisov, V. Tyutyugin et al. P. 585 [in Ukrainian].

¹⁶ Vyrok Zhovtnevoho raionnoho sudu m. Kharkova vid 17 chervnia 2022 roku. Sprava № 639/1560/22 [Verdict of the Zhovtnevyi District Court of Kharkiv of June 17, 2022. Case No. 639/1560/22] URL: <https://reyestr.court.gov.ua/Review/104805657> (accessed October 24, 2023); Vyrok Zhovtnevyi raionnyi sud m. Kharkova vid 8 lypnia 2022 roku. Sprava № 639/1837/22 [Verdict of the Zhovtnevyi District Court of Kharkiv of July 8, 2022. Case No. 639/1837/22]. URL: <https://reyestr.court.gov.ua/Review/105146407> (accessed on October 24, 2023).

Law of Ukraine of March 23, 2022¹⁷ supplemented Art. 436-2 «Justification, Recognition of Lawfulness, Denial of the Armed Aggression of the Russian Federation against Ukraine, Glorification of its Participants», the forms of the objective side of part 1 which, among other things, is the denial of the armed aggression of the Russian Federation against Ukraine, which began in 2014, including by presenting the armed aggression of the Russian Federation against Ukraine as an internal civil conflict, as well as denial of the temporary occupation of part of the territory of Ukraine. In addition, Part 2 of Article 436-2 of the Criminal Code of Ukraine provides for such a form of action as the dissemination of materials containing such denials.

The content of such objections, as we can see, coincides with the content of public objections provided for in Part 1 of Article 111-1 of the Criminal Code of Ukraine, so the distinguishing feature is the public nature of such objections. With regard to the dissemination of materials containing such objections (Part 2 of Article 436-2 of the Criminal Code of Ukraine), this act coincides with a public objection, so the question of proper qualification arises. One of the distinguishing features, at first glance, is the generic object of these criminal offenses, which is different – national security and human security. Although, in terms of content, the concept of human security includes national security.

According to Supreme Court Judge N. Antoniuk, if a person is charged with an act only in the form of denial, it should be qualified under one of the above articles (namely, under Part 1 of Article 436-2 of the Criminal Code of Ukraine, based on the ratio of the objects of encroachment) in order to avoid double

¹⁷ Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo posylennia kryminalnoi vidpovidalnosti za vyhotovlennia ta poshyrennia zaboronenoj informatsiinoj produktsii: Zakon Ukrainy № 2110-IX vid 3 bereznia 2022 roku [On Amendments to Certain Legislative Acts of Ukraine on Strengthening Criminal Liability for the Production and Distribution of Prohibited Information Products: Law of Ukraine No. 2110-IX of March 3, 2022]. URL: <https://zakon.rada.gov.ua/laws/show/2110-20#n20> (accessed on August 23, 2022).

incrimination, and in case of committing a socially dangerous act in forms other than denial, it should be qualified under the totality of these criminal offenses¹⁸.

One of the court decisions reflects the latter suggestion. However, in order to distinguish between criminal offenses, the court used the content element of the information itself, rather than the form of action itself (without distinguishing between public appeals or dissemination of materials). For example, in the verdict of the Sosnivskiy District Court of Cherkasy of May 3, 2022, the court qualified the actions related to the posting on the social network Facebook¹⁹ of a comment to PERSON_3's post that there is currently not a war on the territory of Ukraine, but a special operation to destroy military facilities under Part 1 of Article 111-1 of the Criminal Code of Ukraine, based on the fact that according to the opinion of a specialist of the Cherkasy National University named after Bohdan Khmelnytskyi of 25.04.2022. Bohdan Khmelnytsky National University of Cherkasy dated 25.04.2022, it was established that the materials under investigation, namely the publication of the Internet user "PERSON_4" under the name "PERSON_5" dated 22.03.2022, indicates the dissemination of materials denying the commission of armed aggression against Ukraine and contains calls for support for the decisions and actions of the aggressor state. According to another conclusion of a specialist of the Bohdan Khmelnytsky Cherkasy National University of 13.04.2022, other publications disseminated via Facebook by this person contain justifications, recognizing the legitimacy of the armed aggression of the Russian Federation against Ukraine, which began in 2014. Therefore, the court qualified similar actions of PERSON_1 under Part 3 of Article 436-2 of the Criminal Code of Ukraine.

Analysis of other court decisions indicates that in the investigation of criminal offenses, specialists are rarely asked to provide an opinion on the content

¹⁸ Antoniuk, N. (2021) Derzhavna zrada i kolaboratsiina diialnist: pytannia kryminalno-pravovoi kvalifikatsii [High treason and collaboration: issues of criminal legal qualification]. *Slovo natsionalnoi shkoly suddiv [Word of the National School of Judges]*. № 4(37). P. 59 [in Ukrainian].

¹⁹ Vyrok Sosnivskoho raionnoho sudu m. Cherkasy vid 3 travnia 2022 roku Provadzhennia № 1-kp/712/522/22 [The verdict of the Sosnivskiy District Court of Cherkasy of May 3, 2022, Case No. 1-kp/712/522/22]. URL: <https://reyestr.court.gov.ua/Review/104409643> (accessed on October 24, 2023).

of posts and comments on social networks, only in controversial short posts. For example, on the Odnoklassniki website, PERSON_3 posted a post from a Russian information resource that read: "Melitopol is Russia forever". According to the conclusion of a forensic linguistic study by specialists of Kryvyi Rih State Pedagogical University No. 11 dated 19.07.2022, the text of the publication of 29.05.2022: "MELITOPOL IS RUSSIA FOREVER" shows PERSON_1's approval of the temporary occupation of the territory of Ukraine, in particular the city of Melitopol, by Russian troops. This is an affirmative sentence that acquires the status of a slogan expressed in a concise form of an idea, a call, namely, constructs a distorted reality in the minds of people about the belonging of part of the territory of Ukraine to the Russian Federation²⁰. In most other cases, the courts evaluate the content of the material independently and qualify such acts under Part 1 of Article 111-1 of the Criminal Code of Ukraine.

