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THE MAIN CHALLENGES ARISING BEFORE THE CRIMINAL LAW OF UKRAINE WITH THE BEGINNING OF THE LARGE-SCALE PHASE OF THE WAR, AND THE LEGISLATOR'S RESPONSES TO THEM

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INTRODUCTION

The aggressive war, which Russia unleashed in a hybrid form against our country on February 20, 2014, and which from February 24, 2022 it turned into a large-scale invasion, has without exaggeration become the most difficult challenge for Ukraine since the restoration of its independence. Undoubtedly, the main response to this challenge is provided by the Armed Forces and other military formations of Ukraine, tens of thousands of volunteers who took up arms, hundreds of thousands of volunteers who provided the front and rear, millions of Ukrainians, in Ukraine and outside of Ukraine, who stop and destroy the enemy. But any war is not only a challenge on the battlefield, but it is also a significant challenge to the country's economy, its social structure, political system, internal management systems, strength of external relations, etc. In addition, any war, ready and modern, poses challenges to which the legal system of the state must respond, including its criminal justice system in general and the norms of criminal law in particular.

The transition of the war into a large-scale phase presented Ukrainian criminal law with such challenges, the answers to which were either objectively absent in the current version of the Criminal Code of Ukraine (hereinafter referred to as the CC or Code) on February 24, or were not found in it, or did not satisfy society or the authorities. Therefore, the state responded to these challenges by introducing changes and additions to the CC.

With the laws that were adopted in the first month and a half of the large-scale war, the Code was supplemented with seven new articles (43–1, 111–1, 111–2, 114–2, 201–2, 435–1, 436–2), as well as new item 22 of the Final and Transitional Provisions. In addition, 19 articles were amended: 49, 55 (twice), 68, 86, 96–3 (twice), 96–9, 111 (new edition), 113 (new edition), 114–2 (introduced already during large-scale phase of the war), 161, 185, 186, 187, 189, 191, 263, 361 (new edition), 361–1, 432.

Criminal law novellas of the martial law period caused a discussion among Ukrainian jurists. In particular, Movchan R. O. (Movchan, 2022), Vozniuk A. A, Dudorov O. O., Pysmenskyi Ye. O. and other (Vozniuk and oth. 2022), Bukrieiev O. I. and other (Bukrieiev and oth. 2023), Ponomarenko Yu. A. (Ponomarenko, 2022) and other scientists devoted their research to the issue of their application. However, it cannot be claimed that all the problems are completely exhausted in these works. Until now, judicial practice and scientific doctrine ambiguously interpret a) the scope of the elements of the corpus delicti of crimes provided for by the mentioned articles of the CC; b) features of their qualifications; c) new rules concerning the application of punishment and other criminal legal means, etc.

The main sources of this article are normative legal acts, some provisions of judicial practice and doctrine. Based on them, the author tries to outline the completeness and adequacy of the prescriptions of the CC regarding the specifics of criminal responsibility, which were generated by the full-scale invasion of Russia.

Criminal law novellas of the martial law period became answers to seven main challenges posed by the large-scale phase of the war.

The first challenge is the need to strengthen the criminal law protection of the foundations of Ukraine's national security. Since the goals of its "special operations" officially declared by Russia, and, moreover, the goals of this war, although silenced by it, but quite obvious, are based on the non-recognition of the political legal personality of the Ukrainian nation, there is an urgent need for criminal legal protection, first of all, of the foundations of Ukraine's national security. Therefore, the first block of novelties brought to the CC are changes and additions to the provisions of Chapter I of its Special Part. In particular: articles 111 (Treason) and 113 (Sabotage) are set out in the new editions and new articles 111-1 (Collaborative activities), 111-2 (Assistance to the aggressor state) and 114-2 (Unauthorized dissemination of information on referral, transfer weapons, armaments and military supplies to Ukraine, movement, transfer or placement of the Armed Forces of Ukraine or other military formations formed in accordance with the laws of Ukraine, committed in conditions of war or state of emergency) are added. The changes in Articles 111 and 113 did not receive a wide response, because, in the end, they came down to highlighting (in Article 111) or establishing (in Article 113) the qualified corpus delicti of this crimes: committing them under martial

law (part 2 of Art. 111, part 2 of Art. 113). Some attention has been drawn to the sanctions of these new parts – imprisonment for a term of 15 years or life imprisonment. But neither an absolutely determined term of imprisonment, nor the establishment of life imprisonment for a crime not related to intentional encroachment on the life of another person, is no longer unique to our legislation.

The emergence of new categories of crimes provided for by Art. Art . 111–1, 111–2 became a manifestation of the tendency to "disintegrate" the corpus delicti of state treason. In principle, I consider this trend to be justified, because our legislation should have long since departed from the post-Soviet tradition of considering any interaction with the enemy during war as treason. However, at certain moments, the legislator created additional problems of distinguishing the crimes provided for in the mentioned articles, both among themselves and with the corpus delicti of high treason.

The first step towards breaking up treason was the separation of the composition of collaborative activities (Art. 111-1, entered into force at 00:00 on March 16). It should be noted that this article has become quite eclectic in its construction: it has absorbed several different forms of actions. Moreover, not all of them were included in the corpus delicti of state treason – certain forms of actions were criminalized for the first time (for example, provided for in parts 1 and 3 of Art. 111-1).

Another important novel from this block was the addition of the CC of Art. 114-2, which provides for responsibility for the unauthorized dissemination of information of military significance in conditions of war or emergency. While the first two parts of this article, which provide for the main corpus delicti of a criminal offense, although they are quite difficult to outline, do not give rise to difficult issues of distinction from the state treason, the qualified component provided for in Part 3 of Art. 114-2, posed this question so acutely that even the legislator himself was forced to answer it, making amendments to the newly introduced Art. 114-2 of the Criminal Code by separate laws.

The fact is that the information that is the subject of the crimes provided for in parts 1 and 2 of Art. 114–2, in some cases may be a state secret. If such information is disseminated with the aim of providing it to a state carrying out armed aggression against Ukraine, or to its representatives, or to other illegal armed formations (Part 3 of Art. 114-2), then the question of distinguishing it from high treason in the form of espionage (Art. 111) or espionage provided for by Art. 114, as noted by the legislator in the addendum to this article. It is believed that the separation of this crime from treason in the form of espionage (Art. 111) and espionage as a separate crime (Art. 114) must be carried out depending on whether:

1) the disseminated information was a state secret, and
2) the person who disseminated it was aware of this fact.

If this information belonged to a state secret and the person who disseminated it was aware of this fact, then the transfer of such information to a foreign state or its representative constitutes high treason in the form of espionage (Art. 111) or espionage (Art. 114), entails responsibility for specified articles and excludes the possibility of bringing a person to responsibility under Art. 114–2. If the disseminated information did not belong to a state secret, then its transfer by a citizen of Ukraine to a foreign state or its representatives may constitute treason in the form of providing assistance in carrying out subversive activities against Ukraine only on the condition that the fact of providing such assistance was covered by the intention of this person and, in addition to moreover, it was aimed at causing damage to the sovereignty, territorial integrity and inviolability, defense capability, state, economic or informational security of Ukraine. In the same case, if the scope of the specified fact by the subject's intention is not established, or the specified purpose of his actions is not established, then the qualification of the committed as treason is excluded and the person is subject to liability under Part 3 of Art. 114–2.

The second challenge is the need to regulate criminal responsibility for international crimes. In the form in which the war with Russia lasted from February 20, 2014 to February 23, 2022, not all politicians, lawyers, and researchers regarded it as an armed conflict of an international nature. They often talked about an internal armed conflict with signs or elements of an international one. Therefore, the possibility of applying the articles of Chapter XX of the Special Part of the CC to the acts committed during that period was often questioned (I note: in my opinion – completely unfounded!). Unfortunately, the Ukrainian investigative and judicial practice mainly followed the path of qualifying them as acts of terrorism, and not as, for example, war crimes or crimes against humanity. Of course, on February 24, 2022, all doubts about the nature of the armed conflict (war) with Russia disappeared, and therefore the criminal law of Ukraine faced a challenge regarding the proper response to these crimes.

It is with regret that we have to say that the state did not give an adequate response to this challenge. It should become the law «On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law» (draft law № 2689), which was adopted by the Verkhovna Rada of Ukraine on May 20, 2021 and sent to the President of Ukraine for signature on June 7, 2021. However, the President of Ukraine contrary to Part 2 of Art. 94 of the Constitution of Ukraine, did not sign and publicize this law, but also did not apply the «veto» to it. The draft law was «stuck» between the Verkhovna Rada of Ukraine and the Office of the President of Ukraine and never became an effective law.