The analysis of the operative part of the verdicts under Part 1 of Art. 111-1 of the CC of Ukraine showed that the courts mostly impose a punishment in the form of deprivation of the right to hold positions related to the performance of state and local government functions, positions in state authorities, public administration, local self-government or public services for a period of 10 years, which is provided for in the sanction as the lower limit (61%), in addition, 11 years – 9%, 12 years in 17%, closer to the maximum limit – 13, 15 years – 13%. This situation is obvious, since the only punishment provided for by the sanction of Part 1 of Article 111-1 of the Criminal Code of Ukraine is deprivation of the right to hold certain positions or engage in certain activities for a period of 10 to 15 years. According to the established case law, this type of punishment may be imposed both on persons holding certain positions or carrying out certain activities and on persons who may hold such positions. However, according to the materials of criminal proceedings, these are defendants who are mostly unemployed or retired

²⁰ Vyrok Zhovtnevoho raionnoho sudu mista Kryvoho Rohu Dnipropetrovskoi oblasti 04 serpnia 2022 roku. Sprava № 212/3751/22 [The verdict of the Zhovtnevyi District Court of Kryvyi Rih, Dnipro region, on August 04, 2022. Case No. 212/3751/22]. URL: <https://reyestr.court.gov.ua/Review/105581704> (accessed on 24.10.2023).

(more than 80%), and have secondary or vocational education. Since the effectiveness of criminal penalties is determined by the following sequence: a person who has been subjected to the punitive impact of punishment and has suffered certain deprivations has had the opportunity to adjust his/her behavior in order to prevent the commission of a criminal offense in the future, the imposed penalties are ineffective²¹, and do not fulfill their goals – punishment, correction, prevention of criminal offenses. Therefore, in our opinion, it is advisable to provide for alternative types of punishment in the sanction of Part 1 of Art. 111-1 of the CC of Ukraine in the form of a fine and community service.

Conclusions. Firstly, the criminal offenses defined by the legislator as collaboration activities are quite difficult to understand and generally violate the qualitative property of clarity of criminal law. Secondly, the analysis of the forms of acts within each provision of Art. 111-1 of the CC of Ukraine allows us to conclude that there are no common essential features of collaboration activities, which the legislator relied on when criminalizing this phenomenon. Thirdly, the act in the form of public calls for illegal elections and/or referendums should be classified as a criminal offense (to define this form of action in Part 1 of Article 111-1 of the Criminal Code of Ukraine). Fourthly, we consider it necessary to provide for alternative types of punishment in parts 1-2 of Article 111-1 of the Criminal Code of Ukraine, primarily for the effectiveness of criminal legal influence for collaboration, primarily for public denial by a citizen of Ukraine of the commission of armed aggression against Ukraine, for public calls by a citizen of Ukraine to support the decisions, actions of the aggressor state, armed formations, the occupation administration of the aggressor state, to cooperate with them, to non-recognition of the extension of state sovereignty of Ukraine to the temporarily occupied territories.

²¹ Kozachenko, O. V. (2011) Kryminalno-pravovi zakhody: kulturo-antropolohichniy vymir: monohrafiia. [Criminal and legal measures: cultural and anthropological dimension: a monograph]. Mykolaiv: Ilion, P.219 [in Ukrainian].

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Козаченко О., Мусиченко О. Колабораційна діяльність у формі публічних закликів та заперечень збройної агресії проти України: практика застосування

Стаття присвячена науковому аналізу окремих проблем кримінально-правової кваліфікації за колабораційну діяльність, передбачену ч. 1 ст. 111-1 Кримінального кодексу України. Здійснено кримінально-правовий аналіз вказаної норми як один з проявів колабораційної діяльності, яка криміналізована в законодавстві. Розглянуто окремі проблеми кваліфікації, пов'язані з необхідністю розмежування норм, передбачених ч. 1 ст. 111-1 КК України та частинами 1 та 2 ст. 436-2 КК України. В роботі проаналізовано судові рішення за ч. 1 ст. 111-1 КК України, виявлено певні проблеми щодо застосування даної норми на практиці, та на основі цього зроблено ряд висновків та сформульовано авторські пропозиції. Автори вказують на окремі вади формулювання ст. 111-1 КК України, пов'язуючи це з відсутністю необхідного наукового обґрунтування виділення змістовних ознак колабораційної діяльності, на які б опирався законодавець при криміналізації даного виду суспільно небезпечного діяння. В дослідженні стверджується, що діяння у формі публічних закликів до проведення незаконних виборів та/або референдумів слід віднести до категорії кримінальних проступків, а саме визначити цю форму в ч. 1 ст. 111-1 КК України, зважаючи на те, що публічні заклики, публічні заперечення не є проявами колабораціонізму в класичному розумінні як співпраці з ворогом в умовах окупації. На основі досліджених кримінальних проваджень доведено неефективність застосування єдиного покарання у виді позбавлення права обіймати певні посади та займатися певною діяльністю, тому пропонується передбачити в частинах 1 та 2 ст. 111-1 КК України альтернативні покарання у виді штрафу, громадських робіт.

Ключові слова: колабораціонізм, колабораційна діяльність, кримінальна відповідальність, кримінальний проступок, публічні заклики, публічне заперечення.