Submitted to the Verkhovna Rada of Ukraine on April 15, 2022, the draft law «On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine» (draft law № 7290), which verbatim repeats draft law № 2689 in terms of re-

placing articles of Chapter XX of the Special Part of the CC, as of autumn of 2023, despite its exceptional relevance, it is still at the stage of preliminary consideration in the parliamentary Committees.

Instead, all legislative novelties in this part resulted in the appearance in Chapter XX of the Special Part of Art. 436–2 «Justification, recognition as legitimate, denial of the armed aggression of the Russian Federation against Ukraine, glorification of its participants», which immediately came into conflict with part 1 of Art. 111–1, by which the Code was supplemented on the same day. Therefore, the search for signs that distinguish public denial of aggression, which is subject to qualification under Part 1 of Art. 111–1 and Part 1 of Art. 436–2.

Why not *lex specialis derogat generali*, no *lex posterior derogat priori* cannot be applied here, due to the fact that none of the articles is special in relation to the other and was adopted on the same day, the corresponding categories of criminal offenses should be distinguished according to the features with which they are burdened. In particular:

1) the justification or recognition of the aggression of the RF as legitimate without its denial is covered exclusively by the composition provided for in Art. 436–2, and is not covered by the composition provided for by Art. 111–1;
2) public denial of the aggression of the RF, committed by a citizen of Ukraine, is covered by the clauses provided for by both articles, and non-public – only by Art. 436–2;
3) denial of the aggression of the RF, committed by a foreigner or a stateless person, both publicly and not publicly, is covered exclusively by the composition provided for in Art. 436–2;
4) public denial of the aggression of any other state (for example, Belarus), committed by a citizen of Ukraine, is covered by the composition of Art. 111-1, and non-public, as well as justification or recognition of the legitimate aggression of any other state, which is not connected with its denial, does not constitute a criminal offense;
5) justification, recognition as legitimate, public or non-public denial by a foreigner or a stateless person of the aggression of a foreign state, other than the Russian Federation, does not constitute a criminal offense.

Therefore, only in cases where a person's actions simultaneously fall under both categories (for example, a public denial of the aggression of the RF, committed by a citizen of Ukraine), overcoming conflicts between Art. Part 1 of Art. 111–1 and Art. 436–2 is considered possible due to the application of the rules *in dobio pro reo* and *non bis in idem*. Since the sanction of Part 1 of Art. 111–1 is milder than the sanction of Part 1 of Art. 436–2, the committed is subject to qualification according to the first of the mentioned precepts.

The third challenge is the criminalization of new forms of socially dangerous acts in other spheres. The large-scale phase of the war gave rise to new, previously unknown or little-known forms of socially dangerous acts in other areas as well, which raised the question: are they covered by any of the existing articles of the CC or do they require additional criminalization? In particular, numerous reports in the mass media about the improper use of humanitarian aid led the legislator to the conclusion that such actions cannot be countered by the existing norms of criminal law and that it is necessary to establish criminal liability for them. This is how the Art. 201–2 (Unlawful use for profit of humanitarian aid, charitable donations or gratuitous aid) was appeared. Leaving aside the question of the success of placing this article in Chapter VII of the Special Part (how does this act encroach on interests in the field of economic activity?), I would like to draw attention to the following. Before the appearance of Art. 201–2 the sale of goods (items) of humanitarian aid or the use of charitable donations, gratuitous aid or the conclusion of other transactions regarding the disposal of such property, for the purpose of obtaining profit, would qualify under the relevant parts of Art. 191 of the CC as misappropriation, waste of property or taking possession of it by abuse of official position. The appearance of this new article raised questions about:

1) did the legislator mean to soften the main punishment for improper use of humanitarian aid during martial law? After all, if such actions were qualified under Art. 191, then according to part 4 thereof (as those committed during martial law), would be punished by imprisonment for a term of five to eight years, while according to part 3 of Art. 201–2 they are punished by imprisonment for a term of five to seven years. Moreover, if the value of the object of the crime exceeds 600 tax-free minimum incomes of citizens (t.-f. m. i. s.), under Part 5 of Art. 191 its appropriation, embezzlement or taking possession of it would be punishable by imprisonment for a term of 7 to 12 years, and according to Art. 201–2 – should still be qualified under part 3 with its above-mentioned sanction;
2) how should the misappropriation, waste of property or taking possession of it by abuse of official position, committed in relation to humanitarian aid worth up to 350 t.-f. m. i. s. (minimum "threshold" under Article 201-2) be qualified? If they are qualified under Part 4 of Art. 191 of the Criminal Code, then the embezzlement of humanitarian aid in a smaller amount will be punished more severely than its embezzlement in a larger amount, which is qualified under Part 3 of Art. 201–2.

The fourth challenge is the strengthening of responsibility for common crimes and criminal misdemeanors. It is quite obvious that in the conditions of martial law, the social dangerous of many so-called "common" criminal offenses has significantly changed (increased), which in turn required a proportional change in their punish-

ment. First of all, we are talking about criminal offenses against property: the legislator promptly responded to the frequent reports of high-profile cases of theft of property under martial law and even more high-profile attempts by some citizens to regain their *jus puniendi* to respond to them.

Therefore, already in the first "pool" of the six laws on amendments to the CC, adopted on March 3, 2022, there was a law, which was the fourth part of articles 185 (theft), 186 (looting), 187 (robbery), 189 (extortion), 191 (misappropriation, waste of property or taking possession of it by abuse of official position) were supplemented by the qualifying feature of committing these criminal offenses "under conditions of war or state of emergency". It is worth emphasizing that it is about the commission of a crime "under conditions of martial law", and not "using the conditions of martial law" (as in Clause 1, Part 1, Art. 67 of the CC), therefore any of the mentioned crimes against property, committed in Ukraine after February 24, 2002, regardless of the place, situation and other signs of its commission, must be qualified according to part 4 of the corresponding article.

Therefore, all these actions, committed even in amounts that are not large or particularly large, became grave crimes, and robbery and extortion became especially grave crimes. No case of theft, looting, robbery, extortion, misappropriation, waste of property or taking possession of it by abuse of official position, committed under martial law, can be qualified under parts 1, 2 or 3 of Art. 185, 186, 187, 189 or 191 of the CC. "Basic" for all these crimes are parts 4 of the mentioned articles and only committing theft, looting or misappropriation, waste of property or taking possession of it by abuse of official position in an organized manner under conditions of martial law the group will change the qualification to Part 5 in accordance with Art. 185, 186 or 191 of the CC.

A significant strengthening of the punishment for these crimes against property (which, by the way, from year to year constitute the largest segment in the structure of crime in Ukraine) not only burdened other criminal-legal consequences of their commission (impossibility of exemption from criminal liability on the basis of Art. 45–48; extension of the provisions of Art. 49 statutes of limitation for prosecution; complication of the possibilities of release from punishment, extension of the terms of repayment of a criminal record, etc.), but also a sentence the possibility of applying criminal procedure for each such crime means that can be used only in the case of serious or particularly serious crimes. In particular, these are: increasing the amount of bail as a possible preventive measure (Part 5 of Art. 182 of the Criminal Procedure Code) and easing the grounds for detention (Part 2 of Article 183 of the CPC); the possibility of conducting those secret ones investigative (research) actions, which are admissible only in proceedings concerning serious matters or especially serious crimes (Part 2 of Art. 246 of the CPC), etc.

Therefore, a quite reasonable question arose about whether «go too far» the legislator, having significantly increased criminal liability for crimes against property? From

my point of view, despite the apprehension of the ambiguous perception of such a step on the part of society should be thought about possible reduction of punishment for at least theft, misappropriation, waste (and possibly looting) to such a level that they are from the category of serious crimes were transferred to the category of minor crimes.

The fifth challenge is the need for criminal law stimulation of social activity of citizens in relation to harming the enemy. The large-scale phase of the war gave birth to a previously unknown rise of patriotic aspirations of the Ukrainian people. At the same time, not every one of its representatives limited their contribution to the victory to volunteer activities or her support, ensuring the functioning of the economy, social sphere, authorities, etc. Hundreds and thousands of our compatriots on their own whether they oppose the enemy in an organized manner by inflicting various injuries on him types of damage: from information attacks and the «cancellation culture» of everything that connected with ruscism, to the physical destruction of the occupiers, their military equipment and other property.

No one ever questioned the legality of harming the enemy during the war. Hugo Grotius even referred to Euripides, who in the 5th century BC, in one of his tragedies, he cited an ancient Greek proverb: «The clean hand of the killer of the enemy.» However, in our time, the Ukrainian legislator suddenly became afraid that the Ukrainian courts could hold Ukrainian citizens criminally responsible for the damage caused to the aggressor. To prevent this (but, first of all, probably, in order to stimulate citizens to harm the enemy more actively) at the beginning of the large-scale phase of the war, the CC was supplemented with two new circumstances that exclude criminal liability for harming the enemy.

First, Clause 22 was added to the Final and Transitional Provisions of the CC (hereinafter referred to as the FTP) stating that «civilians do not bear criminal responsibility for the use of firearms against persons who commit armed aggression against Ukraine if such weapons are used in accordance with the requirements of the Law of Ukraine «On ensuring the participation of civilians in the defense of Ukraine». Subsequently, the Code was supplemented by Article 43-1, according to which the fulfillment of the duty to protect the Motherland, independence and territorial integrity of Ukraine was included in the circumstances that exclude the criminal illegality of the act.

In my opinion, novels about circumstances that exclude criminal offenses, under martial law, are related to each other as general (Art. 43-1) and special (Art. 22 of the FTP) prescriptions. In turn, there are reasons to raise the issue that the provisions of Art. 43-1 should be correlated as special with even more general provisions of Art. 36 of the CC, but it needs a separate study. At the same time, I must note that supplementing the Code of Art. 43–1 and p. 22 of the FTP, the legislator assumed a number of no only formal, but also substantive inaccuracies, which, obviously, were caused both by the

haste of adopting the relevant laws, and by the general extremely tense situation in the country at that time. The main among such inaccuracies, as it seems, is the provisions of part 4 of Art. 43–1 of the CC that «It is not considered the fulfillment of the duty to protect the Motherland, independence and of the territorial integrity of Ukraine, an action or inaction aimed at repelling and deterring armed aggression of the Russian Federation or aggression of another country, which clearly does not correspond to the danger of aggression or the situation of repulsion and deterrence, was not necessary to achieve a significant socially useful goal in a specific situation and created a threat to life other people or the threat of an ecological disaster or the occurrence of other extraordinary events of a larger scale». First of all, the set of features is interesting an act not approved by law. It (the act itself, not caused by it harm!) should have a total of three features:

1) clearly do not answer:
   a) danger of aggression or
   b) situations of repulsion and deterrence,
2) not be necessary for achieving a significant socially useful goal in a specific situation and
3) create a threat:
   a) for the lives of other people
   b) ecological disaster or
   c) the occurrence of other extraordinary events of a larger scale.

It is difficult to imagine what action in terms of resistance and repulsion of the aggressor (and what harm, inflicted on the aggressor), that they can be committed (inflicted) by civilians (a Art. 43-1, despite its name being designed specifically for them!), may not correspond to the danger of aggression against Ukraine. It is hard to imagine such a situation of resistance and deterring aggression, which may not correspond to such an act of a civilian! There is not enough imagination to simulate an action that will not happen necessary «to achieve a significant socially useful goal» (namely such the goal is the protection of the Motherland) «in a specific situation» repelling the aggressor! And, finally, if the action that causes harm to the aggressor, at the same time creates a «threat to the lives of other people or the threat of an environmental disaster or the occurrence of other extraordinary events of a larger scale [greater than who or for what? – *Yu. P.*]», then the fact of creating this threat, on the one hand, is not cancels the legality of harming the aggressor, and on the other hand, it can be an independent basis for criminal liability if it contains a composition independent criminal offense.

And therefore I can come to the conclusion that there are no restrictions on the amount of damage (the number of killed or wounded aggressors, the amount or value of their property destroyed) or Art. 43–1, nor Art. 22 of the FTP are not established.

After all, it's not strange, since the state should encourage the infliction of as much harm as possible aggressor in order to speed up the victory over him. Therefore, it should be legitimate consider causing death or bodily harm to any number of aggressors, destruction or damage to any number of properties of the aggressor. Otherwise saying: exceeding the limits of harm in the defense of Ukraine against aggression is impossible.

The sixth challenge is the need to modify the current system of criminal legal remedies. The system of criminal legal means with which Ukraine entered the phase of a large-scale war remains in general stable during this phase and, apparently, will remain until its end. Currently, the legislator has not made and, as far as is known, does not intend to make drastic changes to it. At the same time, a series of point changes, as a rule, are derivatives this system did suffer from the changes in the articles of the Special Time described above.

The most significant among these innovations was the installation of additional ones there are certain exceptions to the term of imprisonment in the form of deprivation of the rights to practice positions or engage in certain activities. According to § 5 Part 1 Art. 55 this one the type of punishment as the main or additional "for the commission of criminal offenses against the foundations of the national security of Ukraine, provided for in Articles 111-1, 111-2 of this Code, is appointed for a term of ten up to fifteen years". For such terms, it is established in the sanctions of the mentioned articles, and if in the sanction of Art. 111–2 – as an additional punishment, in the sanctions of Part 1 and Part 2 of Art. 111–1 – as an unalternative basic punishment. The latter, in particular, raised a number of problematic issues related to the interpretation and application of these sanctions.

Firstly, many researchers have drawn attention to a gross legislative error, because even with such dimensions, deprivation of rights remains a «punishment not related to deprivation of liberty». Therefore, the presence of only this type of punishment in the sanction indicates that the act is a criminal misdemeanor. Instead, according to the title of Section I, all criminal offenses provided for by it must be exclusively crimes. Moreover, in Part 2 of Art. 111–1 deprivation of the rights is combined with an additional punishment in the form of confiscation property, which in accordance with Part 2 of Art. 59 can also be established only by crimes (not misdemeanors) against the foundations of national security of Ukraine. So even if not to deal with the problem of resolving the conflict between the title of the section and the content the sanction of one of the articles included in it will in any case be necessary to ascertain the impossibility of confiscation of property under Part 2 of Art. 111–2, due to its contrary to the requirements of the article of the General Part.

Secondly, the presence in the sanctions of Part 1 and 2 of Art. 111–1 of non-alternative deprivation of rights as the main punishment actualized the issue of the subject

criminal offenses provided for by these Parts. If it is assumed that disqualification can be imposed only on a person who has committed a criminal offense while holding a certain position or engaging in a certain type of activity, then it will be necessary to come to the conclusion that the mentioned in Parts 1 and 2 of Art. 111–1, Ukrainian citizenship is not the only sign of the special subject of these acts. Obviously, it will be necessary to assume that such a subject, except moreover, he must also hold a certain position or engage in a certain type of activity, in connection with which he will commit his collaborative actions. Therefore, the opposite conclusion follows: that the subject of these criminal offenses cannot be a person who does not hold such positions or does not perform types of activities, or holds or performs them illegally. However, the opposite interpretation is also permissible, which is not entirely consistent with established judicial practice, but not directly contradicts Art. 55 of the CC. It can be assumed that such a person can be deprived the right to hold certain positions or engage in certain activities "preventively" for the future, regardless of whether her collaborative actions were related to a certain position or certain types of activities. However, in this case it appears a reasonable question about the rights to occupy which positions or occupy which ones what types of activities should a person be deprived of?

Thirdly, attention should be paid to the impossibility of assigning this species punishment for a term of less than 10 years, even on the basis of Art. 69 of the CC. This conclusion follows from the fact that for criminal offenses provided Art. 111–1, 10 years of imprisonment and is the minimum amount for this type of punishment provided for by the article of the General part of the Criminal Code. The general rule of a term of 2 to 5 years for this type of punishment does not apply to this criminal offense. Therefore, when establishing grounds for the application of Art. 69, the court can only go to the only main type of punishment, which is milder than deprivation of rights, - to a fine - and assign it in the range from 30 to 50,000 t.-f. m. i. s.

The seventh challenge is changes in the rules for the application of criminal legal means. The beginning of the large-scale phase of the war determined not only the strengthening of the punishment, but also the tightening of the rules for its application, exemption from it or its replacement. Despite the fact that the harshness of these rules was clearly the main leitmotif of these changes, but in fact it did not always happen. In particular, three rules for the application of criminal legal means have undergone changes.

First, following the rule introduced back in 2014 failure to apply the statute of limitations for criminal prosecution not only for those international crimes for which it is stipulated by the relevant international treaties, but also for crimes against the foundations of national of Security of Ukraine, legislator, supplementing section I of the Special Part new articles, at the same time supplemented with references to them in part 5 of Art. 49 of the CC. Here again, attention should be paid to the problem of parts 1 and 2

of Art. 111–1. By reason of part 5 of Art. 49 non-application of the statute of limitations is provided only for crimes against the foundations of national security, it is worth concluding that two-year statutes of limitation are established for criminal misdemeanors against the foundations of national security, provided for by the aforementioned regulations (§1, Part 1, Art. 49).

Secondly, following another rule introduced in 2016 – on the possibility of imposing life imprisonment for preparation for and attempt to commit crimes against the foundations of national security of Ukraine – the legislator consistently supplemented with references to new articles from this section and Part 4 Art. 68 of the CC. However, here too, unfortunately, there were some curiosities: in Part 4 of Art. 68 directly indicates the possibility of life imprisonment for the crime provided for in Art. 114–2, while none of the sanctions of the three parts of this article provides for this type of punishment.

Thirdly, probably keeping in mind the deterioration of the situation of persons convicted of treason or sabotage, the legislator added a mention of these two crimes to Part 4 of Art. 86 of the CC, which provides for a list of criminal offenses for which a person may be released from serving a sentence on the basis of the amnesty law after the actual expiration of the terms established by Part 3 of Art. 81 of the CC. For deliberate, especially serious crimes, such as treason and sabotage, this is three-fourths of the term of the sentence imposed by the court. However, what actually happened was not a strengthening, but, on the contrary, a softening of the rules for applying amnesty to such persons. Because before these changes in Art. 86 of the CC, in accordance with § "g", Part 1, Art. 4 of the Law "On the application of amnesty in Ukraine" to persons convicted of crimes against the foundations of national security of Ukraine, amnesty was not applied at all. From now on, it can be applied to those convicted of treason or sabotage after the person has served three quarters of the sentence assigned to him. To those convicted of other crimes against the foundations of national security (including less socially dangerous ones, for example – collaborative activities) – it cannot be applied in the future under any conditions.

CONCLUSIONS

The above provides grounds for the following conclusions:

1. With the beginning of the large-scale phase of Russia's war against Ukraine, our criminal legislation faced a whole series of new challenges that related to many of its institutions, both General and Special parts;
2. In the first weeks of the large-scale war, the legislator carried out active law-making activities in the field of criminal law, trying to respond as quickly as possible to both

real and imagined challenges to criminal law. However, after mid-April of 2022, his activity in this area was reduced to zero;

3. A very small number of novelties, which were introduced to the CC of Ukraine during the martial law, can be unequivocally approved and are aimed at the unequivocal improvement of criminal law norms. Most of the hastily adopted novellas created collisions with other norms of criminal law, often became unfounded special compositions, caused other difficulties in their practical application;
4. The criminal legislation of Ukraine still does not have adequate answers to the main challenges of the martial law, namely: we have significant inconsistencies between the articles of Section I "Crimes against the foundations of the national security of Ukraine" and we still do not have a proper one (one that would correspond to the provisions of the Rome Statute of the ICC) normalization of criminal liability for international crimes in Chapter XX "Criminal offenses against peace, human security and international legal order";
5. The accumulated experience of criminal law law-making during the first months of a large-scale war, and even more – the experience of practical application of criminal law norms during martial law in the country, and ready work of Ukrainian criminologists and penologists during this time, is the basis on which an optimal model of military and criminal law of Ukraine must be created, which will have answers to all the challenges caused by the war.

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PAGRINDINIAI IŠŠŪKIAI UKRAINOS BAUDŽIAMAJAI TEISEI, PRASIDĖJUS DIDELIO MASTO KARUI, IR ĮSTATYMŲ LEIDĖJO ATSAKAS Į JUOS

Santrauka. Straipsnyje įvardijami pagrindiniai iššūkiai, kurių Ukrainos baudžiamoji teisė patyrė nuo Rusijos plataus masto invazijos pradžios (2022 m. vasario 24 d.), ir tebevykstant karui, kuris trunka nuo 2014 metų. Straipsnyje analizuojami teisiniai sprendiniai, teisėkūros iniciatyvos, įtvirtinti Ukrainos baudžiamojo kodekso papildymuose kaip atsakas į nepaprastąją situaciją. Nustatytos teigiamos ir neigiamos šių teisės aktų pakeitimų pasekmės, pabrėžtos tam tikros problemos, kurių kyla juos taikant teismų praktikoje. Aptariamos tolesnės baudžiamosios teisės reguliavimo ir reformos kryptys ir pažanga.

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